

The Economic Loss Doctrine in Michigan

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In cases involving property damage which is allegedly caused by a defective product, Michigan has adopted the economic loss doctrine to bar tort claims for those damages. In *Neibarger v Alf-Laval, Inc*, 439 Mich 512; 486 NW2d 612 (1992), the Michigan Supreme Court explained this doctrine as follows:

[W]here a plaintiff seeks to recover for economic loss caused by a defective product purchased for commercial purposes, the exclusive remedy is provided by the UCC[.]

Id. at pp. 527-528. In *Neibarger*, the plaintiffs purchased a milking system for their dairy farms. The plaintiffs alleged that the milking systems were defective and that their cattle became ill and/or died. Plaintiffs brought claims for negligence, breach of express warranty, and implied warranty. The Michigan Supreme Court held that the economic loss doctrine barred tort recovery and that the plaintiffs were limited to the remedies provided by the UCC. *Id.* at p. 527. The Court held that the plaintiffs' tort claims were barred even though they sought to recover for damage to property other than the allegedly defective product:

In many cases, failure of the product to perform as expected will necessarily cause damage to other property; such damage is often not beyond the contemplation of the parties to the agreement. Damage to property, where it is the result of a commercial transaction otherwise within the ambit of the UCC, should not preclude application of the economic loss doctrine where such property damage necessarily results from the delivery of a product of poor quality.

Id. at p. 531.

The Michigan Court of Appeals has held that privity of contract is unnecessary for

the economic loss doctrine to apply. *Sullivan Industries, Inc v Double Seal Glass Co*, 192 Mich App 333, 344; 480 NW2d 623 (1991). Thus, regardless of whether a commercial entity purchases a product directly from the manufacturer or not, the economic loss doctrine bars all non-UCC claims.

Courts have consistently applied the economic loss doctrine to bar claims where a plaintiff alleges economic losses arising from an allegedly defective product. *Citizens Insurance Co v Osmose Wood Preserving, Inc*, 231 Mich App 40; 585 NW2d 314 (1998) (holding claims of negligence and fraud were properly dismissed where a flame-retardant chemical caused the roof of a restaurant to collapse); *MASB-SEG Property/Casualty Pool, Inc v Metalux*, 231 Mich App 393; 586 NW2d 549 (1998) (holding all claims except breach of warranty under the UCC should have been dismissed where an allegedly defective light caused a fire in a construction lab).

Thus, a party faced with a lawsuit which solely alleges property damages caused by a defective product should consider an early motion for summary disposition in order to dismiss all tort claims. The plaintiff's sole claim should be for breach of warranty pursuant to the Uniform Commercial Code.