

COMMERCIAL LITIGATION ALERT

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Florida Supreme Court Limits Economic Loss Rule

In *Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc.*, No. SC10-1022 (Fla. March 7, 2013), the Supreme Court of Florida limited application of the economic loss rule in Florida to cases involving products liability. The Court receded from prior decisions to the extent that those decisions applied the economic loss rule in cases other than products liability. Florida jurisprudence previously had recognized application of the economic loss rule in both contractual privity and products liability cases. The *Tiara Condominium Association, Inc.* decision thus eliminated application of the rule in cases involving contractual privity.

As the Court explained in *Tiara Condominium Association, Inc.*, the economic loss rule had its genesis in products liability cases. Where the complainant sought solely economic losses, the economic loss rule limited the party's recovery to its contractual rights. Defendants argued the rule in cases involving contractual privity, and courts in Florida expanded the rule to include cases that did not involve products liability. Florida courts then began to recognize exceptions to a broad "the existence of a contract between the parties automatically bars all tort claims" rule. The exceptions included claims based on fraud in the inducement and negligence in providing professional services. In reaching its decision, the Court in *Tiara Condominium Association, Inc.*, indicated that "our experience with the economic loss rule over time, which led to the creation of the exceptions to the rule, now demonstrates that expansion of the rule beyond its origins was unwise and unworkable in practice. Thus, today we return the economic loss rule to its origin in products liability."

In a concurring opinion, Justice Pariente attempted to blunt dissenting opinions, which argued that the majority's decision essentially served to expand Florida tort claims exponentially and eviscerate contract claims when parties stand in contractual privity. According to Justice Pariente, the majority opinion left in place established Florida precedent holding (1) that a complainant cannot bring a tort claim, based on breach of a contractual relationship, unless the complainant can prove all elements of the tort claim independent of a claim for breach of contract and (2) that a breach of contract alone cannot establish a cause of action in tort.

Notwithstanding Justice Pariente's concurring opinion, the decision will have a substantial impact on commercial litigation in Florida. Plaintiffs in Florida cases will argue that the decision in *Tiara Condominium Association, Inc.*, rules out any tort defense based upon the existence of a contract between the parties. To meet this argument, defendants will need to focus upon Florida decisions recognizing that a complaining party must allege and prove an independent tort to avoid a defense based upon contractual privity. In regard to this argument, claims based upon professional negligence, fraud in the inducement and statutory remedies are the type of claims that are independent of a claim for breach of contract and thus are not barred by the existence of a contract between the parties.

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