# Florida's top court addresses Economic Loss Rule

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TALLAHASSEE, Fla. (Legal Newsline) – This past December, the legal landscape for manufacturers in contractual privity with another party was altered.

Florida's Supreme Court has ruled on a question prompted by a 2013 case dealing with the application of economic loss in specific tort cases. The implication of change may depend on one's legal view as to the permeability of the divide between contract and tort law.

At issue is the Economic Loss Rule (ELR). Designed to prohibit tortious product liability claims from being filed between contracted manufacturers and customers over a faulty product that causes no damage other than to itself, the rule was supposed to clearly delineate where warranty liabilities end and tort grievances began.

Instead, the rule has been allowed to slowly permeate into other legal areas of practice.

Walter Latimer, an attorney with Wilson Elser Moskowitz Edelman & Dicker LLP, is an expert on product liability and has written about issues such as this.

Latimer told *Legal Newsline* that ELR evolved through interpretation and application.

"It was going in a lot of different directions," Latimer said. "It kept growing and growing until the court said it will only apply to product cases now."

Adopted by Florida in 1987, it was hoped that ELR would prevent a contracted party from resorting to tort suits to recover damages from economic loss. Over time, however, certain cases with limited circumstances had allowed the concept of ELR to creep outside its legal domain, specifically into what is called the independent tort doctrine.

Soon, according to Latimer, even malpractice suits were utilizing the ELR.

The mission creep of the rule can best be seen in cases involving the contractual privity economic loss rule (CPELR), also known as the independent tort doctrine (IDT). The nuanced rule permitted the ELR to be used in cases involving a breach of contract that resulted in proven economic loss.

This seeming ambiguity caused growing legal uncertainty that was bound to be addressed at some point. Latimer told *Legal Newsline* that the extension of ELR had created a very unsettled area between product liability and tort law.

In 2013, the moment arrived for the matter to be addressed. In *Tiara Condominium Association Inc. v. Marsh & McLennan Cos. Inc.,* the Florida Supreme Court was asked a pointed question by the U.S. Court of Appeals for the 11th Circuit: "Does the Economic Loss Rule bar an insured's suit against an insurance broker where the parties are in contractual privity with one another and the damages sought are solely for economic losses?"

The court opined that, after extensive consideration and historical review, the Economic Loss Rule, as originally intended, only applied in product liability cases and that the creep of the rule into other areas of law, specifically the independent tort doctrine, was unwarranted. This left open the possibility that unimpeded independent tort cases, which previously were limited by the extension of the ELR, would flood the courts.

For many in the legal profession, the decision was confusing if not seemingly a dramatic about-face. Justice Charles Canady, in a dissenting opinion of the case, said that "Florida's contract law is seriously undermined by this decision, [and] with today's decision, we face the prospect of every breach of contract claim being accompanied by a tort claim."

In a news release published on Weinberg Wheeler Hudgins Gunn & Dial's website, the law firm writes that "sweeping" decision was bound to change Florida law with a ruling that was reached "without much discussion or analysis other than historical context." Another law firm, Jimerson & Cobb PA, wrote on its website that while the decision lacked clarity, it did not imperil the independent tort doctrine.

Uncertainty even plagued Latimer.

"You know, when [the decision] came out, everyone thought the sky was falling," he said. He confessed that he, himself, had been rattled by the decision.

After some time for reflection and after digesting the court's opinion, Latimer said he realized that:

"By implication, as number one, the trial court said that the [ELR] rule still has viability and if the court of appeals had thought the trial court was crazy, they would have done something about it."

Latimer went on to say that a bit of uncertainty still exists because the decision was not "a direct affirmation of how the ELR applies, it was more indirect."

Latimer said the court was right in making the ELR domain specific to product liability because manufacturers were in danger of suffering significant financial harm.

"If you don't follow the ELR, things like warranties go by the wayside," said Latimer. "And if warranties could be rendered all but meaningless, contract law would be all but dead."