

Clarifying a doctrine

Courts had turned economic loss rule 'a confusing morass,' so justices waded in

Indemnity Insurance v. American Aviation

Case no.: 03-1601

A dispute over a damaged aircraft prompted the Florida Supreme Court to clarify the state's so-called economic loss rule.

The economic loss rule is applied to negligence actions in which the sole damages suffered are economic losses and no physical injury is involved. Originally a product liability doctrine, the economic loss rule had been stretched over time to include cases beyond product liability claims.

Prior to the court's December decision, plaintiffs in Florida had a clear right to recover solely economic losses in two situations. The first was when the parties were in a contractual relationship. The second was in defective product cases where there was no damage to a person or property.

But courts around the state had expanded the scope of the doctrine, with no clear guiding rationale. It had spread to permit recovery, for example, in the contexts of fraudulent inducement, negligent misrepresentation and breach of fiduciary duty. Justice Raoul G. Cantero III called the state of the law "a confusing morass."

The unanimous opinion in the Indemnity Insurance case, written by Chief Justice Barbara J. Pariente, attempted to standardize the application of the doctrine.

In addition to the privity, or knowledge, of contract and defective product applications, the court created a "duty filter," allowing plaintiffs to sue for solely economic damages in the absence of a contact with the defendant, but only if the plaintiff can prove that the defendant owed the plaintiff a duty.

"In general, actionable conduct that frustrates economic interests should not go uncompensated solely because the harm is unaccompanied by any injury to a person or other property," Pariente wrote for the court.

The case arose from an incident in which a Beechcraft KingAir 100 owned by Profile was extensively damaged during a landing in 1999. The damage occurred when the landing gear failed to fully extend. Profile Aviation is a Charlotte, N.C.-based compa-

ny that charters and leases aircraft.

Profile alleged that in 1996, when the plane was in the possession of a previous owner, that owner had taken the plane to American Aviation, a Federal Aviation Administration-certified aircraft repair shop in Brooksville, Fla. Profile alleged that during the plane's inspection and repair, an American Aviation mechanic installed a piece of a plane's landing gear backward.

The mistake did not manifest itself until 1999, after Profile had purchased the plane.

The original suit was filed in 2002 in U.S. District Court in the Middle District of Florida. Profile and its insurer, Indemnity Insurance Company of North America, sued for negligence, negligent misrepresentation and breach of warranty under the economic loss doctrine. Profile named the plane's previous owner, since the defect was unknown at the time of the purchase. The suit was filed in federal court on diversity grounds.

The district court dismissed the claim, agreeing with American Aviation that the claims were barred by Florida's economic loss rule.

Indemnity and Profile appealed to the 11th U.S. Circuit Court of Appeals, which certified five questions to the Florida Supreme Court, asking the justices to clarify Florida law on the economic loss doctrine.

In December, the justices boiled down the five questions to one — "Whether the economic loss doctrine bars a negligence action to recover purely economic loss in a case where the defendant is neither a manufacturer nor distributor of a product and there is no privity of contract."

The justices described two types of case that clearly qualify for only economic losses, then established a test for other types of situations.

The first type of qualifying case is when the parties are in contractual privity and one party seeks damages relating to a contractual matter. The second type is in a defective product case in which only the product is damaged, with no personal or other property damage.

Indemnity and Profile claimed economic loss due to the alleged negligence of an

American Aviation mechanic, who had been under contract with the plane's previous owner but not with Profile.

The high court ruled that the economic loss doctrine was inapplicable under the privity of contract test, since there was no contract between the plaintiffs and the defendant. The court also ruled that Profile's case was not a defective product case.

"We therefore hold that cases that do not fall into either of the two categories articulated above should be decided on the traditional negligence principles of duty, breach and proximate cause," the high court said.

But the justices carved out a third standard for determining the applicability of the economic loss doctrine, basing it on traditional negligence principles of duty, breach of contract and proximate cause. They said that if American Aviation owed Profile a duty, "Profile is not prevented from recovering for purely economic losses."

The "duty filter" is the standard the court set for determining which causes of action qualify for recovery of economic damages only.

The kind of duty envisioned by the court in the decision is rooted in traditional law causes of action, such as professional malpractice, fraudulent inducement and negligent misrepresentation.

Having established this "duty filter" for economic-only damage cases, the Supreme Court returned the case to the 11th Circuit, which must decide whether American Aviation owed Profile a duty with regard to the plane's landing gear. The case is pending.

Michael P. Bruyere, a partner at Lord Bissell & Brook in Atlanta and attorney for Profile and its insurer, said the Supreme Court's decision "was a long time coming in Florida, and added a lot to the applicability of the [economic loss] doctrine."

His co-counsel in the case are Thomas J. Strueber and Jonathan R. Friedman of Lord Bissell.

Bruyere expressed concern that the duty filter could once again lead to the widely variable ruling decisions that made the economic loss doctrine a quagmire in the first place. ♦