

Dean v. Barrett Homes, Inc.: Court's Expansion of Economic Loss Rule Increases Liability for Component Part Manufacturers

Product Liability Advisory

March 2011

By: [Shaun Bean](#)

In a decision that raises grave concerns for product liability defendants, the New Jersey Supreme Court recently breathed life into plaintiffs planning to sue manufacturers of products that are components of larger, integrated products. That state's economic loss rule has long presented an insurmountable barrier to recovery through tort-based theories. New Jersey's Products Liability Act (PLA), which codified the economic loss rule, permits tort remedies in strict liability or negligence *only* when the claim is for damage to property *other than the product itself*. In *Dean v. Barrett Homes, Inc.*, 204 N.J. 286 (2010), the court parted company with those courts, including New Jersey's federal courts and its Appellate Division, that have expanded the economic loss rule through the adoption of an approach referred to as the "integrated product doctrine." That approach precludes tort-based recovery when a defective product is incorporated into another product that the defective product then damages. In other words, the PLA bars tort recovery because the defective product and the product it damages are considered the same. Thus, there can be no harm to other property. Instead, the *Barrett* court joined the minority, following two California decisions holding that homeowners could recover for damage to their homes caused by defective windows and a defective foundation respectively, and declined to apply the integrated product doctrine.

In *Barrett*, the plaintiffs purchased a home and soon discovered leaks in its stucco siding, known as the Exterior Insulation Finishing System (EIFS), which caused a mold problem. The moisture that seeped behind the stucco caused damage to the home's windows, doors, subfloors, framing and sheathing. Among others, the plaintiffs sued the EIFS manufacturer, not only for the cost of removing the defective siding, but also for negligence, breach of warranties, breach of contract, Consumer Fraud Act violations, common law fraud and strict product liability. The Supreme Court held that although the economic loss rule barred the plaintiffs' strict liability theory for damage the EIFS caused to itself, the plaintiffs retained a cause of action to the extent the EIFS caused damage to the structure of the house or its immediate environs. Writing for the 6-1 majority, Justice Helen Hoens attacked the legal fiction that a component of a house and the house itself are but one unified product: "As we understand it, the EIFS was affixed to the exterior walls to create a moisture barrier, much like exterior vinyl siding. As such, it did not become an integral part of the structure itself, but was at all times distinct from the house."

Writing separately, Justice Roberto Rivera-Soto admonished that the majority's decision will encourage "hairsplitting," i.e., breaking products down conceptually to allow strict liability claims for defects to their components. He also had serious doubts about the notion that the EIFS, which could only be removed by extensive demolition work, was not integrated into the structure, describing it as "so fanciful, so nonsensical, that it beggars the imagination. It is a conclusion that

can germinate only in the minds of lawyers and can find root only in the rarified environment of this Court's decisions; it cannot, however, long survive in the atmosphere of the real world."

Related Practices:

[Products Liability](#)