

Exceptions to the Economic Loss Rule in North Carolina

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As discussed in an earlier article (see “What is the Economic Loss Rule and How Does it Effect Me on My North Carolina Project? Published on JD Supra on 1/28/10), there are exceptions to the economic loss rule which will allow you to recover under for your damages (that is, your “injury”) under a negligence theory, even though you have a contract with the other party which may otherwise limit your recovery.

The four exceptions are:

- (1) The injury is to a person or property of someone other than the promisee;
- (2) The injury is to property of the promisee *other than* the property which was the subject of the contract, or was a personal injury to the promisee;
- (3) The injury to the property is one in which the promisor is charged by law, as a matter of public policy, with the duty to use care in the safeguarding, as in the case of a common carrier, an innkeeper or other bailee.
- (4) The injury was intentional on the part of the promisor, or was a conversion of the property by the promisor.

These are generally called the *Ports Authority* exceptions to the economic loss rule. *Ports Authority v. Fry Roofing Co.*, 294 N.C. 73, 81, 240 S.E.2d 345 (1978), *rejected in part on other grounds*, *Trustees of Rowan Tech. v. Hammond Assoc., Inc.*, 313 N.C. 230, 242, 328 S.E.2d 274, 281 (1985).

Be aware that if one of these exceptions does not apply, the economic loss rule may bar any negligence action, including an action for contribution or indemnity.

For example, where the owner sues the general contractor for construction issues, the general contractor cannot bring a contribution or indemnity action against his subcontractors, as there is a contract between them and only contractual remedies will apply. *Kaleel Builders, Inc. v. Ashby*, 161 N.C.App. 34, 42, 587 S.E.2d 470, 476 (2003).