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What is the Economic Loss Rule and How Does it Effect Me on My North Carolina Project?

By Melissa Dewey Brumback

You may wonder why you cannot recover for certain damages on a construction project. The answer, in all likelihood, is the Economic Loss Rule. The Economic Loss Rule is a rule of law that says, essentially, if you have a contract with another party, and the only damages you suffer are to the project which is the subject of that contract, then no negligence action can lie. Essentially, you are stuck with basic breach of contract principals and remedies.

The rationale for the economic loss rule is that where there is a contract, the parties are free to include, or exclude, provisions as to the parties' respective rights and remedies. See, e.g., Hospira Inc. v. Alphagary Corp., __ N.C. App. __, 671 S.E.2d 7, 14 (2009), discussing the rationale behind the rule. The effect of the rule is that in those situations, parties are limited to their contractual remedies. (Another reason for a well-drafted contract!). No consequential, incidental, or other type claims can be made unless expressly provided for in the contract.

This rule does not apply if no contract exists between parties (a situation called "lack of privity"). The parties are free in that case to sue under a negligence theory.

For example, an architect may be sued by the general contractor or its subcontractors working on a construction project for economic loss foreseeably resulting from breach of architect's common-law duty of due care in the performance of his contract with the owner. Davidson v. Jones, 41 N.C.App. 661, 255 S.E.2d 580 (1979).

Are there exceptions to the economic loss rule? Yep. Those exceptions are detailed in my next blogpost at <http://nconstructionlaw.wordpress.com>