

PRODUCT LIABILITY

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MANUFACTURERS AND SUPPLIERS WIN BIG IN
PENNSYLVANIA ECONOMIC LOSS DOCTRINE ARGUMENT*By Gordon S. Woodward*

The economic loss doctrine (ELD) in Pennsylvania “precludes recovery for negligence ‘if the plaintiff suffers a loss that is exclusively economic, unaccompanied by an injury to either property or person.’” *Elliot-Lewis Corp v. Skanaka USA Building, Inc.*, 2015 U.S. Dist. Lexis 98405 (E.D. Pa. July 27, 2015) (quoting *Bouriez v. Carnegie Mellon Univ.*, 430 F. App’x 182, 187 (3d Cir. 2011)). There is, however, a significant exception to the ELD based on *Section 552 of the Restatement (Second) of Torts*, which allows tort claims for negligent misrepresentation (even absent injury to property or person) against an entity that is “in the business of supplying information.” *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 285 (Pa. 2005). The prototypical examples of such entities are architects and design professionals. *Id.* at 285-87.

Over the summer, in *Elliot-Lewis Corp v. Skanaka*, a group of design professional defendants sought to extend the *Bilt-Rite* exception to product manufacturers and suppliers. In an opinion of which product manufacturers and suppliers should be aware, the *Skanaka* court refused to expand the exception.

Skanaka involved HVAC renovations at The Franklin Institute in Philadelphia. The HVAC system was not operational within the time frame required by the construction schedule, and it was eventually determined that the problem involved

condenser pumps. The pumps were manufactured by Patterson Pump Company (Patterson). The subcontractor who performed the work necessary to complete the renovation project sued the general contractor, Skanaka, for payment. Skanaka filed a third-party claim against the design professionals for negligent misrepresentation, alleging errors in the project drawings and specifications. The design professionals then filed a fourth-party negligence claim against Patterson and Clapp Associates, Inc. (Clapp) (Clapp was Patterson’s representative on the project) alleging that information provided by Patterson and Clapp, and which the design professionals relied upon, was inaccurate.

Patterson and Clapp moved to dismiss the fourth-party claims based on the ELD. In response, the design professionals argued that Patterson and Clapp, by providing information about the condenser pumps, were “in the business of supplying information.” Therefore, the design professionals asserted that Patterson and Clapp were within the exception that would allow a negligence claim to proceed against them, even absent physical injury to persons or property. In analyzing the parties’ arguments, the *Skanaka* court reached two very significant conclusions. First, the court concluded that the *Bilt-Rite* exception was intended to be a narrow exception applicable only to those who are engaged in the

sale of information (e.g. architects, accountants, engineers, and lawyers) as opposed those who sell physical products and provide information about the product to consummate the sale. Second, the court noted that extending the *Bilt-Rite* exception, as argued by the design professionals, would swallow the rule and ultimately destroy the ELD, because it is common for any entity selling any product to provide some information regarding its product.

Skanaka has provided much needed clarity regarding the boundaries of the *Bilt-Rite* exception to the economic loss doctrine, and confirmed that providing information in conjunction with the sale of a product should not subject manufacturers and suppliers to tort liability on negligent misrepresentation claims in violation of the ELD. ♦

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