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MIND OF A LAWYER. HEART OF A CONTRACTOR.

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Oregon Clarifies Statute of Limitations on Construction Breach of Contract Action As 6 Years...But Opens Door to Negligence Claims.

Two interesting decisions from the Oregon Courts of Appeals in 2008 and 2009 are indirectly related, and of interest to folks in the construction industry.

In the earlier decision, the Oregon court clarified the statute of limitations in a breach of contract claim for construct defects. Surprisingly, because of some ambiguity in two Oregon statutes, it has not been settled whether these suits were to be brought within 6 years from the date of breach, or ten.

The Court in [Waxman v. Waxman & Associates, Inc.](#) appears to have settled the rub, holding the claim must be brought within six years from the date of the breach – regardless of when the breach was or should have been discovered. 224 Or. App. 499, 198 P.3d 455 (Or. Ct. App. 2008).

Which leads us to a case the following year before the Oregon Court of Appeals, [Abraham v. T. Henry Construction Inc.](#), 230 Or. App. 564, 217 P.3d 212 (2009).

In this case, the plaintiffs brought suit against their contractors for breach of contract (defects) and negligence....8 years after the breach. As we just learned from the [Waxman](#) case, therefore, the breach of contract claims were prescribed, and the [Abraham](#) court found as such.

Interesting about this case, however, is that the negligence claims were allowed to proceed. This, despite application of the economic loss doctrine.

Typically, the economic loss doctrine will prohibit a tort claim between contracting parties when the claim arises out of a failure to perform contractual obligations. In other words, since negligence is a duty/care claim, one party must breach a standard of care....not simply a contractual obligation.

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The plaintiffs in Abraham argued, however, that the contractors had breached a standard of care because it had violated the Oregon Building Code. The Oregon Court of Appeals agreed that the Oregon Building Code did create a standard of care, and allowed the claim of negligence to proceed.