

Victory For Design Professionals: The Economic Loss Rule In Nevada

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The Nevada Supreme Court recently established a new legal rule that protects design professionals from economic damages arising from their errors and omissions. In the past, in Nevada, design professionals may have been liable in tort for purely economic damages arising from errors or omissions in the design professionals' services. This rule may also extend to defects in the work of commercial construction contractors.

In a Mandalay Resort Group proceeding, Mandalay claimed an engineering firm's geotechnical engineering services for the Mandalay Bay project were deficient and Mandalay sued the engineering firm for associated damages. Specifically, Mandalay claimed that settlement of the soils under the foundation exceeded amounts predicted by the engineering firm and, as a result, Clark County required Mandalay to repair and reinforce the foundation before proceeding with construction. The United States district Court of Nevada, where the case was filed, certified to the Nevada Supreme Court the question of whether Nevada's economic loss doctrine precludes tort-based claims against engineers, architects, and other design professionals in construction defect cases involving commercial property. The federal court had already determined Mandalay's damages were purely economic, as opposed to damages of personal injury or property damage.

The economic loss doctrine is a judicially created rule that shields a party from tort-based liability, including punitive damages. The rule contemplates that parties in a commercial setting should negotiate and determine their risk of liability arising from their performance of a contract at the time they negotiate the contract.

Further, when the economic loss rule applies, disputes are limited to contract-based claims to enforce the expectations derived from the parties' agreement. The purpose of the rule is to balance the disproportion between contract liability and potential alleged damages. Specifically, the court in its decision stated that "cutting off tort liability at the point where only economic loss is at stake without accompanying physical injury or property damage provides... incentives and disincentives to engage in economic activity or to make it safer." The court determined that the fact that the alleged damages arising from the engineering firm's services were foreseeable did not impact its decision.

Other courts have made exceptions to this economic loss rule for

intentional acts and professional negligence claims against attorneys, accountants, real estate professionals, and insurance brokers. The Nevada Supreme Court expressly refused to create a similar exception to allow tort claims for economic loss against design professionals.

Although not the issue before the court, its decision may bolster the implication to apply the economic loss doctrine to commercial construction contractors. The court indicated that when the quality of either work provided by a construction contractor or services provided by a design professional is at issue, remedies are properly addressed through contract law – not tort law. The court specifically stated it was not addressing Nevada's Chapter 40 laws governing residential construction defects.

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