State Specific: Florida

Florida Supreme Court Limits Economic Loss Rule to Products Liability Claims

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In an advantageous decision for the subrogation industry, the Florida Supreme Court recently narrowed the scope of the economic loss rule, and limited the rule's application to only cases involving products liability. Broadly stated, the economic loss rule prohibits a tort action in certain circumstances when the damages incurred are wholly economic, and there is no other property damage or personal injury. Although inexplicably expanded over time, the recent decision curtails the expansive definition and returns Florida's economic loss rule to its historical roots.

In *Tiara Condominium Ass'n, Inc. v. Marsh & McLennan Co., Inc.*,[1] an insured filed a lawsuit against its insurance broker, and alleged the broker incorrectly advised the insured regarding coverage. On appeal, the Eleventh Circuit certified a question to the Florida Supreme Court, asking if the economic loss rule bars a tort claim when an insured and its broker are in contractual privity, and the damages are solely economic. The certified question stemmed from several Florida court opinions purportedly applying the economic loss rule to situations where the parties were in contractual privity, regardless of whether services or goods were involved.

The Florida Supreme Court answered the certified question in the negative and took the opportunity to clarify the somewhat muddled law surrounding the economic loss rule. Significantly, the court noted that the economic loss rule was first adopted in Florida in the context of products liability.[2] The court further explained that the rule was judicially created to "curb potentially unbounded liability following the adoption of strict products liability."[3]

Unfortunately, subsequent decisions "appeared to expand the application of the rule beyond its principled origins and have contributed to applications of the rule by trial and appellate courts to situations well beyond our original intent."[4] Relying on historical background and the underlying rationale for the rule, the Florida Supreme Court receded from prior rulings and held in *Tiara Condominium Ass'n* that the economic loss rule applies only in the products liability context.

This limitation on the use of Florida's economic loss rule is a welcomed change for subrogation professionals, as the rule is often raised as a defense by contractors and subcontractors. Moving forward, the *Tiara Condominium Ass'n* case will help to increase the likelihood of recovery on construction defect claims. More importantly, the case opens the door for subrogating insurers to allege both tort and contract claims against a defendant, thereby increasing the chances of recovery.

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[1] No. SC10-1-22 (Fla. Mar. 7, 2013).
[2] *See Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899 (Fla. 1987).
[3] *Tiara Condo. Ass'n*, No. SC10-1-22 (Pariente, J., concurring).
[4] *Tiara Condo. Ass'n*, No. SC10-1-22 *quoting Moransais v. Heathman*, 744 So. 2d 973, 980 (Fla. 1999).