

CARGO UPDATE NEWSLETTER

THE DEMISE OF FLORIDA'S ECONOMIC LOSS RULE – June 2013

Florida's Economic Loss Rule has been dying a slow death. In the landmark decision of *Tiara Condominium Association, Inc., v. Marsh & McLennan Co., Inc.*, handed down on March 7, 2013, the Florida Supreme Court put another nail in the Economic Loss Rule coffin by holding that the Rule now applies only in products liability cases.

The case involved a lawsuit by a condominium association (Tiara) against their insurance broker (Marsh). Tiara retained Marsh to secure condominium insurance coverage including windstorm coverage, which Marsh secured with a loss limit close to \$50 million. The condominium subsequently suffered significant damage as a result of two hurricanes. Marsh allegedly assured Tiara that the coverage was per occurrence (meaning coverage of almost \$1 million as opposed to coverage in the aggregate which would be half that amount), and relying on that assurance, Tiara proceeded with more expensive remediation efforts. When Tiara sought payment from the underwriter, however, the underwriter claimed that the loss limit was \$50 million in the aggregate, not per occurrence. Tiara sued Marsh on various counts including counts in contract and tort. The appeals court affirmed summary judgment for Marsh on all counts except counts for negligence and breach of fiduciary duty, which were based on allegations that Marsh failed to advise Tiara of its complete insurance needs or failed to advise Tiara of its belief that Tiara was underinsured. The appeals court certified to the Florida Supreme Court the question whether the Economic Loss Rule barred the negligence and breach of fiduciary claims. The Court answered the question in the negative and held that the application of the Economic Loss Rule is limited to products liability cases.

Historically, the Economic Loss Rule was introduced to address attempts to apply tort remedies to traditional contract damages. Simply stated, when parties were in contractual privity and the damages sought in tort were the same as those for breach of contract, a plaintiff could not circumvent the contract by bringing an action in tort. Over time, exceptions to the Economic Loss Rule were carved out, including cases involving torts independent of contract such as fraud in the inducement, cases involving negligent misrepresentation, and cases involving professional services (professional malpractice). *Tiara* makes clear that in Florida the Economic Loss Rule is applicable only in products liability cases, and a plaintiff who is in privity of contract with a defendant is now free to bring causes of action in tort together with causes of action in contract. Each State's rules, decisions, and laws are different, so professional advice should be sought with regard to which rules, decisions and laws are applicable to your particular State and to your particular circumstances.

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