THE HARMONIE GROUP®

State-By-State Compendium on Economic Loss Doctrine

Alabama Recognizes the Economic Loss Doctrine
In Lloyd Wood Coal Co. v. Clark Equip. Co., 543 So. 2d 671, 672-74 (Ala. 1989), the Alabama Supreme Court adopted the East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 868–71, 106 S.Ct. 2295 (1986) approach to the economic loss doctrine noting: (1) that consequential economic loss caused by the failure of a product is more insurable by buyers than loss caused by personal injury; therefore, the increased cost of the product would not be justified; (2) parties should be free to allocate risks among themselves without the intrusion of tort liability; and (3) warranty law contains an adequate remedy with necessary limitations on liability (i.e. privity and remoteness) while liability in tort could subject manufacturers to damages in an indefinite amount. Accordingly, when a malfunction or defect in a commercial product results in damage only to the product itself, there was no cause of action in tort under theories of negligence, wantonness, strict liability, or extended manufacturer's liability doctrine.

Alaska has Recognized the Economic Loss Doctrine
Alaska has accepted the economic loss doctrine. *See Pratt & Whitney Can., Inc. v. Sheehan*, 852 P.2d 1173, 1177 (Alaska 1993); *St. Denis v. Dep't of Hous. & Urban Dev.*, 900 F. Supp. 1194, 1200 (D. Alaska 1995).

Arizona Recognizes the Economic Loss Doctrine
The "economic loss doctrine" bars plaintiffs, in certain situations, from recovering economic damages in tort. See Flagstaff Affordable Housing Ltd. Partnership v. Design Alliance, Inc., 223 P.3d 664, 665 (Az. 2010). Arizona uses the doctrine to limit a contracting party to contractual remedies for the recovery of economic losses unaccompanied by physical injury to persons or other property. Arizona courts established a three-factor test for determining, on a case-specific bases, whether to apply the economic loss doctrine to claims involving a defective product:

1. The nature of the product defect;
2. The manner in which the loss occurred; and
3. The type(s) of loss or damage that resulted.

Id. citing Salt River Project Agr. Imp. and Power Dist. v. Westinghouse Elec. Corp., 694 P.2d 198, 210 (Az. 1984).

Arkansas Does *not* Recognize the Economic Loss Doctrine
The Supreme Court of Arkansas has chosen not to adopt the economic loss doctrine, stating, "[t]his court has declined to recognize the economic-loss doctrine in cases of strict liability, as we allow the recovery of purely economic losses, even where the damage relates only to the defective product." Bayer CropScience LP v. Schafer, 2011 Ark. 518 (2011); Farm Bureau Ins. Co. v. Case Corp., 878 S.W.2d 741, 743 (Ark. 1994); Blagg v. Fred Hunt Co., 612 S.W.2d 321, 324 (Ark. 1981).

California Recognizes the Economic Loss Doctrine

Where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only "economic" losses. Robinson Helicopter Co., Inc. v. Dana Corp., 34 Cal. 4th 979 (Ca. 2004). Further, the economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise. Id. citing Redarowicz v. Ohlendorf, 92 Ill. 2d 171 (Ill. 1982). In Jiminez v. Sperior Court, the rationale for the economic loss rule was set forth:

> The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the "luck" of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. We concluded that the nature of this responsibility meant that a manufacturer could appropriately be held liable for physical injuries (including both personal injury and damage to property other than the product itself), regardless of the terms of any warranty. But the manufacturer could not be held liable for 'the level of performance of his products in the consumer's business unless he agrees that the product was designed to meet the consumer's demands.

58 P.3d 450.

See Sec. 47-255.

Colorado Recognizes the Economic Loss Doctrine

The Colorado Supreme Court adopted the economic loss rule in Town of Alma v. AZCO Construction, Inc, holding that "a party suffering only economic loss from the breach of an express or implied contractual duty may not assert a tort claim for such a breach absent an independent duty of care under tort law." 10 P.3d 1256, 1264 (Colo. 2000). An independent duty exists only if the duty arises from a source other than the relevant contract, and if the duty is not also imposed by the contract. See Makoto USA, Inc. v. Russell, 250 P. 3d 625 (Colo. App. 2009). Thus, if a duty is memorialized in a contract between the parties, then the plaintiff has not shown a duty independent of the contract, and the economic loss rule will bar the tort claim. Id. at 628 (civil theft claim barred by economic loss rule where the plaintiff's contract and theft claims were inextricably linked and where the theft claim could not have been proved without first proving that the defendants breached their contract with the plaintiff).

Connecticut Recognizes the Economic Loss Doctrine

"The economic loss doctrine, a judicially created principle, prohibits recovery in tort where the relationship between the parties is contractual in nature and the only losses alleged are purely economic." *First Am. Title Ins. Co. v. 273 Water Street, LLC*, No. CV-08-4041234-S, 2010 Conn. Super. LEXIS 3449, at *14-15 (Super. Ct., Aug. 30, 2010, *Peck, J.*). The Connecticut Supreme Court initially rejected the doctrine in *Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 579 (1995), holding that "a remedy on the contract is independent of a remedy for negligent misrepresentation."

However, in *Flagg Energy Development Corp. v. General Motors Corp.*, 244 Conn. 126, 153 (1998), a products liability case, the Court seemed to reverse course, holding that "[w]e agree with the holdings of cases in other jurisdictions that commercial losses arising out of the defective performance of contracts for the sale of goods cannot be combined with negligent misrepresentation."

Since *Flagg*, there have been no appellate decisions on the extent to which the economic loss doctrine applies in Connecticut, and trial courts are split as to whether the doctrine does not apply at all, whether it applies only to products liability cases and contracts for the sale of goods under the Uniform Commercial Code, or whether it applies more broadly to any contract between sophisticated parties. *See Doherty, Beals & Banks, P.C. v. Sound Cmty. Servs.*, No. CV-10-6005795, 2011 Conn. Super. LEXIS 1195, at *12 (Conn. Super. Ct., May 19, 2011, *Cosgrove, J.*). The court that addressed the issue most recently noted that the majority of Connecticut trial court decisions "hold that *Flagg* applies the economic loss doctrine broadly to preclude tort claims seeking economic losses emanating from any contractual transactions involving commercial or 'sophisticated' parties." *Id.* at *13; *see also Dart Chart Sys. v. Wintonbury Care Ctr., LLC*, No. CV-09-5025872-S, 2009 Conn. Super. LEXIS 1563, at *10 (Conn. Super. Ct., June 5, 2009, *Aurigemma, J.*) ("[T]his court does not believe that the rule is limited to cases involving the sale of goods. The overriding rationale for the rule is that imposing tort remedies on contracts entered into by sophisticated parties improperly and unnecessarily interferes with the legitimate expectations and powers of the parties to allocate their risks.").

However, a sizeable minority of trial court cases since *Flagg* have construed the application of the economic loss doctrine narrowly. *See, e.g.*, *Tyson Roller Bearing v. Accuride Corp.*, No. X03-CV-06-5009721-S, 2008 Conn. Super. LEXIS 1116, at *6-*7 (Conn. Super. Ct., May 7, 2008, *Langenbach, J.*) (holding on a motion to strike that, "[g]iven that there has been no appellate resolution of this issue, in an abundance of caution, the court will agree at this stage of the proceedings with those cases that have restricted the applicability of the economic loss rule" to cases involving products liability and the sale of goods); *Milltex Props. v. Johnson*, No. 565866, 2004 Conn. Super. LEXIS 653, at *18 (Conn. Super. Ct., Mar. 15, 2004, *Hurley, J.T.R.*) (same).

In sum, courts in Connecticut will likely apply the economic loss doctrine in lawsuits between sophisticated parties involving the sale of goods and products liability claims. Conversely, if the parties at issue are not sophisticated, courts likely will not apply the doctrine. In cases involving sophisticated parties beyond the products liability and sale of goods context, there is no clear way to predict at this time whether a trial court will apply the doctrine.

Florida Recognizes the Economic Loss Doctrine

In Florida, the economic loss rule has been applied in two circumstances to prohibit the recovery in tort for solely economic damages: 1) when a party in contractual privity with another; and 2) when a product defect causes damage to that product without resulting in personal injury or damage to any other property, and no other established exception to the application of the rule applies. *Indem. Ins. Co. of N. America v. America Aviation, Inc.*, 891 So. 2d 532, 535 (Fla. 2004).

When parties enter into a contract, it is assumed that the parties have allocated the economic risks of nonperformance through the bargaining process. *See id.* at 536. The economic loss rule prevents a party to a contract from circumventing the contractual agreement by attempting to obtain a better bargain than that originally contemplated by making a claim for economic loss in tort. *Id.* As such,

plaintiffs are barred from bringing tort actions where a defendant has not breached a duty outside the context of the contract. *Id.* at 537; *see Kone, Inc. v. Robinson*, 937 So. 2d 238, 242 (Fla. 1st DCA 2006) ("[A] promisor will not be held liable for tort damages under a breach of contract theory."); *Elec. Sec. Sys. Corp. v. S. Bell Tel. & Tel. Co.,* 482 So.2d 518, 519 (Fla. 3d DCA 1986) (stating that "breach of contract, alone, cannot constitute a cause of action in tort.")

The economic loss rule also prohibits tort recovery when a product damages itself, causing economic loss, but does not cause personal injury or damage to any other property. *See Casa Clara Condo. Ass'n, Inc. v. Charley Toppino & Sons, Inc.*, 620 So. 2d 1244, 1246 (Fla. 1993) (holding there is no exception to the economic loss rule for the purchase of a house — "if a house causes economic disappointment . . . the resulting failure to receive the benefit of the bargain is a core concern of contract, not tort, law"); *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899, 902 (Fla. 1987) ("We hold contract principles more appropriate than tort principles for resolving economic loss without an accompanying physical injury or property damage."). A purchaser is still able to protect himself from loss by availing himself of statutory remedies for dealing with economic losses under warranty law, by negotiating a contractual remedy, or by purchasing insurance. *See Florida Power & Light*, 510 So. 2d at 902.

The economic loss rule does not operate to bar causes of action based upon torts that are independent of a contractual breach, even though a breach of contract action also exists. *See HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238, 1239 (Fla. 1996). If the parties are in contractual privity, a tort action will still lie for intentional or negligent acts that are independent from the breach of contract, and for freestanding statutory causes of action. *American Aviation*, 891 So. 2d at 543; *see, e.g., Moransais v. Heathman*, 744 So. 2d 973, 983–84 (Fla. 1999) (holding the economic loss rule did not bar a homeowner's professional negligence claim against the engineers who inspected his home and failed to detect certain defects, even where there was no personal injury or property damage other than the defects).

Georgia Recognizes the Economic Loss Rule

Georgia has adopted the economic loss rule to distinguish between those causes of action that may be brought only in a contract warranty action and those that give rise to an action in tort. The rule acts as a shorthand means of determining whether a plaintiff is suing for injuries arising from the breach of a contractual duty; or to produce a product that conforms in terms of quality or performance to the parties' expectations; or whether the plaintiff seeks to recover for injuries resulting from the breach of the duty arising independently of the contract to produce a nonhazardous product that does not pose an unreasonable risk of injury to person or property.

The economic loss rule prevents recovery in tort when a defective product has resulted in the loss of the value or use of the thing sold, or the cost of repairing it. Under such circumstances, the duty breached is generally a contractual one and the plaintiff is merely suing for the benefit of the bargain. The rule does not prevent a tort action to recover for injury to other property and persons because the duty breached generally arises independent of the contract. Nor does it preclude recovery for damages to the defective product itself, where the injury resulted from an accident. *Vulcan Materials Company, Inc. v. Driltech, Inc., 251 Ga. 383, 306 S.E.2d 253 (1983).*

Illinois Recognizes the Economic Loss Doctrine

The Illinois Supreme Court adopted the economic loss rule in Moorman Manufacturing Company. v. National Tank Company, declaring, "[w]e follow the decisions of the majority of courts and

commentators and hold that plaintiff cannot recover for solely economic loss under the tort theories of strict liability, negligence and innocent misrepresentation" 435 N.E.2d 443, 453 (Ill. 1982). Moorman provides three exceptions to the application of the economic loss rule:

1. Where the plaintiff sustained damage, i.e., personal injury or property damage, resulting from a sudden or dangerous occurrence;

2. Where the plaintiff's damages are proximately caused by a defendant's intentional, false representation; and

3. Where the plaintiff's damages are proximately caused by a negligent misrepresentation by a defendant in the business of supplying information for the guidance of others in their business transactions. *Id.* At 86-91

Further explaining the application of the Economic Loss Doctrine, the Illinois Supreme Court later said, "[t]he economic loss rule prevents recovery in tort when a defective product has resulted in the loss of the value or use of the thing sold, or the cost of repairing it. Under such circumstances, the duty breached is generally a contractual one and the plaintiff is merely suing for the benefit of his bargain." Tolan & Son, Inc. v. KLLM Architects, Inc., 308 Ill. App. 3d 18, 25 (Ill. 1999); see also 2314 Lincoln Park West v. Mann, Gin, Ebel & Frazier, Ltd., 136 Ill.2d 302, 315-16 (Ill.1990); quoting Flintkote Co. v. Dravo Corp., 678 F.2d 942, 948 (11th Cir.1982).

Indiana Recognizes the Economic Loss Doctrine

The Indiana Supreme Court in Gunkel v. Renovations, Inc., 822 N.E.2d 150, 152-54 (Ind. 2005) noted that under the Products Liability Act and under general negligence law is that damage from a defective product or service may be recoverable under a tort theory if the defect causes personal injury or damage to other property, but contract law governs damage to the product or service itself and purely economic loss arising from the failure of the product or service to perform as expected. In this respect, Indiana law is consistent with admiralty law, and the law of most other states. Economic loss has been defined by Indiana courts as "the diminution in the value of a product and consequent loss of profits because the product is inferior in quality and does not work for the general purposes for which it was manufactured and sold. Economic loss includes such incidental and consequential losses as lost profits, rental expense and lost time." *Reed,* 621 N.E.2d at 1074 (citations omitted). Damage to the product itself, including costs of its repair or reconstruction, is an "economic loss" even though it may have a component of physical destruction. *Progressive Ins.,* 749 N.E.2d at 488.

Kansas Recognizes the Economic Loss Doctrine

In Koss Const. v. Caterpillar, Inc. the Kansas Supreme Court adopted the economic loss rule holding:

> We conclude that a commercial buyer of defective goods cannot sue in negligence or strict liability where the only injury consists of damage to the goods themselves. Under Kansas law, the economic loss doctrine applies to a claim for damage to the product itself.

960 P.2d 255, 260 (Kansas 1998). The Kansas Supreme Court later restricted the application of the rule from applying to home construction contracts in David v. Hett, 293 Kan. 679, 699, 270 P.3d 1102, 1113 (2011), reasoning that the policy rationales of East River S.S. Corp. v. Transamerica Delaval, Inc., were primarily suited for claims when the damage was solely to the product itself. 476 U.S. 858, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986).

Kentucky Recognizes the Economic Loss Doctrine

Until 2011, no Kentucky court squarely adopted or fully applied the economic loss rule. All earlier decisions, both state and federal, either discussed the doctrine piecemeal or referenced economic loss principles in other contexts. With Giddings & Lewis, Inc. v. Indus. Risk Ins., 348 S.W.3d 729 (Ky. 2011), Kentucky's Supreme Court clearly articulated a comprehensive legal policy that "a manufacturer in a commercial relationship has no duty under either a negligence or strict products liability theory to prevent a product from injuring itself." The court ruled that the commercial purchaser of a product that failed could not recover from the manufacturer under any tort theory, even if the product failure was sudden or calamitous: "We believe the parties' allocation of risk by contract should control without disturbance by the court via product liability theories."

Louisiana Does Not Recognize the Economic Loss Doctrine

Louisiana does not recognize the economic loss doctrine; nor does it recognize a doctrine sufficiently similar to enable the court to conduct an economic loss doctrine analysis of a plaintiff's tort claims. Tort damages for economic losses may be recoverable under laws unique to Louisiana. *See In re Chinese Manufactured Drywall Products Liability Litigation,* 680 F. Supp. 2d 780 (E. D. La. 2010).

Maryland: Economic Loss Doctrine

Maryland does not strictly adhere to the Economic Loss Doctrine. In Maryland, the doctrine has been construed to bar recovery in tort for economic loss unless the condition giving rise to the claim involves a risk of death or sever personal injury – even though those damages did not occur. *Morris v. Osmose Wood Preserving*, 667 A.2d 624 (Md. 1995). In *Morris*, the Court of Appeals of Maryland did not permit the plaintiff to recover on a products liability tort claim for deterioration of plywood in town home roofs because no high probability of death or serious injury would likely result. Economic loss includes "loss of value or use of product itself, cost to repair or replace the product, or lost profits resulting from loss of use of product. *A.J. Decoster v. Westinghouse Electric Corp.*, 333 Md. 245, 250, 634 A.2d 1330, 1332 (Md. 1994).

Michigan Recognizes the Economic Loss Doctrine

While many Michigan district courts recognized the economic loss doctrine, the Supreme Court of Michigan did not explicitly accept the idea until Neibarger v. Universal Cooperatives, Inc., in which the exclusive remedy for a defective product purchased for commercial purposes was determined to be the UCC. 486 N.W.2d 612, 618 (Mi. 1992). The Michigan Supreme Court then clarified the existence and application of the doctrine by stating that a tort action cannot be maintained where there is a contractual agreement, unless the tortious offense results from a duty separate from the contract, and if the action results from a failure to act, it is typically assumed to be a contractual dispute. Hart v. Ludwig, 347 Mich. 559, 565, 79 N.W.2d 895 (1956). Sherman v. Sea Ray Boats, Inc., 251 Mich. App. 41, 52, 649 N.W.2d 783, 789 (2002).

Minnesota Recognizes the Economic Loss Doctrine

In the absence of personal injury, a buyer may only assert a tort claim to recover damages resulting from the purchase of defective goods where the defect "caused harm to the buyer's tangible

personal property **other than** the goods or to the buyer's real property." Minn. Stat. § 604.101 subd. 3 (emphasis added). But the statute does not preclude *intentional* misrepresentation claims relating to goods sold or leased. Id. subd. 4. Although the case law has not clearly defined what constitutes "other property," Minnesota courts have construed this term narrowly, with consequential damages that represent a mere loss of the benefit of the bargain falling outside this definition. For example, damage to feed and cattle resulting from an improperly functioning Harvestore silo did not constitute damage to "other property" and were non-recoverable economic loss damages. *Veldhuizen v. A.O. Smith Corp.,* 839 F.Supp. 669, 677 (D. Minn. 1993) (damage to plaintiff's feed and cattle did not constitute "'damage to other property' as contemplated by *Superwood* [the Minnesota case adopting the economic loss doctrine in 1981, long before the legislature acted in 2000 to codify the doctrine]," because those damages "resulted from the failure of the silos to function as expected.")

Mississippi Does *not* Recognize the Economic Loss Doctrine

Although the Mississippi Supreme Court has not yet considered the issue of whether economic loss alone can be the basis for a products liability or negligence claim, the Mississippi Court of Appeals adopted the rationale of the federal courts and held damages for economic loss cannot be recovered under theories of tort. See Progressive Ins. Co. v. Monaco Coach Corp., 1:05 CV 37 DMR JMR, 2006 WL 839520 at *5 (S.D. Miss. Mar. 29, 2006) (noting that a review of Mississippi case law reflected that there can be no "recovery in strict liability or negligence for a product defect where that defect results in damage only to the product itself and thus causes only economic loss to its purchaser); citing E. Miss. Elec. Power Ass'n v. Porcelain Prods. Co., 729 F. Supp. 512, 514 (S.D. Miss. 1990) (predicting that the Mississippi Supreme Court would not allow recovery of solely economic losses stemming from a defective product in tort); see also State Farm Mut. Auto. Ins. Co. v. Ford Motor Co., 736 So. 2d 384, 387 (Miss. Ct. App. 1999)

Missouri Recognizes the Economic Loss Doctrine

The Missouri Supreme Court discussed the economic loss doctrine in Sharp v. American Hoist, and held that a plaintiff cannot recover on a strict-liability-in-tort theory where the only damage is to the product sold and there is no personal damage. 703 S.W.2d 901, 903 (Mo. 1986). Since that time, Missouri courts have recognized that the economic loss doctrine restricts a plaintiff's right to recover in tort for economic harm that is contractual in nature. See Owen Cont'l Dev., LLC v. Vill. Green Mgmt. Co., 4:11CV1195 FRB, 2011 WL 5330412 (E.D. Mo. Nov. 4, 2011); citing Autry Morlan Chevrolet, Cadillac, Inc. v. RJF Agencies, Inc., 332 S.W.3d 184, 192 (Mo.Ct.App.2010)(collecting cases). "The economic loss doctrine, however, has been held not to bar an action in tort if the contract recognizes a special relationship." Id. at 193.

Montana Recognizes the Economic Loss Doctrine

The Montana Supreme Court has not formally adopted the Economic Loss Doctrine, but has established law abolishing the requirement of privity of contract to maintain an action in tort. See Hawthorne v. Kober Const. Co. (1982), 640 P.2d 467; Tynes v. Bankers Life Co. (Mt. 1986), 730 P.2d 1115; Jim's Excavating Serv., Inc. v. HKM Associates, 265 Mont. 494, 502, 878 P.2d 248, 253 (Mt. 1994). Because of the Montana Supreme Court's reluctance to adopt the economic loss doctrine, the court observes three tests for third party negligence liability. Further, the court was unwilling to adopt a more liberal test in Jim's Excavating Serv., Inc.. The three tests are:

1. The "**near privity**" concept from Credit Alliance Corp. v. Arthur Andersen & Co. (1985), 65 N.Y.2d 536, 493 N.Y.S.2d 435, 483 N.E.2d

110, which limits the duty of care to those third parties who are actually known to the accountant;

2. The "**actually foreseen**" rule from the Restatement (Second) of Torts § 552 (1977), which provides that the party foresee and intend that members of a limited class will rely on his representations; and

3. The "**ordinary negligence rule**" which holds liability to all who might reasonably and foreseeably obtain and rely upon the party's work product. Jim's Excavating Serv., Inc., 878 P.2d 248, 254 (1994), Citing Thayer v. Hicks (1990), 243 Mont. 138, 793 P.2d 784, 788-789.

The Jim's Excavating Serv, Inc. shows the resolve of the court to maintain this type of test for third party negligence rather than adopting the economic loss rule.

Nebraska Recognizes the Economic Loss Doctrine

The Nebraska Supreme Court adopted the economic loss doctrine for claims of negligent manufacture or strict liability in the absence of physical harm to persons or property caused by the defective product in National Crane Corp. v. Ohio Steel Tube Co. 332 N.W.2d 39, 44 (Ne. 1983). In Dobrovolny v. Ford Motor Co, the court explicitly stated its intent to follow both the Restatement (Third) of Torts and the U.S. Supreme Court's decision in East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, (1986). 793 N.W.2d 445, 449 (Ne. 2011). The scope of the doctrine beyond product's liability was defined for the first time in Lesiak v. Central Valley Ag Co-op., Inc. The court stated a general rule:

> "Where only economic loss is suffered and the alleged breach is of only a contractual duty (such as the duty stated above), then the action should be in contract rather than in tort"

808 N.W.2d 67, 83 (Ne. 2012). The court provides two exceptions to the application of the doctrine: (1) where damages are not solely economic and (2) where a duty, separate from the contractual duty, was breached. Id.

New Mexico Recognizes the Economic Loss Doctrine

The New Mexico courts adopted the economic loss-rule in Utah International, Inc. v. Caterpillar Tractor Co., 775 P.2d 741 (Ct.App.); see also In re Consolidated Vista Hills Retaining Wall Litigation, 893 P.2d 438, 446 (N.M. 1995). The court held:

> [I]n commercial transactions, when there is no great disparity in bargaining power of the parties, economic losses from injury of a product to itself are not recoverable in tort actions; damages for such economic losses in commercial settings in New Mexico may only be recovered in contract actions.

Utah International, Inc., 775 P.2d at 744. The court adopted the rule in order to permit commercial parties to freely contract and allocate the risk of defective products as they wish. Id. Moreover, the purpose of the rule is to preserve the bedrock principle that contract damages be limited to those "within the contemplation and control of the parties in framing their agreement." In re

Consolidated Vista, 893 P.2d at 446; citing City of Richmond v. Madison Management Group, Inc., 918 F.2d 438, 446 (4th Cir. 1990).

New York Recognizes the Economic Loss Doctrine

In New York, the "economic loss doctrine" provides that tort recovery in strict products liability and negligence against a manufacturer is not available to a downstream purchaser where the claimed losses flow from damage to the property that is the subject of the contract and personal injury is not alleged or at issue. *See Amin Realty, LLC v. K & R Constr. Corp.*, 306 A.D.2d 230; 762 N.Y.S.2d 92 (2d Dep't 2003). The rule is applicable even where the allegedly defective product is or may be "unduly hazardous" and applies both to economic losses with respect to the product itself and consequential damages resulting from the alleged defect. *See New York Methodist Hosp. v Carrier Corp.*, 68 A.D.3d 830; 892 N.Y.S.2d 110 (2d Dep't 2009). In determining whether the economic loss doctrine applies, a court should consider the nature of the defect, the injury, the manner in which the injury occurred, and the damages sought. *See Hodgson v. Isolatek Int'l Corp.*, 300 A.D.2d 1051; 752 N.Y.S.2d 767 (4th Dep't 2002).

Moreover, the economic loss doctrine prohibits application of New York's contribution statute (*see* CPLR 1401), rendering it unavailable where the damages sought are exclusively for breach of contract. *See Sound Refrig. & A.C., Inc. v All City Testing & Balancing Corp.*, 84 A.D.3d 1349; 924 N.Y.S.2d 172 (2d Dep't 2011). This is because purely economic loss resulting from a breach of contract does not constitute "injury to property" within the meaning of CPLR 1401; the existence of some form of tort liability is a prerequisite for its application. *Id.*

North Carolina Recognizes the Economic Loss Doctrine

North Carolina courts enforce the economic loss rule. *N.C. State Ports Auth. v. Lloyd A. Fry Roofing Co.,* 294 N.C. 73, 81, 240 S.E.2d 345, 350 (1978), *rejected in part on other grounds by Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.,* 313 N.C. 230, 328 S.E.2d 274 (1985). is the seminal opinion on the economic loss rule. In that case, the North Carolina Supreme Court noted the general rule: "Ordinarily, a breach of contract does not give rise to a tort action by the promisee against the promisor." 294 N.C. at 81, 240 S.E.2d at 350. The court then described four exceptions to that general rule, where the economic loss rule does not apply:

> (1) The injury, proximately caused by the promisor's negligent act or omission in the performance of his contract, was an injury to the person or property of someone other than the promisee....
>
> (2) The injury, proximately caused by the promisor's negligent, or wilful, act or omission in the performance of his contract, was to property of the promisee other than the property which was the subject of the contract, or was a personal injury to the promisee....
>
> (3) The injury, proximately caused by the promisor's negligent, or wilful, act or omission in the performance of his contract, was loss of or damage to the promisee's property, which was the subject of the contract, the promisor being charged by law, as a matter of public policy, with the duty to use care in the safeguarding of the property from harm, as in the case of a common carrier, an innkeeper or other bailee....

> (4) The injury so caused was a wilful injury to or a conversion of the property of the promisee, which was the subject of the contract, by the promisor....

North Carolina State Ports Auth., 294 N.C. at 82, 240 S.E.2d at 350-51. *See also, Oates Oates v. JAG, Inc.,* 314 N.C. 276, 277, 333 S.E.2d 222, 223-24 (1985) ((applying exception (1), above, holding that owner of a dwelling house who is not the original purchaser has a cause of action against the builder and general contractor for negligence in the construction of the house, when such negligence results in economic loss or damage to the owner)).

North Dakota Recognizes the Economic Loss Doctrine

The North Dakota Supreme Court adopted the economic loss doctrine in Hagert v. Hatton Commodities, Inc., thereby limiting remedies for economic loss to those provided in the UCC and those available through strict liability in tort. 350 N.W.2d 591, 595 (N.D. 1984). The court later adopted the rule of East River S.S. Corp. v. Transamerica Delaval, Inc., finding that parties could not sue for damages to the defective product if there was no damage to persons or other property. See Cooperative Power Ass'n v. Westinghouse Elec. Corp., 493 N.W.2d 661 (N.D.1992); citing East River, 476 U.S. 858, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986). The court further extended the economic loss rule to apply to consumer purchasers as well as business purchasers. See Clarys v. Ford Motor Co., 1999 ND 72, 592 N.W.2d 573.

Ohio Recognizes the Economic Loss Doctrine

In Chemtrol Adhesives, Inc. v. American Manufacturers Mutual Insurance Company, the Ohio Supreme court established the economic loss rule by, holding:

> [A] commercial buyer seeking recovery from the seller for economic losses resulting from damage to the defective product itself may maintain a contract action for breach of warranty under the Uniform Commercial Code; however, in the absence of injury to persons or damage to other property the commercial buyer may not recover for economic losses premised on tort theories of strict liability or negligence.

537 N.E.2d 624, 635 (1989). The Ohio Supreme Court has, however, limited the extent to which economic loss governs tortious offenses by ignoring the rule in situations involving professional malpractice. In Haddon View Investment Co. v. Coopers & Lybrand, the court held that an accountant could be liable in tort for economic losses caused for negligent representations made while rendering professional services, even in the absence of privity of contract. 436 N.E.2d 212, 215 (1982). Still, the Ohio Supreme Court was unwilling to explicitly extend the Haddon View rule of allowing tort-based economic liability for other professions in either Caruso v. Natl. City Mtge. Co., 2010-Ohio-1878, 187 Ohio App. 3d 329, 334, 931 N.E.2d 1167, 1170-71 or Trustcorp Mortg. Co. v. Zajac, 2006-Ohio-6621, instead relying on the by Restatement of the Law 2d, Torts, Section 552.

Oklahoma Recognizes the Economic Loss Doctrine

The economic loss doctrine was adopted by Oklahoma Supreme Court in *Waggoner v. Town & Country Mobile Homes, Inc.,* 808 P.2d 649, 653 (Okla.1990), bars recovery under tort theories for "injury only to the product itself resulting in purely economic loss." *See also Oklahoma Gas & Electric Company v. McGraw–Edison Company,* 834 P.2d 980 (Okla.1992)(relying on *Waggoner* and concluding

that a plaintiff in a products liability action may not recover damages for injury to a defective product itself and consequential economic harm flowing from that injury). Damages to the product itself are recoverable under contract law in actions brought under the Uniform Commercial Code. *Waggoner,* 808 P.2d at 652. The Oklahoma Supreme Court has also recognized, however, that damages to "other property" apart from the product itself are recoverable in tort actions. *Id.; see also Oklahoma Gas & Electric,* 834 P.2d at 982 (claims for personal injury or damage to other property would not fall within ambit of economic loss doctrine).

Oregon Recognizes a Limited Application of the Economic Loss Doctrine

In Harris v. Suniga, the Oregon Supreme Court clarified the scope of the economic loss doctrine, and in doing so approached the history of the doctrine in Oregon courts, 344 Or. 301, 307, 180 P.3d 12, 15 (2008). Acceptance of the idea of economic loss began with Snow v. West, which stated that financial losses caused by a third party's intentional conduct might be the basis for liability, but liability could not solely be based on a claim of negligence. 116, 440 P.2d 864 (1968). The general application of the rule in Oregon was clearly established by the Hale v. Groce, which stated, "[o]ne ordinarily is not liable for negligently causing a stranger's purely economic loss without injuring his person or property." 304 Or. 281, 284, 744 P.2d 1289 (1987). For a plaintiff to recover in those circumstances, the plaintiff would have to show some source of duty outside the common law of negligence, such as a special relationship or status that imposed a duty on the defendant beyond the common-law negligence standard. Id.

Pennsylvania Recognizes the Economic Loss Doctrine Subject to a Narrow Exception:

Under Pennsylvania law, a plaintiff is prohibited from recovering for negligence that results "solely in economic damages unaccompanied by physical or property damage." *Azur v. Chase Bank, USA, N.A.*, 601 F.3d 212, 222 (3d Cir.2010)(quoting *Sovereign Bank v. BJ's Wholesale Club, Inc.*, 533 F.3d 162, 175 (3d Cir.2008)); *Fid. Nat. Title Ins. Co. v. Craven*, 12-4306, 2012 WL 5881856 (E.D. Pa. Nov. 21, 2012). This doctrine applies even if there is no contractual remedy available to compensate the injured party. *Id.*, at 223. However, a narrow exception to this rule applies under Section 552 of the Restatement (Second) of Torts for a claim involving "a duty owed when one supplies information to others, for one's own pecuniary gain, where one intends or knows the information will be used by others in the course of their own business activities." *Id.* In *Azur*, the Third Circuit Court of Appeals noted that its "holding was limited to 'businesses' which provide services and/or information that they know will be relied upon by third parties in their business endeavors." Id. (citing *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 581 Pa. 454, 479, 866 A.2d 270, 286 (2005).

Rhode Island Recognizes the Economic Loss Doctrine

In Franklin Grove Corp. v. Drexel, 936 A.2d 1272, 1275 (R.I. 2007), the Rhode Island Supreme Court discussed the economic loss doctrine noting that it provides that "a plaintiff is precluded from recovering purely economic losses in a negligence cause of action." *Boston Investment Property # 1 State v. E.W. Burman, Inc.,* 658 A.2d 515, 517 (R.I.1995). In other words, under this doctrine, a plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage. *Id.* This Court has looked to the Supreme Court of Washington for guidance on this issue: "[w]hen parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override * * * tort principles * * * and, thus, purely economic damages are not recoverable." *Id.* (quoting *Berschauer/Phillips Construction Co. v. Seattle School District,* 124 Wash.2d 816, 881 P.2d 986, 993 (1994)). Our rationale for abiding by the economic loss doctrine centers on the notion that commercial transactions are more appropriately

suited to resolution through the law of contract, than through the law of tort. *E.W. Burman, Inc.,* 658 A.2d at 517.

South Carolina Recognizes a Limited Application of the Economic Loss Doctrine

In Sapp v. Ford Motor Co., 386 S.C. 143, 145, 687 S.E.2d 47, 48 (2009), the South Carolina Supreme Court discussed the economic loss rule, noting its origins from the modern law of products liability. Under the rule, there is no tort liability for a product defect if the damage suffered by the plaintiff is only to the product itself. In other words, tort liability only lies where there is damage done to other property or personal injury. The court stated that the purpose of the economic loss rule is to define the line between recovery in tort and recovery in contract. Contract law seeks to protect the expectancy interests of the parties. Tort law, on the other hand, seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property. In the context of products liability law, when a defective product only damages itself, the only concrete and measurable damages are the diminution in the value of the product, cost of repair, and consequential damages resulting from the product's failure. Stated differently, the consumer has only suffered an economic loss. The consumer has purchased an inferior product, his expectations have not been met, and he has lost the benefit of the bargain. Where a product damages only itself, tort law provides no remedy and the action lies in contract; but when personal injury or other property damage occurs, a tort remedy may be appropriate.

South Dakota Recognizes the Economic Loss Doctrine

The South Dakota Supreme Court adopted the economic loss doctrine and discussed its application in Agristor Leasing v. Splindler in City of Lennox v. Mitek Industries. The general rule is that economic losses are not recoverable under tort theories; but rather are limited to the commercial theories found in the UCC. City of Lennox v. Mitek Indus., Inc., 519 N.W.2d 330, 333 (S.D. 1994); citing Agristor Leasing v. Spindler, 656 F.Supp. 653 (D.S.D.1987). Economic losses under negligence claims are also prohibited, with two exceptions: (1) when personal injury is involved, Hapka v. Paquin Farms, 458 N.W.2d 683, 687 (Minn.1990); and (2) when damages to other property occur, and the other property is not a specific good that was part of the transaction. City of Lennox, 519 N.W.2d 330, 333 (S.D. 1994).

Tennessee Does *not* Recognize the Economic Loss Doctrine

The Tennessee Supreme Court discussed the economic loss doctrine, noting that it was a judicially created principle that reflects an attempt to maintain separation between contract law and tort law by barring recovery in tort for purely economic loss. See Lincoln Gen. Ins. Co. v. Detroit Diesel Corp., 293 S.W.3d 487, 488-93 (Tenn. 2009), The court stated that although it has never expressly adopted the economic loss doctrine, it agrees with the policies underlying the doctrine. See Ritter v. Custom Chemicides, Inc., 912 S.W.2d 128 (Tenn.1995) (holding that product liability claims resulting in pure economic loss can be better resolved on theories other than negligence); see also First Nat'l. Bank of Louisville v. Brooks Farms, 821 S.W.2d 925, 930–31 (Tenn.1991) (finding that actions under the Tennessee Products Liability Act are limited to those brought on account of personal injury, death, or property damage and do not include actions brought for pecuniary loss). The court went on to adopt the East River Steamship Corp. v. Transamerica Delaval, Inc. approach, finding that it fairly balances the competing policy interests and clearly delineates between the law of contract and the law of tort and established a bright-line rule that precludes recovery in tort when a product damages itself without causing personal injury or damage to other property. 476 U.S. 858, 868–71, 106 S.Ct. 2295 (1986). The Tennessee Supreme Court went on to hold that Tennessee law did not recognize an exception to the economic loss doctrine under which recovery in tort is

possible for damage to the defective product itself when the defect renders the product unreasonably dangerous and causes damage by means of a sudden, calamitous event.

Texas Recognizes the Economic Loss Doctrine

"It is well-settled Texas law that a plaintiff cannot maintain a tort action against a defendant when his damages are only for economic losses caused by the failure to perform a contract." Coffey v. Fort Wayne Pools, Inc., 24 F. Supp. 2d 671, 687 (N.D. Tex. 1998) (citing Southwestern Bell Tel. Co. v. DeLanney, 809 S.W.2d 493, 494 (Tex. 1991)). DeLanney explained, "In determining whether the plaintiff may recover on a tort theory, it is also instructive to examine the nature of the plaintiff's loss." Id. "When the only loss or damage is to the subject matter of the contract, the plaintiff's action is ordinarily on the contract." Id. "The doctrine will preclude a tort cause of action if 1) the claim is for a breach of duty created solely by contract rather than a duty imposed by law, and 2) the injury is only the economic loss to the subject of the contract itself." Eastman Chem. Co. v. Niro, Inc., 80 F. Supp. 2d 712, 717 (S.D. Tex. 2000). The economic loss doctrine dictates: "When the plaintiff's only harm is an economic loss caused by the defendant's failure to perform a contract, the defendant has breached a contractual duty, not a tortious one." Belanger v. BAC Home Loans Servicing, L.P., No. W-11-CA-00086, 2011 U.S. Dist. LEXIS 151554, 2011 WL 6987152, at *3 (W.D. Tex. Dec. 9, 2011) (citing Jim Walter Homes, Inc. v. Reed, 711 S.W.2d 617, 618 (Tex. 1986)). Therefore, when a plaintiff alleges only economic loss arising out of a contractual relationship between the parties, the plaintiff is precluded from proceeding under a negligence cause of action. See DeFranceschi v. Wells Fargo Bank, N.A., No. 4:10-CV-455-Y, 2011 U.S. Dist. LEXIS 98084, 2011 WL 3875338, at *7 (N.D. Tex. Aug. 31, 2011); see also Castle Tex. Prod. Ltd. P'ship v. Long Trusts, 134 S.W.3d 267, 275 (Tex. App. 2003, pet. denied) (applying economic loss doctrine to conversion claim).

Some Texas courts have held that it is inappropriate to use the economic-loss doctrine, which is at its core a tort law issue, to interpret insurance policies, Nat'l Fire Ins. v. C. Hodges & Assocs., PLLC, 825 F. Supp. 2d 792, 798 (W.D. Tex. 2011).

Utah Recognizes the Economic Loss Doctrine

The Utah Legislature codified the economic loss rule in 2008. See Utah Code section 78B-4-513. The economic loss rule was originally a judicially created doctrine that marked the fundamental boundary between contract law, which protects expectancy interests created through agreement between the parties, and tort law, which protects individuals and their property from physical harm by imposing a duty of reasonable care. See Davenport at Pilgrims Landing HOA v. Davenport at Pilgrims Landing, LC, 221 P.3d 234, 244 (Utah 2009); citing SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc. 28 P.3d 669 (Utah 2001). Absent physical property damage, this doctrine prohibits recovery of economic losses. Id. citing American Towers Owners Ass'n v. CCI Mechanical, Inc., 930 P.2d 1182, 1189 (Utah 1996).

Economic losses are defined as:

> Damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits – without any claim of personal or damage to other property… as well as the diminution of value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold.

Id. at 243.

Vermont Recognizes the Economic Loss Doctrine

The Vermont Supreme Court discussed the economic loss rule in *EBWS, LLC v. Britly Corp.*, 181 Vt. 513, 928 A.2d 497 (Vt. 2007) noting that it "prohibits recovery in tort for purely economic losses" and serves to maintain a distinction between contract and tort law. "The crux of the [economic loss] doctrine is not privity but the premise that economic interests are protected, if at all, by contract principles, rather than tort principles." *Id.*

Virginia Recognizes the Economic Loss Doctrine

Under Virginia law, absent privity of contract, no cause of action exists in cases solely involving economic loss. *Johnson v. Hart*, 279 Va. 617, 692 S.E.2d 239 (2010). "[L]osses suffered as a result of the breach of a duty assumed only by agreement, rather than a duty imposed by law, remain the sole province of the law of contracts." *Kaltman v. All Am. Pest Control, Inc.,* 281 Va. 483, 493, 706 S.E.2d 864 (2011). The economic loss rule "is intended to preserve the bedrock principle that contract damages be limited to those within the contemplation and control of the parties in framing their agreement." *Richmond v. Madison Mgmt. Group, Inc.,* 918 F.2d 438, 446 (4th Cir. 1990) (applying Virginia law). Accordingly, "a plaintiff alleg[ing] economic losses . . . cannot recover in tort 'simply by recasting a contract claim as a tort claim.'" *Wolf v. Federal Nat. Mortg. Ass'n,* __ F. Supp. 2d __, 2011 WL 5881764 (W.D. Va. 2011) (quoting *Waytec Elec. Corp. v. Rohm & Haas Elec. Materials, LLC,* 459 F.Supp.2d 480, 491 (W.D.Va.2006)).

In the products liability context, economic loss is that which "flows from the failure of the product to perform as expected." *Redman v. John D. Brush & Co.,* 111 F.3d 1174, 1182 (4th Cir. 1997) (applying Virginia law). In that respect, "the economic loss rule preserves the balance of rights and remedies established by warranty law." *Id.*

Notably, the economic loss rule also applies to sales of real property where the property is alleged to be qualitatively defective. *See Sensenbrenner v. Rust, Orling & Neale, Architects, Inc.* 236 Va. 419, 374 S.E.2d 55 (1988).

Washington Recognizes the Economic Loss Doctrine

The economic loss doctrine has been statutorily incorporated in Washington through the Washington Products Liability Act (WPLA). Washington Water Power Co. v. Graybar Elec. Co., 112 Wash. 2d 847, 860, 774 P.2d 1199, 1207 (1989) amended sub nom. The Washington Power Co. v. Graybar Elec. Co. court held:

> "[T]he WPLA creates a single cause of action for product-related harms that supplants previously existing common law remedies. We have held also that this cause of action does not afford a remedy for "economic loss".

779 P.2d 697 (Wash. 1989). In Berschauer/Phillips Const. Co. v. Seattle Sch. Dist. No. 1, the Washington Supreme Court expanded the application of the economic loss doctrine for disputes between general contractors and clients—limiting recovery to that which is contractually stipulated in order to preserve the distinction between tort and contract law and encourage parties to be cognizant of risk in negotiations and self-protect if possible. 881 P.2d 986, 992 (1994).

Recently, two cases, *Eastwood v. Horse Harbor Foundation, Inc., et al,* 170 Wn.2d 380, 241 P.3d 1256 (2010) and *Affiliated FM Ins. Co. v. LTK Consulting Services, Inc.,* 170 Wn.2d 442, 243 P.3d 521 (2010), have cast some uncertainty about the future of the economic loss doctrine in Washington by applying a different standard – the independent duty doctrine. *Eastwood* involved a landlord's ability to maintain a breach of lease action and a common law waste action against his tenant. *Affiliated FM* involved whether an engineer should be liable for design flaws that led to third-party damage.

In both *Eastwood and Affiliated FM*, the Washington Supreme Court refused to apply the economic loss doctrine and allowed the plaintiffs to maintain both contractual and tort causes of action. The Supreme Court stated in *Affiliated FM* that where a court applying Washington law is called to "distinguish between claims where a plaintiff is limited to contract remedies and cases where recovery in tort may be available," the court's task is not to superficially classify the plaintiff's injury as economic or non-economic. Rather, the court must apply the independent duty doctrine in which "[a]n injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract." Using ordinary tort principles, the court decides as a matter of law whether the defendant was under an independent tort duty. Interestingly, both decisions were plurality decisions where the lead opinions were joined by only two other justices, calling into question the extent to which these decisions will be precedential for subsequent cases and how they will be applied by lower courts.

West Virginia Generally Recognizes the Economic Loss Doctrine Subject to Exceptions:
In *Aikens v. Debow*, the West Virginia Supreme Court considered the intricacies of a potential rule permitting the recovery of economic damages absent physical or personal injury and held as follows: "we conclude that an individual who sustains purely economic loss from an interruption in commerce caused by another's negligence may not recover damages in the absence of [1] physical harm to that individual's person or property, [2] a contractual relationship with the alleged tortfeasor, or [3] some other special relationship between the alleged tortfeasor and the individual who sustains purely economic damages sufficient to compel the conclusion that the tortfeasor had a duty to the particular plaintiff and that the injury complained of was clearly foreseeable to the tortfeasor." 208 W. Va. 486, 541 S.E.2d 576, 589 (2000). "The existence of a special relationship will be determined largely by the extent to which the particular plaintiff is affected differently from society in general. It may be evident from the defendant's knowledge or specific reason to know of the potential consequences of the wrongdoing, the persons likely to be injured, and the damages likely to be suffered. Such special relationship may be proven through evidence of foreseeability of the nature of the harm to be suffered by the particular plaintiff or an identifiable class and can arise from contractual privity or other close nexus. *Id.* Additionally, it should be noted that under certain scenarios, a party who suffers pure economic loss as a result of a defective product must turn to the Uniform Commercial Code to seek relief. *Basham v. Gen. Shale*, 180 W. Va. 526, 530, 377 S.E.2d 830, 834 (1988)

Wisconsin Recognizes the Economic Loss Doctrine
In Sunnyslope Grading, Inc. v. Miller, Bradford & Risberg, Inc., the Wisconsin Supreme Court accepted the economic loss rule from East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986), holding that a commercial purchaser of a product cannot recover solely economic losses from the manufacturer under negligence or strict liability theories. 148 Wis. 2d 910, 921, 437 N.W.2d 213, 217-18 (1989). The Wisconsin Supreme Court has also adopted the ideas of "disappointed expectations" and "integrated system" in order to limit the

exceptions available when considering if other property was damaged. This allows further protection by the economic loss doctrine by accounting for, as part of the nature of the economic loss, disappointed expectations of the product. Also, should the product be a designated component part of another product, the product into which the former is integrated becomes part of what is inherently covered by the Wisconsin Supreme Court's idea of economic loss. See Grams v. Milk Products, Inc., 2005 WI 112, 283 Wis. 2d 511, 534, 699 N.W.2d 167, 178.

Wyoming Recognizes the Economic Loss Doctrine

The Wyoming Supreme Court adopted the ruling from East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986) that a claim for pure economic loss, with the damage solely to the defective product, does not lie on a theory of negligence or strict liability. See Continental Insurance v. Page Engineering Co., 783 P.2d 641, 647 (Wyo. 1989). The court held that the economic loss doctrine is a mechanism for lessening losses and minimizing prices that the consumer may have to absorb later. See Id. The court further explains that the product is part of a bargain between the consumer and purchaser and should not be dealt with outside of contract law. Id.