

Weston Hurd Client Advisory - February 2015

Court Holds that Economic Loss Doctrine Bars Owners From Holding Designers Personally Liable

Prepared by Frederick T. Bills

On February 12, 2015, the United States District Court for the Northern District of Ohio held that professional negligence claims sounding in tort by owners against design firms is improper where the action is predicated on conduct arising out of a purported breach of contract and that the economic loss doctrine bars claims by owners against individual design professionals where the owner is not in privity of contract with the individual design professional.



The case involves a plaintiff owner, Babcock & Wilcox Power Generation Group, which filed suit against an engineering firm for claims sounding in both breach of contract and in tort, and against an individual designer for a professional negligence claim sounding in tort. The plaintiff sought damages related to remediation costs with the contracted project. The decision of the Court focuses on two interrelated issues:

1. Whether a plaintiff may seek tort claims for professional negligence against the design firm with whom it contracted; and
2. Whether the economic loss doctrine bars tort claims against a design professional completing work on behalf of the design firm with whom the plaintiff contracted.

As to the first issue, the Court noted that in Ohio, "[t]he existence of a contract action generally excludes the opportunity to present the same case as a tort claim[,] [1] unless the breaching party also breaches a duty owed separately from that created by the contract, that is, a duty owed even if no contract existed." [2] The Court acknowledged that the terms of the contract between the owner and the design firm included all professional duties owed by the design firm in relationship to the project. The Court further noted that the owner failed to identify any damages in its tort claim separate and apart from the damages claimed in its breach of contract claim. As a result, the Court held that, under Ohio law, the owner's tort claims against the design firm must be dismissed.

As to the second issue, the Court noted that "[i]n the absence of privity of contract no cause of action exists in tort to recover economic damages against design professionals involved in drafting plans and specifications."^[3] The Court noted that the individual designer was an engineer who completed work as an employee of the design firm on the project and that he held no contract with the owner. As such the Court dismissed the professional negligence claims of the owner against the individual designer.

Closing

The decision should be welcome news to design professionals. Not only does it affirm Ohio as a strong economic loss doctrine state, but it acknowledges that a negotiated contract should be the basis of liability in later litigation. Additionally, and most importantly, it limits the liability exposure of individual design professionals. Last spring, we brought attention to a trend in construction cases ([Weston Hurd's Architects and Engineers Newsletter](#)) of plaintiff attorneys filing suit not only against the design firm with which an owner contracted, but also against the individual design professional assigned to the project by the firm in tort for professional negligence. This decision directly opposes such practice and may be used as a basis for immediately filing a motion to dismiss such claims.

Please contact your Weston Hurd attorney if you have any questions.

Slip Opinion - United States District Court, Northern District of Ohio [Babcock & Wilcox Power Generation Group, Inc. v. R.T. Patterson Co.](#)

[1] *Thornton v. Cangialosi*, 2:09-CV-585, 2010 WL 2162905, at *2 (S.D. Ohio May 26, 2010).

[2] *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 684 N.E.2d 1261, 1270 (Ohio Ct. App. 1996).

[3] *Floor Craft Floor Covering, Inc. v. Parma Comm. Gen. Hosp. Ass'n*, 560 N.E.2d 206, 207 (Ohio 1990).



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