

The Saiber Construction Law Column: January 2026

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As discussed in a prior Saiber Construction Law Column, in New Jersey, the “economic-loss doctrine” bars tort claims when the plaintiff’s only damages are economic in nature because, when parties enter into a contractual relationship, a contractual remedy flows from contract, not tort. (A tort is a civil wrongdoing, such as negligence, fraud, or misrepresentation, that causes harm or loss to another and for which the injured party may seek damages independent of any contractual obligations.) The economic loss doctrine also applies when parties do not have a contractual relationship with each other but have separate contracts with a third-party – a common occurrence in the construction context where many parties – general contractors, subcontractors, suppliers, design professionals, and the like – may directly contract with one party but not with all parties involved with a project. The doctrine prevents a party from bringing a tort action for what is more properly a contractual claim.

Mid-Century Ins. Co. v. HIVE Constr., Inc., a case recently decided by the Supreme Court of Colorado, involved an unsuccessful attempt by an owner’s insurance company to circumvent the economic loss rule in a lawsuit filed against the general contractor of a restaurant construction project. In Mid-Century, a property insurer paid the owner of the restaurant for damages caused by a fire and then, as subrogee of the owner, sued, among others, the general contractor, claiming the GC negligently installed combustible plywood at the project when the architectural plans called for fire resistant plywood. In an effort to avoid the economic loss rule, the insurer argued that the GC’s conduct was careless and reckless “and constituted willful and wanton conduct.”

The Colorado Supreme Court had previously held that the economic loss rule should not apply to intentional tort claims, which require a party to intend a result or know that its conduct will likely cause the result. The Court, however, ruled that willful and wanton tort claims approach but do not include intentional torts. Thus, after concluding that “willful and wanton conduct is not excepted from the economic loss rule,” the Supreme Court of Colorado held that the negligence claim filed against to GC was barred.

Although the Colorado decision is not binding on New Jersey courts, the Mid-Century case does nicely illustrate how the economic loss rule, which is applicable in New Jersey, prevents parties from disguising breach of contract claims as a negligence or tort claim in order to recover purely economic losses. Instead, the parties are left to their contractual remedies to recover their damages.

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Each issue’s Legal Construction Column will discuss a recent decision by New Jersey courts or, like here, courts from other states which may be of interest to people in the construction industry.



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