

FOR THE DEFENSE

July 2017

"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 2:27

Greetings from Lane Farley

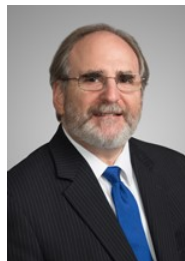


Well it is now July, which is the time of year when we Texans customarily cook our eggs right on the sidewalk. It is also the time of year that we Americans celebrate our country's independence on the Fourth of July. We hope yours was a fun and safe holiday spent with family and friends. As the summer celebrations continue, we hope that all continue to reflect on the values that make our country great - values like liberty, justice and courage. And let's not forget the sacrifices of those who came before us to secure the "blessings of liberty" for us all. Here at Fletcher Farley, we are in the midst of celebrating our own milestone: 25 years in practice. Likewise, we reflect on the values that have brought us to where we are today. We continue to hold faith, family and friends as cornerstones of our practice and our lives. A big part of that is clients like you who we count as friends - we continue to be thankful for each of you.

Bringing Clarity to the Economic Loss Doctrine

Lorin M. Subar

The term "economic loss doctrine" carries with a mystique given the fact that it crosses over the comfort levels of tort law and contract law; two areas that are generally addressed by different types of lawyers. Unfortunately, it leaves many attorneys to not consider a very viable liability defense.



The most basic concept of the economic loss doctrine provides that where liability is derived from the existence of a contract, it is contract law and not tort law that will apply. Under the economic loss rule, a plaintiff may not bring a claim outside the parameters of the contract between the parties unless the plaintiff can establish that they suffered an injury that is distinct, separate, and independent from the economic losses recoverable under a breach of contract claim.

The Texas Supreme Court has held that "a claim sounds in contract when the only injury is economic loss to the subject of the contract itself." When no independent basis for liability exists, the rule applies. The doctrine does not apply when a defendant's conduct "would give rise to liability independent of the fact that a contract exists between the parties." If the plaintiff

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Welcome to the latest edition of Fletcher Farley's Newsletter, which we hope you find interesting and helpful.

If you have any comments, questions or would like more information from us, please contact Doug or Joanna.

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**Welcome
Miguel Bustilloz**



We welcome Miguel Bustilloz to the firm's Austin office. Miguel focuses his practice in civil litigation, commercial litigation and personal injury defense. His experience includes serving as

has not alleged non-economic damages resulting independently of the contract, the economic loss doctrine bars negligence and gross negligence claims.

In *LAN/STV v. Martin K. Eby Constr. Co.*, the Texas Supreme Court provided a thorough analysis of the economic loss rule in Texas. The Court, adopting the *Restatement Third of Torts* regarding economic loss rule as a bar on tort recovery in contract matters, concluded:

Where contracts might readily have been used to allocate the risk of a loss, the *Restatement* observes, "a duty to avoid the loss is unlikely to be recognized in tort - not because the economic loss rule applies, but simply because courts prefer, in general, that economic losses be allocated by contract where feasible." We see no reason not to apply the economic loss rule to achieve this end.

Of course, the economic loss doctrine does not bar tort claims just because of the existence of a contract between the parties. As the name of the doctrine suggests, it only addresses purely economic losses addressing the expectations of the parties under a contract. For example, if a product fails and the only damage is to the product itself, any recovery will be viewed only under the guise of a breach of contract (the cost to repair or replace). If however the defect causes tort injuries, the economic loss doctrine would not apply to limit those tort damages (pain and suffering, etc.).

The most practical application is that if the damages complained of arise from a contract, without other damage, the recovery is limited to recovery allowed for breach of contract - actual damages and attorney's fees - but not tort damages.

Conflicts Resolved

Fletcher Farley Successfully Defends Against Summary Judgment Appellate Attack

After obtaining a summary judgment from the 298th District Court of Dallas County, Fletcher Farley attorneys [David Colley](#) and [Kevin Curley](#) successfully defended that judgment before the Dallas Court of Appeals. The lawsuit arose from a premises liability case where the Plaintiff, a realtor, claims to have been injured when she slid on a patch of ice at a private residence she was considering listing. She sued the homeowners. The Plaintiff had admitted she had seen ice in the area where the incident occurred, but argued that as she had been specifically invited to the residence for a private showing, there was a heightened duty on the part of the property owners, and she was unaware of the ice where she was walking. The Court of Appeals, in *Netherly v. Turco*, agreed with the homeowners' position that the only relevant question was whether the risk was open and obvious, irrespective of whether the Plaintiff did not think she was on the ice. The Court affirmed the summary judgment and dismissal on behalf of Fletcher Farley's clients, the homeowners.

lead attorney at jury trials, bench trials and hearings as well as preparing clients for mediations & depositions.

Craig Reese Speaks on Homeowners and Auto Policies



Policies

[Craig Reese](#), along with [Meloney Perry](#), discussed recurring coverage issues that arise with respect to these policies along with recent legislative changes and case laws that impact potential bad faith exposure for carriers in the personal lines arena in a webcast hosted by the TexasBarCLE.

"Getting Personal: Homeowners and Auto Policies" recording is available until June 30th, 2018. To watch this recording or learn more please [click here](#).

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