

The Integrated Product Doctrine: At the Nexus Between Products Liability and Construction

by Mark D. Shifton

Often, in certain situations, New Jersey attorneys may be confronted with overlapping areas of litigation—community association attorneys may be confronted with issues of First Amendment jurisprudence when a resident seeks to display a political message in the window of a condominium, or a plaintiff’s personal injury lawyer may need to deal with the insurance coverage issues when filing a bad faith claim following a jury verdict in excess of a defendant’s insurance policy. So it is with construction law attorneys, who may be presented with products liability issues within construction actions.

This most common situation may occur in a situation involving building products, such when a plaintiff in construction defect litigation alleges damage to property caused by an allegedly defective product. In such a situation, what damages are recoverable is an important issue. Are the plaintiff’s damages limited to the replacement of the defective product itself, or does it extend to whatever other property was damaged by the defective product? Furthermore, does the plaintiff’s remedy lie in tort law, or in contract? The answers to these questions are found in the interplay between two often-misunderstood but critically important concepts—the economic loss rule and the integrated product doctrine. In a sense, at the place where these two doctrines intersect, one finds oneself at the nexus between products liability and construction law.

The Economic Loss Rule

The economic loss rule, first established by the California Supreme Court in *Seely v. White Motor Co.*,¹ bars remedies in negligence or strict liability when the claim for damages is limited to damage to the product itself. In such a situation, a plaintiff’s remedy lies solely in contract, and the economic loss rule serves as a sort of ‘boundary’ between contract and tort remedies.

New Jersey first recognized the economic loss rule in *Spring Motors v. Ford Motor Co.*,² when the Supreme

Court held that a plaintiff seeking damages for economic loss for the purchase of defective goods could recover from the seller under a contract or warranty theory, but not in tort. The New Jersey Supreme Court’s reasoning in *Spring Motors* was expressly adopted by the United States Supreme Court the following year, in *East River S.S. Corp. v. Transamerica Delaval*.³ Echoing New Jersey’s application of the doctrine, the United States Supreme Court held that recovery for a defective product that caused damages only to the product itself could be had only under a contract, not tort, theory. Thus, under the economic loss rule, a plaintiff’s claim for damages resulting from a defective product is limited to the damages related to the product itself, such as repair costs and diminution in value.

The New Jersey Products Liability Act

The New Jersey Products Liability Act (PLA) was enacted in 1987, and created a single, unified, theory of recovery for personal injuries or property damage caused by a defective product.⁴ Under the PLA, common-law causes of action for negligence, breach of implied warranties, and strict liability were subsumed into a single statutory claim. While the adoption of the PLA was groundbreaking for New Jersey jurisprudence, it did not tear down history entirely, as the economic loss rule remained firmly in place in the PLA’s definition of harm:

(2) “Harm” means (a) physical damage to property, other than to the product itself; (b) personal physical illness, injury or death; (c) pain and suffering, mental anguish or emotional harm; and (d) any loss of consortium or services or other loss deriving from any type of harm described in subparagraphs (a) through (c) of this paragraph.⁵

As it relates to most construction defect litigation involving manufacturers of building products, the first

clause is generally the relevant one, and defines harm as damage to property, other than to the allegedly defective property itself. This is the economic loss rule as codified directly in the PLA. It has since become settled law that in claims under the PLA, purely economic losses caused by a defective product *do not* properly fall under the PLA, but, instead, remain in the realm of contract. Thus, under the economic loss rule, as applied by the Product Liability Act, economic losses caused by a defective product are limited to the value of the product itself, and any consequential damages caused by the defective product are not recoverable (at least not in a statutory product liability action). Accordingly, in those situations where the buyer of an allegedly defective product is not in contractual privity with the seller, and there are no applicable warranties, the buyer may find its remedies extremely limited, especially when the defective product causes far-reaching damages.

The Integrated Product Doctrine

In certain situations, it can be relatively easy to delineate between the allegedly defective product and the harm it caused. But there are certain products that are integrated into a larger whole before they fail and cause damage, and the failure of the original product causes damages far exceeding the value of the product itself. While the PLA does not speak directly to this concept, under the ‘integrated product doctrine’ such claims may also be barred under the PLA, limiting the aggrieved plaintiffs to recovering the value of the damaged product itself rather than the consequential damages from the product’s failure (unless the plaintiff had a remedy in contract or warranty). In a sense, the integrated product doctrine represents a common-law expansion of the economic loss rule by limiting a buyer’s tort remedies for damage caused by a defective product.

In the construction context, the integrated product doctrine often is seen in cases involving allegations of defective synthetic stucco (often called EIFS, or exterior insulation and finishing systems). There have been two recent Appellate Division cases involving these very issues—*Dean v. Barrett Homes, Inc.*⁶ and *Marrone v. Greer & Pulman Construction, Inc.*⁷

Both *Dean* and *Marrone* involved plaintiffs who purchased homes clad in EIFS, and alleged that the EIFS on their homes allowed moisture to penetrate, ultimately causing mold and other significant damage to their homes, which greatly exceeded the damage to the EIFS

itself. In both cases, the Appellate Division held that the economic loss rule precluded the homeowners’ claims under the PLA. Thus, under the Appellate Division’s analyses in these two cases, an aggrieved homeowner’s remedy for defective EIFS that caused damage to the rest of the home would be found in contract, not tort, law and in the absence of contractual privity or a warranty, the homeowner’s potential remedy might be extremely limited.

It is important to note that EIFS is not a single ‘product,’ nor is it simply ‘fastened’ to a home. Rather, it is a complex layering of various products that are ‘integrated’ onto the exterior sheathing of a home during construction. As described by the Appellate Division:

EIFS is an “exterior cladding component of the building envelope” and is not sold as a final product. The “traditional” EIFS consists of: (1) an adhesive; (2) expanded polystyrene (“EPS”) board; (3) base coat; (4) reinforcing mesh; and (5) finish coat. The mesh is sold in rolls, EPS board sold in large sheets, and the adhesive, base and finish coats sold in buckets. The EPS board and mesh are cut and sized by the contractors usually at the jobsite, and the adhesive, base coat and finish coat are applied with the EPS board and mesh to the building by the contractors.⁸

In barring the homeowners’ claims under the PLA in both *Dean* and *Marrone*, the Appellate Division relied on the integrated product doctrine in both cases, and held that since the EIFS was integrated into the plaintiffs’ homes, the economic loss rule precluded the homeowners from any recovery in tort for damages to their homes caused by the EIFS. As the Appellate Division noted in *Marrone*:

Plaintiffs here did not purchase the EIFS cladding; they bought a house. They cannot maintain a PLA claim by attempting to break the house down conceptually into its component parts and suing in strict-liability for defects in the components...Moreover...allowing a tort remedy here would subject component manufacturers to potentially unlimited liability. Under plaintiffs’ theory, a buyer who purchased plaintiffs’ house fifty years from now

and discovered defects in the EIFS cladding could potentially sue the [the Manufacturer] for water damage to the house.⁹

Dean Goes to the Supreme Court

On appeal, the New Jersey Supreme Court reversed the Appellate Division's decision in *Dean* (and thereby abrogating its decision in *Marrone*).¹⁰ Significantly, in reversing the Appellate Division, the Supreme Court held that while the economic loss rule did indeed preclude the plaintiffs from recovering the costs of replacing the defective EIFS itself, it did *not* preclude their claims under the PLA for damage to the rest of the home. Under the Supreme Court's analysis, this result was appropriate because the EIFS was "not so fully integrated into the structure of the house that the house effectively became the product for purposes of the economic loss rule..."¹¹ Accordingly, while the economic loss rule would bar the plaintiffs' claims of damage to the EIFS itself, the plaintiffs were free to pursue tort remedies against the manufacturer for their consequential damages caused by the defective EIFS.

In a forceful dissent, Justice Roberto Rivera-Soto argued that he would have applied the economic loss rule to preclude the plaintiffs' recovery under the PLA in its entirety, and noted:

The notion that an exterior finish that can only be removed by extensive demolition work is not "integrated" into the structure to which it

is attached is so fanciful, so nonsensical, that it beggars the imagination. It is a conclusion that can germinate only in the minds of lawyers and can find root only in the rarified environment of this Court's decisions; it cannot, however, long survive in the atmosphere of the real world. EIFS is in many relevant respects no different than roofing shingles. Yet, applying the majority's reasoning, the roof of a home is not integrated into that home.¹²

Conclusion

Following the Supreme Court's decision in *Dean*, future application of the integrated product doctrine in New Jersey is somewhat unclear. While the Supreme Court certainly reaffirmed the economic loss rule and its place within the PLA, it did *not* discard the integrated product doctrine, but it simply held that in this one case, involving this one product and this one home, the integrated product doctrine did not apply. Essentially, the Supreme Court's holding in *Dean* (at least as it regards the integrated product doctrine) was limited to its own facts.¹³ Accordingly, it remains to be seen whether, in other cases involving different building products, the Supreme Court would be willing to apply the integrated product doctrine and hold an aggrieved homeowner's entire claim barred under the PLA. ■

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Endnotes

1. 403 P.2d 145 (Cal. 1965).
2. 98 N.J. 555 (1985).
3. 476 U.S. 858 (1986).
4. N.J.S.A. 2A:58C-1 *et seq.*
5. N.J.S.A. 2A:58C-1(b)(2) (emphasis added).
6. 406 N.J. Super. 453 (App. Div. 2009).
7. 405 N.J. Super. 288 (App. Div. 2010).
8. *Dean*, 406 N.J. Super. at 457-58.
9. *Marrone, supra*, 405 N.J. at 302-03.
10. *Dean v. Barrett Homes, Inc.*, 204 N.J. 286 (2010).
11. *Dean, supra*, 204 N.J. at 305.
12. *Dean, supra*, 204 N.J. at 308 (Rivera-Soto, J., dissenting).
13. *Dean, supra*, 204 N.J. at 289 (noting that "[o]ur consideration of these questions, and of the policies expressed by our Legislature in the governing statute, *compels us to conclude that the integrated product doctrine does not apply to the facts before this Court*, but that the economic loss rule limits plaintiffs' recovery to damage to the structure other than that sustained by the exterior finishing system itself.") (emphasis added).