

## ECONOMIC LOSS DOCTRINE APPLIES TO PREVENT TORT DAMAGES IN CONSTRUCTION DEFECT CASES

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*Flagstaff Affordable Housing Ltd. Partnership v. Design Alliance, Inc.*  
Supreme Court, February 12, 2010

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The “economic loss doctrine” refers to the common law rule that limits a contracting party to contractual remedies for the recovery of economic losses unaccompanied by physical injuries to persons or other property. The Arizona Supreme Court previously addressed the economic loss doctrine in *Salt River Project Agric. Improvement & Power District v. Westinghouse Elec. Corp.*, a products liability case. There, rather than categorically bar tort recovery for economic losses caused by defective products, the Court set forth a case-by-case approach for determining whether a claim is more properly brought under tort law or contract law. In making this determination, courts must analyze: (1) the nature of the loss, whether purely economic or accompanied by physical injury to person or property; (2) whether the defect was “unreasonably dangerous”; and (3) whether the loss occurred in a “sudden, accidental manner.”

Here, a building owner who suffered purely economic loss brought a tort claim against an architect, claiming that the economic loss doctrine did not bar claims for professional negligence. The Court considered the underlying policies of tort and contract law in the construction setting, and compared those policies as they applied in the products liability setting. The Court held that in construction defect cases, the policies of the law will be best served by leaving the parties to their commercial remedies when a contracting party has incurred only economic loss. The Court specifically declined to extend *Salt River*’s three part test described above to the construction defect setting. The Court reasoned that the economic loss doctrine appropriately applies in this context because construction contracts typically are negotiated on a project-specific basis and the parties should be encouraged to prospectively allocate risk and identify remedies within their agreements. Furthermore, rejecting several of appellant’s arguments, the Court held that the policy concerns that justify applying the doctrine to construction defect cases do not justify distinguishing between contractors and design professionals.