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## **LONG TERM COMMERCIAL CONTRACT DOES NOT CREATE A FIDUCIARY RELATIONSHIP; ECONOMIC LOSS RULE APPLIES**

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*Cook v. Orkin Exterminating Co., Inc.*  
Ct. Appeals, Div. One, May 19, 2011

Authored by the [JSH Appellate Team](#)

Cook purchased a new home in 1987 and almost immediately had termite problems. Cook contracted with Orkin for termite control, and Orkin treated the home many times between 1989 and 2007. The termites returned each time. Cook sued, seeking a variety of contract and tort remedies, alleging that Orkin had failed to fulfill its promise to get rid of the termites. One of the claims was for breach of fiduciary duty. Orkin moved for summary judgment on this and the tort claims, arguing no fiduciary duty existed and the tort claims were barred by the economic loss rule. The court agreed and dismissed those claims. Cook appealed.

The court of appeals affirmed dismissal of the fiduciary duty claim, because commercial transactions do not create fiduciary relationships unless there is an express agreement otherwise. A party's mere trust in the other's expertise does not give rise to such a relationship. Fiduciary relationships are characterized by intimacy, disclosure of secrets, or entrusting of power. The court also affirmed on the economic loss rule. Cook's losses were only economic, including repair costs. As such, Cook was limited to contract remedies.