IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

AIRPORT RENT-A-CAR,
a Florida corporation,

Appellant/Movant

vs.

PREVOST CAR, INC.,
a New Jersey corporation,

Appellee.
_____/

Supreme Court Case #: 83,586

11th Circuit Case #: 93-4015

District Court Case #: 91-6653

CERTIFIED QUESTIONS FROM THE
ELEVENTH CIRCUIT COURT OF APPEAL
Pursuant to 9.030(a)(3) and 9.150 Fla. R. App. P

ANSWER BRIEF OF THE APPELLEE
PREVOST CAR, INC.

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STATEMENT OF THE CASE AND OF THE FACTS

The statement of facts contained in the Appellant/Movant's Initial Brief is an accurate statement of the allegations of the Second Amended Complaint.

SUMMARY OF ARGUMENT

This appeal presents three certified questions to this court. In the first two questions, this court is asked to decide whether Florida law recognizes exceptions to the economic loss rule for situations where the plaintiff has no alternate remedy or where the damage to the product is caused by a sudden calamitous event. The last question concerns whether the economic loss rule applies to acts of negligence which occur after the manufacture of the product.

All of these questions are answered by reference to the basic principles of negligence law. A cause of action for negligence only exists where there is a duty and a breach of that duty that causes personal injury or property damage. This is so because the law of negligence was developed to provide a remedy for injuries to person or property caused by unintentional acts. Negligence law was not created to remedy unfulfilled expectations in commercial transactions. Applying these principles to the facts of this case requires that Question I be answered in the affirmative and that Questions II and III be answered in the negative.

The first exception to the economic loss rule claimed by the appellant is that the rule does not apply if the appellant has no alternate remedy in contract. In other words, the appellant contends that the existence or non existence of a cause of action in tort depends upon whether a contract action is available. This contention ignores the basic premise of negligence law that one must suffer personal injuries of property damage in order for a cause of action to accrue. To recognize an "exception" to the economic loss rule simply because no other remedy exists is actually the equivalent of creating a new cause of action.

The same can be said for the second claimed exception for sudden calamitous events. It is irrelevant that the damage to a product only happens over the course of a few weeks or

years or in a single second. It is the damage caused by the failure of the product that determines whether a cause of action for negligence has accrued. In cases where no personal injury or property damage has resulted, no cause of action for negligence or strict liability exists.

Both of these questions were answered by this court in Casa Clara Condominium v. Charley Toppino & Sons, more fully discussed below, and should not require a great deal of discussion. Nor should the third issue, which concerns the application of the economic loss rule to negligent failure to warn cases, since the same principles of negligence apply to it as well. The cause of action for failure to warn was recognized by this court to protect against personal injuries and property damage. Without those tort damages, no cause of action for negligent failure to warn exists. Whether a duty is created before during or after a product is manufactured has no affect upon whether a cause of action has accrued unless it is followed by a breach which causes personal injury or property damage. In this case there was no personal injury or property damage and, therefore, there is no cause of action for negligence.

Each of the certified questions posed to this court should be answered in the negative. To do otherwise would create a new cause of action to protect purely economic interests. Protection of those interests is the concern of contract law and remedies.

ARGUMENT

INTRODUCTION

This court's review of the issues on appeal involves the consideration of three questions certified to this court from the Eleventh Circuit Court of Appeals. Before delving into those questions and their respective answers, it is important to consider the general rule out of which Airport Rent-A-Car is attempting to carve exceptions.

The "Economic Loss Rule" was made applicable in Florida by this court in Florida Power & Light Company v. Westinghouse Electric, 510 So.2d 899 (Fla. 1987). It prevents a manufacturer in a commercial relationship from being held liable to a purchaser of the product manufactured where the only damage is to the product itself. The rule acts as a limitation on the use of strict liability and negligence remedies to cases involving personal injury or injury to property, other than the product itself. The Rule was discussed and explained by the United States Supreme Court in East River Steam Ship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 106 S.Ct 2295, 90 L.Ed. 2d. 865 (1986). In that case, the Supreme Court stated:

> "Damage to a product itself is most naturally understood as a warranty claim....The maintenance of product value and quality is precisely the purpose of express and implied warranties....
>
> "Contract law, and the law of warranty in particular, is well suited to commercial controversies of the sort involved in this case because the parties may set the terms by their own agreements. The manufacturer can restrict its liability, within limits, by disclaiming warranties or limiting remedies. In exchange, the purchaser pays less for the product....
>
> "...Permitting recovery for all foreseeable claims for purely economic loss could make the manufacturer liable for vast sums. It would be difficult for a manufacturer to take into account the expectations of the persons downstream who may encounter the product..."
>
> East River, 476 U.S. at 872-874, 106 S.Ct. at 2302-2304.

In so stating, the Supreme Court refused to allow the application of products liability law

to a suit by a charter of a vessel against the manufacturer of a part of the ship. The charterer, a subsequent user of the ship and not in privity with the manufacturer, was denied a cause of action against the manufacturer in tort.

The basic premise of the economic loss rule is very simple; it exists as the only barrier between tort and contract law and prevents parties from obtaining from the courts a remedy that they do not have in contract. It is the "fundamental boundary between contract law, which is designed to enforce expectancy interests of parties, and tort law, which imposes a duty of reasonable care and thereby encourages citizens to avoid causing physical harm to others." Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc., 620 So. 2d 1244 at 1246 (Fla. 1993). This court reaffirmed the application of the economic loss rule to Florida in Casa Clara and refused to recognize an exception to it in favor of homeowners, finding that to allow such an exception would allow "contract law to drown in a sea of tort." Casa Clara, 620 So. 2d at 1247, citing East River, 476 U.S. at 866, 106 S.Ct. at 2300. Despite this decision, the Appellant in this case has asked that exceptions be made. As is reflected in the following discussion, all of the Appellant's requests for exceptions should be denied.

Reference to Circuit Court Briefs

Appellee's Answer Brief filed in the Eleventh Circuit Court of Appeal provides a detailed analysis of the existing law in Florida with respect to the economic loss rule prior to Casa Clara, a case which was decided by this court after the last brief was filed in the Eleventh Circuit but before oral argument. In an effort to be concise, Prevost will not repeat the entire contents of the Eleventh Circuit Court briefs and therefore this Answer Brief is limited in its scope. The purpose of this brief is to focus more on the underlying policies and legal concepts that this court must consider in addressing the certified questions of the Eleventh Circuit Court of Appeal and

the affect of the Casa Clara decision. In fact, a thorough analysis of the Casa Clara decision leads to the clear conclusion that Florida does not recognize the no alternative remedy, sudden calamity or independent tort exceptions, or any other exceptions, to the economic loss rule. Please see Appellee, Prevost's Answer Brief filed in the Eleventh Circuit which is included in the record for analysis of the pre Casa Clara decisions and an in depth analysis of the decisions of other jurisdictions.

CERTIFIED QUESTIONS

QUESTION I

WHETHER, UNDER FLORIDA LAW, THE ECONOMIC LOSS RULE APPLIES TO NEGLIGENCE CLAIMS FOR THE MANUFACTURE OF A DEFECTIVE PRODUCT WHERE THE ONLY DAMAGES CLAIMED ARE TO THE PRODUCT ITSELF AND WHERE THE PLAINTIFF CLAIMS TO HAVE NO ALTERNATIVE THEORY OF RECOVERY?

The question of whether there is a "no alternate remedy" exception to the economic loss rule was answered by this court in Casa Clara and should not require an additional discussion. The Petitioner in that case made an argument similar to the one made in this case. In its simplest form the argument states that a person who does not have a cause of action under any theory other than tort is automatically exempt from the economic loss rule and given the tort cause of action. The end result of this argument would be that the economic loss rule would not be a rule of law, but one of preference. If adopted, the new economic loss rule would be that the law would prefer that parties utilize contract law but if they fail to do so then a tort cause of action will be created for them.

The obvious problem posed by this exception is that tort law and contract law provide for different damages, exist for different reasons, and have different elements. It would be completely ridiculous to "create" a cause of action only for those litigants who would otherwise lose their cases and recover nothing. Moreover, the adoption of such an exception would actually encourage people to forego contract and warranty rights. This court has already recognized that plaintiffs find tort remedies more attractive because a tort cause of action provides for the recovery of greater damages than the same plaintiff would obtain through contract. Casa Clara, 620 So. 2d 1244. If the law automatically permitted a plaintiff to obtain those more preferable tort damages whenever the plaintiff did not have a contract cause of action, plaintiffs would intentionally avoid the purchase of warranties and other contract remedies

for the sole purpose of obtaining tort relief. The law of contract would truly "drown in a sea of tort." East River; Casa Clara, 620 So. 2d at 1247.

In Casa Clara, this court recognized that a "no alternate remedy" exception to the economic loss rule would be inconsistent with contract and tort principles. The Petitioner in that case argued that the holdings of A.R. Moyer v. Graham, 285 So. 2d 397 (Fla. 1973), AFM Corp. v. Southern Bell Telephone and Telegraph Co., 515 So. 2d 180 (Fla. 1987) and Latite Roofing Co., Inc. v. Urbanek, 528 So. 2d 1381 (Fla. 4th DCA 1988) supported the recognition of this exception because the outcome of those cases seemed to depend upon the existence of other remedies. (Casa Clara, Initial Brief of Petitioner, page 31-32[1]) This court rejected that argument but did not make any comment about the viability of the exception in its decision. The only discussion of the "no alternative remedy" exception is contained in the dissent to the court's decision written by Justice Barkett. It is obvious from that dissent that the court considered the exception and rejected it but without an express statement to that effect the Eleventh Circuit Court of Appeals was without guidance. This court's disapproval of Latite, which was decided solely on the basis that the plaintiff had no alternate remedy and should be allowed to state a cause of action for negligence, clearly shows that the no alternate remedy exception was rejected by this court. The Appellant's effort to circumvent this court's disapproval of Latite overlooks the clear statement by this court that the Latite court refused to apply the economic loss rule to what should have been a contract claim. This court's disapproval of that decision should put to rest the question of whether there is a "no alternate theory" exception to the economic loss rule.

The creation of the exception requested was also considered, and implicitly rejected, in GAF Corp. v. Zack Company, 445 So.2d 350 (Fla. 3rd DCA 1984). In GAF, the Third District Court of Appeal held that a roofing company who was held liable to its customers for the

[1]This court may take judicial notice of the briefs filed in Casa Clara if doing so would assist the court understand the decision reached. Irvin v. Chapman, 75 So. 2d 591 (Fla. 1954)

installation of defective roofing materials had no cause of action under a negligence theory against the manufacturer of the materials because no personal injury or property damage was sustained by the roofing company as a result of the purchase and installation of the defective roofing materials. The Court also held that because there was no privity between the roofing company and the manufacturer, there could be no breach of implied warranty. Under the Court's holding, the roofing company, Zack, was relegated to an action for breach of implied warranty of merchantability against the supplier of the defective materials. The Court did not predicate the use of the economic loss rule upon the existence of another remedy against any other entity. The Court specifically held that there was no duty on the part of the manufacturer to the installer of the roofing materials and that the plaintiff would have to pursue a cause of action against the seller of the materials. In doing so, the Court recognized the possibility that the plaintiff may not have a cause of action against the seller stating:

> "the Plaintiff, Zack's, sole remedy, if any, for these economic losses would be an action ... against the party ... which sold the defective roofing materials to the Plaintiff ..."
>
> GAF 445 So.2d at 352. (Emphasis added)

By adding the words "if any", the Court specifically recognized the possibility that the plaintiff may not even have a cause of action against the supplier of the goods. The Court never considered making an exception to well reasoned tort law principles for the plaintiff simply because there was no alternate remedy.

A final and clear resolution of this certified question requires a definitive statement from this court finally disposing of all possible exceptions to the economic loss rule. All purported "exceptions" to the economic loss rule are illogical because they create a tort where no tort exists. As stated by the District Court of Pennsylvania in Palco Linings, Inc. v. Pavex, Inc.,

755 F. Supp. 1278, 1280 (M.D. Pa. 1990):

> "[The Appellant] argues, in effect, that the absence of a contractual remedy should justify its reliance to a tort claim in this case. [It] thus resorts to a tort claim only because it has no other basis for recovery. The economic loss doctrine was designed to prevent just such strategy. [The Appellant's] inability to recover in contract or warranty due to the lack of privity, although unfortunate, does not change the fact that [its] remedies in this matter are limited by law."

The answer to the certified question, as framed by the Eleventh Circuit Court of Appeals should be answered clearly in the affirmative. The economic loss rule applies to all claims in tort for economic losses even if the plaintiff has no other cause of action available.

QUESTION II

WHETHER, UNDER FLORIDA LAW, A CAUSE OF ACTION PRECLUDED BY THE ECONOMIC LOSS RULE MAY BE MAINTAINED IF THE DAMAGE TO THE PRODUCT IS CAUSED BY A SUDDEN CALAMITOUS EVENT.

The second question asked by the Circuit Court of Appeals concerns the creation of yet another exception to the economic loss rule if the product is destroyed by a sudden calamitous event rather than by slow deterioration. The sudden event in this case is a fire which destroyed the buses. Despite the sudden nature of the fire, though, there was no personal injury or property damage.

Under these circumstances this court should not allow a cause of action for negligence. The Appellants have put forth a good argument, making sure to repeat as often as possible that "school children" were in the bus when it broke down and eventually caught fire, but nothing can save that argument from the fact that there was no personal injury or property damage caused by the bus fire. This court recognized in Casa Clara that this type of argument goes against the "principle that the injury must occur before a negligence action exists." Casa Clara, 620 So. 2d at 1247. The sudden calamitous event argument used in this case is essentially the same argument rejected in Casa Clara. The mere fact that there is a risk of injury associated with the sudden calamitous nature of an event does not mean that a tort has occurred. A tort does not occur unless and until the injury is inflicted. The mere fact that a personal injury could possibly be inflicted by exploding concrete, for example, does not give rise to a tort cause of action.

An exception based upon the speed of a product's damage was considered by the United States Supreme Court in East River and summarily rejected. On this topic, the Court discussed the wide spectrum of cases which held, on one end, that warranty law supplants the existence

of tort law, Seely v. White Motor Co., 63 Cal.2d 9, 45 Cal. Rptr. 17, 403 P.2d 145 (1965), and, on the other end, that any tort claim on a defective product, regardless of its nature, is allowed. Santor v. A&M Karagheusian, Inc., 44 N.J. 52, 207 A.2d 305 (1965). In between the court found that there were a number of courts which had created meaningless distinctions depending upon whether the damage was sudden, calamitous, or placed members of the public in danger, but not actually harmed. As to these distinctions, the Court said:

> "We find intermediate and minority land-based positions unsatisfactory. The intermediate positions, which essentially turn on the degree of risk, are too indeterminate to enable manufacturers easily to structure their business behavior. Nor do we find persuasive a distinction that rests on the manner in which the product is injured. We realize that the damage may be qualitative, occurring through gradual deterioration or internal breakage. Or it may be calamitous. But either way, since by definition no person or other property is damaged, the resulting loss is purely economic. Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss...is essentially the failure of the purchaser to receive the benefit of his bargain- traditionally the core of contract law."
>
> East River, 476 U.S. at 870, 106 S.Ct. at 2301-2302. (Emphasis added)

After stating its position, the Court chose to adopt the position of the California Supreme Court in Seely, holding that a manufacturer in a commercial setting has no duty in tort to prevent a product from injuring itself. The proper role for the law of warranty precludes imposing tort liability if a defective product causes purely monetary harm.

To understand why the nature of the damage to the product has no affect on whether the economic loss rule applies, one must examine the elements of a tort action. A tort cause of action consists of three basic elements; 1) the commission of a tort which 2) causes 3) tort damages. For purposes of this argument it can be assumed that a tort was committed and that it caused damage to the product itself. These assumed facts can not, however, give rise to a cause of action for negligence because the damages caused were not tort damages. In Affiliates

for Evaluation and Therapy v. Viasyn Corp., 500 So. 2d 688 (Fla. 3d DCA 1987) the Third District Court of Appeal discussed the elements needed to give rise to a tort cause of action stating:

> "A negligence action against the defendant...cannot lie herein because no cognizable tort damages were sustained by the plaintiff...; stated differently, no personal injury or property damage was sustained by the plaintiff...as a result of its purchase and installation of the defective [product] and therefore no negligence action is maintainable."

Viasyn, 500 So. 2d at 690, quoting from GAF Corp. v. Zack Company, 445 So.2d 350 (Fla. 3rd DCA 1984).

This court recognized the same principle in Casa Clara when it stated that the mere possibility of personal injury or property damage from deteriorating or exploding concrete is not enough and that the injury must actually occur for a tort cause of action to exist. It is this principle that underlies the economic loss rule.

In the final analysis, the economic loss rule is not a rule of exclusion. It does not exist to destroy a tort cause of action where such action would otherwise exist. The rule is, rather, a simple statement of a fundamental concept. In order to allege a cause of action in tort, a plaintiff must allege the commission of a tort and that such tort caused tort damages, i.e. personal injury or property damage. If a plaintiff cannot in good faith allege the existence of personal injury or property damage, then that plaintiff has failed to state a cause of action and the complaint is properly dismissed.

Practical Considerations

There are practical reasons which make the exception requested, even if adopted, completely unworkable. If this court were to recognize an exception for damage caused by a sudden calamity, what would constitute a sudden calamity? Would it be an event that lasts one

second, three seconds, hours or days? Even assuming that damage is caused by gradual deterioration, the final "failure" of a product is often sudden. A ship may rust for years but still float until, suddenly, a hole in the hull finally opens and the ship sinks. Certainly the sinking of a ship cannot be called anything but sudden but the failure of the product would still be gradual. Would a "sudden calamity" exception apply?

These practical considerations preclude the recognition of a new cause of action in negligence or strict liability for product damage that occurs suddenly. Such an exception would be illogical, impractical, and completely impossible to apply. Given the fact that most, if not all, product failure occurs suddenly, the creation of a new cause of action for sudden failure would completely supplant warranty and contract law and, just as in the case of the "no alternate remedy" exception, would encourage individuals to forego contract remedies. This question should be answered in the negative.

QUESTION III

WHETHER, UNDER FLORIDA LAW, A CAUSE OF ACTION MAY EXIST OUTSIDE THE BAR OF THE ECONOMIC LOSS RULE WHERE PLAINTIFFS ALLEGE A DUTY TO WARN WHICH AROSE FROM FACTS WHICH CAME TO THE KNOWLEDGE OF THE COMPANY AFTER THE MANUFACTURING PROCESS AND AFTER THE CONTRACT?

The third question presented to this court is not difficult to resolve since it is bound by the same principles of tort law discussed above. The existence of a tort cause of action requires the commission of a tort and the existence of tort damages. The timing of the tort, whether it occurs before, during or after the manufacture of the product, is completely irrelevant.

The appellant supports its claim of a cause of action for negligent failure to warn by arguing that a defect which is discovered after the manufacturing process is concluded gives rise to a separate duty. Therefore, concludes the appellant, the breach of that duty is an independent tort and is not subject to the economic loss rule. For this proposition, the appellant relies upon Miller Industries v. Caterpillar Tractor Co., 733 F.2d 813 (11th Car. 1984) and McConnell v. Caterpillar Tractor Co., 646 F.Supp. 1520 (D. N.J. 1986). Both of these cases applied federal maritime law to reach the conclusion that a failure to warn of a defect which is the result of information obtained by the manufacturer after the manufacturing process was complete gives rise to a new cause of action in negligence. The defect in the reasoning of these cases is that the economic loss rule is not concerned with the existence of a duty or breach of duty but the existence of damages which tort law is designed to remedy.

It should be noted first that the authorities relied upon by the appellant are federal cases applying federal maritime law. They do not interpret or apply Florida Law. Fishermen are the "favorites" of admiralty and the courts have always given them special treatment and excepted

them from harsh rules. McConnell, 646 F. Supp. at 1525. The decisions cited by the Plaintiff are distinguishable because of this favored status through which the maritime courts granted to fishermen remedies not available to others. Those cases therefore have no application to this case, and can not serve as a basis for creating a new branch of tort law in Florida.

It should also be noted that the United States Supreme Court disapproved Miller when it decided East River. The Supreme Court accepted jurisdiction in East River because of a conflict between the Third Circuit in East River Steamship Corp. v. Delaval Turbine, Inc., 752 F.2d 903 (3d Cir. 1985), which held that damage to a defective product is not actionable in tort, and Miller, Ingram River Equipment, Inc. v. Pott Industries, Inc., 756 F.2d 649 (8th Cir. 1985), and Emerson G.M. Diesel, Inc. v. Alaskan Enterprise, 732 F.2d 1468 (9th Cir. 1984), which all held that damage to a product itself is actionable in tort. The United States Supreme Court sided with the Third Circuit and, in doing so, impliedly overruled Miller, Ingram, and Emerson.

The attempt by the District Court in McConnell to distinguish East River from the facts in Miller by stating that the two cases deal with different legal principals because of the timing of the negligence is ineffective. If such a difference made them distinguishable, then the United States Supreme Court would not have found that the decisions conflicted. It appears, rather, that as far as the United States Supreme Court was concerned the economic loss rule does not depend upon when the negligence occurs, only that the cause of action is negligence and that there was no personal injury or property damage. The economic loss rule is not made applicable because of a product or a defect. It is applicable to all cases where negligence is alleged. The "distinction" utilized in McConnell, that application of the economic loss rule depends upon the temporal relationship between a product and the allegation of negligence, is misleading and

inaccurate. The opinions establishing the economic loss rule is a general rule applicable to all negligence theories. The rule simply states that without damages to property or person, tort law provides no remedy. Seely Stated differently, no tort has been committed without personal injury or property damage.

If there is any doubt about whether the tort of "negligent failure to warn" can exist absent tort damages it can be resolved by looking at the purpose of the cause of action. In Tampa Drug Company v. Wait, 103 So. 2d 603 (Fla. 1958) this court described the cause of action in terms of the existence of a duty stating:

> "The measure of the duty of the distributor of an inherently dangerous commodity is now well established to be the reasonable foreseeability of injury that might result from the use of the commodity."
>
> Tampa Drug Company, 103 So. 2d at 607.

Upon this reasoning this court held that the manufacturer must clearly warn of the risks of personal injury associated with the use and misuse of the product. There was no concern about the value of the product itself. The only reason for the recognition of the tort was to protect the safety of those using the product.

That purpose has no application here. There is no overwhelming public need for the protection of a product's value or its usefulness as a product. A manufacturer only has a duty to warn of reasonably foreseeable injuries to those who might use the product. A breach of that duty without any personal injury or property damage does not give rise to a cause of action for negligence or strict liability.

Negligent Duty to Warn Is Not An "Independent Tort"

Even if it is assumed that an "independent tort" is not affected by the economic loss rule

the appellant has still failed to state a cause of action because it has not alleged the existence of an independent tort. The appellant has argued that it should be permitted to allege a tort cause of action that is "independent" of the manufacturing process and immune to the economic loss rule. Further, it claims that a "failure to warn" action satisfies the "independent tort" requirement of this theory. This theory, of course, relies upon the timing of the creation of a duty to warn.

A duty to warn is not created by the existence of knowledge but by the manufacture of a product. A person who has knowledge that a product is defective has no obligation to warn the public of that danger. On the other hand, a manufacturer with that same knowledge has a duty to warn. The only difference between the two situations is that one party manufactured the product and the other did not. The duty to warn, therefore, arises out of the manufacture of the product, not the knowledge, and a breach of that duty can never be "independent" of the manufacturing process. It is not a tort that arises after the manufacturing process as described by the appellant and fails to meet that requirement of the appellant's theory. The existence of a duty to warn is inextricably intertwined with the manufacture of the product.

There Are No Exceptions to the Economic Loss Rule

It is the interplay of the economic loss rule with the duty to protect from foreseeable injuries that has been the source of so much confusion. Those who have had their economic expectancies unfulfilled, such as the appellant in this case, seize the opportunity to take this "duty to protect from foreseeable injuries" as a way to avoid the economic loss rule. The "sudden calamity" and "failure to warn" exceptions in this case are a perfect example of this phenomenon. The appellant argues that Prevost had a duty to prevent risks such as fire which could have injured school children and a duty to warn that the buses could catch fire. Both of those duties may exist, but the existence of a duty and the breach of that duty do not create a

cause of action in tort. Actual personal injuries or property damage must result from the breach of a duty to have a tort cause of action.

All claimed "exceptions" are the result of superficial analysis of the economic loss rule. The economic loss rule is nothing more than a restatement of the traditional common law rule that negligence is intended to protect interests concerning the safety of person and property. Sandarac v. W.R. Frizell Architects, 609 So. 2d 1349 (Fla. 2d DCA 1992). It can be stated in terms of a duty, as in Sandarac, by holding that there is no duty to protect against damage to purely economic interests, but that analysis actually leads to confusion. It is confusing because the breach of the same duty can cause either purely economic damage or personal injuries but the resulting cause of action depends upon the damage caused by the breach. A duty to warn and a breach of that duty, for example, exist long before any damage is caused. A cause of action for the breach of that duty does not accrue until personal injury or property damage results from the breach. If nothing but purely economic interests are damaged, then no cause of action for negligence will ever accrue. Describing the economic loss rule in terms of the damage caused by the negligent act presents a clearer explanation of the rule. Any analysis of whether the economic loss rule applies to a given situation must begin by examining the nature of the damage caused, not the duties involved. If the analysis continues to be done by examining whether a duty exists to prevent the harm, litigants will continue to argue that there are exceptions for every duty that exists.

It is because the economic loss rule is a rule of damages that there are no exceptions to the rule. Negligence law was created to protect society from the unintentional injury to person or property. If person or property is not damaged, then negligence law does not apply. For this reason perhaps the rule should be called the "Economic Damages Rule" to keep the focus on the damages caused and not on other elements of a cause of action for negligence or strict liability. It is completely irrelevant that the negligence occurred before, during or after the

manufacture of the product, or that the damage to the product occurred suddenly and without warning, or that the plaintiff will be left with no other remedy if the negligence cause of action is allowed. Permitting any of these exceptions actually creates a new cause of action. Sandarac. As stated by the Sandarac court:

> "The analysis of an exception to the economic loss rule must justify the creation of a new cause of action - not a bar to an existing cause of action."
>
> Sandarac, 609 So. 2d at 1355.

This court has never found any overwhelming public need to use the law of negligence to protect the benefit of one's bargain or the value of a product. That is the purpose of warranty and contract law and should remain so. East River. These areas of the law were created to protect different interests and should remain separate. As pointed out by the United States Supreme Court:

> "Permitting recovery for all foreseeable claims for a purely economic loss could make a manufacturer liable for vast sums. It would be difficult for a manufacturer to take into account the expectations of persons downstream who may encounter the product."
>
> East River, 476 U.S. at 874, 106 S.Ct. at 2304.

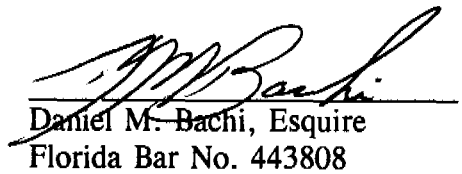
The exceptions to the general rule which the Appellant urges this Court to apply to Florida would expose a manufacturer to vast and unpredictable liability, a result not intended by the Supreme Court. Were the exceptions intended to effect some laudable or altruistic purpose, then perhaps they would be defensible, but they are not so based. The exceptions exist merely to expand the realm of tort law to an area governed by contract, warranty, and the law of sales. This court should answer the third certified question in the negative.

CONCLUSION

The previous decisions of this court establish clear precedent for the responses to the certified questions. Pursuant to those decisions, all of the questions certified by the Eleventh Circuit Court of Appeals must be answered that "Yes" the economic loss rule applies even if the plaintiff has no alternate theory of recovery, "No," there is no exception to the economic loss rule when the damage to the product is caused by a sudden calamity, and "No," a cause of action for negligent failure to warn does not exist unless there is personal injury or property damage. Having suffered no personal injury or property damage, the appellant cannot claim the commission of a tort.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to: Gary S. Maisel, Esq., 600 S. Andrews Avenue, Suite 600, Ft. Lauderdale, Florida 33301 and Richard Solomon, Esq., Caldwell, Cabanis & Wagner, P.A., 800 North Magnolia Avenue suite 1800, Post Office Box 2513, Orlando, Fl. 32802-2513, Attorneys for Amicus Curae, Florida Concrete & Products Assoc., Inc. this 26th day of May, 1994.



Daniel M. Bachi, Esquire
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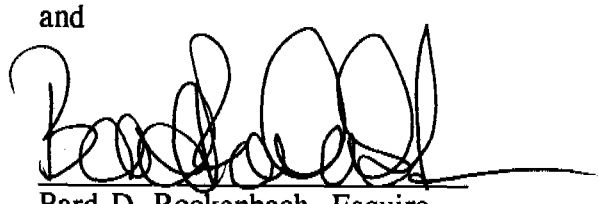
and



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