

# state of the art

EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

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## Economic Loss Rule Defeats Tort Claims

By Matthew Consolo

In 1992, the Michigan Supreme Court formally adopted the economic loss doctrine. *Neibarger v Universal Cooperatives, Inc.*, 439 Mich 512 (1992). The economic loss doctrine “bars tort recovery and limits remedies to those available under the Uniform Commercial Code (UCC) where a claim for damages arises out of the commercial sale of goods and losses incurred are purely economic.” *Neibarger*, at 515.

The doctrine’s basic premise is that economic losses that relate to commercial transactions are not recoverable in tort. Therefore, the doctrine hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner that has traditionally been remedied by resort to the law of torts. *Neibarger*, at 520-521.

Since *Neibarger*, the economic loss doctrine in Michigan has been applied in the context of various transactions for goods or products to bar recovery in tort when damages are recoverable under the UCC. The issue of whether the UCC provides sufficient remedies to compensate the buyer of a defective product for damage to property other than the defective product itself was recently addressed in *Semco Energy v Eclipse, Inc.*, unpublished opinion per curiam of the Court of Appeals, rel’d 12/4/12 (Docket No. 306644).

In *Semco Energy*, Plaintiff corporation commercially supplied natural gas to customers for the operation of home appliances. Defendants were commercial manufacturers of natural-gas shutoff valves. At the time of this incident, Plaintiff estimated that it had 41,522 Rockford Eclipse Series 125 gas valves in use. Eclipse was the sole designer and seller of the natural-gas shutoff valves from 1990 until 1993. However, in 1993 Mueller bought the product line from Eclipse and sold the valves until 1999. Plaintiff bought valves from Eclipse before 1993 and bought valves from Mueller from 1993 until 1998.

In 2004, Don Zube broke a gas line at his home and the home caught on fire. Zube was installing a furnace, attempted to turn the valve, and according to Zube “the . . . core of the valve blew right out of the valve body.” Zube sued Mueller and Mueller asserted that the Rockford Eclipse valve failed because of Zube’s misuse.

### SECRET WARDLE NOTES:

In Michigan, the economic loss doctrine bars recovery in tort for economic loss where: (1) the parties or others closely related to them had the opportunity to negotiate the terms of the sale of the good or product causing the injury, and (2) their economic expectations can be satisfied by contractual remedies.

The natural question is “so what? A claimant can still sue under the UCC.” Correct, a claimant can still sue on a UCC contract claim. However, the statute of limitations for a UCC claim is four years from the date of delivery. A tort statute of limitations only begins to run when the injury or damage occurred. Therefore, the statute of limitations for a UCC claim can run (and often does) before an accident occurs.

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In January, May, and September of 2005, more Rockford Eclipse valves broke causing Plaintiff to issue an internal memorandum acknowledging the valve failures and stating that it was currently investigating the failures. Plaintiff also instructed its employees that the valve failure might occur with all shutoff valves because it was uncertain if the failure was specific to the Rockford Eclipse valves.

Additionally, several other home fires occurred over the next five years allegedly because of the valve. After a house fire in 2006, a Fire and Forensics expert opined that a defectively designed Rockford Eclipse valve caused the fire. After receiving this report, Plaintiff issued another internal memorandum indicating that it had determined “this type of failure is specific to the Rockford Eclipse Model Series 125 service valve.”

Ultimately, Plaintiff filed suit against both Mueller and Eclipse alleging various theories including product liability and breach of express and implied warranties. Mueller and Eclipse filed motions for summary disposition, arguing that the statute of limitations and the economic loss doctrine barred Plaintiff’s claims. The trial court dismissed the action by granting the motions and Plaintiff appealed the ruling.

In applying the economic loss doctrine to *Semco Energy*, the Court of Appeals upheld the trial court’s ruling based on the conclusion that the economic loss doctrine barred Plaintiff’s tort claim. The Court reasoned that Plaintiff sought damages for purely economic loss. The Court also relied upon the fact that Plaintiff was a sophisticated user of the product at issue since it was a corporation that commercially supplies natural gas. Additionally, the Court held the use of the gas valves to regulate natural gas—a highly flammable substance—necessarily involved a contemplation of the risks to other property should a valve fail. Therefore, the facts supported a conclusion that the risk was reasonably contemplated at the time of the contract.

Since Plaintiff could not avoid the application of the economic loss doctrine, Plaintiff’s sole remedy was in contract law under the UCC. However, the statute of limitations for breach of a contract for the sale of goods is four years. MCL 440.2725(1). The breach for statute of limitation purposes occurs when the goods are delivered, “regardless of the aggrieved party’s lack of knowledge of the breach.” MCL 440.2725(2). Since Plaintiff last purchased the valves in 1998, Plaintiff would have had to bring the lawsuit before 2002. In this case, Plaintiff first filed the action in 2010. Therefore, Plaintiff’s claims were barred under the statute of limitations.

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