

Case law update on the economic loss doctrine following *Flagstaff Affordable Housing LP v. Design Alliance, Inc.*,¹ Arizona Supreme Court, En Banc

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I. The *Flagstaff*² decision; backdrop:

A. *Woodward v. Chirco Construction Co.*, 141 Ariz. 514, 687 P.2d 1269 (1984).

The dicta fireplace example that became law.

In *Woodward*, Plaintiffs, purchasers of a home, brought an action against the builder alleging that the builder was negligent and breached its implied warranty of workmanlike performance and habitability. 141 Ariz. at 515, 687 P.2d at 1270. The trial court dismissed both claims. The court of appeals affirmed dismissal of Plaintiffs' negligence claim, but reversed dismissal of Plaintiffs' implied warranty claim after applying a six year statute of limitations to the claims. *Id.* The issue before the Arizona Supreme Court was whether the six year contract or two year tort statute of limitations governed Plaintiffs' claims against the builder. *Id.* In discussing the claims, the Court noted that the purchaser may have both tort and contract claims, stating:

For example, if a fireplace collapses, the purchaser can sue in contract for the cost of remedying the structural defects and sue in tort for damage to personal property or personal injury caused by the collapse. . . Each claim will stand or fail on its own [and] a distinct statute of limitations applies to each.

Id. at 516, 1271. The *Woodward* Court was *not* asked to apply the economic loss doctrine and it did *not* discuss the rule by name. Nonetheless, the Arizona court of appeals cited *Woodward* in subsequent cases for the proposition that Arizona applied the economic loss doctrine to construction defect cases. *See, e.g., Carstens v. City of Phoenix*, 206 Ariz. 123, 75 P.3d 1081 (Ct. App. 2003); *Colberg v. Rellinger*, 160 Ariz. 42, 44, 770 P.2d 346, 348 (Ct. App. 1988); *Nastri v. Wood Bros. Homes, Inc.*, 142 Ariz. 439, 444-445, 690 P.2d 158, 163-164 (Ct. App. 1984). This interpretation of *Woodward* and was expressly rejected by *Flagstaff* stating, “[I]n short, *Woodward* does not resolve whether the economic loss doctrine should apply to construction defects. Although several opinions by the court of appeals have concluded that the doctrine applied, those cases rely heavily on an interpretation of

¹224 Ariz. 320, 223 P.3d 664 (2010).

²This overview is not intended to be a complete recitation of all relevant cases discussing the economic loss doctrine prior to *Flagstaff*.

Woodward that we today reject.” *Flagstaff*, 223 Ariz. at 228, 223 P.3d at 669.

B. *Donnelly Const. Co. V. Obert/Hunt/Gilleland*, 139 Ariz. 184, 677 P.2d 1292 (1984).³

The duty case Plaintiffs adore.

In *Donnelly*, Plaintiff, Donnelly Construction Company was hired to follow the plans created by Defendant, Oberg/Hunt/Gilleland ("Architect"). 139 Ariz. at 188, 677 P.2d at 1296. Although Plaintiff and Defendant did not have contracts with each other, Plaintiff relied on Defendant's design to bid the job. *Id.* at 185, 1293. Defendant's plans, however, contained errors and Plaintiff suffered increased construction costs that it sued to recover. *Id.* at 186, 1294. Plaintiff asserted negligence, negligent misrepresentation and breach of implied warranty against Defendant. *Id.* Defendant filed a motion to dismiss for various reasons including lack of privity. *Id.* Neither party argued the economic loss doctrine and the Court's decision did not expressly address it.

In permitting Plaintiff's action to advance past the 12(b)(6) stage, the Arizona Supreme Court stated in *Donnelly*, "There is no requirement of privity in this state to maintain an action in tort." *Id.* 187, 1295. In reaching this conclusion, the Court reasoned:

Design professionals have a duty to use ordinary skill, care, and diligence in rendering their professional services. When they are called upon to provide plans and specifications for a particular job, they must use their skill and care to provide plans and specifications which are sufficient and adequate. This duty extends to those with whom the design professional is in privity . . . and to those with whom he or she is not. . . .

Id. (citations omitted). Before *Flagstaff*, Plaintiffs relied on this language as authority for the proposition that the economic loss doctrine does not apply to design professionals; *Donnelly* permitted plaintiffs to maintain a negligence claim against a design professional seeking only economic loss. Plaintiffs also relied on *Donnelly* in addressing the scope of the duty a design professional owes one with whom he is not in privity of contract.

³rejected in part by *Gipson v. Kasey*, 214 Ariz. 141, 144, 150 P.3d 228, 231 (2007).

C. *Salt River Project Agric. Improvement & Power Dist. v. Westinghouse Elec. Corp.*, 143 Ariz. 368, 694 P.2d 198 (1984).⁴

Arizona's three-factor case by case application of the economic loss doctrine.

In *Salt River*, SRP brought a product defect action against Westinghouse because a generator exploded and destroyed itself. 143 Ariz. at 372, 694 P.2d at 202. After the Court resolved a "battle of the forms" issue and concluded that Westinghouse prevailed, it addressed SRP's argument that, regardless of its UCC claim, it should be permitted to proceed on a theory of strict products liability regardless of its contract. *Id.* at 374-375, 204-205. Westinghouse disagreed arguing, in part, that the parties' contract expressly disclaimed any liability in tort exceeding the price of the generator. *Id.* at 375, 205. The court considered three factors in deciding to permit SRP to pursue its strict liability claim:

- (1) the type of the defect causing loss,
- (2) how the loss occurred, and
- (3) the nature or kind of loss for which the plaintiff seeks redress.

Id. at 376-379, 206-209. Regarding the first factor, the Court stated that the type of product defect giving rise to tort liability is one where the defect creates an unreasonable danger to those who use or consume the product. *Id.* The second factor examines whether there was a sudden calamity or extraordinary event; an accident ordinarily triggers tort law, although this factor is not conclusive. *Id.* Finally, the third factor considers whether plaintiff seeks cost of repair or contract based damages as opposed to recovery for personal injury or secondary property loss. *Id.*

In reaching its decision, the Arizona Supreme Court described the issue presented as being, "at the intersection of tort and commercial contract law, implicating principles of both fields." *Id.* at 375, 205. It clarified the different functions of tort and contract law: strict product liability has been developed in tort in part because of a "cost-shifting rationale;" because manufacturers are better able to "internalize" accident costs; the "social goal of product safety" and because fault is not an issue in strict liability, rather preventing future harm is the goal. *Id.* Conversely, contract law preserves "freedom of contract," "promotes the free flow of commerce" and resolves issues where one does not get the anticipated quality. *Id.* "Traditional contract remedies are designed to redress loss of the benefit of the bargain while tort remedies are designed to protect the public from dangerous products." *Id.* at 376, 206.

⁴*abrogated on other grounds by Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, 111 P.3d 1003 (2005).

D. *East River Steamship Corp. V. Transamerica Delaval, Inc.*, 476 U.S. 858, 106 S. Ct. 2295 (1986).

If tort law is “allowed to progress too far, contract law would drown in a sea of tort.”⁵

In *East River*, an admiralty case, the United States Supreme Court decided "whether a cause of action in tort is stated when a defective product purchased in a commercial transaction malfunctions, injuring only the product itself and causing purely economic loss." *Id.* at 859, 2296. The Court held that, "a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself." *Id.* at 871, 2302. Accordingly, a plaintiff who is in privity of contract with a manufacturer cannot sue in tort where the product purchased, injured only itself. The Court did not decide whether plaintiff stated a tort claim when its only damages were economic. *Id.*

In reaching its decision, the Court described the different interests protected by tort and contract law; it observed:

The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the ‘luck’ of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products.

Id. at 871, 2302 (*citing Seely v. White Motor Co.*, 63 Cal.2d 9, 18, 403 P.2d at 145, 151 (1965)).

Applying this reasoning to the facts before it, the Court determined that when a product injures only itself, a loss that can be insured against, the purchaser does not need "special protection;" the cost passed on to society if manufacturers were liable in tort for injury to a product itself "is not justified." *Id.* at 871-872, 2302-2303. The Court contrasted the facts presented with a situation where a person is injured and the "'cost of an injury and loss of time or health may be an overwhelming misfortune' . . ." *Id.* at 871, 2302 *citing Escola v. Coca Cola Bottling Co. Of Fresno*, 24 Cal.2d 453, 462, 150 P.2d 436, 441 (1944). The Court continued by describing the different interests protected by tort as opposed to

⁵*East River*, 476 U.S. at 866, 106 S. Ct. at 2300.

contract law advising: "preserving a proper role for the law of warranty precludes imposing tort liability if a defective product causes purely monetary harm;" "when a product injures only itself the reasons for imposing a tort duty are weak and those for leaving the party to its contractual remedies are strong;" and "the failure of a product to function properly 'is the essence of a warranty action, through which a contracting party can seek to recoup the benefit of its bargain.'" *Id.* at 868-869, 2300-2301.

E. *Carstens v. City of Phoenix*, 206 Ariz. 123, 75 P.3d 1081 (Ct. App. 2003).

"It is well-established that a homeowner may not recover in tort against a contractor for economic losses attributable to defective construction when the negligence has not caused personal injury or damage to property other than the defective structure itself."⁶

In *Carstens*, Plaintiffs sued the City of Phoenix alleging that its inspectors were grossly negligent for failing to discover construction defects in their home before their purchase. *Id.* at 125, 1083. The defects, including inadequate natural gas piping, hazardous venting and missing fire blocking, essentially required that Plaintiffs demolish the home. *Id.* Duty was not at issue; "duty in these circumstances is clear." *Id.* at 124-125, 1082-1083. Still, because Plaintiffs did not suffer personal injury or secondary property loss, the City moved for summary judgment, which the trial court granted. *Id.* at 125, 1083. The court of appeals upheld the trial court's ruling applying the economic loss doctrine; "In Arizona, it is well-established that a homeowner may not recover in tort against a contractor for economic losses attributable to defective construction when the negligence has not caused personal injury or damage to property other than the defective structure itself." *Id.* at 126, 1084 (citing *Woodward v. Chirco Construction Co.*, 141 Ariz. 514, 687 P.2d 1269 (1984)). The Court applied the economic loss doctrine despite Plaintiffs' lack of privity; "Arizona courts have never held that the application of the economic loss rule depends upon the plaintiff also having a viable contract claim against the defendants." *Id.* at 127, 1085. It also stated that the application of the economic loss doctrine does not depend on the dangerousness of the defect. *Id.* at 127-128, 1085-1086.

II. The Flagstaff decision

As a matter of first impression, the Arizona Supreme Court applied the economic loss doctrine to a design defect case preventing an owner from recovering purely economic loss from the architect.

In *Flagstaff*, Flagstaff Affordable Housing Limited Partnership ("Owner") sued Design Alliance, Inc. ("Architect") for breach of contract and negligence arising out of the

⁶*Carstens*, 206 Ariz. at 126, 75 P.3d at 1084.

design of an apartment complex. *Flagstaff*, 223 Ariz. 320, 321, 223 P.3d 664, 665 (2010). Architect's design did not comply with the federal Fair Housing Act's accessibility requirements; Owner had to pay a monetary settlement to the U.S. Department of Housing and Urban Development. *Id.* at 321-322, 665-666. Owner brought this action against Architect to recover its purely economic loss. Owner voluntarily dismissed its contract claim because of the statute of repose and Architect filed a 12(b)(6) motion to dismiss arguing that the economic loss doctrine barred Owner's negligence claim. *Id.* The Architect prevailed at the trial court, but lost at the court of appeals. *Id.* at 322, 666. The Arizona Supreme Court granted review to address whether: (1) the economic loss doctrine should apply in construction cases, and, if so, (2) whether it barred Owner's professional negligence claim for recovery of the costs of remediating alleged design defects. *Id.* Reversing the court of appeals, the Supreme Court held, "a contracting party is limited to its contractual remedies for purely economic loss from construction defects." *Id.* at 326, 670. In reaching its decision, the Court described Arizona's economic loss doctrine and defined what constitutes economic loss.

The economic loss doctrine is a judicially created doctrine that serves as a complete defense to tort claims where plaintiff seeks recovery for only economic damages. "We use the phrase to refer to a common law rule limiting a contracting party to contractual remedies for the recovery of economic losses unaccompanied by physical injury to persons or other property." *Id.* at 323, 667. The Court defined 'economic loss' as "pecuniary or commercial damage, including any decreased value of repair costs for a product or property that is itself the subject of a contract between the plaintiff and defendant, and consequential damages such as lost profits." *Id.*

The Court applied the economic loss doctrine in *Flagstaff* as a result of its context-specific policy analysis of the different purposes of tort and contract law. According to the Court, construction contracts are often negotiated, are project specific and contain "detailed provisions allocating risks of loss and specifying remedies." *Id.* at 325, 669. The *Flagstaff* decision stressed the purposes of contract law, which "seeks to encourage parties to order their prospective relationships, including the application of risk of future losses and the identification of remedies, and to enforce any resulting agreement consistent with the parties' expectations." *Id.* The Court also reasoned that purchasers do not need tort claims where Arizona law allows home purchasers to bring contract claims for breach of implied warranty of good workmanship and habitability regardless of whether they are in privity of contract with the builder. *Id.* Accordingly, unless parties contract otherwise, a "property owner is limited to its contractual remedies when an architect's negligent design causes economic loss but no physical injury to persons or other property." *Id.* at 321, 665.

A. Owner's arguments.

1. The "special relationship" between architects and their clients.

The Court rejected Owner’s argument that the professional status of the architect should determine whether the economic loss doctrine applies. The Court observed that at least two Arizona statutes do not draw a distinction between professionals and non-professionals in the construction defect setting; rather Arizona Revised Statutes §§ 12-552⁷ and 12-1363⁸ draw a distinction between contract claims as opposed to claims for personal injury.

2. Architect’s duties are imposed by law.

One approach to determining whether the economic loss doctrine applies is to examine the nature of the duty owed and whether it arises in tort or contract law. The Court, however, rejected this; “Attempting to label claims by distinguishing between contractual and extracontractual duties is an unduly formalistic approach to determining if plaintiff like Owner should be limited to their contractual remedies for economic loss.” *Id.* at 328, 672. The Court also noted that “the fact that an architect, as a professional, has legally imposed duties of care does not displace the general policy concerns that parties to construction-related contracts should structure their relationships by prospectively allocating the risks of loss and identifying remedies.” *Id.*

3. It is contrary to Arizona public policy to apply the economic loss doctrine to architects because it reduces their incentives to properly

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A.R.S. §12-552(A) states, “Notwithstanding any other statute, no action or arbitration based in contract may be instituted or maintained against a person who develops or develops and sells real property, or performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of an improvement to real property more than eight years after substantial completion of the improvement to real property.” Section 12-552(D) however, clarifies that, “Nothing in this section applies to actions for personal injury or death nor shall this section operate to shorten the period of warranty provided in an express written warranty.”

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A.R.S. § 12-1363(A) provides an opportunity to repair stating, “At least ninety days before filing a dwelling action, the purchaser shall give written notice by certified mail, return receipt requested, to the seller specifying in reasonable detail the basis of the dwelling action. The notice in a multiunit dwelling action involving alleged defects that are substantially similar in multiple residential units may comply with this section by providing a reasonably detailed description of the alleged defects in a fair and representative sample of the affected residential units. For the purposes of this subsection, "reasonable detail" includes a detailed and itemized list that describes each alleged defect and the location that each alleged defect has been observed by the purchaser in each dwelling that is the subject of the notice.”

design buildings.

The Court rejected Owner's public policy argument stating, "Limiting the parties to their contractual remedies for economic losses related to design defects does not, however, eliminate incentives for due care. The doctrine instead limits a party to contractual remedies when the injury is solely economic. . . . This is no more contrary to public policy than are contractual provisions limiting a design professional's liability to the amount of fees received." *Id. citing 1800 Ocotillo, LLC v. WLB Group, Inc.*, 219 Ariz. 200, 202-204, 196 P.3d 222, 224-226 (2008) (holding that a limitation of liability clause that capped damages at the amount paid for services did not violate Arizona public policy and did not constitute assumption of risk under Article 18, Section 5 of the Arizona Constitution).

B. Additional points from *Flagstaff*:

1. A party can contract out of the economic loss doctrine and preserve traditional tort remedies.

"In the construction context, the economic loss doctrine respects the expectations of the parties when, as will often be true, they have expressly addressed liability and remedies in their contract. Thus, the parties can contractually agree to preserve tort remedies for solely economic loss, just as they may otherwise specify remedies that modify common law recovery. But if the parties do not provide otherwise in their contract, they will be limited to contractual remedies for any loss of the bargain resulting from construction defects that do not cause personal injury or damage to other property." *Flagstaff*, 223 Ariz. at 326, 223 P.3d at 670. The presumption is that the economic loss rule applies to contracting parties to bar plaintiffs from seeking tort damages unless they have specifically preserved their common law remedies.

2. The Supreme Court invalidated the support for all of Arizona's prior appellate decisions applying the economic loss doctrine in construction cases.

The Court dismantled Arizona's prior economic loss doctrine law in the construction context. It observed, "many other courts, and the parties here, have assumed that Arizona law also applies the economic loss doctrine to construction defect cases. The only opinion by this Court cited for this proposition is *Woodward v. Chirco Construction Co.*, 141 Ariz. 514, 687 P.2d 1269 (1984)." *Flagstaff*, 223 Ariz. at 227, 223 P.3d at 668. The Court described the statute of limitations issue presented in *Woodward* and concluded, "In short, *Woodward* does not resolve whether the economic loss doctrine should apply to construction defects." *Id.* at 228, 669. It also rejected court of appeals decisions that interpreted *Woodward* as applying the economic loss doctrine including *Carstens v. City of Phoenix*, 206 Ariz. 123, 75 P.3d 1081 (Ct. App. 2003); *Colberg v. Rellinger*, 160 Ariz. 42, 44, 770 P.2d 346, 348 (Ct. App. 1988); *Nastri v. Wood Bros. Homes, Inc.*, 142 Ariz. 439, 444-445,

690 P.2d 158, 163-164 (Ct. App. 1984). *Flagstaff* decided an issue of first impression.

3. *Salt River's* three-factor test does not apply in the construction defect setting.

As stated above, the *Salt River* three-factor test requires a case by case determination of (1) the type of the defect causing loss, (2) how the loss occurred, and (3) the nature or kind of loss for which the plaintiff seeks redress. The *Flagstaff* court rejected this test stating, "this minority view has been criticized as being too unpredictable and allowing non-contractual recovery when a purchaser has only been deprived on the benefit of the bargain." *Flagstaff*, 224 Ariz. at 326, 223 P.3d at 670. The Court declined to extend the *Salt River* test to construction defect cases. *Id.*

4. The economic loss doctrine does not apply to preclude the tort claim of a non-contracting party.

In discussing *Donnelly Construction Co. v. Oberg/Hunt/Gilleland*, 139 Ariz. 184, 677 P.2d 1292 (1984) *rejected in part by Gipson v. Kasey*, 214 Ariz. 141, 144, 150 P.3d 228, 231 (2007). *Flagstaff* states, "*Donnelly* correctly implied that it [the economic loss doctrine] would not apply to negligence claims by a Plaintiff who has no contractual relationship with the defendant." *Flagstaff*, 224 Ariz. at 327, 223 P.3d at 671. The Court noted that the "principle function of the economic loss doctrine. . . is to encourage private ordering of economic relationships and to uphold the expectations of the parties by limiting a plaintiff to contractual remedies for loss of the benefit of the bargain. These concerns are not implicated when the plaintiff lacks privity and cannot pursue contractual remedies." *Id.* The Court directed that rather than attempting to rely on the economic loss doctrine, "courts should instead focus on whether the applicable substantive law allows liability in the particular context." *Id.*

5. Application of the economic loss doctrine outside construction defect cases.

The *Flagstaff* decision suggests that the economic loss rule may apply to a variety of situations outside of construction defect. "The economic loss doctrine may vary in its application depending on context-specific policy considerations. To determine whether the doctrine should apply here, we must consider the underlying policies of tort and contract law in the construction setting." *Id.* at 325, 669. Presumably, litigants pursuing matters other than construction defect could make a case specific argument regarding the policies of tort and contract law such that the economic loss doctrine should apply to their facts.

III. Aftermath

Flagstaff as applied in various unreported Arizona decisions:

1. *The Caricoa Company v. Sult*, 2010 WL 2606623 (Ct. App. June 29, 2010)

This is a memorandum decision applying the economic loss doctrine to an "informal" contract outside of the product defect or construction defect setting. In *Sult*, Sult, the sole proprietor of Granite Mountain Materials, hauled dirt and building materials. ¶ 3. The Carioca Company, ("Carioca") owned property where a gas station had previously been operated. ¶ 2. Carioca contracted with Danu Construction Company ("Danu") and as part of its work, Danu called Sult and over the telephone, asked it to "haul off dirt." ¶¶ 2-3. Sult asked about the type of dirt and after hearing it was "pretty clean," agreed and charged \$294.00 for the job. ¶ 3. The dirt, however, was contaminated with petroleum and Arizona Department of Environmental Quality ("ADEQ") pursued citations against Carioca obtaining \$80,000 as a civil penalty. ¶ 6. Carioca sued Sult, d/b/a Granite Mountain Materials for breach of contract and negligence. ¶ 7. Sult sought summary judgment arguing there was no contract to remove contaminated material and the economic loss doctrine bars any negligence claim where Carioca's only harm was economic. ¶ 7.

Applying *Flagstaff*, the court of appeals upheld the trial court's grant of summary judgment to Sult; Carioca was limited to contractual remedies for its purely economic loss. This was so despite the fact that this case was not a product defect or construction defect case. The Court relied on *Flagstaff*'s statement that "the economic loss doctrine may vary in its application depending on context-specific policy considerations." ¶ 16 *citation omitted*. It also stated that, "To apply the economic loss doctrine, we need not decide whether Carioca has a viable contract claim against Sult." FN3, *citations omitted*.

2. *TSYS Acquiring Solutions, LLC v. Electronic Payment Systems, LLC*, 2010 WL 3882518 (D. Ariz. Sept. 29, 2010)

In *TSYS, Electronic Payment Systems, LLC ("EPS")* contracted with TSYS to provide credit card payment processing services. *1. The district court had to determine whether the economic loss doctrine would apply to a credit card payment processing contract. Determining that the "Arizona Supreme Court likely would bring contracts of the type at issue. . .under the economic loss doctrine" the Court reasoned, "Given the commercial nature of the contract, the fact that the parties anticipated a possible breach, and the policy of encouraging parties to such contracts to allocate risk prospectively and identify remedies within their agreements, the Court concludes that the type of contract at issue in this case is subject to the economic loss doctrine." *2. Following *Flagstaff*, after deciding the economic loss doctrine applied, the Court continued to analyze the claims looking at: (1) whether the

breach of contract also caused physical injury or economic harm to "interest other than those within the scope of the contract;" and (2) whether the parties preserved tort remedies in their contract. *Id.*

3. *Sherman v. PremierGarage Systems, LLC*, 2010 WL 3023320 (D. Ariz. July 30, 2010)

Plaintiffs alleged tort claims including fraud and negligence misrepresentation arising out of statements made to them before they executed various agreements including a Dealer Agreement to operate a PremierGarage franchise. *1, 3. Defendant argued such tort claims were barred by the economic loss doctrine where the alleged misrepresentations were specifically addressed in the parties' Dealer Agreements. *Id.* In finding that the economic loss doctrine barred Plaintiffs' fraud and negligent misrepresentation claim, the Court stated:

Although it appears that the *Flagstaff* decision limited its expansion of the economic loss rule to construction defect cases, the Arizona Supreme Court rested its decision on the fact that 'contracts often are negotiated between the parties on a project-specific basis and have detailed provisions allocating risks of loss and specifying remedies. In this context, allowing tort claims poses a greater danger of undermining the policy concerns of contract law.' Here, the Shermans negotiated and signed, not one, but two Dealer Agreements The bases of the Shermans' fraud and negligent misrepresentation claims rest on statements made 'regarding the profits Plaintiffs' PremierGarage franchises would generate and the quality and performance characteristics of PremierGarage's floor-coating materials.' Similar to the contract at issue in *Flagstaff*, the Dealer Agreements allocate risks of loss and specify remedies for both of these issues Given that the Shermans are a contracting party, that they seek to recover economic losses 'in the form of repairs costs, ... or lost profits,' and that they signed two separate Dealer Agreements, the Court finds that economic loss rule applies here in order to 'uphold the expectations of the parties by limiting [the] plaintiff[s] to contractual remedies for loss of the benefit of the bargain.'

*4. (*Citations omitted*). The Court also expressed that despite *Flagstaff's*, attempt to clarify the application of the doctrine, "the scope of the economic loss doctrine in Arizona is by no means settled." *3.