

## ELD Strikes Again! Michigan Court Hits the Brakes on Plaintiffs' Economic Loss Claims

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In *HDI Glob. SE v. Magnesium Prods. of Am., Inc.*, No. 360385, 2023 Mich. App. LEXIS 2602 (*Magnesium Prods.*), the Court of Appeals of Michigan (Court of Appeals) considered whether the lower court erred in dismissing the plaintiffs' claim for loss of income based on the economic loss doctrine. The court found that while the defendant manufacturer owed a duty to the general public to exercise reasonable care in its manufacturing process, that duty did not apply to the economic damages alleged by the plaintiffs.

In *Magnesium Prods.*, the plaintiffs' insured, Daimler AG (Daimler), contracted with its affiliate company, Mercedes-Benz U.S. International (MBUSI), to manufacture its vehicles. MBUSI contracted with defendant Magnesium Products of America, Inc. for the supply of magnesium-casted cross bar beams, which MBUSI incorporated into Daimler's vehicles. Daimler was not a signatory to the contract with the defendant. In May 2018, the defendant's manufacturing facility caught fire. As a result, the defendant failed to produce cross beams to MBUSI, and MBUSI was unable to manufacture vehicles for Daimler. As the insurance carriers for Daimler, the plaintiffs paid Daimler for its lost profits.

The plaintiffs, as insurers and assignees of Daimler, then filed suit against the defendant alleging negligence. The defendant filed a motion for summary judgment, alleging that it did not owe a common law duty to Daimler. The plaintiffs amended their complaint to assert that working with magnesium is hazardous which the plaintiffs alleged created a duty owed to the general public to exercise due care. The trial court granted the defendant's summary judgment motion, finding that the defendant's duty to use due care did not apply to the type of harm that the plaintiffs alleged.

The Court of Appeals acknowledged that the defendant owed a duty to the general public to exercise due care so to avoid physical harm to foreseeable persons and property. In addition, the court also recognized that this duty can either be one owed to the plaintiff or a general duty owed by the defendant to the general public. The Court of Appeals noted that Michigan courts have established that a common law duty can arise from contracts, but that this duty must be one that exists separate from contractual obligations.

The court agreed that the defendant had an independent common law duty, separate and distinct from its contractual duties. However, the court held that this duty did not extend to intangible economic losses and the plaintiffs only alleged damages for "business interruption," "loss of business income" and "lost profits." The court held that these types of damages constitute the "intangible economic losses" to which the courts have clearly stated the common law duty does not extend. Thus, the Court of Appeals affirmed the lower court's ruling dismissing the case.

This case establishes that the economic loss doctrine is alive and well in Michigan. Even if the defendant is found to owe a duty in common law to exercise due care, that duty does not apply to economic losses. Subrogation professionals handling matters in Michigan must be conscious of whether any portions of their damages can be deemed economic losses. If so, the defendant may be able to rely on the economic loss doctrine to dismiss tort claims.

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