GUEST EDITORIAL **By Jamie Schwinghamer, Esq.**

"Economic Loss" rule returns to its roots

In a landmark decision, the Florida Supreme Court receded from over two decades of precedent, and held that the "economic loss rule" applies only in the products liability context. *Tiara Co. Assoc'n, Inc. v. Marsh & McLennan Companies, Inc.*, 2013 WL 828003 (Fla. Mar. 7, 2013). The economic loss rule, a judicially created doctrine, was often misapplied and misunderstood by practitioners and the courts alike. In practice, the economic loss rule was originally intended to set forth circumstances under which a tort action would be prohibited if the only damages suffered were economic in nature. While the rule originated in the products liability context, over the years it was expanded "to circumstances when the parties were in contractual privity, and one party sought to recover damages in tort for matters arising from the contract." *Id.* at *2. The expansion of the economic loss rule was intended to prevent parties in contractual privity from circumventing the limits on recovery established in the contract by also seeking to recover damages in tort. *Id.* The contractual privity application of the economic loss rule resulted in numerous Florida courts holding that a tort action was barred where the defendant had not committed a breach of duty separate and apart from the breach of contract. *Id.*

In its opinion, the Supreme Court recognized that for a number of years it had been "concerned" with what it perceived as an "overexpansion" of the economic loss rule. This concern was first expressed in *Moransasis v. Heathman*, where the Supreme Court acknowledged that while the Court continued to believe the outcome of other decisions was sound, it "may have been unnecessarily over-expansive in [its] reliance on the economic loss rule as opposed to fundamental contractual principals." 744 So. 2d 973, 981 (Fla. 1999). With this backdrop, in *Moransasis* the Supreme Court refused to apply the economic loss rule to actions based on fraudulent inducement and negligent misrepresentation. *Id.* Five years later, the Supreme Court reaffirmed the application of the economic loss rule in the products liability context, but again expressed its concern with the over-expansion of the doctrine. *Indem. Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532, 542 (Fla. 2004) ("Several justices on this Court have supported expressly limiting the economic loss rule to its principled origins."). The Supreme Court characterized its more recent decisions as an "effort to roll back the economic loss rule to its products liability roots." *Tiara*, 2013 WL 828003, at *6. However, in each instance the Supreme Court left a number of exceptions intact, leading the Court to determine in Tiara that it "simply did not go far enough." *Id.* at *7.

The Florida Supreme Court held that it will depart from precedent "when such a departure is necessary to vindicate other principals of law or to remedy continued injustice." *Id.* (citations omitted). In sum, the Court stated that its "experience with the economic loss rule over time, which led to the creation of the exceptions to the rule, now demonstrates that expansion of the rule beyond its original origins was unwise and unworkable in practice." *Id.*

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