

April 30, 2020

## Michael Best Wins Appeal in Precedent-Setting Subcontractor Dispute

Michael Best & Friedrich's (Michael Best) Roy Wagner and Lauren Triebenbach won a substantial victory in the Court of Appeals on Wednesday, April 22, 2020. Michael Best client, Mechanical Inc. (Mechanical), was the HVAC subcontractor to the general contractor on the \$36M Great Lakes Research Laboratory addition to the University of Wisconsin-Milwaukee School of Freshwater Sciences. After the project was completed, the electrical subcontractor, Venture Electrical Contractors (Venture), sued Mechanical for negligence, alleging that Mechanical interfered with Venture's ability to efficiently and timely perform work. According to its experts, Venture's delay damages exceeded \$1.1M.

Mechanical's lawyers from Michael Best brought a Motion for Summary Judgment, arguing that the economic loss doctrine bars claims for economic damages by one subcontractor against another. Instead, Mechanical argued that each subcontractor had negotiated a subcontract with the general contractor that contained a procedure for addressing impact claims. As such, if a subcontractor believed it was delayed by another subcontractor, it should pursue relief through its own subcontract with the general contractor. And, in fact, Venture had done just that when it initially submitted a claim to the general contractor seeking identical damages. Because Venture waited until project completion to submit its claim, the general contractor rejected the claim as untimely. Venture then turned to Mechanical and sued it for negligence.

Mechanical argued to the circuit court that while Mechanical and Venture were not in direct privity of contract, they were both part of the same integrated system of contracts with the general contractor. In support of their position, Mechanical argued the entire construction contractual process would be chaotic if subcontractors could ignore the contractual claims process negotiated with the general contractor and instead sue each other in negligence. Waukesha County Circuit Court Judge William Domina agreed and dismissed Venture's claim against Mechanical in its entirety after applying the economic loss doctrine. Venture appealed.

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The Court of Appeals agreed with Mechanical’s position and affirmed the Circuit Court ruling. In its opinion, the Court of Appeals stated, “Regardless of the absence of a vertical chain of contracts between the horizontal subcontractors, the economic loss doctrine bars a negligence claim for economic loss solely between them. The network of interrelated contracts contained their duties of care and contractual remedies. Thus, there is no independent tort duty owing from Mechanical to Venture to timely perform its contract with [the general contractor], or to avoid the risk of economic loss to Venture. Finding otherwise would eliminate the contract/tort distinction. It would undermine the expectancy protection afforded to [the general contractor] and Mechanical when they agreed upon and defined the duties, risks, and costs. Finally, letting Venture ignore its own contract to prosecute a tort claim would discourage other parties who are typically best situated to evaluate the risk of economic loss and take appropriate measures.”

The Court of Appeals’ decision preserves the distinction between tort and contract and is a natural progression to Wisconsin’s line of cases addressing the economic loss doctrine. Furthermore, the ruling prevents the risk and legal confusion that would occur if project subcontractors could sue each other, which would be detrimental to owners, contractors, and overall project stability. This case is one of first impression in Wisconsin, with only Colorado, Indiana, and Arizona having similar case law, and it has been recommended for publication.

To read the Court of Appeals decision, [click here](#).

During the unprecedented COVID-19 pandemic, your Real Estate, Construction, and Workplace Safety professionals at Michael Best are here to help you navigate these challenging circumstances. Please contact any member of our team for assistance.

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