SUPREME COURT OF WASHINGTON

Affiliated FM Insurance Co. v. LTK Consulting Services, Inc.

243 P.3d 521 (Wash. 2010) · No. No. 82738-9 · Decided November 4, 2010

SUMMARY

The Washington Supreme Court answered a certified question from the Ninth Circuit concerning whether a monorail operator with contractual rights to use and operate property owned by the City of Seattle could sue an engineering firm for negligent damage to that property despite lacking contractual privity. The court held that engineers undertaking professional services owe an independent common-law duty of reasonable care, measured by the care, skill, and learning expected of a reasonably prudent Washington engineer. That duty extends to safety risks of physical damage and to persons holding legally protected interests in the damaged property, allowing the insurer-subrogee to pursue the negligence claim.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Fairhurst, J.; Owens, J.; Chambers, J.; Charles W. Johnson, J.; Richard B. Sanders, J.; Debra L. Stephens, J.; Madsen, C.J.; Gerry L. Alexander, J.; James M. Johnson, J.
JURISDICTION	Washington
DECIDED	November 4, 2010
DOCKET	No. 82738-9
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Ninth Circuit certified a question of Washington law concerning whether a subrogee of a monorail operator could pursue negligence claims against an engineering firm that was not in contractual privity with the operator.
STANDARD OF REVIEW	Questions concerning the existence, measure, and scope of a tort duty are questions of law reviewed de novo. The certified state-law question was considered de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Affiliated FM Insurance Company v. LTK Consulting Services, Inc.

TOPICS

professional negligence · duty of care · negligence · subrogation · appellate procedure

PRACTICE AREAS

torts · professional negligence · negligence · contracts · commercial litigation · insurance · subrogation · appellate procedure

QUESTIONS PRESENTED

1. Whether an engineering firm that undertakes engineering services owes an independent tort duty of reasonable care notwithstanding its contract with the property owner.
2. Whether that duty extends to safety risks of physical damage to property in which a nonowner concessionaire holds a legally protected right to use and possess the property.
3. Whether the economic loss rule or independent duty doctrine bars the subrogee's negligence claim against the engineering firm.
4. What measure of reasonable care applies to an engineer undertaking professional engineering services.

HOLDINGS

1. Engineers who undertake engineering services in Washington owe a common-law duty to exercise reasonable care independent of their contractual obligations.
2. The measure of reasonable care for an engineer undertaking engineering services is the degree of care, skill, and learning expected of a reasonably prudent engineer in Washington acting in the same or similar circumstances.
3. An engineer's duty of care encompasses safety risks of physical damage to the property on which the engineer works, even when the plaintiff's damages also include business interruption or other economic consequences.
4. An engineering firm's duty of care regarding damage to property extends to persons holding a legally protected interest in that property; ownership of the property is not required.
5. Because AFM was subrogated to SMS's rights, it may pursue damages for tortious injury to SMS's legally protected property interests, including potentially consequential lost profits.

KEY QUOTATIONS

> *"An injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract."* (at 526)

> *"We therefore hold the measure of reasonable care for an engineer undertaking engineering services is the degree of care, skill, and learning expected of a reasonably prudent engineer in the state of Washington acting in the same or similar circumstances."* (at 529)

> *"We reject LTK's argument and hold that the scope of an engineer's duty of care extends to the persons who hold a legally protected interest in the damaged property."* (at 530)

> *"Applying the independent duty doctrine here, we hold that SMS may sue LTK for negligence."* (at 532)

FACTUAL BACKGROUND

In May 2004, a fire caused by an electrical failure damaged the blue and red trains of the Seattle Monorail System. Seattle Monorail Services operated the monorail under a concession agreement with the City of Seattle and was responsible for certain maintenance and repair costs, but did not own the monorail. LTK had contracted with the City to examine the monorail system and recommend repairs, and AFM paid SMS $3,267,861 for the fire-related losses and became subrogated to SMS's rights.

PROCEDURAL HISTORY

Affiliated FM sued LTK in King County Superior Court, alleging negligent modification of the monorail's electrical grounding system. LTK removed the action to the United States District Court for the Western District of Washington and obtained summary judgment on the ground that SMS's losses were purely economic and barred by Washington's economic loss rule; the district court denied reconsideration. AFM appealed, and the Ninth Circuit certified the Washington-law question to the Washington Supreme Court.

DISPOSITION

other

REMAND INSTRUCTIONS

The Washington Supreme Court answered the Ninth Circuit's certified question in the affirmative: SMS, through AFM's subrogation rights, may pursue a negligence claim against LTK. The federal proceedings were to continue consistently with that answer.

CASES CITED

- Eastwood v. Horse Harbor Foundation, 170 Wash. 2d 380, 241 P.3d 1256 (2010)
- Berschauer/Phillips Construction Co. v. Seattle School District No. 1, 124 Wash. 2d 816, 881 P.2d 986 (1994)
- Seattle Western Industries, Inc. v. David A. Mowat Co., 110 Wash. 2d 1, 750 P.2d 245 (1988)
- G.W. Construction Corp. v. Professional Service Industries, Inc., 70 Wash. App. 360, 853 P.2d 484 (1993)
- Snyder v. Medical Service Corp. of Eastern Washington, 145 Wash. 2d 233, 35 P.3d 1158 (2001)
- Taylor v. Stevens County, 111 Wash. 2d 159, 759 P.2d 447 (1988)
- Hunsley v. Giard, 87 Wash. 2d 424, 553 P.2d 1096 (1976)
- Schooley v. Pinch's Deli Market, Inc., 134 Wash. 2d 468, 951 P.2d 749 (1998)
- ESCA Corp. v. KPMG Peat Marwick, 135 Wash. 2d 820, 959 P.2d 651 (1998)
- Stuart v. Coldwell Banker Commercial Group, Inc., 109 Wash. 2d 406, 745 P.2d 1284 (1987)
- Alejandre v. Bull, 159 Wash. 2d 674, 153 P.3d 864 (2007)
- BRW, Inc. v. Dufficy & Sons, Inc., 99 P.3d 66 (Colo. 2004)
- Ultramares Corp. v. Touche, 255 N.Y. 170, 174 N.E. 441 (1931)