



## EIGHTH CIRCUIT PREDICTS NEGLIGENT MISREPRESENTATION CLAIM BARRED BY MISSOURI'S ECONOMIC LOSS DOCTRINE

*DANNIX PAINTING, LLC v. SHERWIN-WILLIAMS COMPANY,*  
732 F.3D 902 (8TH CIR. 2013)

Missouri's economic loss doctrine prohibits a commercial buyer of goods from seeking to recover in negligence or strict liability for purely economic losses that are contractual in nature. In this appeal originating in the United States District Court for the Eastern District of Missouri, the 8th Circuit Court of Appeals held that, if called upon to do so, the Missouri Supreme Court would likely hold that a negligent misrepresentation claim relating to the seller's recommendation as to a product would be barred by the economic loss doctrine to the same extent as a negligence or strict liability claim based on a defect in the product.

Dannix Painting alleged Sherwin-Williams negligently misrepresented a certain Sherwin-Williams paint product was appropriate for a particular painting project Dannix was undertaking. The recommended paint peeled off, causing Dannix to suffer financial loss when it had to remove the paint and redo the work. Dannix sued Sherwin-Williams for negligent misrepresentation in recommending the product. Significantly, Dannix did not allege the product itself was defective; rather, it alleged Sherwin-Williams failed to exercise reasonable care or competence in investigating the accuracy of its recommendation and in specifying a product for this particular project. Sherwin-Williams moved to dismiss the claim on the basis that it was barred by Missouri's economic loss doctrine, and the district court granted the motion.

On appeal, Dannix argued that the economic loss doctrine did not apply because it was not making a straight defect claim. Instead, it based its claim for negligent misrepresentation on Sherwin-Williams' product recommendation and for damages for the loss it suffered when the recommendation resulted in Dannix using an unsuitable product. In this way, Dannix argued it was faulting Sherwin-Williams' recommendation rather than its product, and the economic loss doctrine should not bar the claim.

The 8th Circuit disagreed and affirmed the dismissal. The Court noted that, in general, remedies for economic loss sustained by reason of damage to or defects in products sold are limited under Missouri law to those under the warranty provisions of the Uniform Commercial Code. As a result, the economic loss doctrine bars recovery for negligence and strict liability for such losses where the only damage is to the product sold. The Court found it significant that it could find no Missouri state court case that had allowed a commercial buyer of goods under the Uniform Commercial Code to maintain a negligent misrepresentation claim against the seller based upon the seller's recommendation as to the fitness or performance of those goods. Although no Missouri state court has specifically addressed whether a commercial buyer may recover for disappointed commercial expectations based on a theory of negligent misrepresentation, the Court concluded Missouri's economic loss doctrine does, in fact, bar such a negligent misrepresentation claim. Dannix admitted that, at base, it was seeking damages for the loss it suffered when the recommended product proved unsuitable. According to the Court, this is precisely the type of tort claim by a disappointed commercial buyer that Missouri's economic loss doctrine prohibits. The Court held Dannix's attempt to distinguish between the advice given by Sherwin-Williams and the product about which the advice was given was a distinction without a difference under Missouri law.

*SUBMITTED BY: LISA A. LARKIN, PARTNER • llarkin@wvslaw.com • (314) 345-5014*

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