



# **Bilt-Rite v. Architectural Studio Turns Thirteen – A Look Back and Ahead**

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# The Bilt-Rite Case

- Factual Background
- Section 552 of the Restatement (Second) of Torts – Negligent Misrepresentation
- Lack of Privity
- Economic Loss Rule Not a Bar

# Elements of a Bilt-Rite Claim

- Businesses that provide services and/or information – “such as an architect or design professional”
- Services or information that they know will be used and relied upon by third parties in their business endeavors
- Foreseeability – restricts class of potential Plaintiffs

## Elements of a Bilt-Rite Claim (Cont'd)

- Negligent Misrepresentation (not negligence)
- Reliance
- Damages
- Section 552 does not “supplant the common law tort” but clarifies it as applied to those “in the business of providing information”

# It “Clarifies” the Tort?



# Who Supplies Information?

- Excavation Technologies v. Columbia Gas
- PA Supreme 2009
- ETI excavating contractor
- Columbia Gas (utility) marks gas lines in excavation area
- Alleged Failure to comply with One Call

## Columbia Gas (Cont'd)

- Superior Court: Bilt-Rite “narrow exception” limited to design professionals; No contract with owner/project participant – utility just supplies gas to customers
- Supreme Court affirmed: Utility does not supply information to others for gain – often responds, as required, without compensation

# A Misrepresentation?

- Baker v. Reese Bros.
- Commonwealth Court 2012 (unreported)
- Negligence claim against company hired to perform code inspections on residential project
- Dismissal of homeowner's claim affirmed: No misrepresentation – Bilt-Rite not an exception for negligence



# Sufficiency of Pleading?

- Gongloff Contracting v. L. Robert Kimball Assoc.
- Superior Court 2015
  
- Claim by structural steel erector vs. designer
- Truss design faulty because could not handle loads
- Increased costs/damages based on redesign
- Allegation: expressly or impliedly represented that structure could sustain required loads

## Kimball (Cont'd)

- Trial court dismissed: Express representation required
- Superior Court reversed
- Express representation not required – roof design could be the basis of a claim without any other or separate “express” representation; implicit inference of adequacy to build

## Kimball (Cont'd)

- Elements:
- (1) defendant in the business of supplying information for guidance of others and a pecuniary interest in the transaction
- (2) information false
- (3) information justifiably relied upon
- (4) defendant failed to exercise reasonable care in obtaining or communicating the information

## Kimball (Cont'd)

- As applied, Gongloff pled:
- (1) Kimball supplied the roof design
- (2) Foreseeable that information would be used and relied upon by others
- (3) Kimball in the business of providing information
- (4) Design called into question – inference of false information

# Contract and Tort Claims?

- Trinity Contracting v. Sewickley Twp. Authority
- Commonwealth Court 2015
- Contractor encounters unforeseen subsurface conditions
- Designer modifies project design and layout
- Case against Authority for breach of contract and designer for negligent misrepresentation

## Trinity (Cont'd)

- Finding at trial that designer negligently misrepresented geotechnical information
- Representation that project could be constructed as designed
- Geotechnical report not included as part of contract documents
- Not contractor's burden to verify information during bidding process

# Manufacturers and Contractors?

- Elliott-Lewis v. Skanska
- EDPA 2015 and 2016 (unreported)
- Additional HVAC work based upon pump performance and incorrect flow data from balancing contractor
- HVAC sub sues general; general joins architect and engineer (neg misrep in design)
- Arch and engineer joins: (a) pump manufacturer and (b) balancing contractor

## Elliott-Lewis (Cont'd)

- 2015 decision – No claim against manufacturer – sale of product different than sale of information; information was ancillary to sale of product
- 2016 decision – No claim against balancing contractor – Provided a service but service not determinative – rather, whether service delivered was to provide information



# More with Manufacturers

- Slippery Rock SD v. Tremco
- WDPA 2016 (unreported)
- SD misrepresentation claim against product manufacturers re: failure of roofing systems/products
- Neg Misrep dismissed – Information ancillary to sale of products

# Other Professions?

- Fulton Bank v. Sandquist
- Superior Court 2017 (unreported)
- Against an accountant
- Can be applied to factual scenarios other than a design professional – where providing professional information designed to be relied upon by a third party

## Fulton Bank (Cont'd)

- Bilt-Rite only provides architects and design professionals as illustrative examples
- Accountants: (1) in business of providing information; (2) supplied information regarding financial condition; and Bank's (3) reliance; (4) damages in extending loans

# Foreseeability and Scope?

- Precision Pipeline v. Trico and GAI
- 3d Circuit 2017 (unreported)
- Summary judgment in favor of surveyor and environmental consultant affirmed
- No duty owed – issue was undisclosed below-ground foreign crossings in pipe construction
- Consultants only had to identify above-ground crossings and did not breach contracts with owner: no duty of unknown scope

# ISSUES

- Damages – direct only or consequential?
- To whom does Bilt-Rite apply – CM's, others?
- Other?