

BIBLIOGRAPHY OF ECONOMIC LOSS DOCTRINE CASES

(December 2016)

This bibliography is updated periodically by Skellenger Bender P.S. Users should be cautioned that Skellenger Bender does not represent that this bibliography is a complete survey of all design professional ELD cases, nor that it is necessarily current as new cases are reported. Please contact Terry Scanlan at Skellenger Bender for any questions about using this bibliography. Skellenger Bender would also appreciate receiving the citation to any new cases that are not included in the bibliography. Please forward these to Terry Scanlan via the contact information below.

State	Does ELD bar tort claims against DP?	Case Citation
Alabama	Unclear at this time. ELD clearly applies to products liability cases, but courts have obviated the need to analyze the applicability of the ELD in the context of commercial construction disputes by focusing instead on whether the claimant owed a duty to the party he was suing.	<p><i>Tuscumbia City Sch. Sys. v. Pharmacia Corp.</i>, 871 F. Supp. 2d 1241 (N.D. Ala. 2012) (Economic loss rule did not bar claims by public school district against manufacturer of toxic chemicals because “[t]he justification for the economic loss rule fades when the product must be replaced or repaired, not because the product failed to perform, but because it is dangerous.”).</p> <p><i>Northview Christian Church, Inc. v. J & J Group, Inc.</i>, No. 4:10-CV-382, 2010 WL 4641661 (D. Idaho Nov. 8, 2010) (applying Alabama law and holding that owner could sue architect and engineer of church domes for design and construction flaws; ELD does not bar tort claims in commercial construction context).</p> <p><i>Public Bldg. Auth. of City of Hunstville v. St. Paul Fire & Marine Ins. Co.</i>, 80 So. 3d 171 (Ala. 2010), <i>rehearing denied</i> (2011) (answering in the negative the following certified question: “Does the economic loss doctrine, first recognized in Alabama in <i>Lloyd Wood Coal Co. v. Clark Equip. Co.</i>, 543 So. 2d 671 (Ala. 1989), a product liability case, also apply in the context of a commercial construction dispute so as to preclude the [PBA], as the owner of the subject property, from asserting tort claims against various subcontractors given that the only damage claimed to have resulted from any defective conditions allegedly caused by the subcontractors was to the property itself?”).</p> <p><i>Vesta Fire Ins. Corp. v. Milam & Co. Constr., Inc.</i>, 901 So. 2d 84 (Ala. 2004) (owner’s fire insurance carrier allowed to pursue negligence claim against HVAC contractor because fire damage to building was not economic loss).</p>

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		<p><i>Keck v. Dryvit Sys., Inc.</i>, 830 So. 2d 1 (Ala. 2002) (ultimate consumer can recover in tort against manufacturer even in absence of privity of contract; where one party assumes a duty to another party in contract and it is foreseeable that injury to a third party could occur as result of breach, the promissor owes a duty to all within foreseeable area of risk).</p> <p><i>Bay Lines, Inc. v. Stoughton Trailers, Inc.</i>, 838 So. 2d 1013 (Ala. 2002) (ELD bars product liability claim against manufacturer where only injury is to product itself).</p> <p><i>Berkel & Co. Contractors, Inc. v. Providence Hosp.</i>, 454 So. 2d 496 (Ala. 1984) (subcontractor sued hospital and its architect for negligence relating to extra costs associated with pile driving; lack of privity not a defense, and subcontractor could sue owner in tort to recover economic losses. Six factors should be analyzed to determine whether a party not in privity with the claimant owes the claimant a duty of care in a construction setting: (1) [T]he extent to which the transaction was intended to affect the other person; (2) the foreseeability of harm to him; (3) the degree of certainty that he suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the moral blame attached to such conduct; and (6) the policy of preventing future harm.).</p>
Alaska	No clear cut ruling on issue from Alaska Supreme Court. Tort claims asserted by person not in privity with design professional will probably be barred unless exception to ELD applies; tort claims asserted by clients will probably not be barred.	<p><i>City of Anchorage v. Integrated Concepts and Research Corp., et al.</i>, No. 3:13- cv-00063-SLG, 2016 WL 926219 (D. Alaska Oct. 31, 2016) (examining exceptions to ELD and holding that (1) risk of personal injury or property damage by potential major earthquake too speculative to allow for recovery economic loss; (2) finding that negligence claim did not permit recovery of economic losses under analysis of D.S.W. factors because aside from foreseeability, all other D.S.W. factors weighed against imposing a tort duty on design professional not in privity with plaintiff; (3) professional negligence claim is significantly fact-dependent; and (4) ELD does not apply to claims for negligent misrepresentation). <i>See also City of Anchorage v. Integrated</i></p>

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		<p><i>Concepts and Research Corp., et al.</i>, No. 3:13- cv-00063-SLG, 2016 WL 926219 (D. Alaska Dec. 5, 2016) (similar analyses and holdings as to different parties).</p> <p><i>City of Anchorage v. Integrated Concepts and Research Corp., et al.</i>, No. 3:13-cv-00063-SLG, 2015 WL 926219 (D. Alaska Mar. 4, 2015) (stating that the ELD applies to parties who are not in privity so as to generally preclude a negligence claim seeking recovery of only economic loss but denying each motion for summary judgment without prejudice should additional evidence come to light during discovery).</p> <p><i>Geotek Alaska, Inc. v. Jacobs Eng’g Grp., Inc.</i>, 354 P.3d 368 (Alaska 2015) (examining particularly foreseeable plaintiff exception to ELD, application of the D.S.W. factors, and clarifying that foreseeability alone is not sufficient to create an actionable duty in tort law).</p> <p><i>Pruhs Corp. v. City of Nenana</i>, No. S-12338, Alaska Supreme Court, issue briefed but not ruled on by court. For briefing on ELD in Alaska, <i>see</i> Appellant Pruhs Corporation’s Opening Brief, 2006 WL 3905045 (Oct. 16, 2006), and Appellee MBA Consulting Engineers, Inc.’s Brief, 2006 WL 4545068 (Dec. 27, 2006) (suggesting that if client has privity, tort claim may be pursued).</p> <p><i>But see St. Denis v. Dep’t of Housing & Urban Dev.</i>, 900 F. Supp. 1194 (D. Alaska 1995) (federal court engages in extensive discussion of Alaska law on ELD and predicts that Alaskan courts will bar tort claims for the recovery of economic loss in cases dealing with real estate transactions, service contracts and products liability cases).</p> <p><i>City of Dillingham v. CH2M HILL Northwest, Inc.</i>, 873 P.2d 1271 (Alaska 1994) (city filed third party complaint against engineer and in footnote, Supreme Court suggested that third parties might be allowed to recover in tort for economic losses, despite lack of privity).</p>

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		<p><i>State Dep't of Nat. Res. v. Transamerica Premier Ins. Co.</i>, 856 P.2d 766 (Alaska 1993) (surety sought tort damages from owner and design professional for economic losses sustained by contractor as a result of defective designs; held that project owner may sue design professional in tort, but contractor may not do so).</p> <p><i>State for Use of Smith v. Tyonek Timber</i>, 680 P.2d 1148 (Alaska 1984) (concrete subcontractor could not sue concrete supplier in tort to recover economic losses because of the lack of privity of contract).</p>
Arizona	Yes.	<p><i>Cook v. Orkin Exterminating Co., Inc.</i>, 227 Ariz. 331, 258 P.3d 149 (Ariz. Ct. App. 2011) (holding the economic loss precluded tort claims brought by homeowners against pest control company because the owners only sought economic losses stemming from company's failure to adequately perform its promises under the contract).</p> <p><i>Five Points Hotel P'ship v. Pinsonneault</i>, No. 2 CA-CV 2010-0118, 2011 WL 346314 (Ariz. Ct. App. Feb. 3, 2011) (reserving judgment on the whether the ELD applies to claims other than product liability and construction defect).</p> <p><i>Flagstaff Affordable Housing Ltd. P'ship v. Design Alliance, Inc.</i>, 223 Ariz. 320, 223 P.3d 664 (2010) (in case of first impression involving architect, Arizona Supreme Court extended ELD beyond context of products liability and construction defects to apply to claims against design professionals; building owner barred under ELD from recovering tort damages arising from faulty work by architect that caused economic loss but no physical injury to persons or other property; property owner limited to its contractual remedies against design professional).</p> <p><i>Hughes Custom Bldg., L.L.C. v. Davey</i>, No. 2 CA-CV 2008-0103, 2010 WL 1407999 (Ariz. Ct. App. Apr. 8, 2010) (ELD did not preclude construction company from seeking recovery from a civil engineering in a negligence action because the construction company and civil engineering firm did not</p>

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		<p>have a contractual relationship). This opinion superseded and replaced that of <i>Hughes Custom Building, L.L.C. v. Davey</i>, 221 Ariz. 527, 212 P.3d 865 (Ariz. Ct. App. 2009), on reconsideration.</p> <p><i>Valley Forge Ins. Co. v. Sam's Plumbing, LLC, et al.</i>, 220 Ariz. 512, 207 P.3d 765 (Ariz. Ct. App. 2009) (tort claim will lie if damage occurs accidentally and suddenly and defect poses unreasonable risk of danger because contractor had general duty to exercise reasonable care) (decision subject to further appellate review).</p> <p><i>Evans v. Singer</i>, 518 F. Supp. 2d 1134 (D. Ariz. 2007) (court allowed purchaser of self-storage facility to sue realtors in tort for economic losses; ELD limited to product liability and construction defect cases).</p> <p><i>QC Constr. Prods., LLC v. Cohill's Bldg. Specialties, Inc.</i>, 423 F. Supp. 2d 1008 (D. Ariz. 2006) (supplier's tort claims for tortious interference against builder barred by ELD).</p> <p><i>Hayden Bus. Ctr. Condos. Ass'n v. Pegasus Dev. Corp.</i>, 209 Ariz. 511, 105 P.3d 157 (Ariz. Ct. App. 2005) (citing <i>Carstens, infra</i>, and holding that condo association's breach of warranty suit against developer sounded in contract and was barred due to lack of privity between the parties).</p> <p><i>Carstens v. City of Phoenix</i>, 206 Ariz. 123, 75 P.3d 1081 (Ariz. Ct. App. 2003), <i>review denied</i> (2004) (homeowners' tort claim against City inspectors barred by ELD).</p> <p><i>Donnelly Constr. Co. v. Oberg/Hunt/Gilleland</i>, 139 Ariz. 184, 677 P.2d 1292 (1984) (contractor, who reasonably relied on architect's faulty plans to his detriment, when plans prepared specifically for contractor, could sue architect to recover economic losses; court applies special relationship exception).</p> <p><i>Woodward v. Chirco Constr. Co., Inc.</i>, 141 Ariz. 514, 687 P.2d 1269 (1984) (plaintiff may sue in tort for personal property damage and personal injury, but</p>

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		<p>must sue in contract for the cost of remedying construction defects).</p> <p><i>Nastri v. Wood Bros. Homes, Inc.</i>, 142 Ariz. 439, 690 P.2d 158 (Ariz. Ct. App. 1984).</p>
Arkansas	Unclear at this time, but the ELD is probably not going to bar a tort claim given prior case law in products liability cases.	<p><i>Erdman Co. v. Phoenix Land & Acquisition, LLC</i>, No. 2:10-CV-2067, 2:11-CV-2067, 2013 WL 685209 (W.D. Ark. Feb. 25, 2013) (declining to adopt the ELD in a “construction project gone wrong” negligence case, and noting that “Arkansas has impliedly cold-shouldered the economic-loss rule in negligence cases”).</p> <p><i>Bayer CropScience LP v. Schafer</i>, 2011 Ark. 518, 385 S.W.3d 822 (2011) (declining to address issue of whether ELD applies in negligence action brought by rice farmers following contamination of rice).</p> <p><i>Farm Bureau Ins. Co. v. Case Corp.</i>, 317 Ark. 467, 878 S.W.2d 741 (1994) (purchaser of tractor could sue manufacturer in strict liability under state tort law because defect in tractor was “unreasonably dangerous”).</p> <p><i>Carroll-Boone Water Dist. v. M. & P. Equip. Co.</i>, 280 Ark. 560, 661 S.W.2d 345 (1983) (in dispute between owner, contractor and engineer over damages to dam intake during blasting, court ruled that contractor entitled to judgment against engineer; court did not discuss or analyze economic loss rule).</p>
California	Perhaps. Courts are approaching the issue as a fact-specific inquiry. Conflicting case law at the intermediate appeals court level.	<p><i>State Ready Mix, Inc. v. Moffatt & Nichol</i>, 232 Cal. App. 4th 1227, 181 Cal. Rptr. 3d 921 (2015) (holding that ELD barred plaintiff’s cross-complaint where no contractual relationship existed and no facts demonstrated that concrete injured a person or other property).</p> <p><i>Beacon Residential Cmty. Ass’n v. Skidmore, Owings & Merrill LLP</i>, 211 Cal. App. 4th 1301, 150 Cal. Rptr. 3d 712 (2012), <i>review granted and opinion superseded sub nom.</i> 295 P.3d 373 (Cal. 2013), 59 Cal. 4th 568, 327 P.3d 850 (2014) (in lawsuit brought by homeowners’ association against architectural, engineering and administration contractors for violation of statutory building</p>

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		<p>standards, negligence <i>per se</i> and professional negligence, holding that design professionals owe a duty of care to third parties in the construction of residential housing).</p> <p><i>Olson & Co. Steel v. Nestor Gaffney Architecture, LLP</i>, No. F063292, 2012 WL 5332041 (Cal. Ct. App. Oct. 29, 2012) (trial court granted summary judgment entered in favor of architect in lawsuit brought by structural steel subcontractor, because no contractual relationship existed between the entities; the appellate court reversed and remanded to determine whether the architect owed an independent duty to the subcontractor to prepare adequate plans and specifications).</p> <p><i>San Benito Supply v. Kleinfelder West, Inc.</i>, 2nd Civil No. B225302, 2011 WL 2848148 (Cal. Ct. App. June 29, 2011) (holding concrete subcontractor could not sue engineering subcontractor for equitable indemnity or contribution, because wet concrete did not meet the ELD exception for defective product or services that damage other property or cause physical injury to third persons).</p> <p><i>Kelly v. Carriage Homes</i>, 2nd Civil No. B213222, 2010 WL 3387505 (Cal. Ct. App. Aug. 30, 2010) (holding economic loss rule did not bar recovery for the cost of raising the new foundations in construction defect lawsuit against developer).</p> <p><i>Lake Almanor Assocs. L.P. v. Huffman-Broadway Group, Inc.</i>, 178 Cal. App. 4th 1194, 101 Cal. Rptr. 3d 71 (2009) (developer brought action against consultant who produced draft environmental impact report for breach of consultant's contract with county, negligence and negligent interference with prospective economic advantage; Court of Appeals held consultant had no obligation to protect third parties from economic loss and no duty to timely complete draft EIR).</p> <p><i>Tachs Prop. Dev. v. Xinos</i>, No. D049087, 2007 WL 2327039 (Cal. Ct. App. Aug. 16, 2007) (developer allowed to sue engineer for grading plan</p>

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		<p>deficiencies).</p> <p><i>Rafael Town Center Investors v. Weitz Co.</i>, No. C 06-6633, 2007 WL 1577886 (N.D. Cal. May 31, 2007) (court denied architect’s motion to dismiss contractor’s tort claim because whether architect owed duty to contractor was factual issue).</p> <p><i>O’Connor v. Hertz</i>, No. G033909, 2005 WL 3106407 (Cal. Ct. App. Nov. 21, 2005) (owner’s claim against architect for negligent misrepresentation barred by ELD).</p> <p><i>McCarthy Bldg. v. Teng Li</i>, No. G030544, 2005 WL 1532274 (Cal. Ct. App. June 30, 2005), <i>review denied</i> (Sept. 21, 2005) (engineer argued that contractor’s claim for negligence against engineer should be barred by ELD; court found claim barred by statute of limitations and did not reach ELD, but in doing so stated that “it is questionable whether defendant owed a duty to plaintiff”).</p> <p><i>Weseloh Family Ltd. P’ship v. K. L. Wessel Constr. Co.</i>, 125 Cal. App. 4th 152, 22 Cal. Rptr. 3d 660 (2004), <i>review denied</i> (2005) (general contractor’s tort and indemnity claims against retaining wall engineer (who had contract with second tier subcontractor) dismissed under ELD, because engineer owed no duty to general contractor or to property owner).</p> <p><i>Shekhter v. Seneca Structural Design, Inc.</i>, 121 Cal. App. 4th 1055, 18 Cal. Rptr. 3d 83 (2004), <i>review denied and opinion ordered not published</i> (2004) (owners of apartment complex damaged in earthquake could sue design and construction firms for negligence, because ELD does not apply to claims alleging negligent engineering and design services).</p> <p><i>BFGC Architects Planners, Inc. v. Forcum/Mackey Constr. Inc.</i>, 119 Cal. App. 4th 848, 14 Cal. Rptr. 3d 721 (2004), <i>review denied</i> (2004) (court rejects equitable indemnity claim brought by contractor against architect, holding that</p>

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		the underlying action in an equitable indemnity claim must sound in tort and that the claimant’s indemnity claim was barred, because the underlying case was grounded solely upon breach of contract allegations).
Colorado	Yes, if the parties are in privity; no, if there is no privity and a tort duty of care exists independently of contract. ELD may not be extended to non-commercial transactions. As a general matter, Colorado uses the independent duty analysis to determine whether to apply the ELD.	<p><i>Mid Valley Real Estate Solutions V, LLC v. Hepworth-Pawlak Geotechnical, Inc.</i>, No. 13CA0519, 2013 WL 3943215 (Colo. App. Aug. 1, 2013) (reaffirming the independent duty doctrine and holding that a “home owner” who is a wholly-owned subsidiary of the construction lender on a project may sue a construction professional for negligence).</p> <p><i>Former TCHR, LLC v. First Hand Mgmt. LLC</i>, 317 P.3d 1226 (Colo. App. 2012) (in a lawsuit involving commercial real estate and claims for conversion, fraudulent concealment and misrepresentation, noting that Colorado courts apply three factors to determine whether an allegedly violated tort duty arose independently of the parties’ contract: (1) whether the relief sought in tort is the same as the contractual relief; (2) whether there is a recognized common law duty of care in tort; and (3) whether the tort duty differs in any way from the contractual duty).</p> <p><i>A Good Time Rental, LLC v. First Am. Title Agency, Inc.</i>, 259 P.3d 534 (Colo. App. 2011) (holding the economic loss rule bars tort claim when the harm allegedly suffered is only to contractual expectations).</p> <p><i>Sterling Constr. Mgmt., LLC v. Steadfast Ins. Co.</i>, No. 09-cv-02224, 2010 WL 3720064 (D. Colo. Sept. 12, 2010) (drilling subcontractor that breached a canal was barred from suing engineering firm, because the duties imposed on the engineering firm by its contract with the project’s owner created a duty that is identical to the duty imposed by tort law, the economic loss rule precludes any claims sounding in tort).</p> <p><i>Hamon Contractors, Inc. v. Carter & Burgess, Inc.</i>, 229 P.3d 282 (Colo. App. 2009) (contractor’s claim for fraud against construction manager barred by economic loss rule because there was no tort duty of care owed to contractor</p>

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		<p>independent of contract).</p> <p><i>Williams Field Servs. Group LLC v. Gen. Elec. Int'l</i>, No. 06-CV-0530-CVE-SAJ, 2008 WL 450374 (N.D. Okla. Feb. 15, 2008) (applying Colorado law, court dismisses negligence action based on <i>BRW, infra</i>, but refused to dismiss negligent misrepresentation claim).</p> <p><i>Derkevorkian v. Lionbridge Techs., Inc.</i>, No. 04-CV-01160-LTB-CBS, 2006 WL 197320 (D. Colo. 2006) (employee's tort claim against employer not barred by ELD, because employer owed fiduciary duty to employee, citing <i>A. C. Excavating</i>).</p> <p><i>A.C. Excavating v. Yacht Club II Homeowners Ass'n, Inc.</i>, 114 P.3d 862 (Colo. 2005) (subcontractors owe homeowners a duty of care, independent of any contractual obligations, to act without negligence in the construction of a home; the economic loss rule has no application where a plaintiff's tort claim is based on an independent duty of care).</p> <p><i>BRW, Inc., v. Dufficy & Sons, Inc.</i>, 99 P.3d 66 (Colo. 2004) (Colorado Supreme Court holds that ELD bars tort actions, when the claimant is seeking only economic damages; noting that the controversy involved duties arising from contractual relationships between commercially sophisticated parties, the court overrules an appellate court decision finding that the ELD did not serve as a bar).</p> <p><i>Town of Alma v. AZCO Constr., Inc.</i>, 10 P.3d 1256 (Colo. 2000) (Colorado Supreme Court adopts the ELD and holds that it bars tort actions brought by an owner against a contractor, when the owner only sought to recover economic damages; opinion contains extensive discussion regarding the history of the doctrine and its underlying rationale).</p>
Connecticut	Conflicting reported decisions from different superior courts as to whether or	<i>Lawrence v. O & G Indus., Inc.</i> , 319 Conn. 641 (2015) (noting that the ELD is another way of saying that a defendant owed no duty to a plaintiff because the

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	<p>not the economic loss doctrine is limited to disputes between the buyer and seller of goods under Article 2 of the Uniform Commercial Code, or if it applies generally to other types of disputes between parties who are in a contractual relationship. The Connecticut Supreme Court addressed this issue in November 2013, when it stated that the ELD is not limited to Article 2 and applied the ELD to a sale of personal property pursuant to Article 9. However, that court has not yet addressed whether the ELD will bar tort claims against DP. One federal court predicts that Supreme Court will apply ELD to bar tort claims against DP, yet a majority of state superior courts seem inclined to limit application of doctrine to product liability cases.</p>	<p>claimed loss was a remote and indirect consequence of the misconduct of the defendant, and distinguishing <i>Ins. Co. of North America v. Manchester</i> because in <i>Lawrence</i> the plaintiffs, employees dependent on the contractor for their wages, are further removed from the negligence of the defendants and in a more attenuated position).</p> <p><i>Country Squire I, Inc. v. Raw Constr., LLC</i>, No. MMXCV126008392S, 2014 WL 1283046 (Conn. Super. Ct. Mar. 4, 2014) (finding that ELD barred tort claims against defendant property manager for failure to supervise contractor because “but for a contractual relationship, [defendant] had no common-law duties to the plaintiff”).</p> <p><i>Ulbrich v. Groth</i>, 310 Conn. 375, 78 A.3d 76 (2013) (in a case involving a sale governed by Article 9 of the UCC, Connecticut Supreme Court addresses ELD for the first time since <i>Flagg, infra</i>, and states that the doctrine is not limited to sales covered by Article 2).</p> <p><i>Beamer v. O&G Indus., Inc.</i>, Case No. X04HHDCV116034685S, 2013 WL 3871776 (Conn. Super. Ct. July 10, 2013) (in case where plaintiffs, a group of employees who were no longer able to work when the power plant where they were employed exploded, sued defendants (who were involved in the construction and startup of the plant) for negligence, alleging lost past and future wages, the court held that defendants owed no duty to plaintiffs, and found consideration of the ELD unnecessary because “[t]hat doctrine . . . is merely another way of saying that the defendant owned no duty to the plaintiff because the claimed loss ‘was a remote and indirect consequence of the misconduct of the defendants’”).</p> <p><i>Featherston v. Tautel & Sons Consulting</i>, No. CV065002924, 2012 WL 1624249 (Conn. Super. Ct. Apr. 17, 2012) (developer sued excavation contractor, construction consultant and concrete subcontractor for negligence, breach of contract, breach of the covenant of good faith and fair dealing, and violation of the consumer protection act; acknowledging uncertainty in the</p>

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		<p>law, Superior Court held ELD did not bar the tort claims, but only awarded damages to the developer for the breach of contract claim).</p> <p><i>Caires v. Bueti Dev. Corp., Inc.</i>, No. FSTCV116011812S, 2012 WL 3007487 (Conn. Super. Ct. June 21, 2012) (in lawsuit involving the construction of a luxury home, holding that the ELD is limited to cases arising under Article 2 of the UCC and does not bar a claim for breach of the consumer protection act).</p> <p><i>A&G Contracting, Inc. v. Design/Build Collaborative, LLC</i>, No. CV106008755, 2011 WL 1168699 (Conn. Super. Ct. Feb. 28, 2011) (restating economic loss rule and denying motion to strike).</p> <p><i>Coldform, Inc. v. Faurecia Auto. Seating Canada, LTD.</i>, No. CV085022854S, 2011 WL 383925 (Conn. Super. Ct. Jan. 5, 2011) (acknowledging divergence of opinion among Superior Court judges as to whether <i>Flagg, infra</i>, bars tort claims for economic losses in cases other than product liability, and holding that plaintiff's claims for misrepresentation are separate from his claims for breach of contract and cannot be not precluded by the ELD).</p> <p><i>Dispazio v. Oakleaf Waste Mgmt., LLC</i>, No. NNHCV106012650, 2011 WL 1026094 (Conn. Super. Ct. Feb. 18, 2011) (acknowledging divergence of opinion among Superior Court judges on application of the ELD; holding that doctrine should only apply to UCC cases involving the sale of goods, and denying motion to strike plaintiff's claims for fraudulent inducement, gross negligence, tortious interference with contract and violation of the Connecticut Unfair Trade Practices Act).</p> <p><i>Doherty, Beals & Banks, P.C. v. Sound Cmty. Servs., Inc.</i>, No. CV106005795, 2011 WL 2177257 (Conn. Super. Ct. May 19, 2011) (holding that ELD barred plaintiff's claims for fraud and misrepresentation where plaintiff's only allegation was that defendant represented it would pay for services, but had no intention of doing so, and plaintiff's loss was purely economic).</p>

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		<p><i>Loureiro Contractors, Inc. v. City of Danbury</i>, No. CV096002650, 2010 WL 4942983 (Conn. Super. Ct. Nov. 18, 2010) (in the absence of privity of contract, a contractor may bring a tort claim against a design professional for purely economic losses "as long as the latter [has] failed to perform its duties with care and diligence and the damages claimed by the general contractor were a reasonably foreseeable consequence of its failure").</p> <p><i>Hoydic v. B&E Juices, Inc.</i>, No. X08CV034010104S, 2008 WL 803642 (Conn. Super. Ct. Feb. 27, 2008) (court limited ELD to product liability cases; allowed purchaser of Snapple distribution route to sue seller in tort to recover economic losses).</p> <p><i>Town of New Canaan v. Brooks Labs., Inc.</i>, No. FSTCV054006797S, 2007 WL 4214227 (Conn. Super. Ct. Nov. 7, 2007) (court found that ELD has not been adopted in Connecticut in cases similar to the one at hand – for negligent performance of asbestos testing services).</p> <p><i>Am. Progressive Life & Health Ins. Co. v. Better Benefits, LLC</i>, No. X10UWYCV02401221S, 2007 WL 125073 (Conn. Super. Ct. Jan. 4, 2007) (ELD extends to any lawsuit arising out of the party’s contract and the parties are both sophisticated), <i>reversed on other grounds</i>, 292 Conn. 111, 971 A.2d 17 (2009) (explaining conflict in lower courts but refusing to reach issue).</p> <p><i>Riggs-Brewer Indus. v. Shelton Senior Housing, Inc.</i>, No. CV044000365, 2006 WL 1738231 (Conn. Super. Ct. June 6, 2006) (trial court held that contractor could sue architect in tort because contract between architect and owner was for services and not for a product and contractor alleged he was third party beneficiary to contract with architect).</p> <p><i>CW Waterbury, LLC v. Mahler</i>, No. X02UWYCV0065001128S, 2006 WL 3908525 (Conn. Super. Ct. Dec. 27, 2006) (ELD did not apply to contractor negligence claim against owner’s agent because no contract existed between these two parties).</p>

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		<p><i>Colonial Sur. Co. v. Lenard Eng'g, Inc.</i>, No. X02CV030184253S, 2004 WL 2943640 (Conn. Super. Ct. Nov. 10, 2004) (reporting that there are conflicting trial court rulings regarding the applicability of the ELD without reaching the issue).</p> <p><i>Best Friends Pet Care, Inc. v. Design Learned, Inc.</i>, No. X06CV000169755S, 2003 WL 22962147 (Conn. Super. Ct. Dec. 3, 2003) (court permitted building owner to sue engineer in tort despite lack of privity because engineer knew that owner would rely on engineer's design).</p> <p><i>RAC Constr. Co., Inc. v. Harp</i>, No. CV010454383S, 2003 WL 22234645 (Conn. Super. Ct. Sept. 17, 2003) (ELD does not prevent contractor from recovering purely economic damages against architect in absence of contractual privity and in absence of personal injury and property damage).</p> <p><i>Worldwide Preservation Servs., L.L.C., v. IVth Seha, L.L.C.</i>, No. X05CV980167154S, 2001 WL 34093945 (Conn. Super. Ct. Feb. 1, 2001) (court adopted ELD prohibiting contractors from suing design firms in tort absent privity of contract).</p> <p><i>Flagg Energy Dev. Corp. v. General Motors Corp.</i>, 244 Conn. 126, 709 A.2d 1075 (1998) (claim for breach of contract cannot be combined with claim for negligent misrepresentation where only commercial losses were sustained).</p> <p><i>Ins. Co. of N. America v. Town of Manchester</i>, 17 F. Supp. 2d 81 (D. Conn. 1998) (federal district court held that Connecticut Supreme Court would not bar contractor from suing design firm in tort to recover purely economic losses).</p> <p><i>Williams Ford, Inc. v. Hartford Courant Co.</i>, 232 Conn. 559, 657 A.2d 212 (1995) (court rejected application of ELD to negligent misrepresentation claim).</p> <p><i>Coburn v. Lenox Homes, Inc.</i>, 173 Conn. 567, 378 A.2d 599 (1977) (Supreme</p>

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		court holds that homeowner can proceed with negligence action against developer, even though the damages sought are economic and lack of privity; court does not discuss the ELD).
Delaware	Negligence claim probably barred; negligent misrepresentation claim will not be barred if design professional is found to be in business of providing information (known as “information supplier” exception to ELD). Recent trend among Superior Courts suggests that negligence claims are barred, but Delaware courts are moving towards an independent duty analysis.	<p><i>Riverbend Cmty., LLC v. Green Stone Eng’g, LLC</i>, No. N10C-07-042, 2012 WL 1409013 (Del. Super. Ct. Apr. 4, 2012) (in case where plaintiffs hired defendants to perform civil and environmental engineering services and then sued the defendants for negligence, breach of contract and professional negligence for failing to accurately depict wetlands on the property, in granting summary judgment to the defendants, the Superior Court held the negligence claims were barred by the ELD and dismissed the breach of contract claim because plaintiffs executed a general release exculpating the defendants from any liability).</p> <p><i>Malinak v. Kramer</i>, C.A. No. CPU6-11-002145, 2012 WL 174958 (Del. Ct. of Common Pleas Jan. 5, 2012) (denying summary judgment in homeowner’s lawsuit against general contractor over installation of windows, because (1) the alleged negligence occurred in construction upon residential real property, so the tort claim, by statute, is not barred by the ELD, and (2) genuine issues of material fact remain as to whether the defendants, in their capacities as general contractors, violated any building codes applicable to the installation of the windows).</p> <p><i>State Dep’t of Transp. v. Figg Bridge Eng’rs, Inc.</i>, C.A. No. S11C-01-031 RFS, 2011 WL 5593163 (Del. Super Ct. Nov. 9, 2011) (ELD bars claim for negligence because Delaware DOT failed to allege geotechnical reports were intended for use by a third party or that Delaware DOT relied on the reports to pursue business transactions).</p> <p><i>Citadel Eng’g, Inc. v. Am. Aerospace Corp.</i>, C.A. No. S08C-03-003 RFS, 2011 WL 1632184 (Del. Super. Ct. Apr. 26, 2011) (“Moreover, the damages claimed are economic. They are recoverable, if at all, under contract but not on a negligence basis. The economic loss doctrine precludes recovery where a</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>breach of contract remedy exists.”).</p> <p><i>Edelstein v. Goldstein</i>, C.A. No. 09C-05-034 DCS, 2011 WL 721490 (Del. Super. Ct. Mar. 1, 2011) (holding that defendant’s claims against law firm for professional negligence were barred by economic loss doctrine, because action was based entirely on breach of the terms of the parties’ contract and not on a violation of an independent duty imposed by law, and further the defendant could not assert both negligence and breach of contract claims based on the same conduct).</p> <p><i>Sycamore Farms, Inc. v. Barnes Elec., Inc.</i>, C.A. No. 08C-05-007 RFS, 2011 WL 5330621 (Del. Super. Ct. Oct. 20, 2011) (denying motion to dismiss for failure to state a claim because plaintiff asserted sufficient allegations that defendant breached a duty independent of its contractual obligations).</p> <p><i>Browning v. Data Access Sys., Inc.</i>, C.A. No. 09C-10-248 FSS, 2011 WL 2163555 (Del. Super. Ct. Jan. 31, 2011) (declining to address whether economic loss rule precluded negligence claims made against bank where plaintiff failed to establish specific duty of care).</p> <p><i>Palma, Inc. v. Claymont Fire Co., No. 1</i>, C.A. No. 09LL-06-121 JRS, 2009 WL 3865395 (Del. Super. Ct. Nov. 18, 2009) (ELD bars claim that architect’s negligent misrepresentation resulted in damage to the epoxy floor and the costs to repair that damage; plaintiff did not plead facts that would allow it to avail itself of the "information supplier" exception to the ELD but was granted leave to amend complaint accordingly).</p> <p><i>Commonwealth Constr. Co. v. Endecon Inc.</i>, C.A. No. 08C-01-266 RRC, 2009 WL 609426 (Del. Super. Ct. Mar. 9, 2009) (contractor’s claim for tortious interference with contractual relations against engineer who recommended that owner not pay contractor’s pay application is not barred by ELD).</p> <p><i>RLI Ins. Co. v. Indian River Sch. Dist.</i>, 556 F. Supp. 2d 356 (D. Del. 2008) (subcontractor’s insurer sued school district, construction manager and project</p>

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		<p>architect, claiming that payment to subcontractor impaired collateral; court held that negligent misrepresentation claim barred by ELD because neither construction manager nor architect was in business of supplying information; information provided was incidental to construction project).</p> <p><i>Delaware Art Museum v. Ann Beha Architects, Inc.</i>, C.A. No. 06-481 GMS, 2007 WL 2601472 (D. Del. 2007) (negligent misrepresentation claim against architect dismissed because only architect did not act as ‘pure information provider’).</p> <p><i>Millsboro Fire Co. v. Constr. Mgmt. Serv., Inc.</i>, C.A. No. 05C-06-137 MMJ, 2006 WL 1867705 (Del. Super. Ct. June 7, 2006) (Delaware court declined to apply negligent misrepresentation exception to ELD where architect and engineer did not engage in business of supplying information).</p> <p><i>Int’l Fid. Ins. Co. v. Mattes Elec.</i>, No. Civ.A. 99C-10-065WCC, 2002 WL 1400217 (Del. Super. Ct. June 27, 2002) (refusing to permit surety company to pursue negligence claim against construction manager for alleged negligent performance of obligation to project owner to manage project).</p> <p><i>Danforth v. Acorn Structures, Inc.</i>, 608 A.2d 1194 (Del. 1992) (applying ELD to preclude homeowner from asserting tort claim against corporation that sold kits for construction of mobile homes, even though parties were not in privity).</p> <p><i>But see</i> 6 Del. Code § 3651 (1996) (Delaware state legislature enacted law prohibiting application of ELD in residential construction defect cases).</p> <p><i>Council of Dorset Condo. Apts. v. Dorset Apts.</i>, C. A. No. 90C-10-269, 1992 WL 240444 (Del. Super. Ct. Aug. 26, 1992) (negligent misrepresentation claim against engineers not within ELD; court suggested that claims against architects would be barred because architects prepared plans which are converted into a tangible product, whereas engineers prepared information to be relied on by condo owners).</p>

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		<p><i>Pierce Assocs., Inc. v. The Nemours Found.</i>, 865 F.2d 530 (3d Cir. 1988) (dismissing negligence claim seeking recovery of economic damages brought by owner against subcontractor, Circuit Court predicts that the Delaware Supreme Court would adopt the ELD, citing <i>Crowell, infra</i>, which was drafted by a trial judge who subsequently was named chief justice of the Delaware Supreme Court).</p> <p><i>Crowell Corp. v. Topkis Constr. Co.</i>, 280 A.2d 730 (Del. Super. Ct. 1971) (owner sues subcontractor, seeking to recover purely economic loss damages; trial court dismisses action, finding that claims sound in contract and are barred due to lack of privity; one of the earliest applications of the ELD).</p>
District of Columbia	Probably, in cases where parties are in contractual privity.	<p><i>RLI Ins. Co. v. Pohl, Inc. of America</i>, 468 F. Supp. 2d 91 (D. D.C. 2006) (District of Columbia has not authorized tort recovery for purely economic losses in a contract setting; tort claims arising out of installation of allegedly defective zinc panels on building barred by ELD).</p>
Florida	Likely no after <i>Tiara</i> , unless case is in products liability context.	<p><i>Tiara Condo. Ass’n, Inc. v. Marsh & McLennan Cos., Inc.</i>, 110 So.3d 399 (Fla. 2013) (in a lawsuit brought by a condominium association against an insurance broker, holding the economic loss rule “applies only in the products liability context” and that the Court “recede[s] from our prior rulings to the extent that they have applied the economic loss rule to cases other than products liability.”)</p> <p><i>Laufen, Inc. v. Andrew</i>, 83 So. 3d 898, 37 Fla. L. Weekly D425 (Fla. Dist. Ct. App. 2012) (citing <i>Vesta Constr. & Design, infra</i>, for proposition that ELD generally prohibits parties in contractual privity from recovering in tort for damages caused when performing the contract and holding that homeowners were precluded from recovering damages in tort for contractor’s negligence).</p> <p><i>Rocks v. McLaughlin Eng’g Co.</i>, 49 So. 3d 823, 35 Fla. L. Weekly D2627 (Fla. Dist. Ct. App. 2010) (holding surveyors were “professionals” and, thus, ELD</p>

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		<p>did not bar clients' claims for professional malpractice and negligence).</p> <p><i>Witt v. La Gorce Country Club, Inc.</i>, 35 So. 3d 1033, 35 Fla. L. Weekly D1300 (Fla. Dist. Ct. App. 2010) (in action against licensed geologist for the alleged negligent design and installation of a reverse osmosis water treatment system at golf course, holding ELD does not bar a cause of action against a professional for negligence even though the damages are purely economic in nature and the aggrieved party has entered into a contract with the professional's employer).</p> <p><i>Vesta Constr. & Design, L.L.C. v. Lotspeich & Assocs., Inc.</i>, 974 So. 2d 1176 (Fla. Dist. Ct. App. 2008) (developer's claim of negligent misrepresentation against individual ecologist arising out of environmental assessment was barred by ELD).</p> <p><i>Florida Auto. Joint Underwriting Ass'n v. Milliman, Inc.</i>, No. 4:06cv546-WCS, 2007 WL 1341127 (N.D. Fl. May 3, 2007) (in a non-design professional case, breach of fiduciary duty claim barred by ELD).</p> <p><i>Granat v. AXA Equitable Life Ins. Co.</i>, No. 06-21197-CIV, 2006 WL 3826785 (S.D. Fl. Dec. 27, 2006) (<i>Moransais, infra</i>, refused to extend ELD to professional malpractice claims; in non-design professional case, breach of fiduciary duty claim barred by ELD).</p> <p><i>Kraft Co. v. Marsh McLennan</i>, No. 2:06-CV-6-FtM-29DNF, 2006 WL 1876995 (M.D. Fl. July 5, 2006) (Kraft's negligence against Marsh arising out of its management of CCIP program dismissed under ELD; negligent misrepresentation claim (claim of fraud in the inducement) was not barred).</p> <p><i>Indem. Ins. Co. of N. America v. Am. Aviation, Inc.</i>, 891 So. 2d 532 (Fla. 2004) (ELD bars a negligence action to recover solely economic damages only in circumstances where the parties are either in contractual privity or the defendant is a manufacturer or distributor of a product; claim for negligent</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>maintenance and inspection of aircraft landing gear allowed to proceed in tort).</p> <p><i>Florida State Bd. of Admin. v. Law Eng'g & Envtl. Servs., Inc.</i>, 262 F. Supp. 2d 1004 (D. Minn. 2003) (federal court in Minnesota applying Florida law distinguishes <i>Moransais, infra</i>, holding that Florida investor's negligence and breach of fiduciary duty claims against engineering firm who performed inspection of building were barred by ELD, because of the contractual privity between the parties, but recognized negligent misrepresentation as an exception to ELD and allows this claim to proceed).</p> <p><i>Moransais v. Heathman</i>, 744 So. 2d 973 (Fla. 1999) (ELD does not extend to homeowner's negligent misrepresentation claim against individual engineer who performed inspection services).</p> <p><i>Stone's Throw Condo. Ass'n, Inc. v. Sand Cove Apts., Inc.</i>, 749 So. 2d 520 (Fla. 1999) (condo association's claims of negligent misrepresentation allowed to proceed against architect; Florida recognizes a tort cause of action against design professionals in absence of contractual privity; court suggested ordinary negligence claim may also be viable under the "special relationship" exception to ELD).</p> <p><i>Spancrete, Inc. v. Ronald E. Frazier Assocs.</i>, 630 So. 2d 1197 (Fla. Dist. Ct. App. 1994) (subcontractor suing for economic losses not in contractual privity with architect could not state claim under either tort or contract).</p>
Georgia	No. Recent Court of Appeals decision, however, suggests that the Georgia courts may be shifting towards independent duty analysis.	<p><i>City of Atlanta v. Benator</i>, 310 Ga. App. 597, 714 S.E.2d 109 (2011) (holding economic loss rule barred lawsuit by city residents against city contractors, because the residents failed to demonstrate the contractors owed any duty independent of the contract and failed to allege any damages due to injury to people or property).</p> <p><i>City of Cairo v. Hightower Consulting Eng'rs, Inc.</i>, 278 Ga. App. 721, 629 S.E.2d 518 (2006) (city allowed to sue engineering firm in tort for alleged losses arising out of design of wastewater treatment plant; negligent</p>

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		<p>misrepresentation exception to ELD applies to allow action).</p> <p><i>Holloman v. D.R. Horton, Inc.</i>, 241 Ga. App. 141, 524 S.E.2d 790 (1999), <i>cert. denied</i> (2000) (ELD does not bar negligence action against construction manager if there is evidence of “passive concealment or fraud”).</p> <p><i>Rowe v. Akin & Flanders, Inc.</i>, 240 Ga. App. 766, 525 S.E.2d 123 (1999) (landowner not barred from suing contractor for negligent construction on the basis of ELD).</p> <p><i>Robert & Co. Assoc. v. Rhodes-Haverty P’ship</i>, 250 Ga. 680, 300 S.E.2d 503 (1983) (holding that claimant may assert negligent misrepresentation claim against engineer for purely economic losses despite absence of privity; adopts Restatement (Second) of Torts § 552, which holds that a person who supplies information during the course of business owes a duty of reasonable care to all persons or classes of persons who may foreseeably rely upon the information).</p>
Hawaii	Yes.	<p><i>Leis Family Ltd. P’ship v. Silversword Eng’g</i>, 126 Haw. 532, 273 P.3d 1218 (Haw. Ct. App. 2012) (in professional negligence action against thermal energy system designers, holding (1) lack of privity of contract did not bar application of the ELD; (2) designers did not have a tort duty to prevent economic loss; and (3) court would decline to apply any deviation from industry standards exception to the ELD).</p> <p><i>Ass’n of Apt. Owners v. Venture 15, Inc.</i>, 115 Haw. 232, 167 P.3d 225 (2007) (ELD bars condo association’s negligence claim against engineer, even in absence of privity; but ELD does not bar claim for negligence by homeowner where builder has violated applicable building code).</p> <p><i>City Express, Inc. v. Express Partners</i>, 87 Haw. 466, 959 P.2d 836 (1998) (ELD bars an owner seeking recovery of economic losses from bringing a negligent misrepresentation claim against a design professional when there is contractual privity).</p>

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		<i>State by Bronster v. U.S. Steel Corp.</i> , 82 Haw. 32, 919 P.2d 294 (1996) (in product liability case not involving design professional, supreme court holds that ELD does not bar negligent misrepresentation claim).
Idaho	Generally, ELD bars tort claims in absence of “special relationship.” Professional providing personal services to a client may qualify as having a special relationship.	<p><i>Mountain View Hosp., L.L.C. v. Sahara, Inc.</i>, No. 4:07-cv-464-BLW, 2011 WL 4962183 (D. Idaho Oct. 17, 2011) (repeating rule that special relationship exception applies to insurance agents, attorneys, architects, engineers and physicians).</p> <p><i>Brian & Christie, Inc. v. Leishman Elec., Inc.</i>, 150 Idaho 22, 244 P.3d 166 (2010) (holding ELD did not bar restaurant owner’s negligence claim against electrical subcontractor in which owner alleged that subcontractor negligently performed services in connecting neon signs and transformers to electrical power and that such negligence caused a fire that damaged the restaurant and its contents).</p> <p><i>Millenkamp v. Davisco Foods Int’l, Inc.</i>, 391 F. Supp. 2d 872, 879 (D. Idaho 2005) (special relationship exists where a professional or quasi-professional performs personal services).</p> <p><i>Blahd v. Richard B. Smith, Inc.</i>, 141 Idaho 296, 108 P.3d 996 (2005) (holding that “special relationship” and “unique circumstances” exceptions to ELD under Idaho law did not apply because there was no evidence that plaintiff-homeowner relied upon geotech’s representations regarding suitability of site for construction).</p> <p><i>Nelson v. Anderson Lumber Co.</i>, 140 Idaho 702, 99 P.3d 1092 (Idaho Ct. App. 2004) (homeowners’ negligence claim against county and building materials supplier barred by economic loss rule; “special relationship” exception to rule did not apply to lumber company).</p> <p><i>Ramerth v. Hart</i>, 133 Idaho 194, 983 P.2d 848 (1999) (ELD prohibits buyer of airplane from bringing negligence action against mechanic who inspected</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		plane). <i>Tusch Enters. v. Coffin</i> , 113 Idaho 37, 740 P.2d 1022 (1987) (ELD bars purchaser of duplex from suing both seller and developer for negligence, but holding that a negligent representation claim was actionable).
Illinois	Yes, except in cases of “sudden, dangerous, calamitous event,” or in limited cases, if claim is for negligent misrepresentation. ELD also called the “ <i>Moorman Doctrine</i> ” in reference to seminal case of <i>Moorman Mfg. Corp. v. Nat’l Tank Co.</i> , 91 Ill. 2d 69, 435 N.E.2d 443, 61 Ill. Dec. 746 (1982).	<p><i>Lexington Mktg., LLC v. Franks Mechanical Contractors, Inc.</i>, 2016 WL 634886 (Ill. App. Ct. Feb. 16, 2016) (upholding <i>Moorman</i> doctrine and finding that exposure to mold did not constitute a substantial threat of personal injury and denying argument that indemnification provision in subcontract was a waiver of the economic loss doctrine).</p> <p><i>Stewart Title Guar. Co. v. Inspection & Valuation Int’l, Inc.</i>, No. 12 C 08918, 2013 WL 5587293 (N.D. Ill. Oct. 10, 2013) (holding that economic loss rule barred plaintiff-title company’s negligent misrepresentation claim related to hotel renovation project, and noting that “[w]here the ultimate result of the contractual undertaking is the creation of a tangible product, the economic loss doctrine generally bars recovery of damages in tort”).</p> <p><i>Olson v. Hunter’s Point Homes, LLC</i>, 2012 Ill. App. 5th 100506, 357 Ill. Dec. 697, 964 N.E.2d 60 (2012) (holding ELD does not bar home purchasers from recovering against seller of real estate where intentional misrepresentation is sufficiently alleged).</p> <p><i>Donovan v. County of Lake</i>, 2011 Ill. App. 2d 100390, 351 Ill. Dec. 592, 951 N.E.2d 1256 (2011) (holding that economic loss rule barred customers from recovering damages allegedly caused by county’s failure to properly maintain the water system).</p> <p><i>Perez v. AMCO Ins. Co.</i>, No. 08-cv-4364, 2009 WL 755228 (N.D. Ill. Mar. 23, 2009) (good succinct description of exceptions to ELD recognized in Illinois; ELD does not apply in cases (i) involving property damage from a sudden and calamitous event, (ii) in which the party who incurred the property damage was not a party to any agreement, (iii) allegations of fraud, and (iv) negligent</p>

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		<p>misrepresentation by one in the business of supplying information for the guidance of others).</p> <p><i>F.H. Paschen/S.N. Nielsen, Inc. v. Burnham Station, L.L.C.</i>, 372 Ill. App. 3d 89, 309 Ill. Dec. 865, 865 N.E.2d 228 (2007) (ELD/<i>Moorman</i> barred negligent design cause of action by LLC member against architectural firm).</p> <p><i>Moorman Mfg. Corp. v. Nat'l Tank Co.</i>, 91 Ill. 2d 69, 61 Ill. Dec. 746, 435 N.E.2d 443 (1982) (in general, purely economic losses are not recoverable in tort actions in Illinois absent application of one of several limited exceptions, including negligent misrepresentation cases, where the defendant was "in the business of supplying information for the guidance of others in their business transactions").</p> <p><i>Gen. Elec. Co. v. Honeywell Int'l, Inc.</i>, No. 05-3239, 2006 WL 988468 (C.D. Ill. Apr. 13, 2006) (negligent misrepresentation is only an exception to the ELD when the person or entity making the misrepresentation is in the business of supplying information).</p> <p><i>Neumann v. Carlson Envtl., Inc.</i>, 429 F. Supp. 2d 946 (N.D. Ill. 2006) (tort claim against environmental consultant for negligent preparation of Phase I ESA report is not barred by ELD).</p> <p><i>Cement-Lock v. Gas Tech. Inst.</i>, No. 05-C-0018, 2005 WL 2420374 (N.D. Ill. Sept. 30, 2005) ("where a duty arises outside of the contract, the ELD does not prohibit recovery in tort for the negligent breach of that duty;" negligent misrepresentation falls within exception to ELD).</p> <p><i>Mercury Skyline Yacht Charters v. Dave Matthews Band, Inc.</i>, No. 05-C-1698, 2005 WL 3159680 (N.D. Ill. Nov. 22, 2005) (in a case where driver of motor coach emptied the motor coach's human waste collection tank while driving over bridge, causing the contents to fall on ship and passengers below, the ELD did not bar shipowner's tort claims because case fell into sudden or</p>

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		<p>dangerous occurrence exception).</p> <p><i>Options Ctr. for Indep. Living v. G & V Dev. Co.</i>, 229 F.R.D. 149 (C.D. Ill. 2005) (developer-defendant could assert cross-claim against co-defendant designer for professional malpractice arising out of plaintiffs’ claims of inaccessibility to housing under Fair Housing Amendments Act because plaintiffs alleged both economic and non-economic damages).</p> <p><i>Martusciello v. JDS Homes, Inc.</i>, 361 Ill. App. 3d 568, 297 Ill. Dec. 522, 838 N.E.2d 9 (2005) (court affirmed dismissal of homeowner claim against architect based on ELD; distinguished exception for claims of malpractice against attorneys and accountants).</p> <p><i>Menards, Inc. v. Countryside Indus., Inc.</i>, No. 02-C-7142, 2004 WL 1336382 (N.D. Ill. June 14, 2004) (failure of retaining wall found to be “sudden, dangerous, calamitous event” – exception to economic loss doctrine).</p> <p><i>Tolan & Son, Inc. v. KLLM Architects, Inc.</i>, 308 Ill. App. 3d 18, 241 Ill. Dec. 427, 719 N.E.2d 288 (1999) (townhouse owner sued architect, soil engineer and structural engineer for foundation cracks; negligent misrepresentation claim dismissed because in this case, providing plans and specifications that are incorporated into finished product does not constitute the provision of information for the guidance of others in business transactions).</p> <p><i>Fireman’s Fund Ins. Co. v. SEC Donohue, Inc.</i>, 176 Ill. 2d 160, 223 Ill. Dec. 424, 679 N.E.2d 1197 (1997) (subcontractor subrogee could not sue engineering firm for negligence or negligent misrepresentation under ELD because engineers and architects do not supply information to third parties but merely supply plans that are incidental to tangible product).</p> <p><i>Anderson Elec., Inc. v. Ledbetter Erection Corp.</i>, 115 Ill. 2d 146, 104 Ill. Dec. 689, 503 N.E.2d 246 (1987) (applying ELD to preclude plaintiff, not in direct privity with inspector, from bringing tort claim against inspector).</p>

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State	Does ELD bar tort claims against DP?	Case Citation
Indiana	Yes.	<p><i>Thalheimer v. Halum</i>, 973 N.E.2d 1145 (Ind. Ct. App. 2012) (holding that homeowner may bring an action against tile installer for breach of contract and may only recover economic losses under that contract, but also holding the homeowner could bring a tort action for a loss that is not purely economic and not covered in the contract).</p> <p><i>Corry v. Jahn</i>, 972 N.E.2d 907 (Ind. Ct. App. 2012) (granting summary judgment in favor of builders because homeowner’s negligence claims are barred by ELD).</p> <p><i>Rollander Enters., Inc. v. H.C. Nutting Co.</i>, No. 15A01-1008-CC-430, 2011 WL 2671929 (Ind. Ct. App. 2011) (in lawsuit brought by developer against a geotechnical engineering firm, holding that damage to retaining wall was pure economic loss and that negligent misstatement exception to the ELD was inapplicable in the construction context).</p> <p><i>Guideone Ins. Co. v. U.S. Water Sys. Inc.</i>, 950 N.E.2d 1236, 74 U.C.C. Rep. Serv. 2d 806 (Ind. Ct. App. 2011) (holding “other property” exception to ELD applied to homeowners’ walls and floors that were damaged by water filtration system and that homeowners’ insurer could recover against the installer of the system).</p> <p><i>Life v. F.C. Tucker Co., Inc.</i>, 948 N.E.2d 346 (Ind. Ct. App. 2011) (homeowners’ claim against contractor for negligent construction work precluded by ELD).</p> <p><i>Indianapolis-Marion County Pub. Library v. Charlier Clark & Linard, P.C.</i>, 929 N.E.2d 722 (Ind. 2010) (library’s negligence claim against designer and engineer performing on-site inspection of garage construction barred by ELD; “because library is connected with the defendants through a network or chain of contracts, the economic loss rule precludes it from proceeding in tort”).</p> <p><i>Hasse Constr. Co., Inc. v. Gary Sanitary Dist. Bd. Of Comm’rs</i>, No. 2:06-CV-322-PRC, 2008 WL 2169000 (N.D. Ind. May 23, 2008) (city’s third party</p>

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		<p>complaint against construction manager dismissed because it could not seek to recover economic losses from its consultants but was limited to recovery under its contract).</p> <p><i>Gunkel v. Renovations, Inc.</i>, 822 N.E.2d 150 (Ind. 2005) (ELD applies to contracts for services and the sale of goods when the alleged damages do not arise from personal injury or damage to other property. Court reverses summary judgment, holding that the doctrine barred tort recovery for damage to subcontractor’s work, but allowed negligence action to recover damages to other parts of the residence to proceed because those damages were allegedly caused by the subcontractor’s installation of defective stone façade and constitute “damage to other property.”).</p>
Iowa	ELD probably bars negligence claim, but does not bar negligent misrepresentation claim.	<p><i>Lipps v. Hjelmeland Builders, Inc.</i>, No. 07-1410, 2008 WL 4877458 (Iowa Ct. App. 2008) (“Despite its origins, the economic loss doctrine has not been limited to product liability suits and clearly includes defective construction claims.”).</p> <p><i>Annett Holdings, Inc. v. Kum & Go, L.C.</i>, 801 N.W.2d 499 (Iowa 2011) (July 8, 2011) (holding negligence claim was barred by the economic loss rule; applying Tennessee law, trucking company was not an intended third-party beneficiary of contract between fuel credit card company and gas station).</p> <p><i>Rozeboom Dairy, Inc. v. Valley Dairy Farm Automation, Inc.</i>, No. 09-1447, 2011 WL 662338 (Iowa Ct. App. 2011) (holding that injury to herd of cows was not precluded by the ELD because injury was “peripheral to the sale and a serious product defect” rather than purely economic loss).</p> <p><i>Umthun v. IMT Ins. Co.</i>, No. 09-1120, 2011 WL 222514 (Iowa 2011) (refusing to extend “professional negligence” to an insurance company as an exception to the damages bar of the ELD).</p> <p><i>John T. Jones Constr. Co. v. Hoot Gen. Constr.</i>, 543 F. Supp. 2d 982 (S.D. Iowa 2008) (In Iowa, a design engineer may be held liable for failing to</p>

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		<p>exercise the ordinary skill of the profession in drafting plans and specifications or in supervising construction work. The extent of that duty is not limited by privity of contract. The duty extends to those who would foreseeably rely on the engineer's services or be harmed by their negligent performance. The economic loss rule does not apply to claims of professional negligence).</p> <p><i>The Conveyor Co. v. Sunsource Tech. Servs., Inc.</i>, 398 F. Supp. 2d 992 (N.D. Iowa 2005) (Iowa courts draw line between tort and contract rather than between physical harm and economic loss; when the loss relates to product deterioration, internal breakdown or non-accidental cause, the remedy lies in contract).</p> <p><i>Holden Farms, Inc. v. Hog Slat Inc.</i>, 347 F.3d 1055 (8th Cir. 2003) (buyer of hog nursery sued design/builder of hog nursery in tort; builder not in business of supplying information for guidance of others).</p> <p><i>Richards v. Midland Brick Sales Co., Inc.</i>, 551 N.W.2d 649 (Iowa Ct. App. 1996) (homeowner claim against contractor for negligent brickwork barred by ELD).</p>
Kansas	Unclear at this time. Recent Supreme Court decision embracing independent duty analysis may result in future tort claims against DP.	<p><i>Louisburg Bldg. & Dev. Co., L.L.C. v. Albright</i>, No. 102,511, 2012 WL 3289940 (Kan. Ct. App. Aug. 10, 2012) (upon remand, citing the <i>David, infra</i>, decision for the proposition that “[t]he economic loss doctrine should not bar claims by homeowners seeking to recover economic damages resulting from negligently performed residential construction services,” and reversing summary judgment granted to defendant Louisburg Building on the homeowners’ fraud-in-the-inducement claim).</p> <p><i>David v. Hett</i>, 293 Kan. 679, 270 P.3d 1102 (2011) (holding as a matter of first impression that ELD does not apply in residential construction context, overruling <i>Prendiville v. Contemporary Home, infra</i>, and remanding for determination whether contractor had any duty independent of the contract to</p>

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		<p>perform his work in a particular manner).</p> <p><i>Louisburg Bldg. & Dev. Co., L.L.C. v. Albright</i>, 45 Kan. App. 2d 618, 252 P.3d 597 (2011), <i>review granted</i> (Mar. 9, 2012) (holding the ELD precluded homeowners’ fraud-in-the-inducement claim against contractor because the claim duplicated their claim for breach of contract and the ELD prohibits the assertion of such duplicative claims).</p> <p><i>Prendiville v. Contemporary Homes, Inc.</i>, 32 Kan. App. 2d 435, 83 P.3d 1257 (2004) , <i>review denied</i> (May 25, 2004) (ELD bars negligent construction claim brought by homeowner against contractor, finding that allowing negligence action to go forward would effectively nullify contractor’s one year express warranty). Supreme Court disapproved this decision in <i>David v. Hett, supra</i>.</p> <p><i>Koss Constr. v. Caterpillar, Inc.</i>, 25 Kan. App. 2d 200, 960 P.2d 255 (1998), <i>review denied</i> (Sept. 10, 1998) (purchaser of hydraulic roller sued manufacturer for products liability; ELD barred negligence or strict liability claims).</p>
Kentucky	ELD probably bars negligence claim, but does not bar negligent misrepresentation claim.	<p><i>Giddings & Lewis, Inc. v. Indus. Risk Insurers</i>, 348 S.W.3d 729 (Ky. 2011) (June 16, 2011) (holding economic loss rule barred buyer’s negligence and strict liability claims lawsuit against manufacturer and holding there is no calamitous event exception to the ELD).</p> <p><i>Westlake Vinyls, Inc. v. Goodrich Corp.</i>, 518 F. Supp. 2d 955 (W.D. Ky. 2007) (ELD bars tort claims arising out of “business purchases” and not just the purchase of goods).</p> <p><i>Pioneer Res. Corp. v. Nami Res. Co., LLC</i>, Civil Action No. 6:04-465-DCR, 2006 WL 1778318 (E.D. Ky. 2006) (Kentucky Supreme Court would not likely extend ELD outside products liability, business purchase or construction cases).</p> <p><i>Davis v. Siemens Med. Solutions USA, Inc.</i>, 399 F. Supp. 2d 785 (W.D. Ky.</p>

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		2005) (ELD applies to products liability cases but not to fraudulent inducement claim). <i>Presnell Constr. Managers v. EH Constr., LLC</i> , 134 S.W.3d 575 (Ky. 2004) (contractor’s claim of negligent misrepresentation against construction manager was not barred by ELD).
Louisiana	Yes, if damage is defective work; no, if damage is caused by defective work.	<i>N. Clark, L.L.C. v. Chisesi</i> , 2016 WL 7132164 (La. App. 4 Cir. Dec. 7, 2016) (affirming dismissal of a neighboring property owner’s claim against architect for professional negligence for allegedly defective design of the neighboring houses, stating “[t]here is no duty owed by [the architect] to plaintiffs concerning the design of the property next door”). <i>Young v. City of Plaquemine</i> , 818 So. 2d 892 (La. Ct. App. 2002) (painter sued contractor and architect for personal injuries sustained during paint removal; court acknowledged that if damage sued for is defective work, only those with contractual privity may sue for breach; if damage is caused by defective work, a tort action may be pursued). <i>Standard Roofing Co. of New Orleans v. Elliot Constr. Co., Inc.</i> , 535 So. 2d 870 (La. Ct. App. 1988) (roofing subcontractor could sue architect for negligence but failed to produce evidence to support claim of breach of duty of care).
Maine	Yes.	<i>Maine Rubber Int’l v. Envtl. Mgmt. Group, Inc.</i> , 298 F. Supp. 2d 133 (D. Me. 2004) (land buyer’s claim against engineering firm for negligence and negligent misrepresentation in connection with Phase I ESA barred by ELD). <i>Oceanside at Pine Point Condo. Owners Ass’n v. Peachtree Doors, Inc.</i> , 659 A.2d 267 (Me. 1995) (applying economic loss rule to preclude plaintiff’s claim against engineer for negligent misrepresentation).
Maryland	Yes, unless (1) there is a contract between design professional and party	<i>Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP</i> , 226 Md. App. 420, 130 A.3d 1024 (2016) (holding that, in absence of privity, death,

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	asserting claim; (2) the alleged defect created substantial risk of death or injury; or (3) there is an “intimate nexus” between design professional and non-client (except in public construction projects).	<p>personal injury, property damage, or risk of serious death or personal injury, there is no duty of care in tort that runs from an engineer or architect to a contractor for purely economic losses on a public construction project and declining to expand the “intimate nexus” test to include extra-contractual concepts of duty for the recovery of solely economic losses in public construction cases).</p> <p><i>Nat’l Labor College, Inc. v. Hillier Group Architecture N.J., Inc.</i>, 739 F. Supp. 2d 821 (D. Md. 2010) (declining to dismiss on grounds of ELD and reframing the ELD question as independent duty question: “...the real question here is whether Hiller was bound by any duty independent of the contract. The complaint alleges that Hillier had a duty to meet the ordinary standard of care required of architects and engineers, but does not cite to any source of that duty outside of the contract. On the other hand, Plaintiff does allege that it engaged Hillier to perform professional services, normally giving rise to the duty. In any event, Defendant’s argument that the economic loss rule bars this claim is misplaced. <i>See City of Richmond v. Madison Mgmt. Group, Inc.</i>, 918 F.2d 438, 446 (4th Cir. 1990) (“[I]f, when the surface is scratched, it appears that the defendant has breached a duty imposed by law, not by contract, the economic loss rule should not apply.”)).</p> <p><i>Potomac Constructors, LLC v. EFCO Corp.</i>, 530 F. Supp. 2d 731 (D. Md. 2008) (negligence claim against engineer not barred by ELD because ELD does not bar recovery of cost to replace negligent work that poses a substantial and reasonable risk of death or personal injury).</p> <p><i>RLI Ins. Co. v. John H. Hampshire Inc.</i>, 461 F. Supp. 2d 364 (D. Md. 2006) (contractor’s surety could not sue university’s architect in tort for allegedly failing to detect that contractor was installing wall panels incorrectly).</p> <p><i>Heritage Harbour, LLC v. John J. Reynolds, Inc.</i>, 143 Md. App. 698, 795 A.2d 806 (2002) (ELD barred developer’s statutory contribution and</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>indemnification claims for alleged defects in condos).</p> <p><i>Walpert, Smullian & Blumenthal, P.A. v. Katz</i>, 361 Md. 645, 762 A.2d 582 (2000) (malpractice claim brought by non-client against accounting firm allowed to proceed under theory of negligent misrepresentation because non-client alleged facts sufficient to demonstrate that accounting firm knew of non-client’s reliance on financial information).</p> <p><i>The Milton Co. v. Council of Unit Owners of Bentley Place Condo.</i>, 121 Md. App. 100, 708 A.2d 1047 (1998), <i>affirmed on other grounds</i>, 354 Md. 264, 729 A.2d 981 (1999) (court recognized two exceptions to ELD in case by condo association against builder: (1) defect creates substantial risk of death or personal injury and (2) parties share “intimate nexus;” claim allowed to proceed on first exception).</p> <p><i>Council of Co-Owners Atlantis Condo., Inc. v. Whiting-Turner Contracting Co.</i>, 308 Md. 18, 517 A.2d 336 (1986) (court of appeals required privity of contract between builder and architect for an action in tort to be allowed; however, court created limited exception in cases where a dangerous condition was discovered before it resulted in a personal injury).</p>
Massachusetts	Negligence claims barred; negligent or intentional misrepresentation claims not barred.	<p><i>Wyman v. Ayer Props., LLC</i>, 469 Mass. 64 (2014) (in lawsuit brought by trustee of condominium association against developer, court held that the economic loss rule is not applicable to damage caused to common areas of condo building as a result of the builder’s negligence and defective construction).</p> <p><i>Patenaude v. Tibbetts Eng’g, Inc.</i>, No. 11-P-1172, 2012 WL 761972 (Mass. App. Ct. Mar. 12, 2012) (in lawsuit arising out of subdivision plan of land, holding that ELD does not bar lawsuit by purchaser against the engineering firm that prepared the plan).</p> <p><i>Passatempo v. McMenimen</i>, 461 Mass. 279, 960 N.E.2d 275 (2012) (holding</p>

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		<p>ELD does apply where intentional misrepresentation is sufficiently alleged).</p> <p><i>Albert v. Zabin</i>, No. MICV200302830B, 2011 WL 1020090 (Mass. Super. Jan. 11, 2011) (holding purely economic losses cannot be recovered in tort based on the economic loss doctrine).</p> <p><i>Deheer v. Am. Acad. of Podiatric Practice Mgmt.</i>, No. ESCV200901777A, 2011 WL 1019911 (Mass. Super. Jan. 31, 2011) (reaffirming ELD bars recovery unless the plaintiffs can establish that the injuries they suffered due to the defendants' negligence involved physical harm or property damage, and not solely economic loss).</p> <p><i>Brennan v. Morano et al.</i>, No. 2004-04794, 2008 WL 2097392 (Mass. Super. May 7, 2008) (developer's tort claim against engineer for alleged negligence in laying out lots for development was barred by ELD).</p> <p><i>Pro Con, Inc. v. J&B Drywall, Inc.</i>, No. 032063C, 2006 WL 392123 (Mass. Super. Jan. 31, 2006) (in contractor-filed suit against subcontractor and exterior insulating and finish system (EIFS) manufacturer, alleging water intrusion due to faulty application of EIFS and sealant, court held claims were barred by ELD because no other property was damaged and contractor only lost benefit of bargain under the contract.).</p> <p><i>Josefek v. Loitherstein Env'tl. Eng'g, Inc.</i>, No. 032156, 2004 WL 3218004 (Mass. Super. Dec. 31, 2004) (negligent misrepresentation claims are an exception to the ELD).</p> <p><i>Berish v. Bornstein</i>, 437 Mass. 252, 770 N.E.2d 961 (2002) (condo association sued developer and contractor for negligent design and construction; claim not barred by ELD because defects caused property damage beyond the damage to condo units themselves).</p> <p><i>Aldrich v. ADD Inc.</i>, 437 Mass. 213, 770 N.E.2d 447 (2002) (claim for negligent design of condominium not barred by ELD because plaintiff alleged</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>physical property damage to condo).</p> <p><i>Nota Constr. Corp. v. Keyes Assocs., Inc.</i>, 45 Mass. App. Ct. 15, 694 N.E.2d 401 (1998) (economic losses resulting from negligent misrepresentation are exception to the ELD, when claimant reasonably relies upon design professional’s work product).</p>
Michigan	ELD does not apply to claims arising out of contract for professional services or to claims of fraud in the inducement.	<p><i>Farm Bureau Mut. Ins. Co. of Michigan v. Borkholder Buildings & Supply, LLC</i>, No. 1:14-CV-1118, 2015 WL 5682729 (W.D. Mich. Sept. 25, 2015) (noting that the Michigan Supreme Court “has yet to provide clear guidance on the determinative factors for applying the economic loss doctrine,” thus, the litigants and courts applying <i>Neibarger</i> must “discern the distinguishing factors in each case that adhere to the doctrine’s rationale and result in a logical and legally supportable outcome”).</p> <p><i>Just U.S. Four, L.L.C. v. Villa Env’tl. Consultants, Inc.</i>, No. 300215, 2011 WL 6378814 (Mich. Ct. App. Dec. 20, 2011) (affirming the trial court’s summary disposition of property owners’ complaint regarding performance of pre-purchase environmental assessment and wetland review based on the ELD because owners’ failed to allege violation of a legal duty separate and distinct from the contractual obligation).</p> <p><i>AERO Taxi-Rockford v. Gen. Motors Corp.</i>, No. 259565, 2006 WL 1479915 (Mich. Ct. App. May 30, 2006) (holding that ELD does not apply to “claims emanating from a contract for services”).</p> <p><i>Alternative Aviation Servs., Inc. v. Meggitt (UK) Ltd.</i>, 207 Fed. Appx. 506, 2006 WL 3794329 (6th Cir. 2006) (ELD does not bar fraud in the inducement claims in Michigan).</p> <p><i>Caldwell v. Delta Land Surveying & Eng’g, Inc.</i>, No. 241913, 2004 WL 952874 (Mich. Ct. App. May 4, 2004) (without expressly citing to ELD, court holds that lack of privity bars plaintiffs’ claims against developer because</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>damages sought were purely economic).</p> <p><i>Quest Diagnostics, Inc. v. MCI WorldCom, Inc.</i>, 254 Mich. App. 372, 656 N.W.2d 858 (2002), <i>review denied</i>, 469 Mich. 975, 671 N.W.2d 886 (2003) (holding that ELD does not apply in absence of privity of contract; court observes that application of the ELD in Michigan has been limited to contracts for the sale of goods and questions whether the doctrine extends to services contracts.).</p> <p><i>Neibarger v. Universal Coops., Inc.</i>, 439 Mich. 512, 486 N.W.2d 612 (1992) (in a dairy farmers’ negligence and products liability action against designers and sellers of defective milking system, claims barred by ELD).</p> <p><i>Bacco Constr. Co. v Am. Colloid Co.</i>, 148 Mich. App. 397, 384 N.W.2d 427 (1986) (holding that contractor can proceed with negligence action to recover purely economic losses from project engineer; court applies a foreseeable risk of harm analysis).</p>

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State	Does ELD bar tort claims against DP?	Case Citation
Minnesota	No.	<p><i>80 South Eighth St. Ltd. P'ship v. Carey-Canada, Inc.</i>, 486 N.W.2d 393 (1992), (holding that ELD does not bar owner of building with asbestos-containing fireproofing from suing manufacturer of fireproofing under tort theories of negligence and strict liability for cost of maintenance, removal and replacement of fireproofing).</p> <p><i>McCarthy Well Co., Inc. v. St. Peter Creamery, Inc.</i>, 410 N.W.2d 312 (1987) (Where the "predominant factor" in an agreement is the performance of services rather than the sale of goods, the ELD does not apply).</p> <p>See Minn. Stat. § 604.10 (in sale of goods, economic loss rule does not bar consumer's tort claim; ELD does bar such claim between merchants).</p> <p><i>Waldor Pump & Equip. Co. v. Orr-Schelen-Mayeron & Assoc., Inc.</i>, 386 N.W.2d 375 (Minn. Ct. App. 1986) (engineer liable to subcontractor for negligence in drafting and interpreting specifications; rejected application of ELD).</p>
Mississippi	No.	<p><i>Lyndon Prop. Ins. Co. v. Duke Levy & Assocs., LLC</i>, 475 F.3d 268 (5th Cir. 2007) (economic loss rule did not apply to action by surety for county sewer project against the engineer hired by county for breach of contract, breach of warranty and negligence; ELD does not bar tort action against engineer for negligent inspection and approval of work, because Mississippi does not apply ELD outside of the products liability claim arena).</p> <p><i>State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.</i>, 736 So. 2d 384 (Miss. Ct. App. 1999) (court adopted ELD in non-design firm case; rule barred car buyer's tort claim against car dealer).</p> <p><i>Magnolia Constr. Co., Inc. v. Mississippi Gulf South Eng'rs, Inc.</i>, 518 So. 2d 1194 (Miss. 1988) (contractor allowed to pursue negligence claim against architect; no discussion of ELD).</p> <p><i>May v. Ralph L. Dickerson Constr. Corp.</i>, 560 So. 2d 729 (Miss. 1990)</p>

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		<p>(statutory provision authorizes negligence action to recover economic losses against architect despite lack of privity; nNo discussion of ELD).</p> <p><i>But see</i>, Miss. Code Ann. § 11-7-20 (“In all causes of action for personal injury or property damage or economic loss brought on account of negligence, strict liability or breach of warranty, including actions brought under the provisions of the Uniform Commercial Code, privity shall not be a requirement to maintain said action.”).</p>
Missouri	Yes, if plaintiff has contract with design professional; no, if plaintiff is client in privity with design professional.	<p><i>Sports Capital Holdings (St. Louis), LLC v. Schindler Elevator Corp.</i>, No. 4:12CV1108-SNLJ, 2014 WL 1400159 (E.D. Mo. Apr. 10, 2014) (finding that ELD did not bar tort claim by owners of facility against designer and manufacturer of escalator where escalator malfunction injured patrons of facility and owners thus pled personal injury and not merely economic losses).</p> <p><i>Dannix Painting, LLC v. Sherwin-Williams Co.</i>, 732 F.3d 902 (8th Cir. 2013) (stating that “Missouri’s economic loss doctrine bars recovery for negligence ... and strict liability ‘where only damage is to the product sold,’” and upholding district court’s finding that ELD barred plaintiff’s negligent misrepresentation claim against defendant for recommending a particular type of paint).</p> <p><i>Summer Chase Second Addition Subdivision Homeowners Ass’n v. Taylor-Morley, Inc.</i>, 146 S.W.3d 411 (Mo. Ct. App. 2004) (holding the ELD precludes negligent construction claim brought by homeowners’ association against contractor and, in the alternative, that negligence claim is barred absent privity between the parties).</p> <p><i>Korte Constr. Co. v. Deaconess Manor Ass’n</i>, 927 S.W.2d 395 (Mo. Ct. App., 1996) (construction defect case holding that ELD barred negligence action where parties are in privity and the only losses alleged are economic).</p> <p><i>Business Men’s Assurance Co. of Am. v. Graham</i>, 891 S.W.2d 438 (Mo. Ct. App. 1994) (architect owes independent professional duty of care to client with</p>

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		<p>whom it has privity of contract; ELD does not bar negligence claims).</p> <p><i>Fleischer v. Hellmuth, Obata & Kassabaum, Inc.</i>, 870 S.W.2d 832 (Mo. Ct. App. 1993) (holding that, generally, “an architect owes no tort duty of care and is not liable to a general contractor or construction manager for damages for economic losses arising as a result of the architect’s negligent performance of its contract with the owner”).</p> <p><i>Sharp Bros. Contracting Co. v. Am. Hoist & Derrick Co.</i>, 703 S.W.2d 901 (Mo. Ct. App. 1986) (court adopted ELD in case involving alleged negligent design of crane).</p> <p><i>Bryant v. Murray-Jones-Murray, Inc.</i>, 653 F. Supp. 1015 (E.D. Mo. 1985) (upholding negligence claim against architect; application of ELD limited to sales of goods). Opinion relies upon several foreign cases that are no longer good law.</p>
Montana	No.	<p><i>Glacier Tennis Club at the Summit, LLC v. Treweek Constr. Co., Inc.</i>, 320 Mont. 351, 87 P.3d 431 (2004) (contractor may recover for economic loss against project engineer or architect when design professional knew or should have known that plaintiff was at risk in relying on information supplied).</p> <p><i>Jim’s Excavating Serv., Inc. v. HKM Assocs.</i>, 265 Mont. 494, 878 P.2d 248 (1994) (contractor sued project engineer for extra work and delay damages allegedly caused by engineer’s negligent design and supervision of water pipeline project; court allowed claim to proceed under § 552 of Restatement (Second) of Torts).</p>
Nebraska	Unclear at this time.	<p><i>E3 Biofuels-Mead, LLC v. Skinner Tank Co.</i>, No. 8:06CV706, 2014 WL 351971 (D. Neb. Jan. 30, 2014) (plaintiff hired defendant to design, fabricate and construct tanks to be used in integrated solid waste and bio-fuels facility; court found ELD not applicable, because plaintiff claimed damages to property other than property that was the subject of the contract, and because the case involved alleged breach of services and design contracts, noting “[t]here are</p>

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		<p>duties imposed on architects and tradesmen that are independent of the contract”).</p> <p><i>Hawkins Constr. Co. v. Peterson Contractors, Inc.</i>, 970 F. Supp. 2d 945 (D. Neb. 2013) (In a case that does not expressly mention the ELD, the court found that where a prime contractor failed to show privity of contract with second-tier subcontractors, the negligence claims against the subcontractors must be dismissed. “Absent fraud or extraordinary facts, ‘professionals are not liable in negligence to third parties with whom they are not in privity of contract.’”).</p> <p><i>Dobrovolny v. Ford Motor Co.</i>, 281 Neb. 86, 793 N.W.2d 445 (2011) (holding ELD barred recovery in products liability case where the product, a motor vehicle, self-destructed without causing damage to persons or other property).</p> <p><i>Nat’l Crane Corp. v. Ohio Steel Tube Co.</i>, 213 Neb. 782, 332 N.W.2d 39 (1983) (buyer of defective crane parts cannot sue manufacturer in tort under economic loss rule).</p> <p><i>Lesiak v. Central Valley Ag Coop., Inc.</i>, 283 Neb. 103, 808 N.W.2d 67 (2012) (holding ELD did not apply to bar farmers’ claim against cooperative for negligent application of herbicide even though duty did not exist but for execution of contract because the alleged damages were not purely economic).</p>
Nevada	Yes, if parties are in privity and claims arise out of that contract; no, if claim is being asserted by homeowner against contractor.	<p><i>Halcrow, Inc. v. Eighth Judicial Dist. Ct.</i>, 129 Nev. Adv. Op. 42, 302 P.3d 1148 (2013) (holding that ELD bars negligent misrepresentation claims against design professionals in commercial construction defect litigation).</p> <p><i>Soltani v. GP Indus.</i>, No. 56114, 2011 WL 6916451 (Nev. Dec. 27, 2011), (refusing to revisit whether contractual privity is required).</p> <p><i>Terracon Consultants Western, Inc. v. Mandalay Resort Group</i>, 125 Nev. 66, 206 P.3d 81 (2009) (in commercial property construction defect action for purely economic losses, ELD applies to bar tort claims against design</p>

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		<p>professionals who have provided professional services in process of developing or improving property).</p> <p><i>SMI Owen Steel Co., Inc. v. Marsh USA, Inc.</i>, 520 F.3d 432 (5th Cir. 2008) (Court interpreted Nevada law to exclude application of the ELD in cases for negligent provision of professional services – allowing a claim for negligent failure to procure insurance).</p> <p><i>G.K. Las Vegas Ltd. P’ship v. Simon Prop. Group, Inc.</i>, 460 F. Supp. 2d 1222 (D. Nev. 2006) (Nevada has adopted the ELD; tort claims will be barred if based on breached contractual promises).</p> <p><i>Skender v. Brunsonbuilt Constr. & Dev. Co., LLC</i>, 122 Nev. 1430, 148 P.3d 710 (2006) (homeowner’s tort claim against contractor for negligent construction governed by statute, not ELD).</p> <p><i>Olson v. Richard</i>, 120 Nev. 240, 89 P.3d 31 (2004) (ELD does not apply to preclude tort claims resulting from construction defect in newly constructed residential property; NRS § 40.640 governs contractor liability for construction defect cases and preserves right of purchasers of newly constructed property to sue in tort).</p>
New Hampshire	Yes. ELD does not apply to claims of fraud in the inducement.	<p><i>Wyle v. Lees</i>, 162 N.H. 406, 33 A.3d 1187 (2011) (as a matter of first impression holding the ELD did not bar purchaser’s negligent misrepresentation claims against vendor and contractor where the misrepresentation related to inducement for the contract and not simply a breached promise to perform the terms of the contract or breach of the terms of the contract).</p> <p><i>Plourde Sand & Gravel v. JGI Eastern, Inc.</i>, 154 N.H. 791, 917 A.2d 1250 (2007) (New Hampshire applies ELD to construction cases and barred gravel supplier’s tort claim against inspector who erroneously determined that gravel failed to meet spec).</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p><i>Lempke v. Dagenais</i>, 130 N.H. 782, 547 A.2d 290 (1988) (reaffirming ELD bars recovery of purely economic loss damages in tort; but allowing recovery of economic loss for breach of warranty).</p> <p><i>Ellis v. Robert C. Morris, Inc.</i>, 128 N.H. 358, 513 A.2d 951 (1986) (home buyers cannot ordinarily recover in a negligence action for purely economic loss against builder; overruled on other grounds).</p>
New Jersey	Unclear. Negligent misrepresentation claims appear to be allowed; fraud in the inducement is allowed.	<p><i>Saratoga at Toms River Condo. Ass'n v. Menk Corp., et al.</i>, No. L-23-04, 2014 WL 3510872 (N.J. Super. A.D., July 17, 2014) (finding that condominium association's claims against general contractor sounded in contract, not tort, and thus ELD barred recovery).</p> <p><i>Hanover Architecture Serv., P.A. v. Christian Testimony-Morris, N.P.</i>, No. Civ. 10-5455, 2014 WL 884778 (D. N.J. Mar. 6, 2014) (finding that allegations that defendant architect misclassified building and provided designs that required several revisions were wholly intrinsic to its performance under its agreement with plaintiff and, thus, provided basis for breach of contract claim but not malpractice).</p> <p><i>SCR Constr. Corp. of Monroe v. Atlantic City Hous. Auth.</i>, 935 F. Supp. 2d 796 (D. N.J. 2013) (holding that ELD did not bar plaintiff general contractor's negligence claim against defendant architect where plaintiff and defendant did not have contract, in spite of fact that plaintiff asserted a contract claim against co-defendant housing authority (with whom plaintiff did have contract)).</p> <p><i>Hunter v. Sterling Bank</i>, No. CIV.A. 09-172 FLW, 2011 WL 5921388 (D. N.J. Nov. 28, 2011) (noting that New Jersey courts have suggested that a tort claim premised on a legal duty independent from the duties arising from the contract will survive the ELD).</p> <p><i>Capitalplus Equity, LLC v. Prismatic Dev. Corp.</i>, No. 07-321, 2008 WL 2783339 (D. N.J. July 16, 2008) (ELD applies to contracts for services).</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p><i>Vukovich v. Haifa, Inc.</i>, Civil Action No. 03-737, 2007 WL 655597 (D. N.J. Feb. 27, 2007) (buyer claimed seller of building materials committed fraud when it did not deliver what it promised to deliver; court allowed fraud in the inducement claim to proceed despite adoption of ELD in New Jersey).</p> <p><i>Titan Stone, Tile & Masonry, Inc. v. Hunt Constr. Group, Inc.</i>, Civ. No. 05-3362 (GEB), 2007 WL 174710 (D. N.J. Jan. 22, 2007) (panelized wall subcontractor’s claim against owner’s engineer for fraud and conversion barred by ELD).</p> <p><i>Wärtsilä NSD N. America, Inc. v. Hill Int’l, Inc.</i>, 342 F. Supp. 2d 267 (D. N.J. 2004) (ELD does not bar contractor’s action against engineering firm for negligent misrepresentation and negligent hiring in case in which employee listed fraudulent credentials in resume).</p> <p><i>Conforti & Eisele, Inc. v. John C. Morris Assocs.</i>, 175 N.J. Super. 341, 418 A.2d 1290 (1980) (third party contractor allowed to sue design professional who prepared mechanical plans under tort theory).</p>
New Mexico	No, if claim is professional malpractice asserted by client in contractual privity; unclear as to non-clients	<p><i>Farmers Alliance Mut. Ins. Co. v. Naylor</i>, 480 F. Supp. 2d 1287 (D. N.M. 2007) (holding fire investigator was a professional and therefore subject to a professional standard of care, such that he could not invoke the economic loss rule’s bar against a claim for professional negligence).</p> <p><i>Farmers Alliance Mut. Ins. Co. v. Naylor</i>, 452 F. Supp. 2d 1167 (D. N.M. 2006) (federal court predicts New Mexico Supreme Court will apply ELD to contracts for services and contracts for sale of goods when the parties to an agreement are sophisticated commercial entities; however, ELD will not bar a claim for professional malpractice).</p> <p><i>Adobe Masters, Inc. v. Downey</i>, 118 N.M. 547, 883 P.2d 133 (1994) (architect’s client can sue architect in either tort or in contract).</p>

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State	Does ELD bar tort claims against DP?	Case Citation
New York	No, if relationship between design professional and third party is “functional equivalent to privity of contract” or if there is property damage beyond the project property.	<p><i>Dormitory Auth. of State v. Samson Const. Co.</i>, 137 A.D.3d 433, 27 N.Y.S.3d 114 (N.Y. App. Div. 2016) (finding factual dispute existed as to whether project was so affected with the public interest that the architect’s failure to comply with professional standards could result in catastrophic consequences and noting that the settling of a building over a few years, along with the destruction of road beds, sidewalks, sewers and water pipes in a crowded city does not need to be a sudden event to still amount to a catastrophe).</p> <p><i>Carpenter v. Plattsburgh Wholesale Homes, Inc.</i>, 83 A.D.3d 1175, 921 N.Y.S.2d 654 (N.Y. App. Div. 2011) (holding ELD barred purchasers’ negligence claim against vendors, where purchasers failed to allege that they sustained a personal injury as the result of vendors’ negligence, as opposed to merely contractually based damages under a contract for the purchase of a modular home).</p> <p><i>Castle Village Owners Corp. v. Greater N.Y. Mut. Ins. Co.</i>, 58 A.D.3d 178, 868 N.Y.S.2d 189 (N.Y. App. Div. 2008) (design professional may be subject to tort liability for failure to exercise reasonable care, irrespective of contractual duties).</p> <p><i>Trs. of Columbia Univ. v. Gwathmey Siegel & Assocs. Architects</i>, 192 A.D.2d 151, 601 N.Y.S.2d 116 (N.Y. App. Div. 1993) (public policy exception to ELD permits recovery under a tort theory because “separate tort liability [] can arise independently of the contractual relationship between the parties where the nature of the performance called for is affected with a significant public interest and failure to perform the service carefully and competently can have catastrophic consequences”).</p> <p><i>Bri-Den Constr. Co., Inc. v. Kapell & Kostow Architects</i>, 56 A.D.3d 355, 867 N.Y.S.2d 437 (N.Y. App. Div. 2008) (dismissing action for lack of contractual privity or functional equivalent of privity between contractor and architect).</p> <p><i>Weiss v. Polymer Plastics Corp.</i>, 21 A.D.3d 1095, 802 N.Y.S.2d 174 (N.Y.</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>App. Div. 2005) (ELD barred homeowner claim for defective stucco that damaged substrate; tort recovery in strict products liability and negligence against a manufacturer not available to downstream purchaser where losses flow from damage to the property that was the subject of the contract and where personal injury not alleged).</p> <p><i>ECOR Solutions, Inc. v. Malcolm Pirnie, Inc.</i>, No. 1:02-cv-01103NAMDRH, 2005 WL 1843253 (N.D. N.Y. July 29, 2005) (contractor allowed to proceed in tort against engineering firm on theory that contractor has a relationship with firm that was “functional equivalent of privity” of contract).</p> <p><i>QB, LLC v. A/R Architects, LLP</i>, 19 A.D.3d 675, 797 N.Y.S.2d 552 (2005) (client could sue architect in tort for failing to determine proper code provisions for maximum building height and set-backs).</p> <p><i>Hodgson, Russ, Andrews, Woods & Goodyear, LLP v. Isolatek Int’l Corp.</i>, 300 A.D.2d 1051, 752 N.Y.S.2d 767 (N.Y. App. Div. 2002) (ELD would ordinarily preclude tort recovery against contractor and consultant, but damage occurred as result of mold and fungus, which caused property damage, is recoverable in tort).</p> <p><i>City of Kingston Water Dep’t v. Charles A. Manganaro Consulting Eng’rs, P.C.</i>, No. 01-CV-1317, 2003 WL 355763 (N.D.N.Y. 2003) (engineer defendant can be held liable in tort to client for economic losses under theory of malpractice and may seek contribution from other engineering firms who may be at fault).</p> <p><i>Hydro Investors, Inc. v. Trafalgar Power Inc.</i>, 227 F.3d 8 (2d Cir. 2000) (ELD does not bar tort recovery of economic damages from engineer when liability arose from breach of professional duty).</p> <p><i>17 Vista Fee Assocs. v. Teachers Ins. & Annuity Ass’n of Am.</i>, 259 A.D.2d 75, 693 N.Y.S.2d 554 (1999) (seller of building may pursue tort claim against mechanical engineer it hired to design smoke purge system even though losses</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>were purely economic).</p> <p><i>Joseph v. David M. Schwarz/Architectural Servs., P.C.</i>, 957 F. Supp. 1334 (S.D. N.Y. 1997) (ELD bars negligence claim against design professional when parties are in privity).</p> <p><i>Strategem Dev. Corp. v. Heron Int'l N.V.</i>, 153 F.R.D. 535 (S.D. N.Y. 1994) (construction manager could sue architect for economic loss, even in absence of privity of contract, because the relationship was the “functional equivalent” to privity and thus imposed a duty on the architect).</p>
North Carolina	No.	<p><i>Wachs Technical Servs., Ltd. v. Praxair Distrib., Inc.</i>, No. COA11-633, 2012 WL 945215 (N.C. Ct. App. Mar. 20, 2012) (referencing <i>Moorman</i> (91 Ill. 2d 69, 61 Ill. Dec. 746, 435 N.E.2d 443 (1982))), affirmed trial court holding that the economic loss rule barred plaintiff, a welding contractor, from asserting a claim for negligent misrepresentation).</p> <p><i>Akzo Nobel Coatings Inc. v. Rogers</i>, No. 11-CVS-3013, 2011 WL 5316772 (N.C. Ct. App., Nov. 3, 2011) (relying on <i>ACS Partners, LLC v. American Group, Inc.</i>, No. 3:09-cv-464, 2010 WL 883663 (W.D.N.C. Mar. 5, 2010)), held tort claims for violation of non-compete and non-solicitation agreements are barred by the ELD).</p> <p><i>Lord v. Customized Consulting Specialty, Inc.</i>, 182 N.C. App. 635, 643 S.E.2d 28 (2007) (homeowner sued truss designer in tort for negligent design; court held claim not barred by ELD even though parties had no contract).</p> <p><i>Pompano Masonry Corp. v. HDR Architecture, Inc.</i>, 165 N.C. App. 401, 598 S.E.2d 608 (2004) (subcontractor allowed to sue project expediter in tort; no express discussion of ELD).</p> <p><i>Ellis-Don Constr., Inc. v. HKS, Inc.</i>, 353 F. Supp. 2d 603 (M.D. N.C. 2004) (court rejects economic loss argument and allows contractor’s negligence claim against consultant despite absence of privity; predicts that NC Supreme</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>Court will refuse to apply ELD to service contracts).</p> <p><i>Davidson & Jones, Inc. v. County of New Hanover</i>, 41 N.C. App. 661, 255 S.E.2d 580 (1979) (without discussing ELD, holds that claimants seeking to recover economic damages can maintain negligent misrepresentation action against design professional absent privity).</p>
North Dakota	Unclear. No opinion addressing application of ELD to DP service contracts, but tort claims are barred against general contractor.	<p><i>Arena Holdings Charitable, LLC v. Harman Prof., Inc.</i>, No. 14-1853, 2015 WL 2115857 (8th Cir. May 7, 2015) (holding that ELD barred owner’s tort claim for damage to other property and defective product).</p> <p><i>Leno v. K & L Homes, Inc.</i>, 2011 ND 171, 803 N.W.2d 543 (2011) (rejecting homeowners’ arguments that newly constructed home was a “product” for purposes of product liability action and further holding ELD precluded lawsuit against the general contractor for purely economic damages).</p> <p><i>Dakota Gasification Co. v. Pascoe Bldg. Sys.</i>, 91 F.3d 1094 (8th Cir. 1996) (holding that North Dakota’s ELD under UCC bars tort claims for economic losses brought by plant owner against contractor who supplied defective building, finds that “thrust” of the contract was the sale of goods).</p> <p><i>Tioga Public Sch. Dist. #15 v. U.S. Gypsum Co.</i>, 984 F.2d 915 (8th Cir. 1993) (ELD did not bar school district’s tort claim against supplier of asbestos-containing material because tiles had become friable and released asbestos).</p>
Ohio	Yes, if no contractual relationship between litigants; negligent misrepresentation claims are not barred.	<p><i>J & H Reinforcing & Structural Erectors, Inc. v. Wellston City Sch. Dist.</i>, No. 09CA8, 2010 WL 2172380 (Ohio Ct. App., May 20, 2010) (in a lawsuit brought by subcontractor against school district and general contractor alleging defendants administered school construction project in a negligent manner, holding that sufficient nexus may have existed to serve as a substitute for privity and affirmatively resolving appellate court split on whether a plaintiff can rely upon “excessive control” as a substitute for privity).</p> <p><i>Chapman v. Ohio Dep’t of Youth Servs.</i>, No. 11AP-268, 2011 WL 4477330</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>(Ohio Ct. App., Sept. 27, 2011) (holding ELD barred employment lawsuit against State of Ohio for negligence).</p> <p><i>Digiknow, Inc. v. PKXL Cards, Inc.</i>, No. 96034, 2011 WL 2899600 (Ohio Ct. App., July 21, 2011) (in a lawsuit relating to computer design services, holding ELD barred customer’s negligence claim because claim sounded in tort and plaintiff only sought recovery of damages for economic loss).</p> <p><i>Campbell v. Krupp</i>, No. L-10-1224, 2011 WL 2175009 (Ohio Ct. App., June 3, 2011) (holding ELD precludes plaintiffs from pursuing tort claims against title abstracters absent privity of contract).</p> <p><i>Eysoldt v. ProScan Imaging</i>, 194 Ohio App. 3d 630, 957 N.E.2d 780 (2011) (as a matter of first impression, holding that ELD did not preclude website account holder and account holder’s family from suing website domain name registrar for invasion of privacy and conversion after holder’s accounts were transferred to third party).</p> <p><i>Waverly City Sch. Dist. Bd. of Educ. v. Triad Architects, Inc.</i>, No. 08AP-329, 2008 WL 5423269 (Ohio Ct. App., Dec. 30, 2008) (in the absence of privity of contract or a sufficient nexus that can serve as a substitute for contractual privity, no cause of action exists in tort to recover economic damages against design professionals involved in drafting plans and specifications).</p> <p><i>Int’l Fid. Ins. Co. v. TC Architects, Inc.</i>, No. 23112, 2006 WL 2683439 (Ohio Ct. App., Sept. 20, 2006) (court awarded summary judgment to architecture firm where surety for construction firm sued architecture firm for professional negligence, negligent misrepresentation, breach of implied warranty and breach of assumed duty; court rejected notion that the excessive control doctrine could substitute for contractual privity and held that in the absence of a contract or a substitute for contractual privity, there is no general duty to protect another party from purely economic harm).</p> <p><i>Spring Creek Condo. Ass’n v. Colony Dev. Corp.</i>, No. 07AP-671, 2008 WL</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>802729 (Ohio Ct. App., Mar. 27, 2008) (affirming dismissal of tort claims by purchasers of condominium units against architect for purely economic losses because no privity of contract was present and the architect owed no duty of care to the plaintiffs).</p> <p><i>Wagner-Smith Co. v. Ruscilli Constr. Co.</i>, 139 Ohio Misc. 2d 101, 861 N.E.2d 612 (Ct. Common Pleas 2006) (electrical contractor’s claim of tortious interference with contract with university, asserted against construction manager, barred by ELD).</p> <p><i>Mosser Constr., Inc. v. W. Waterproofing Co.</i>, No. L-05-1164, 2006 WL 1944934 (Ohio Ct. App., July 14, 2006) (contractor not allowed to sue architect in tort for alleged negligent supervision of construction).</p> <p><i>J.F. Meskill Enters., LLC v. Acuity</i>, No. 05-CV-2955, 2006 WL 903207 (N.D. Ohio, April 7, 2006) (negligent misrepresentation claims are not barred by ELD in Ohio).</p> <p><i>Corporex Dev. & Constr. Mgmt., Inc., v. Shook, Inc.</i>, 106 Ohio St. 3d 412, 835 N.E.2d 701 (2005) (owner cannot sue subcontractor in tort to recover economic losses).</p> <p><i>Ohio Plaza Assocs., Inc. v. Hillsboro Assocs.</i>, No. 96CA898, 1998 WL 394370 (Ohio Ct., App., June 29, 1998) (discussion of “sufficient nexus” exception to ELD).</p> <p><i>Clevecon, Inc. v. Northeast Ohio Reg’l Sewer Dist.</i>, 90 Ohio App. 3d 215, 628 N.E.2d 143 (1993) (contractor can sue tunnel designer for professional malpractice, when designer’s control over worksite caused contractor to incur economic losses; court holds “sufficient nexus” exception to ELD replaces need for privity between parties).</p> <p><i>Tomb & Assocs., Inc. v. Wagner</i>, 82 Ohio App. 3d 363, 612 N.E.2d 468 (1992) (holding contractor’s claim for economic loss against architect frivolous where</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>there was no contract between contractor and architect and no independent tort duty).</p> <p><i>Floor Craft Floor Covering, Inc. v. Parma Cmty. Gen. Hosp. Ass'n</i>, 54 Ohio St. 3d 1, 560 N.E.2d 206 (1990) (in the absence of contractual privity, no cause of action exists to recover economic damages against design professional who drafted plans and specs).</p>
Oklahoma	Unclear, because case does not discuss ELD.	<p><i>Lexington Ins. Co. Newbern Fabricating Newbern Fabricating Doveland Eng'g Co. Baucom Concrete Constr. v. Commercial Metals Co.</i>, No. 14-CV-0610-CVE-TLW, 2016 WL 6495570 (N.D. Okla. Nov. 2, 2016) (analyzing <i>Pierce Associates, Inc. v. Nemours Foundations</i>, 865 F.2d 530 (3d Cir. 1988) in context of Oklahoma law, stating “there is no indication that the Oklahoma Supreme Court would limit the ability of an owner to sue a subcontractor for negligence to situations in which there is privity of contract, and even if it were to do so, it is possible an exception would be made for cases, such as this one, which involve property damage”).</p> <p><i>Boren v. Thompson & Assoc.</i>, 2000 OK 3, 999 P.2d 438 (2000) (subcontractor sued architect hired to oversee construction for failing to ensure that general contractor had secured payment bond before certifying payments to contractor; claim allowed to proceed; no explicit mention of ELD).</p>
Oregon	ELD will bar claim if no “special relationship” exists between litigants. Oregon court of appeals defines “economic loss” very narrowly; deterioration to building because of defective construction is property damage and not “economic loss.”	<p><i>Waxman v. Waxman & Assocs., Inc.</i>, 224 Or. App. 499, 198 P.3d 445 (2008) (holding ELD did not bar plaintiff-homeowners’ negligence claims against developer for construction defects because physical damage to property caused by allegedly negligent construction was not a purely economic loss).</p> <p><i>Harris v. Suniga v. Harvey Cain Constr., Inc.</i>, 344 Or. 301, 180 P.3d 12 (2008) (ELD does not bar negligence claim against builder because property damage is not “economic loss”). This is the review and affirmation of the previous case <i>Harris v. Suniga v. Harvey Cain Constr., Inc.</i>, 209 Or. App. 410, 149 P.3d 224 (2006), <i>review granted</i>, 342 Or. 644, 158 P.3d 507 (2007)</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>(homeowner allowed to sue builder for negligent construction; damage to house deemed “property damage” and not “economic loss”).</p> <p><i>Bunnell v. Dalton Constr., Inc.</i>, 210 Or. App. 138, 149 P.3d 1240 (2006) (homeowner allowed to sue builder for negligent construction; damage to house deemed “property damage” and not “economic loss”).</p> <p><i>Oregon Steel Mills, Inc. v. Coopers & Lybrand, LLP</i>, 336 Or. 329, 83 P.3d 322 (2004) (steel mill could sue accountant in tort to recover economic losses because of “special relationship” that existed between them).</p> <p><i>Int’l Paper Co. v. TCR Northwest 1993, Inc.</i>, No. Civ. 02-496 JE, 2004 WL 1173182 (D. Or. May 25, 2004) (ELD bars negligent construction claim against subcontractors, citing <i>Jones v. Emerald Pac. Homes, infra</i>).</p> <p><i>Jones v. Emerald Pac. Homes, Inc.</i>, 188 Or. App. 471, 71 P.3d 574 (2003), <i>review denied</i>, 336 Or. 125 (2003) (upholding dismissal of homeowners’ negligence claim against contractor for breach of duties imposed by contract absent special relationship; court does not discuss ELD).</p> <p><i>Onita Pac. Corp. v. Trs. of Bronson</i>, 315 Or. 149, 843 P.2d 890 (1992) (discussion of ELD and its application to legal malpractice claims; states in <i>dicta</i> that relationship between design professionals and their clients may give rise to a duty of care, the breach of which could support a claim in negligence for purely economic harm).</p>
Pennsylvania	Negligence claims are barred; negligent misrepresentation claims are not barred.	<i>Elliott-Lewis Corp. v. Skanska USA Bldg., Inc.</i> , No. CV 14-03865, 2016 WL 2346737 (E.D. Pa. May 4, 2016) (holding that <i>Bilt-Rite</i> exception does not apply to fourth-party defendant, CTB, retained to troubleshoot one aspect of the project due to improper installation, noting that the dispositive issue in determining Section 552’s applicability is whether the service CTB delivered was to provide information in the same manner as an architect or design professional: “As a contractor hired after the commencement of the Project to repair—or “balance”—the cooling system, CTB does not fall into that

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>category.”).</p> <p><i>Excavation Techs., Inc. v. Columbia Gas Co.</i>, 604 Pa. 50, 985 A.2d 840 (2009) (appellate court properly dismissed contractor’s negligent misrepresentation claim against gas company, because legislature did not intend for public utility companies to be liable for economic harm caused by an inaccurate response under the One Call Act and did not provide a private cause of action for economic losses).</p> <p><i>Waynesborough Country Club of Chester County v. Diedrich Niles Bolton Architects, Inc.</i>, No. 07-155, 2008 WL 687485 (E.D. Pa. 2008) (architect’s claims for common law contribution and indemnity against general contractor allowed to proceed for recovery of property damage only; claims for economic damages barred by ELD).</p> <p><i>McElwee Group, LLC v. Mun. Auth. of Borough of Elverson</i>, 476 F. Supp. 2d 472 (E.D. Pa. 2007) (contractor’s fraud claim against engineer not barred by ELD, because Pennsylvania allows ELD claims under Restatement (Second) Torts § 552).</p> <p><i>Retail Brand Alliance, Inc. v. Rockvale Outlet Ctr., LP</i>, Civil Action No. 06-01857, 2007 WL 403885 (E.D. Pa. Jan. 31, 2007) (<i>Bilt-Rite, infra</i>, narrowly construed to allow negligent misrepresentation claim only against architect or engineer with whom plaintiff had no contractual privity; not applicable to lessee’s claim against lessor).</p> <p><i>Bilt-Rite Contractors v. The Architectural Studio</i>, 581 Pa. 454, 866 A.2d 270 (2005) (carving out exception to ELD and holding that ELD does not bar contractor’s negligent misrepresentation claim against architect who was not in privity when contractor reasonably relied upon defective plans and specifications).</p> <p><i>Rock v. Voshell</i>, 397 F. Supp. 2d 616 (E.D. Pa. 2005) (ELD bars plaintiffs from recovering economic damages in tort when their entitlement flows only</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>from a contract).</p> <p><i>David Pflumm Paving & Excavation, Inc. v. Found. Servs. Co.</i>, 2003 Pa. Super. 41, 816 A.2d 1164 (2003) (excavation subcontractor’s negligence and misrepresentation claims against township’s inspector, architect and engineer dismissed under ELD).</p> <p><i>Rapidigm, Inc. v. ATM Mgmt. Servs. LLC</i>, No. GD-02-17261, 2003 WL 23146480 (Pa. Com. Pl., July 10, 2003) (ELD precluded negligence claim against computer consultant).</p> <p><i>Blue Mountain Mushroom Co. v. Monterey Mushroom</i>, 246 F. Supp. 2d 394 (E.D. Pa. 2002) (claims for negligent misrepresentation barred by ELD).</p> <p><i>Sun Co., Inc. (R & M) v. Badger Design & Constructors, Inc.</i>, 939 F. Supp. 365 (E.D. Pa. 1996) (refinery not allowed to sue construction management firm for negligence under ELD).</p>
Rhode Island	Not in consumer transactions, only in cases of commercial entities with equal bargaining power.	<p><i>Franklin Grove Corp. v. Drexel</i>, 936 A.2d 1272 (R.I. 2007) (application of ELD is limited to cases involving commercial entities).</p> <p><i>Triton Realty L.P. v. Almeida</i>, No. PC 04-2335, 2006 WL 828733 (R.I. Mar. 29, 2006) (Supreme Court has recognized the ELD, but limits its application to disputes involving commercial entities yielding equal bargaining power; ELD does not apply in consumer transactions).</p> <p><i>Anderson v. Garafalo & Assocs., Inc.</i>, No. C.A. PC 1991-8501, 2003 WL 23195552 (R.I. Nov. 14, 2003) (engineer could raise lack of privity as defense to plaintiff’s negligence claim).</p> <p><i>Rousseau v. K.N. Constr., Inc.</i>, 727 A.2d 190 (R. I. 1999) (purchaser of real property allowed to sue engineer hired by vendors for negligence in performing percolation tests).</p> <p><i>Forte Bros., Inc. v. Nat’l Amusements, Inc.</i>, 525 A.2d 1301 (R.I. 1987)</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		(contractor allowed to sue architect/site engineer for negligent performance of oversight duties).
South Carolina	Not necessarily. Design professionals may have a duty separate and distinct from contractual duties such that ELD may not prohibit a tort action. <i>Koontz</i> decision suggests South Carolina uses the independent duty analysis to determine whether to apply the ELD.	<p><i>Sherman Constr. Co., Inc. v. NGM Ins. Co.</i>, No. 3:15-CV-3189-JFA, 2016 WL 4736046 (D.S.C. Sept. 12, 2016) (finding sufficient facts alleged regarding engineering services to fall within the “special relationship” ELD exception to support negligence claim).</p> <p><i>Koontz v. Thomas</i>, 333 S.C. 702, 511 S.E.2d 407 (1999) (Client sued architectural firm for professional negligence, negligent misrepresentation and breach of contract. The Court of Appeals affirmed trial court, holding that ELD barred professional negligence claim; applying independent duty analysis, the court observed that ELD turns on the determination of the source of the duty plaintiff claims the defendant owed -- a breach of a duty that arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie; however, a breach of a duty arising independently of any contract duties between the parties may support a tort action.).</p> <p><i>Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.</i>, 320 S.C. 49, 463 S.E.2d 85 (1995) (contractor allowed to sue design professional for economic losses because design professional has duty not to negligently design or supervise project).</p> <p><i>Beachwalk Villas Condo. Ass’n, Inc. v. Martin</i>, 305 S.C. 144, 406 S.E.2d 372 (1991) (architect may be held liable to homebuyer for negligence in connection with home construction even when no contractual privity exists between homebuyer and architect).</p>
South Dakota	Unclear. While 1993 case suggests no bar for design professional malpractice claims, 1994 construction case imposed	<i>Diamond Surface, Inc. v. State Cement Plant Comm’n</i> , 1998 S.D. 97, 583 N.W.2d 155 (1998) (Highway contractor brought action against state-owned cement supplier, alleging negligence, breach of implied warranty of fitness for a particular purpose, breach of Uniform Commercial Code’s (UCC) obligation

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	bar under ELD.	<p>of good faith and fair dealing, fraud and deceit, and violation of industry standards. On appeal from a directed verdict against contractor, the Supreme Court held damages sought by contractor for its negligence claim were consequential damages governed by UCC, rather than economic loss rule.).</p> <p><i>Fisher Sand & Gravel Co. v. State by & through South Dakota DOT</i>, 1997 S.D. 8, 558 N.W.2d 864 (1997) (reversing jury’s award of negligence damages where only duties alleged to have been breached were contractual, distinguishing <i>Mid-Western, infra</i>, without any reference to ELD).</p> <p><i>City of Lennox v. Mitek Indus., Inc.</i>, 519 N.W.2d 330 (S.D. 1994) (applying ELD to preclude tort claim against subcontractor based on allegedly negligent design).</p> <p><i>Mid-Western Elec., Inc. v. DeWild Grant Reckert & Assocs. Co.</i>, 500 N.W.2d 250 (S.D. 1993) (privity not required to sustain claim for professional negligence; electrical subcontractor allowed to sue engineering firm who prepared specifications and gave advice regarding installation of fire detection system).</p>
Tennessee	Yes, as to ordinary negligence; no, as to negligent misrepresentation.	<p><i>SPO Go Holdings, Inc. v. W & O Constr. Co., Inc.</i>, No. 1-16-0010, 2016 WL 2607005 (M.D. Tenn. May 6, 2016) (denying motion to dismiss golf course owner’s negligence claim against construction company, which extended sewer line that ran through golf course, reasoning that ELD did not bar claim even though owner was seeking lost profits because owner also claimed it suffered substantial damage to its property as result of company’s negligence).</p> <p><i>Acuity v. McGhee Eng’g, Inc.</i>, 297 S.W.3d 718 (Tenn. Ct. App. 2008) (holding negligent misrepresentation claim against design engineer was not barred under ELD).</p> <p><i>Amsouth Erectors, LLC v. Skaggs Iron Works, Inc.</i>, No. W2002-01944-COA-R3-CV, 2003 WL 21878540 (Tenn. Ct. App. Aug. 5, 2003) (subcontractor’s claim against construction management firm dismissed because of failure to</p>

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		<p>prove negligent misrepresentation, an exception to ELD).</p> <p><i>United Textile Workers of Am., AFL-CIO v. Lear Siegler Seating Corp.</i>, 825 S.W.2d 83 (Tenn. Ct. App. 1990) (in non-design professional case, union’s claims against factory owner for nonpayment of wages dismissed, because there can be no recovery for purely economic losses resulting from defendant’s negligence).</p> <p><i>John Martin Co., Inc. v. Morse/Diesel, Inc.</i>, 819 S.W.2d 428 (Tenn. 1991) (subcontractor can sue construction manager for negligent misrepresentation; no privity required).</p>
Texas	Probably, so long as the parties are in privity. ELD does not apply to claims of fraud in the inducement.	<p><i>A & H Properties P’ship v. GPM Eng’g</i>, No. 03-13-00850-CV, 2015 WL 9435974 (Tex. App. Dec. 23, 2015) (Court of Appeals applied economic loss rule to negligence claim brought by property owner against project designer hired by general contractor, with whom it had no contract, reasoning that a ruling otherwise would disrupt the risk allocations of the vertical chain of contracts, particularly where property owner did not assert or establish any personal injury or property damage separate from the economic loss of failing to receive the benefit of its bargain with its general contractor).</p> <p><i>McCaig v. Wells Fargo Bank (Texas), N.A.</i>, 788 F.3d 463 (5th Cir. 2015) (holding economic loss rule does not bar a plaintiff’s Texas Deceptive Trade Practices Act claims against loan servicer).</p> <p><i>LAN/STV v. Martin K. Eby Constr. Co., Inc.</i>, 57 Tex. Sup. Ct. J. 816, 435 S.W.3d 234 (2014) (court held that economic loss rule does not allow a general contractor to recover increased costs of performing its construction contract with owner in tort against project architect for errors in plans and specifications).</p> <p><i>Peterson Group Inc. v. PLTQ Lotus Group, LP</i>, 417 S.W.3d 46 (Tex. Ct. App. 2013) (in suit arising from alleged breach of development agreement between plaintiff developer and defendant investor, court held that ELD did not bar</p>

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		<p>plaintiff’s fraud claim and stated that “the duty not to commit fraud is different from and independent of the duty to comply with the terms of a contract”).</p> <p><i>Turnbow v. PNC Mortgage</i>, Civil Action No. 4:12-CV-2835, 2013 WL 5410075 (S.D. Tex. Sept. 25, 2013) (lawsuit by plaintiff-homeowner against defendant-mortgagee, who began foreclosure proceedings after purportedly accepting loan modification agreement; court held that ELD barred plaintiffs’ fraud/intentional misrepresentation and constructive fraud/negligent misrepresentation claims because damages were economic and arose from claims dependent upon the existence of a contract).</p> <p><i>Arlington Home, Inc. v. Peak Envtl. Consultants, Inc.</i>, 361 S.W.3d 773 (Tex. Ct. App. 2012), <i>review denied</i> (Jan. 18, 2013) (holding economic loss rule barred home purchaser’s negligence claims against mold assessment consultant, as only duty allegedly breached was a duty created by contract).</p> <p><i>P. McGregor Enters., Inc. v. Hicks Constr. Group, LLC</i>, 420 S.W.3d 45 (Tex. Ct. App. 2012) (economic loss rule barred project owner’s negligence claim against subcontractor based on alleged faulty work; project owner’s cause of action was one for breach of contract against general contractor.).</p> <p><i>Sharyland Water Supply Corp. v. City of Alton</i>, 354 S.W.3d 407 (Tex. 2011), <i>rehearing denied</i> (Dec. 16, 2011) (in lawsuit brought by water supply corporation of breach of contract claim against city and negligence claim against city’s contractors based on allegedly improper construction of residential sewer lines, holding ELD did not bar corporation’s negligence claim against the contractors because parties were not in privity and the contractor caused property damage unrelated to its contract).</p> <p><i>Barzoukas v. Found. Design, Ltd.</i>, 363 S.W.3d 829 (Tex. Ct. App. 2012) (stating that “economic loss rule’s legal boundaries are not entirely settled” and remanding for further evidence to determine whether negligence claims made against contractor and engineer are foreclosed by the economic loss</p>

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		<p>rule).</p> <p><i>Matlock Place Apts., L.P. v. Druce</i>, 369 S.W.3d 355 (Tex. Ct. App. 2012) (reaffirming rule that the economic loss rule does not apply to claims for fraudulent inducement and, thus, economic loss rule did not preclude recovery of damages for apartment complex purchasers' statutory fraud claim against vendors based on fraudulent inducement).</p> <p><i>Archon Invs. v. Great Am. Lloyds Ins. Co.</i>, 174 S.W.3d 334 (Tex. Ct. App. 2005) (ELD does not apply to insurance company's duty to defend its insured).</p> <p><i>Goose Creek Consol. Indep. Sch. Dist. v. Jarrar's Plumbing, Inc.</i>, 74 S.W.3d 486 (Tex. Ct. App. 2002), <i>review denied</i> (2002) (school district's tort claim against architect and contractor for plumbing defects barred by ELD).</p> <p><i>Coastal Conduit & Ditching, Inc. v. Noram Energy Corp.</i>, 29 S.W.3d 282 (Tex. Ct. App. 2000) (excavator's negligence against gas line operator barred by ELD).</p> <p><i>Southwestern Bell Tel. Co. v. DeLanney</i>, 809 S.W.2d 493 (Tex. 1991) (party may only maintain a tort action, in addition to a breach of contract action, if the tort action is independent of the contract action; court looks to nature of the damages in determining whether an independent tort exists).</p>
Utah	<i>CCI</i> and <i>SME</i> cases suggest ELD bar, although subsequent case law not clear.	<p><i>Salt Lake City Corp. v. ERM-West, Inc.</i>, No. 2:11-CV-1174 TS, 2013 WL 5873292 (D. Utah Oct. 30, 2013) (plaintiffs entered into professional services agreement with defendants to coordinate environmental remediation project and ensure compliance; court held that ELD barred plaintiffs' claims for breach of agency duties because plaintiffs failed to demonstrate that defendants breached any duties independent of the contract).</p> <p><i>Sunridge Dev. Corp. v. RB&G Eng'g, Inc.</i>, 2010 UT 6, 230 P.3d 1000 (2010) (ELD barred negligence claims against engineering firm arising from an alleged inadequate analysis of the geologic condition of a development site;</p>

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		<p>exception to ELD for recognized independent duty of care does not apply; court rejected petitioner’s argument that because an engineer provides specific and complicated information, engineer should be subject to a duty outside of any contract and held that since there is no independent duty to refrain from acting negligently, petitioner’s argument that engineer has an independent duty to petitioners that overcomes the existence of the contracts, was misplaced and unpersuasive).</p> <p><i>Davencourt at Pilgrims Landing Homeowners Ass’n v. Davencourt at Pilgrims Landing, LC</i>, 2009 UT 65, 221 P.3d 234 (holding that the economic loss rule precluded claims of negligence <i>per se</i> and nuisance against Defendants and the claim of negligence against the Builder, but the HOA’s claims of negligence and negligent misrepresentation against the Developer and Woolstenhulme were proper because they owed an independent duty to the HOA during their period of control of the Townhome Owners’ Association).</p> <p><i>Anapoell v. Am. Express Bus. Finance Corp.</i>, No. 2:07-CV-198-TC, 2007 WL 4270548 (D. Utah Nov. 30, 2007), <i>affirmed</i>, No. 08-4114, 2009 WL 766532 (10th Cir. Mar. 24, 2009) (doctor’s tort claims against lessor of medical equipment barred by ELD).</p> <p><i>Associated Diving & Marine Contractors, LC v. Granite Constr. Co.</i>, No. 2:01CV330 DB, 2003 WL 25424908 (D. Utah July 11, 2003) (court held tort claims for fraud, negligent misrepresentation, fraudulent concealment and fraudulent nondisclosure were all barred by ELD, because each claim alleged breach of a duty encompassed by the subject matter of the contract).</p> <p><i>Bower v. Stein Eriksen Lodge Owners Ass’n, Inc.</i>, 201 F. Supp. 2d 1134 (D. Utah 2002) (ELD did not bar unit owners’ negligent misrepresentation claim against condo association).</p> <p><i>Hermansen v. Tasulis</i>, 2002 UT 52, 48 P.3d 235 (2002) (purchaser of real estate sued broker for fraudulent nondisclosure; claim not barred by ELD).</p>

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		<p><i>SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc.</i>, 2001 UT 54, 28 P.3d 669 (2001) (applying ELD to preclude negligent misrepresentation claim by subcontractor against members of design team).</p> <p><i>American Towers Owners Ass'n v. CCI Mech.</i>, 930 P.2d 1182 (Utah 1996) (ELD bars unintentional tort claims against contractors and architects).</p>
Vermont	Yes, in non-DP context; however, no cases have been reported concerning design professionals.	<p><i>Long Trail House Condo. Ass'n v. Engelberth Constr., Inc.</i>, 192 Vt. 322, 59 A.3d 752 (2012) (holding economic loss rule bars negligence claim by homeowner association against general contractor).</p> <p><i>Hunt Constr. Group, Inc. v. Brennan Beer Gorman/Architects, P.C.</i>, 607 F.3d 10 (2d Cir. 2010) (certifying two questions to Vermont Supreme Court: (1) Does ELD bar a contractor from seeking purely economic damages against design professionals who allegedly provided negligent professional services in violation of the design professionals' contractual obligations with a mutual counterparty? (2) Does the economic loss doctrine apply to claims of negligent misrepresentation?).</p> <p><i>Springfield Hydroelectric Co. v. Copp</i>, 172 Vt. 311, 779 A.2d 67 (2001) (owner of hydroelectric facility sued purchasing agent for negligence; claim barred by ELD).</p>
Virginia	Yes, if design professional owes no independent common law duty to claimant.	<p><i>McConnell v. Servinsky Eng'g, Inc., PLLC</i>, 22 F. Supp. 3d 610 (W.D. Va. 2014) (granting defendant-engineer's motion to dismiss plaintiff's claim for breach of professional standard of care, court found that plaintiff was limited to a contract claim because he was alleging only economic losses; court went on to find that because law of contracts provides sole remedy, privity is a requirement for a viable claim. "An engineer performing a professional service pursuant to a contract does not also assume an independent tort duty.").</p> <p><i>Goodrich Corp. v. BaySys Techs., LLC</i>, 873 F. Supp. 2d 736 (E.D. Va. 2012) (in a lawsuit by cabinet maker against remodeling service provider, holding the</p>

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		<p>economic loss rule barred claim of tortious interference with contract).</p> <p><i>Kaltman v. All American Pest Control, Inc.</i>, 281 Va. 483, 706 S.E.2d 864 (2011) (holding that negligence and tort claims brought against pest control company and its employee were barred by ELD because losses suffered as a result of the breach of a duty assumed only by agreement, rather than a duty imposed by law, remain the sole province of the law of contracts).</p> <p><i>Travelers Prop. Cas. Co. of Am. v. Premier Project Mgmt. Group, LLC</i>, 78 Va. Cir. 315, 2009 WL 7339868 (2009) (insurer sued property management company after fire damaged retirement complex; management company’s third party tort claim against contractor barred by ELD because claimed damage was purely economic loss).</p> <p><i>Gonella v. Lumbermens Mut. Cas. Co.</i>, 64 Va. Cir. 229, 2004 WL 836031 (2004) (court held ELD barred claims of negligence where damages were purely economic, unless injury results from contractor’s creation of unreasonably dangerous situation from which a separate duty of care arises).</p> <p><i>Hanover Ins. Co. v. Corrpro Cos., Inc.</i>, 312 F. Supp. 2d 816 (E.D. Va. 2004) (contractor’s bond claim against inspection company denied under ELD).</p> <p><i>Richmond Metro. Auth. v. McDevitt St. Bovis, Inc.</i>, 256 Va. 553, 507 S.E.2d 344 (1998) (owner’s claims against builder for actual and constructive fraud were barred because they were related to and arose from various contractual duties specifically required under design-build contract; breach of contract action was appropriate remedy).</p> <p><i>Gerald M. Moore & Son, Inc. v. Drewry</i>, 251 Va. 277, 467 S.E.2d 811 (1996) (client sued engineering firm and firm’s president for negligence; negligence claim against president barred by ELD).</p> <p><i>Mortorino v. Consultant Eng’g Servs., Inc.</i>, 251 Va. 289, 467 S.E.2d 778 (1996) (property owner who relied on factual statements in environmental</p>

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		<p>consultant's report could proceed with constructive fraud claim, despite lack of privity).</p> <p><i>Sensenbrenner v. Rust, Orling & Neale, Architects, Inc.</i>, 236 Va. 419, 374 S.E.2d 55 (1988) (denied tort claim by pool installer who was not in contractual privity with architect).</p> <p><i>Blake Constr. Co., Inc. v. Alley</i>, 233 Va. 31, 353 S.E.2d 724 (1987) (court refused to recognize contractor's negligent misrepresentation claim for purely economic loss against design professional; rights and duties in construction context are defined by contract).</p>
Washington	Unclear, but likely no in light of recent appellate decisions. Tort claims against DPs are likely to be permitted in cases where an independent, extra-contractual duty to use reasonable care exists, particularly in cases involving sudden and calamitous failures.	<p><i>Pointe at Westport Harbor Homeowners' Ass'n v. Engineers Nw., Inc., P.S.</i>, No. 45839-0-II, 2016 WL 2643729 (Wn. App. May 3, 2016) (holding that ENW owed an independent duty to the developer and to members of the HOA, as holders of property interests in The Pointe, to take reasonable care to design a building that did not present safety risks to its residents or their property and stating that even the <u>risk</u> of safety constitutes an injury within the class of harm contemplated by a DP's duty of care).</p> <p><i>Pac. Boring, Inc. v. Staheli Trenchless Consultants, Inc.</i>, No. C14-187RSM, 2015 WL 5794260 (W.D. Wash. Oct. 5, 2015) (discussing <i>Affiliated FM Ins. Co.</i> and <i>Berschauer</i> noting that <i>Affiliated FM Ins.</i> appears to have carved out a source of liability for engineers, specific to the facts of that case, and specifically <i>not</i> applicable to the facts of <i>Berschauer</i>, which the court finds to still be good law; holding that the project consultant did not owe a professional duty to the subcontractor).</p> <p><i>Donatelli v. D.R. Strong Consulting Eng'rs, Inc.</i>, 179 Wn.2d 84, 312 P.3d 620 (2013) (finding record insufficient to determine on summary judgment whether independent duty doctrine barred plaintiff-property owners' negligence claims against engineer, because parties disputed the scope of the contractual duties, but holding that plaintiff's negligent misrepresentation claims were not barred</p>

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		<p>because “duty to avoid misrepresentations that induce a party to enter into a contract arise independently of the contract”).</p> <p><i>Elcon Const., Inc. v. Eastern Washington Univ.</i>, 174 Wn.2d 157, 273 P.3d 965 (2012) (holding ELD (re-named independent duty doctrine) did not bar well drilling contractor’s claims against state university for breach of contract, fraud and intentional interference with a contractual relationship).</p> <p><i>Coastal Constr. Group, Inc. v. Stellar J Corp.</i>, No. 66932-0-I, 2011 WL 5147672 (Wash. Ct. App. Oct. 31, 2011) (refusing to consider whether equitable indemnity provides an independent basis in tort for the claims of intentional misrepresentation when the argument was raised for the first time on appeal).</p> <p><i>Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.</i>, 170 Wn.2d 442, 243 P.3d 521 (2010) (“Applying the independent duty doctrine here, we hold that SMS may sue LTK for negligence. LTK, by undertaking engineering services, assumed a duty of reasonable care. This obligation required LTK to use reasonable care, as we have defined it, with respect to risks of physical damage to the monorail.”).</p> <p><i>Eastwood v. Horse Harbor Found., Inc.</i>, 170 Wn.2d 380, 241 P.3d 1256 (2010) (“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. ... [t]he existence of a duty is a question of law and depends on mixed considerations of logic, common sense, justice, policy, and precedent. ... Where this court has stated that the economic loss rule applies, what we have meant is that considerations of common sense, justice, policy, and precedent in a particular set of circumstances led us to the legal conclusion that the defendant did not owe a duty. When no independent tort duty exists, tort does not provide a remedy.”).</p> <p><i>Carlile v. Harbour Homes, Inc.</i>, 147 Wn. App. 193, 194 P.3d 280 (2008) (homeowner’s claims of negligent and intentional misrepresentation against</p>

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		<p>builder barred by ELD).</p> <p><i>Alejandre v. Bull</i>, 159 Wn.2d 674, 153 P.3d 864 (2007) (home buyer’s negligent misrepresentation claim against seller barred by ELD; claim of pre-contractual fraudulent concealment is not barred).</p> <p><i>Atlantic Pacific Corp. v. Associated Earth Sciences, Inc.</i>, 112 Wn. App. 1044, 2002 WL 1608451 (2002) (ELD barred client’s tort claim against consultant for failing to properly report soil compaction tests).</p> <p><i>Carlson v. Sharp</i>, 99 Wn. App. 324, 994 P.2d 851 (1999) (ELD barred homeowner’s claim against geotechnical firm for subsidence of home).</p> <p><i>Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1</i>, 124 Wn.2d 816, 881 P.2d 986 (1994) (ELD barred contractor’s tort claim against engineer).</p> <p><i>Touchet Valley Grain Growers v. Opp & Seibold Gen. Constr., Inc.</i>, 119 Wn.2d 334, 831 P.2d 724 (1992) (owner’s tort claim against contractor after collapse of grain storage building allowed to proceed because it was sudden and dangerous event).</p>
West Virginia	No.	<p><i>Eastern Steel Constructors, Inc. v. City of Salem</i>, 209 W.Va. 392, 549 S.E.2d 266 (2001) (contractor claim against design professional not barred by ELD; design firm may owe duty of care to contractor despite absence of privity of contract).</p>
Wisconsin	Wisconsin courts recognize a clear distinction between contracts for services (to which the doctrine does not apply) and contracts for goods (to which it does). Thus, the ELD is inapplicable to claims for the negligent provision of services. ELD does not bar tort claims, if	<p><i>Kalahari Dev., LLC v. Iconica, Inc.</i>, 340 Wis. 2d 454, 811 N.W.2d 825 (Wis. Ct. App. 2012) (in a lawsuit by resort owner against contractor for breach of contract and professional negligence, holding ELD precluded negligence action against contractor).</p> <p><i>Acuity v. Society Ins.</i>, 339 Wis. 2d 217, 810 N.W.2d 812 (2012) (holding ELD does not apply to insurance coverage dispute where there was property damage caused by an “occurrence” within the meaning of the CGL policy).</p>

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	contract between owner and DP is “purely a service contract.” ELD probably does not apply to claims for statutory misrepresentation, but applies to claims for intentional or negligent misrepresentation.	<p><i>Singh v. Hestad</i>, 339 Wis. 2d 491, 2012 WL 178255 (Wis. Ct. App. 2012) (Homeowners purchased home from seller-original builders who built home without plans, expertise or knowledge of the building code requirements. In subsequent lawsuit by homeowners, homeowners argued economic loss rule doctrine should not apply, because the contract related only to purchasing the home, not building it, or the “other property” exception should apply. Court affirmed summary judgment dismissal of claim as barred by the ELD).</p> <p><i>BAC Home Loan Servicing, L.P. v. Williams</i>, 337 Wis. 2d 557, 2011 WL 4482615 (Wis. Ct. App. 2011) (upholding dismissal of counterclaims based on negligence, product liability and strict liability because the claims were associated with contractual relationships arising out of a series of mortgages and were barred by the ELD).</p> <p><i>Ferris v. Location 3 Corp.</i>, 337 Wis. 2d 155, 804 N.W.2d 822 (Wis. Ct. App. 2011) (holding property purchaser’s claim against corporate real estate vendor and vendor’s agents for statutory misrepresentation was not barred by the ELD).</p> <p><i>Rowan v. Bourget</i>, 337 Wis. 2d 89, 2011 WL 3055341 (Wis. Ct. App. 2011) (holding ELD barred misrepresentation claims related to a residential real estate transaction).</p> <p><i>Alsteen v. Wauleco, Inc.</i>, 335 Wis. 2d 473, 802 N.W.2d 212 (Wis. Ct. App. 2011) (distinguishing case law allowing tort recovery for damage to property caused by asbestos and dismissing personal injury complaint based on ingesting toxic substance as speculative).</p> <p><i>Borchardt v. Gore</i>, 336 Wis. 2d 477, 2011 WL 2535541 (Wis. Ct. App. 2011) (holding intentional misrepresentation claim involving sale of bulldozer is barred by the ELD).</p> <p><i>Thelen v. Cremer</i>, 334 Wis. 2d 146, 2011 WL 1587129 (Wis. Ct. App. 2011) (affirming trial court summary judgment dismissal of homeowner claims for</p>

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		<p>misrepresentation based on the ELD).</p> <p><i>Foremost Farms USA, Coop. v. Performance Process, Inc.</i>, 332 Wis. 2d 315, 2011 WL 535109 (Wis. Ct. App. 2011) (reversing summary judgment and remanding for further fact finding on whether ELD applied to tort claims based on loss to dairy products).</p> <p><i>Aslani v. Country Creek Homes, Inc.</i>, 308 Wis. 2d 395, 2008 WL 220714 (Wis. Ct. App. 2008), <i>review denied</i>, 314 Wis.2d 281 (2008) (ELD bars tort claims where contract is predominantly one for a product, but does not bar tort claims based on contract for professional services; court held that predominant purpose of a contract to construct a home was for purchase of a product).</p> <p><i>Komorowski v. Jeff Janssen Builders, Inc.</i>, 297 Wis. 2d 585, 2006 WL 3007524 (Wis. Ct. App. 2006) (ELD applied to preclude homeowners' claims against builder; court rejected the homeowners' argument that ELD did not apply because the contract was for services, not for goods).</p> <p><i>Wickerhauser v. Lehtinen</i>, 302 Wis. 2d 41, 734 N.W.2d 855 (2007) (ELD does not bar claims for fraudulent inducement, if there was an intentional misrepresentation before the contract was executed and the fraud was extraneous to the contract).</p> <p><i>Stuart v. Weisflog's Showroom Gallery, Inc.</i>, 293 Wis. 2d 668, 721 N.W.2d 127 (Wis. Ct. App. 2006) (ELD does not apply to architectural services).</p> <p><i>1325 N. Van Buren, LLC v. T-3 Group, Ltd.</i>, 293 Wis. 2d 410, 716 N.W.2d 822 (2006) (ELD barred owner's malpractice claim against contractor because primary purpose of contract was to construct condos, not to manage construction services).</p> <p><i>D & B Auto. Equip., Inc. v. Snap-On, Inc.</i>, No. 03-CV-141, 2006 WL 776749 (E.D. Wisc. Mar. 27, 2006) (ELD bars claims for misrepresentation if damages are purely economic; damages are economic in nature if they relate to the "loss</p>

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		<p>of value of an inadequate or inferior product").</p> <p><i>Federal Ins. Co. v. Grunau Project Dev., Inc.</i>, 295 Wis. 2d 840, 2006 WL 1528948 (Wis. Ct. App. 2006) (building owner’s tort claims against contractor barred by ELD because contract was primarily for a product - a completely renovated building).</p> <p><i>Manitowoc Marine Group, LLC v. Ameron Int’l Corp.</i>, 424 F. Supp. 2d 1119 (E.D. Wis. 2006) (ELD bars fraud claims where plaintiff suffered only economic loss rather than personal injury or property loss, even if there is no privity of contract).</p> <p><i>Trinity Lutheran Church v. Dorschner Excavating, Inc.</i>, 289 Wis. 2d 252, 710 N.W.2d 680 (Wis. Ct. App. 2006) (owner could sue contractor in tort because contract was a “design-build” contract and contract was essentially for construction management services; excavator could similarly assert contribution claim against contractor).</p> <p><i>Linden v. Cascade Stone Co., Inc.</i>, 283 Wis. 2d 606, 699 N.W.2d 189 (2005) (homeowner cannot sue subcontractor in tort because defects in home were economic loss and not damage to “other property;” economic loss rule applies because pertinent contract was for the provision of a “good,” i.e., a house, rather than the provision of services; integrated products limitation of “other property” exception to ELD is applicable, because homeowners contracted for a finished product, a house, not its various components).</p> <p><i>Grams v. Milk Prods., Inc.</i>, 283 Wis. 2d 511, 699 N.W.2d 167 (2005) (court applies the “disappointed expectations” test: when damage to “other property” could have been the subject of negotiations between the parties, and such damage occurs, the ELD applies to bar tort claims). Note, this test has also been compared to a reasonable foreseeability approach to application of the ELD.</p> <p><i>Ins. Co. of N. America v. Cease Elec., Inc.</i>, 276 Wis. 2d 361, 688 N.W.2d 462</p>

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State	Does ELD bar tort claims against DP?	Case Citation
		<p>(2004) (ELD does not apply to contracts for professional services and does not bar negligence action against designer-installer of barn ventilation system).</p> <p><i>KHLH, Inc. v. Wisconsin Land Surveyors, Ltd.</i>, 239 Wis. 2d 232, 2000 WL 1341784 (Wis. Ct. App. 2000) (unpublished) (upholding contribution action against land surveyor whose negligently placed stakes caused home to violate set back requirements; court rules ELD does not apply because damage was not merely economic).</p> <p><i>Cooper Power Sys., Inc. v. Union Carbide Chems. & Plastics Co., Inc.</i>, 123 F.3d 675 (7th Cir. 1997) (privity is not a prerequisite to the application of the ELD in Wisconsin).</p> <p><i>Wausau Paper Mills Co. v. Chas. T. Main, Inc.</i>, 789 F. Supp. 968 (D. Wis. 1992) (papermill’s claim against design professional barred by ELD but rule limited to cases where there is a contract between two sophisticated parties).</p> <p><i>A.E. Investment Corp. v. Link Builders, Inc.</i>, 62 Wis. 2d 479, 214 N.W.2d 764 (Wis. 1974) (holding that tenant can bring negligence action against architect despite lack of privity; ELD not discussed).</p>
Wyoming	Yes. However, Wyoming recognizes an independent duty of reasonable care owed by home builders thereby making the economic loss rule inapplicable in those cases.	<p><i>Rogers v. Wright</i>, 2016 WY 10, 366 P.3d 1264 (Wyo. 2016) (discussing the independent duty of reasonable care owed by home builders to not build homes in a negligent manner, thereby making the economic loss rule inapplicable; also discussing that while an “as-is” clause in a home buyer’s contract may constitute an effective waiver of any implied warranties against the seller, the “as-is” provision does not waive any potential causes of action against those entities not parties to such a contract).</p> <p><i>Excel Constr., Inc. v. HKM Eng’g, Inc.</i>, 2010 Wy. 34, 228 P.3d 40 (2010) (plaintiff’s allegations of negligence against engineer involve performance of contractual duties and are barred by the economic loss rule in <i>Rissler, infra</i>. “The Court continues to believe that parties to a construction contract have the opportunity to allocate the economic risks associated with the work, and that</p>

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		<p>they do not need the special protections of tort law to shield them from losses arising from risks, including negligence of a design professional, which are inherent in performance of the contract.”).</p> <p><i>U.S. Aviation Underwriters, Inc. v. Dassault Aviation</i>, 505 F. Supp. 2d 1252 (D. Wyo. 2007) (contract language may not create a right to pursue a claim that would otherwise be barred by ELD).</p> <p><i>Grynberg v. Questar Pipeline Co.</i>, 70 P.3d 1 (Utah 2003) (applying Wyoming law, economic loss rule barred owners of natural gas wells from suing gas purchaser in tort).</p> <p><i>Rissler & McMurry Co. v. Sheridan Area Water Supply Joint Powers Bd.</i>, 929 P.2d 1228 (Wyo. 1996) (contractor’s claim against engineer for negligence barred by economic loss rule).</p>

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