

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 8, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2004AP2365**

**Cir. Ct. No. 2002CV101**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**JOSSART BROS., INC.,**

**PLAINTIFF,**

**V.**

**CRISPELL-SNYDER, INC.,**

**DEFENDANT-APPELLANT,**

**WISCONSIN CONCRETE PRODUCTS, INC.,**

**DEFENDANT-RESPONDENT,**

**V.**

**AMERICAN CONCRETE PIPE CO., INC.,**

**THIRD-PARTY DEFENDANT.**

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APPEAL from a judgment of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 SNYDER, J. Crispell-Snyder, Inc. appeals from a summary judgment in favor of Wisconsin Concrete Products, Inc. Crispell-Snyder contends that the circuit court erred when it dismissed Crispell-Snyder's contribution and indemnification claims against Wisconsin Concrete. Crispell-Snyder contends that its claims should not be barred by the court's dismissal of Jossart Bros., Inc.'s negligence claim against Wisconsin Concrete. We disagree and affirm the judgment of the circuit court.

#### FACTS

¶2 Jossart, a construction firm, was awarded a contract with the Village of Oostburg for a public sewer project. The Village of Oostburg retained Crispell-Snyder to oversee the engineering aspects of the construction. The project included the installation of a "wet well" constructed from precast concrete. Jossart subcontracted the construction of the well to American Concrete Pipe Co., Inc., which in turn subcontracted with Wisconsin Concrete to manufacture the well.

¶3 Jossart installed the well between November 1, 2000, and February 9, 2001. During the week of February 9, Jossart noticed cracks in the well wall. On February 22, 2001, an independent engineering firm conducted a field inspection of the well structure and reported that the cracks in the wall were caused by "structural failure of the precast concrete well units ... due to an inadequate design and construction of the concrete units."

¶4 On February 27, Jossart contacted Crispell-Snyder and demanded immediate removal and replacement of the faulty well. Jossart wrote Crispell-Snyder on March 6, informing it that Jossart planned to proceed with replacement and requesting input regarding specifications of the new well. Later that month, Jossart retained another engineering firm to submit plans for the replacement well. Jossart installed the replacement well between March 27 and approximately May 7, 2001. No further cracking occurred with the redesigned well.

¶5 Jossart brought suit alleging that Crispell-Snyder negligently approved an inadequate design and set of specifications for the well and further alleging that Wisconsin Concrete negligently failed to construct the well structure in accordance with the specifications. Crispell-Snyder then cross-claimed against Wisconsin Concrete for contribution and/or indemnification. Wisconsin Concrete answered and cross-claimed against Crispell-Snyder for contribution. Wisconsin Concrete also filed a third-party summons and complaint against American Concrete Pipe for breach of contract and contribution or indemnification in the event Wisconsin Concrete was adjudged liable to Jossart. American Concrete Pipe answered, claiming breach of contract by Jossart and cross-claimed against all parties for contribution or indemnification.

¶6 Crispell-Snyder, Wisconsin Concrete, and American Concrete Pipe all moved for summary judgment against Jossart. Each also moved for summary judgment on their cross-claims for contribution and indemnification. Jossart conceded Wisconsin Concrete's motion regarding Jossart's negligence claim. A hearing took place on April 26, 2004, and the circuit court granted summary judgment in favor of Wisconsin Concrete as to all remaining claims against it. Crispell-Snyder appeals.

## DISCUSSION

¶7 When reviewing a summary judgment, we perform the same function as the circuit court and review the matter de novo. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment must be affirmed where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2) (2003-04).<sup>1</sup> If a determination of law will conclude the case, summary judgment should be granted. *Northwest Eng’g Credit Union v. Jahn*, 120 Wis. 2d 185, 187, 353 N.W.2d 67 (Ct. App. 1984). We will reverse a decision granting summary judgment if either (1) the circuit court incorrectly decided legal issues, or (2) material facts are in dispute. *Ackerman v. Hatfield*, 2004 WI App 236, ¶9, 277 Wis. 2d 858, 691 N.W.2d 396.

¶8 Here, Crispell-Snyder concedes that there are no disputed material facts. The remaining issue before us, therefore, is whether the circuit court correctly concluded that dismissal of Jossart’s negligence claim against Wisconsin Concrete under the economic loss doctrine barred Crispell-Snyder’s contribution or indemnification claim against Wisconsin Concrete. The circuit court granted summary judgment to Wisconsin Concrete on Crispell-Snyder’s claims stating, “[T]he facts are undisputed that Wisconsin Concrete had a contract for a commercial product with [American Concrete Pipe] and its liability is limited to

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[American Concrete Pipe] under the terms of that contract. That's how I understand the economic loss doctrine.”

¶9 Crispell-Snyder argues that “Wisconsin Concrete’s use of the economic loss doctrine overlooks the fact that the wet well it constructed failed and did not meet the project specifications.... Quite simply, Wisconsin Concrete was negligent in performing its subcontract with American [Concrete] Pipe.” The economic loss doctrine, however, is a judicially created remedy that generally precludes contracting parties from pursuing tort-based recovery for purely economic or commercial losses associated with a contractual relationship. *Tietsworth v. Harley-Davidson, Inc.*, 2004 WI 32, ¶23, 270 Wis. 2d 146, 677 N.W.2d 233. The oft-stated purposes of the economic loss doctrine are to: (1) maintain the distinction between tort and contract law; (2) protect the freedom to allocate economic risk by agreement; and (3) encourage the party best situated to assess the risk of economic loss and assume, allocate, or insure against that risk. *Id.*, ¶27. Because Wisconsin Concrete’s duty was based in contract, the circuit court properly applied the economic loss doctrine to preclude recovery in tort.

¶10 In considering the cross-claims against Wisconsin Concrete for contribution or indemnification, the circuit court turned to our holding in *Brown v. LaChance*, 165 Wis. 2d 52, 477 N.W.2d 296 (Ct. App. 1991). There we observed that the “elements of a contribution claim are (1) joint causally negligent wrongdoers, (2) common liability because of such negligence to the same person and (3) one bears more than his or her fair share of the burden.” *Id.* at 64. Crispell-Snyder and Wisconsin Concrete share no common tort liability to Jossart; therefore, the circuit court properly dismissed Crispell-Snyder’s contribution claim against Wisconsin Concrete.

¶11 Crispell-Snyder also contends that it is entitled to equitable indemnification. Equitable indemnification “permits those who pay a claim that ‘in equity should have been satisfied by another’ to recover that payment from the person or entity primarily liable.” *General Accident Ins. Co. of Am. v. Schoendorf & Sorgi*, 195 Wis. 2d 784, 795, 537 N.W.2d 33 (Ct. App. 1995) (citation omitted). Crispell-Snyder posits that the posture of the case as it stands could result in it paying tort damages to Jossart for negligence attributable to Wisconsin Concrete. Indemnity, however, is “[t]he right of an injured party to claim reimbursement for its loss, damage, or liability from a person *who has such a duty*.” BLACK’S LAW DICTIONARY 784 (8th ed. 2004) (emphasis added). As we have already established, Wisconsin Concrete has no duty to Jossart under tort principles; therefore, Wisconsin Concrete has no duty to indemnify Crispell-Snyder for any tort liability it may incur at trial. Notably, in its cross-claim, Crispell-Snyder acknowledges that its contribution or indemnification claims arise only if it “and any other defendant are joint tortfeasors.” Like its claim for contribution, Crispell-Snyder’s indemnification claim must fail.

## CONCLUSION

¶12 The economic loss doctrine necessitated the circuit court’s dismissal of Jossart’s negligence claim against Wisconsin Concrete. Accordingly, Crispell-Snyder’s contribution and indemnification claims against Wisconsin Concrete must fail because the parties are not “joint causally negligent wrongdoers.” See *Brown*, 165 Wis. 2d at 64. The circuit court properly applied the relevant legal principles to the undisputed facts in granting summary judgment in favor of Wisconsin Concrete.

*By the Court.*—Judgment affirmed.

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