

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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.

No. 00-0952

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

EMERSON ELECTRIC CO.,

PLAINTIFF,

v.

JUST IN TIME, INC., A/K/A JUST IN TIME
CORPORATION,

DEFENDANT-APPELLANT,

INTERNATIONAL WIRE GROUP, INC.,

DEFENDANT,

GENERAL CASUALTY COMPANY,

INTERVENOR-RESPONDENT.

APPEAL from a judgment of the circuit court for Door County:
PETER C. DILTZ, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. This appeal arises out of a suit filed by Emerson Electric Company, a motor manufacturer, against International Wire Group, Inc., a wire manufacturer; Just In Time, Inc., the wire distributor; and its insurer, General Casualty Company. The trial court entered summary judgment declaring that General Casualty has no duty to defend Just In Time in this action. Just In Time appeals, claiming that the trial court erroneously applied the economic loss doctrine described in *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 593 N.W.2d 445 (1999), and incorrectly concluded that Emerson's alleged damages are not within the scope of coverage. We disagree and therefore affirm the summary judgment in favor of General Casualty.

BACKGROUND

¶2 The following facts are alleged in Emerson's complaint. Just In Time supplies lead wire manufactured by International Wire to Emerson for use in motors that Emerson manufactures. In 1997, Emerson discovered deformities in some of the lead wire it used to manufacture its motors. Unable to determine the cause of the deformity, Emerson ceased production and notified International Wire of the problem. International Wire admitted that the wire sold to Emerson was not properly cured.

¶3 In its complaint, Emerson pled breach of contract and warranties against Just In Time and that "the wire, being of unmerchantable quality and unfit for its purpose, caused certain defects in the motors manufactured by Emerson." As a result of the defects, Emerson alleges that it was required to cease manufacturing operations, compensate customers for defective motors, and rework motors sold to customers.

¶4 General Casualty moved for summary judgment, asserting that under the terms of its policy it owed no duty to defend or provide coverage for economic losses flowing from a breach of contract. It relied on policy language that provides coverage for “property damage” caused by and “occurrence” subject to certain exclusions.¹

¶5 The trial court concluded that there was no coverage or accompanying duty to defend Just In Time. It essentially ruled that Emerson’s complaint asserted claims based on economic losses flowing from contract and warranty breaches and, accordingly, failed to allege property damage within the meaning of the policy. It granted General Casualty’s summary judgment motion for dismissal. Just In Time appeals the judgment.

STANDARD OF REVIEW

¶6 When reviewing a summary judgment, we perform the same function as the trial court and our review is de novo. *Id.* at 266. Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08.

¶7 Insurance policies are governed by the same rules that govern interpretation of contracts in general. *Wisconsin Label Corp. v. Northbrook*

¹ The policy defined these terms as follows:

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

....

“Property Damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property; or
- b. Loss of use of tangible property that is not physically injured.

Prop. & Cas. Ins. Co. 2000 WI 26, ¶23, 233 Wis. 314, 607 N.W.2d 282 (2000). Their interpretation presents a question of law that we review de novo. *Jacob v. Russo Bldrs.*, 224 Wis. 2d 436, 444, 592 N.W.2d 271 (Ct. App. 1999). When the contract language is unambiguous, we apply its literal meaning. *Wisconsin Label*, 2000 WI at ¶23.

DISCUSSION

¶8 To determine whether an insurer has a duty to defend, we must compare the allegations within the four corners of the complaint with the terms of the insurance policy. *Radke v. Fireman's Fund Ins. Co.*, 217 Wis. 2d 39, 43, 577 N.W.2d 366 (1998). “If there are allegations in the complaint which, if proven, would be covered by the policy, the insurer has a duty to defend.” *Id.* We must narrowly construe policy exclusions against the insurer and any ambiguity regarding coverage is to be resolved in favor of the insured. *Id.* at 43-44. “Thus, the duty to defend and the duty to indemnify (that is, to pay the insurance claim) are not coextensive, and the former, being triggered by arguable as distinct from actual coverage and determined by what the complaint says rather than by the actual facts underlying the claim of liability, is broader.” *Hamlin, Inc. v. Hartford Acc. & Indem. Co.*, 86 F.3d 93, 94 (7th Cir. 1996).

¶9 We first look to the policy in question, which defines “Property Damage” as “[p]hysical injury to tangible property, including all resulting loss of use of that property; or ... [l]oss of use of tangible property that is not physically injured.” Next, we review Emerson’s complaint to determine whether there are allegations in the complaint that, if proven, would be covered by the policy. Both parties agree that economic losses are not property damage within the meaning of the policy. See *Wausau Tile*, 226 Wis. 2d at 267-68.

¶10 “Economic loss is the loss in a product's value which occurs because the product ‘is inferior in quality and does not work for the general purposes for which it was manufactured and sold.’” *Id.* at 246 (citation omitted). “In short, economic loss is damage to a product itself or monetary loss caused by the defective product, which does not cause personal injury or damage to other property.” *Id.* at 247.

¶11 Turning to Count I of Emerson’s complaint, it alleges breach of implied warranty of merchantability against Just In Time and that “the wire, being of unmerchantable quality and unfit for its purpose, caused certain defects in the motors manufactured by Emerson.” As a result of the defects, Emerson alleges that it was required to

rework motors sold to its customers that had been manufactured using the lead wire, cease its manufacturing operations and determine the origination and location of defective wire; to inform its customers of the non-conforming motors resulting from the defective wire and compensate its customers for same; inspect and rework motors for customers whose motors were damaged

Emerson further alleged that it

has been damaged in an amount exceeding \$250,000, for lost and damaged inventory of motors, reimbursements to customers who sustained losses caused by and related to motors containing defective wire, loss of customer good will, loss of customers and related loss of profits, damage to its business reputation, lost business expenses—included in the form of factory shut down expenses, freight expenses for replacement of motors, costs for inspection of motors, reworking costs and expenses of salesmen in reassuring customers—and damage to its motors business as a going concern.

¶12 In Count II, Emerson also alleged breach of implied warranty of fitness for a particular purpose against Just In Time, and in Count III, breach of contract, resulting in claims for damages similar to those asserted in Count I.

¶13 We conclude that the complaint alleges economic losses arising from breach of contract and breach of warranties that are not covered under the language of General Casualty's policy. The damages sought by Emerson can be grouped into three categories: (1) the costs of replacing its damaged motor inventory, (2) the costs of satisfying customer's claims related to motors containing defective wire, and (3) lost profits, goodwill, and other business expenses. We consider each of these types of damages in turn.

¶14 Emerson's complaint alleges that the wire Just In Time distributed was "incorporated into" motors that Emerson manufactured. The crux of Emerson's complaint for repair or replacement costs is that its motors were damaged because the wire incorporated into the motors was of insufficient quality and did not work for its intended purpose. "This is the essence of a claim for economic loss." *Wausau Tile*, 226 Wis. 2d at 253. Instead of resulting from property damage, the alleged damages in this case result from Just In Time's claimed failure to adequately perform its contract. Damages resulting from a breach of contract are not "physical injury" caused to or "loss of use" of Emerson's property. See *Wisconsin Label*, 2000 WI at ¶33.

¶15 In addition, the costs incurred settling customers' claims resulting from the defective wire likewise are not recoverable as physical injury to or loss of use of tangible property. See *Wausau Tile*, 226 Wis. 2d at 253-54. Finally, lost business and profits attributable to the inferior quality of the wire are similarly not covered. *Id.* at 257. We conclude that under these circumstances, any reasonable

interpretation of Emerson's complaint fails to bring its allegations within the scope of liabilities that General Casualty insured. Because Emerson's complaint does not allege damages for which General Casualty has contracted to provide coverage, the trial court correctly determined that General Casualty has no duty to defend.

¶16 Nonetheless, Just In Time argues that the complaint "implies physical damage to property other than the wire itself" and alleges losses not solely economic in nature. Just In Time maintains that the complaint permits an inference that the defective wire physically injured the motors, thus alleging property damage within the scope of coverage. We are unpersuaded.

¶17 "Damage by a defective component of an integrated system to either the system as a whole or other system components is not damage to 'other property' which precludes the application of the economic loss doctrine." *Id.* at 249. Our supreme court acknowledged this "'integrated system' rule:"

A defective product that causes harm to property other than the defective product itself is governed by the rules of this Restatement. What constitutes harm to other property rather than harm to the product itself may be difficult to determine. A product that nondangerously fails to function due to a product defect has clearly caused harm only to itself. A product that fails to function and causes harm to surrounding property has clearly caused harm to other property. However, when a component part of a machine or a system destroys the rest of the machine or system, the characterization process becomes more difficult. *When the product or system is deemed to be an integrated whole, courts treat such damage as harm to the product itself. When so characterized, the damage is excluded from the coverage of this Restatement.* A contrary holding would require a finding of property damage in virtually every case in which a product harms itself and would prevent contractual rules from serving their legitimate function in governing commercial transactions.

Wausau Tile, 226 Wis. 2d at 249-50 (emphasis added) (quoting RESTATEMENT (THIRD) OF TORTS § 21 cmt. e (1997)).

¶18 Just In Time asserts that the integrated system rule in *Wausau Tile* must be factually distinguished because a defective wire can be physically separated from the motor, in contrast to cement and silica that could not be physically separated from the defective pavers in *Wausau Tile*. We disagree. *Midwehy Powder Co. v. Clayton Indus.*, 157 Wis. 2d 585, 590-91, 460 N.W.2d 426 (Ct. App. 1990), held: “While a steam generator and a turbine may in other circumstances be sufficiently functionally distinct to be regarded as separate property, under the facts of this case when each is a component of a single system integrally connected to one another as part of an overall apparatus designed to produce electricity, the turbines cease to be separate property.” Because the inference that the defective wire was an integral component of the motors reasonably follows from the facts alleged in the complaint, we must regard it as true. See *Wausau Tile*, 226 Wis. 2d at 250-51. Accordingly, we reject Just In Time’s contention.²

By the Court.—Judgment affirmed.

² We further note that under policy language defining “occurrence” in the *Wausau Tile* case identical to the policy language before us, the parties agreed that a breach of contract or warranty was not a covered “occurrence” under the terms of the policy. *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 268 n.18, 593 N.W.2d 445 (1999). We do not address this issue, nor the policy exclusions, because we dispose of the matter on alternate grounds.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

