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THE ECONOMIC LOSS RULE & PRODUCT WARRANTIES

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INTRODUCTION

For anybody, including a city, who purchases a product, which later malfunctions or breaks, the economic loss rule and product warranties can be of extreme importance—especially if you want to recover damages.

The economic loss rule has been traced back to the products liability case of Seely v. White Motor Co.,[1] decided by the California Supreme Court in 1965. Mr. Seely sought to recover damages from a manufacturer for the purchase of a defective heavy-duty hauling truck (it had a tendency to bounce violently). Pursuant to a warranty, the manufacturer had made several attempts to correct the condition, but was unsuccessful. Following an accident in which Mr. Seely suffered no bodily injury, he sought to recover the purchase price of the truck, the cost of repairs, and the value of lost profits for loss of use of the truck. The manufacturer argued that pursuant to its warranty, its liability should be limited solely to the cost of repair.

Since Mr. Seely had suffered no bodily injury, and no property other than the truck itself had been damaged, the California Supreme Court held that Mr. Seely's sole source of relief was to be found in the contractual warranty, and not in the theories of negligence or strict liability. The court drew the distinction between the safety standards imposed by tort law, and the performance standards imposed by contract law.[2] And, luckily for Mr. Seely, the court ruled that White Motor had breached its warranty by failing to correct the defect in the truck, such that Mr. Seely was entitled to recover his economic losses, which were reasonably foreseeable consequences of the breach of the warranty.

Several decades later, in the 1986 case of East River S.S. Corp. v. Transamerica Delaval, Inc.,[3] the United States Supreme Court formally recognized the economic loss rule and held it applicable in the context of admiralty cases, which is subject to federal common law. *East River* involved a claim brought against the manufacturer of a high-pressure steam turbine used on several oil supertankers, which malfunctioned, but caused damage only to the turbine itself, and not to any person or any other property. Relying upon the *Seely* decision, the Supreme Court held that "a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself,"

[1] R. Joseph Barton, *Drowning in A Sea of Contract: Application of the Economic Loss Rule to Fraud and Negligent Misrepresentation Claims*, 41 WM. & MARY L. REV. 1789, 1794 (2000); and Seely v. White Motor Co., 403 P.2d 145 (Cal. 1965).
[2] *Seely*, 151 (emphasis added).
[3] East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986).

and that "[w]hen a product injuries only itself the reasons for imposing a tort duty are weak and those for leaving the party to its contractual remedies are strong."[4] In delivering the opinion of the court, Justice Harry Blackmun explained:

> Damage to a product itself is most naturally understood as a warranty claim. Such damage means simply that the product has not met the customer's expectations, or, in other words, that the customer has received "insufficient product value." The maintenance of product value and quality is precisely the purpose of express and implied warranties. Therefore, a claim of a nonworking product can be brought as a breach-of-warranty action. Or, if the customer prefers, it can reject the product or revoke its acceptance and sue for breach of contract.
>
> Contract law, and the law of warranty in particular, is well suited to commercial controversies of the sort involved in this case because the parties may set the terms of their own agreements. ***The manufacturer can restrict its liability, within limits, by disclaiming warranties or limiting remedies. In exchange, the purchaser pays less for the product.*** Since a commercial situation generally does not involve large disparities in bargaining power, we see no reason to intrude into the parties' allocation of the risk.[5]

At its core, the economic loss rule holds that in the absence of personal injury, or damage to property other than the product itself, a buyer's sole remedy lay in contract law, and not tort law. The importance of this distinction is that under contract law damages are limited either to the remedy set forth in the contract (such as a warranty), or to such economic losses as are reasonably to be expected to result from a breach of the contract. By contrast, under tort law, damages may be recovered for any losses which are incurred as a consequence of the injurious event, if even unforeseen.

ADOPTION OF THE ECONOMIC LOSS RULE IN KENTUCKY

While the economic loss rule may have been first articulated by the California Supreme Court back in 1965, it did not make its way into Kentucky's jurisprudence until 1990, though it was not expressly adopted at that time. The case was known as Falcon Coal Co. v. Clark Equipment Co.,[6] and involved whether the purchaser of a front-end loader, which caught fire due to a manufacturing defect, "may recover from the [manufacturer] 'in a product liability tort action based upon the doctrine of strict liability where the subject damage is limited to the product itself.'"[7] While referencing the *East River* decision, and ultimately coming to the

[4] *East River*, 871.
[5] *East River*, 872–73 (internal citations and footnotes omitted)(emphasis added).
[6] Falcon Coal Co. v. Clark Equipment Co., 802 S.W.2d 947 (Ky.App. 1990), *disc. rev. denied* (Ky. 1991).
[7] *Falcon Coal*, 948.

same result as the economic loss rule,[8] the Kentucky Court of Appeals did so for different reasons. Rather, the *Falcon Coal* decision was based upon Kentucky's prior adoption of Section 402A of the Restatement (Second) of Torts, which holds that a seller of a defective and unreasonably dangerous product is subject to strict liability, but only for physical harm and damage to other property caused thereby and "not for harm caused only to the product itself." And, due to Kentucky's enactment of the Uniform Commercial Code (in 1960), which "provide[s] a contractual remedy in a case such as this where the product sold proves to be unfit for its ordinary use."

The economic loss rule was not formally adopted in Kentucky until the Kentucky Supreme Court did so in the 2011 case of Giddings & Lewis, Inc., v. Industrial Risk Insurers.[9] Giddings was the manufacturer of a device known as a diffuser cell system, which is used for cutting and shaping metal objects. The diffuser cell system was purchased by Ingersoll Rand for use in its own manufacturing operations (power tools) for seven years until experiencing a "calamitious event" (a 3400 pound clamp, 1500 pound pallet, and 300 pound "chunk" of metal flew off a turning lathe and catapulted around the workspace). Amazingly, nobody was injured and damage to the workspace was "minimal," with the only real damage being to the diffuser cell system itself, which cost nearly $2.8 million to repair. After paying for the repairs, the insurers sought to recover against Giddings, asserting several theories of liability, including implied warranty and contract claims, negligence and strict liability claims, as well as claims for negligent misrepresentations and fraud by omission. The implied warranty claim was easily dispensed with as the statute of limitations upon such a claim is limited to 4 years from delivery of the product.[10]

In *Giddings*, the Kentucky Supreme Court recognized that since the endorsement of the economic loss rule by the U.S. Supreme Court in the *East River* decision, "virtually all states apply the rule in some form."[11] A brief summary of the court's ruling, was best stated by the court itself:

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[8] In the case of Presnell Constr. Mgrs., Inc. v. EH Constr., LLC, 134 S.W.3d 575 (Ky. 2004), the concurring opinion of Justice James Keller recognized that the end result of the *Falcon Coal* decision was to limit recover for economic loss "to any contractual remedy that might be available, and thus, the Court of Appeals adopted, albeit *sub silentio*, the economic-loss-rule principal …," and urged the court to expressly adopt the economic loss rule *Presnell*, 587-588 (J. Keller, concurring).

[9] Giddings & Lewis, Inc. v. Industrial Risk Insurers, 348 S.W.3d 729 (Ky. 2011).

[10] KRS 355.2-725. The only exception to the 4 year statute of limitations on a warranty claim (express or implied) is when a warranty "explicitly extends to future performance of the goods," in which case the statute of limitations will not begin to run until the breach is, or should have been, discovered. KRS 355.2-725(2). While Kentucky has not yet weighed in, a majority of courts, quite logically, have held that an implied warranty cannot extend the limitations period because "by its very nature, an implied warranty is not explicit and therefore cannot be said to explicitly extend to future performance. *See, What constitutes warranty explicitly extending to "future performance" for purposes of UCC § 2-725(2),"* 81 A.L.R.5th 483 (orig. pub. 2000).

[11] *Giddings*, 736.

> Today we hold that the economic loss rule applies to claims arising from a defective product sold in a commercial transaction, and that the relevant product is the entire item bargained for by the parties and placed in the stream of commerce by the manufacturer. Further, the economic loss rule applies regardless of whether the product fails over a period of time or destroys itself in a calamitous event, and the rule's application is not limited to negligence and strict liability claims but also encompasses negligent misrepresentation claims. As for the impact of the rule on fraud claims, that issue awaits another case because the plaintiffs in this case pled fraud by omission, a claim that is unsustainable on the record before us, irrespective of the economic loss rule.[12]

The court, however, made clear to point out that if a person were injured, or if other property were damaged, that the economic loss rule would not be a bar to recovery under traditional tort theories.[13] Of note, no decision was made as to whether the rule would apply to a tort claim of fraud—the court instead avoided that issue by deciding that there had nonetheless been no proof sufficient to support the claim of fraud.[14]

And, while Kentucky has not yet weighed in on the issue, the Sixth Circuit Court of Appeals has predicted that Kentucky would limit application of the economic loss rule to *commercial transactions* (as opposed to individual consumer transactions) in which there is usually an unequal bargaining position and less opportunity for negotiation.[15] Though, in that decision, there was a strong dissenting opinion predicting the opposite.[16]

ISSUES WITH THE APPLICATION OF THE ECONOMIC LOSS RULE

Over the years several issues have arisen regarding application of the economic loss rule. Such as the distinction between what constitutes the "product" and what is "other property"; whether privity of contract is required; whether the rule applies in the context of service contracts; and whether the rule operates to bar a tort claim for fraud or negligent misrepresentation. And, what if the end-user of the product is not the purchaser? And, what relief may be available against parties other than the manufacturer?

Often, cities find themselves in the situation where they never have any direct dealings with the manufacturer of a product for which they are the end-user. Take for example, the situation of where a city bids out a public construction project. The city contracts with architects and engineers to design the project. The city then bids out and contracts with the lowest-bidding contractor for the actual construction of the project. The contractor then hires

[12] *Giddings*, 733.
[13] *Giddings*, 738.
[14] *Giddings*, 747-749.
[15] State Farm Mut. Auto. Ins. Co. v. Norcold, Inc., 849 F.3d 328 (6th Cir., Feb. 22, 2017).
[16] *Norcold*, 335-338 (J. Gilman, dissenting).

multiple subcontractors to work on various aspects of the project. One subcontractor then purchases and installs a "gizmo" from a retailer. The retailer has itself contracted with the manufacturer for the right to sale the gizmo. And taking this one step further, the manufacturer has obtained the component pieces needed to assemble the gizmo from numerous submanufacturers. Everything is fine for a few years, but then, outside of any manufacturer's warranty, the gizmo suffers a catastrophic (and expensive) failure due to a defective "doohickey," which is a component part made by a submanufacturer. What then? This is not an easily answered question. And there are many questions that arise out of this scenario.

The "Product" and "Other Property"

One of the first questions to be answered is: What was the "product"? For the answer to this question may determine whether the economic loss rule could be applicable at all. Is the "product" the gizmo that failed? Or is it the doohickey? If the product is the doohickey, then any damage that occurred to other parts of the gizmo could be considered as damage to "other property," to which the economic loss rule would be inapplicable.

This very question was answered in the *Giddings* decision. The insurers had argued that the "product" was the turning lathe, and that damage to other parts of the diffuser cell system was thus damage to "other property," to which the economic loss rule was inapplicable. The manufacturer countered that such an interpretation would mean that only the simplest of products, with no component parts, would fall with the ambit of the economic loss rule. The Kentucky Supreme Court agreed with the manufacturer, and held that the "product" is the product that the manufacturer places into the stream of commerce, which includes the integration of component parts into a single unit.[17]

This comports with prior federal decisions in which it has been held that a building, in its entirety (in one case a school and in the other case a nursing home), was the "product," rather than the component parts of the building (such as plywood and lumber).[18]

Privity of Contract

The heart of the economic loss rule is that when damages result from a defective product, the parties should be limited to contractual remedies. But what about parties who have no contract with each other? In our scenario, the city has a service contract with the architects and engineers, and a construction contract with the contractor—but no contract

[17] *Giddings*, 741-742.
[18] McCracken Cnty. School Bd. v. Hoover Universal, Inc., No. CIV. A. 93–0164–P(J), 1994 WL 1248581 (W.D.Ky. 1994); Mt. Lebanon Personal Care Home, Inc. v. Hoover Universal, Inc., 276 F.3d 845, 849-851 (6th Cir. 2002).

with the subcontractors, or with the manufacturer. So when the gizmo fails and there is no warranty to cover it, does the economic loss rule prevent the city from suing the manufacturer in tort?

There is as yet no clear answer to this question. Prior the *Giddings* decision, the Sixth Circuit Court of Appeals, in the 2002 case of Mt. Lebanon Personal Care Home, Inc. v. Hoover Universal, Inc.,[19] predicted that Kentucky would not require privity for the economic loss rule to apply to a tort action brought by the owner of a construction project against a subcontractor with whom the general contractor, and not the owner, had contracted.[20] The court reasoned that the project owner no doubt was aware that the general contractor would hire subcontractors, and that the project owner had the opportunity to allocate risk, even if vicariously through the general contractor. Otherwise, an incongruous result could be reached were an owner who serves as his own general contractor would be subject to the economic loss rule, whereas an owner who hires a general contractor would not.

In 2011, shortly after *Giddings*, the Western District of Kentucky again predicted that Kentucky would not require privity of contract for the economic loss rule to apply in the context of a commercial transaction.[21] This conclusion was based on the fact that the parties in the U.S. Supreme Court's *East River* decision were not in contractual privity, and that in *Giddings* the Kentucky Supreme Court had adopted the economic loss rule as set forth in *East River*.

For its part, the different judicial panels of the Kentucky Court of Appeals have sent mixed messages. In the 2013 case of Cincinnati Ins. Cos. v. Staggs & Fisher Consulting Engineers, Inc.,[22] a judicial panel of the Kentucky Court of Appeals (Judges D. Dixon, J. Lambert and J. Taylor) held that the economic loss rule prohibited a subcontractor's claims against engineers who designed a construction project, even though there was no contractual relationship between the parties. Then, in the more recent 2016 decision of D.W. Wilburn, Inc. v. K. Norman Berry & Assocs., Architects, PLLC,[23] another judicial panel of the Kentucky Court of Appeals (Judges D. Clayton, J. Stumbo and K. Thompson) held that in the absence of a contractual relationship, the economic loss rule would not bar a tort claim for negligent

[19] *Mt. Lebanon*, supra.
[20] *Mt. Lebanon*, 851-852.
[21] Morris Aviation, LLC v. Diamond Aircraft Industries, Inc., No. 3:09-cv-644-S, 2011 WL 5904451 (W.D.Ky.), *reconsideration denied*, 2012 WL 3684760 (W.D.Ky. 2012), *affirmed on other grounds,* 536 Fed.Appx. 558 (6th Cir. 2013).
[22] Cincinnati Ins. Cos. v. Staggs & Fisher Consulting Engineers, Inc., No. 2008-CA--002395-MR, 2013 WL 1003543 (Ky.App. 2013)(Unpublished).
[23] D.W. Wilburn, Inc. v. K. Norman Berry & Assocs., Architects, PLLC, No. 2015-CA-001254-MR, 2016 WL 7405774 (Ky.App. 2016)(Unpublished), *disc. rev. denied*, No. 2017-SC-46-D (Ky., 04/19/2017).

misrepresentation brought by a subcontractor against the project owner's architect. And, now we have the 2017 case of Commonwealth v. Pinnacle, Inc.[24] (which is not yet final at the time of the preparation of these materials), in which another panel of the Court of Appeals (Judges S. Combs, J. Lambert, and L. Vanmeter) has held that, even absent any direct contractual relationship, the economic loss rule would apply to bar tort claims asserted by a project owner against a subcontractor and its supplier relating to economic damages incurred as a result of the use of defective concrete on the project (though the owner could still pursue contract damages against the general contractor).[25]

Notably, all of these decisions are unpublished, and lack the force or effect of precedent. Hopefully, discretionary review will be sought, and granted, in the *Pinnacle* case, so that the Kentucky Supreme Court may finally determine the issue of privity.

Product versus Service

It should be noted that the *D.W. Wilburn* case involved alleged negligence with regard to the architect's performance of a *service*, not the sale or construction of a *product*.[26] In its opinion, the Court of Appeals acknowledged this distinction, and that Kentucky's federal courts have held the economic loss rule "does not apply to the provision of services or service contracts,"[27] but decided the case on the privity issue rather than the distinction between a service and product.[28] It does not appear that the distinction between the provision of a product, and the provision of a service, was even considered in the *Staggs & Fisher* or *Pinnacle* cases.

While there is plenty of federal precedent,[29] there is no Kentucky precedent specifically addressing whether the economic loss rule applies to service contracts. There are, however, indications that it *does not*. Such as the 2004 case of Presnell Const. Managers, Inc. v. EH

[24] Commonwealth v. Pinnacle, Inc., No. 2014-CA-001974-MR, 2017 WL 729172 (Ky.App., 02/24/2017) (Unpublished & Non-final), *reconsideration denied* (Ky.App., 08/17/2017)(deadline to petition for disc. rev., 09/18/2017).

[25] *Pinnacle*, *6.

[26] *Staggs & Fisher* also involved the performance of a service, however, the distinction between a service and a product was not discussed, or indeed even mentioned, in the opinion.

[27] State Farm Mut. Auto. Ins. Co. v. Norcold, Inc., 143 F.Supp.3d 586, 588 (E.D.Ky. 2015), *affirmed,* 849 F.3d 328 (6th Cir. 2017), *citing to* NS Transp. Brokerage Corp. v. Louisville Sealcoat Ventures, LLC, No. 3:12-CV–00766–JHM, 2015 WL 1020598, *5 (W.D.Ky. 2015) and Louisville Gas and Elec. Co. v. Continental Field Sys., Inc., 420 F.Supp.2d 764, 769–70 (W.D.Ky. 2005).

[28] *D.W. Wilburn*, *6.

[29] *See, e.g.*, *Norcold*, supra (E.D.Ky.), 588-89; Brewer Mach. & Conveyor Mfg. Co. v. Old Nat'l Bank, 248 F.R.D. 478, 481 (W.D. Ky. 2008); Davis v. Siemens Medical Sols. USA, Inc., 399 F.Supp.2d 785, 801 (W.D.Ky. 2005); Louisville Gas & Elec. Co. v. Cont'l Field Sys., Inc., 420 F.Supp.2d 764, 769-70 (W.D.Ky. 2005); Morris v. Tyson Chicken, Inc., No. 4:15-CV-00077-JHM, 2015 WL 7188479, *4 (W.D.Ky. 2015) NS Transp. Brokerage Corp. v. Louisville Sealcoat Ventures, LLC, No. 3:12-CV-00766-JHM, 2015 WL 1020598, *4 (W.D.Ky. 2015); Rodrock v. Gumz, No. 4:11-CV-00141-JHM, 2012 WL 1424501, *4 (W.D.Ky. 2012); Lewis v. Ceralvo Holdings, LLC, No. 4:11-CV-00055-JHM, 2012 WL 32607, *3 (W.D.Ky. 2012); Grace v. Armstrong Coal Co., No. 4:08-CV-109-JHM, 2009 WL 366239, *4 (W.D.Ky. 2009).

Const., LLC,[30] in which the Kentucky Supreme Court allowed a subcontractor to maintain a negligent misrepresentation claim against a construction manager relating to the manager's performance of services. Therein, the court held that anyone who supplies information for the guidance of others in a business transaction owes a duty of reasonable care, independent of any contractual duty. And, in the *Giddings* case (2011), wherein the Kentucky Supreme Court formally adopted the economic loss rule, it noted that the *Presnell* "was not a classic case for application of the economic loss rule," in part because the "the dispute was not over a product but rather the provision of services."[31]

Fraud and Negligent Misrepresentation

While the Kentucky Supreme Court has not yet definitively decided whether the economic loss rule would prohibit a tort claim for fraud, both of Kentucky's federal courts have predicted that the Kentucky Supreme Court would hold that it does.[32] And, the *Giddings* decision, discussed previously, did specifically hold that the rule was applicable to a claim of negligent misrepresentation asserted against the manufacturer.

CONSIDERATIONS FOR CONTRACT NEGOTIATIONS & PURCHASES

For cities, which routinely have the need for purchasing expensive products, and entering into expensive construction projects, the economic loss rule can be a real dilemma. And, it must be given ample consideration and forethought.

(1) *Due Diligence*

- Make sure the architects and engineers who are designing a project understand precisely what the city is seeking to achieve. And, it is important to do this in writing and with detail, especially since cities are not required to solicit competitive bids for professional services.[33]
- Perform some basic research on the manufacturer and the product. Does the manufacturer have a good reputation for quality? For warranty service? What about the product? Does it have a history of good performance and reliability? Also, are there any indications of solvency concerns regarding the manufacturer? For construction projects, does the contractor have proper bonding in case of insolvency?

[30] *Presnell*, supra.
[31] *Giddings*, 737.
[32] Westlake Vinyls, Inc. v. Goodrich Corp., 518 F.Supp.2d 955 (W.D.Ky. 2007); Derby City Capital, LLC v. Trinity HR Serv., 949 F.Supp.2d 712 (W.D.Ky. 2013); Ashland Hosp. Corp. v. Provation Medical, Inc., No. 14-44-DLB-EBA, 2014 WL 5486217 (E.D.Ky. 2014).
[33] Per KRS 424.260, cities are only required to advertise for bids when a purchase of materials, supplies, equipment or nonprofessional services would exceed $20,000.00.

- This also applies to the purchase of services. Does an architect or engineer have a good reputation? Experience? Proper insurance?
- Also, carefully review and consider any disclaimers or "fine print" in a contract. You may be bargaining away important legal rights. Such as the right to pursue a lawsuit here in Kentucky, or have Kentucky law apply to the transaction, rather than that of the manufacturer's home jurisdiction.

(2) *Warranties*

- When purchasing a product, compare the life expectancy of the product with the manufacturer's warranty (if any), and consider whether an extended warranty may be appropriate.
- Under Kentucky law the implied warranties of merchantability (i.e., the product is fit for the ordinary purpose for which it used) and fitness for a particular purpose (i.e., the product is fit for the particular use intended by the purchaser, provided that the seller as reason to know of that particular use) are included within all contracts for the commercial sale of goods, unless expressly excluded.[34] Sales which are "as is" or "with all faults" are deemed to have excluded such implied warranties.
- Rather than rely upon an implied warranty, make it *express*. Be sure (either by doing so directly, or requiring that a general contractor do so) that a manufacturer is specifically advised of what the intended use of the product will be, and if possible, get the manufacturer to confirm in writing, that the product is fit for such a purpose.

(3) *Insurance*

- Consider whether you have appropriate insurance in place to cover the repair or replacement cost of a product should something go wrong. Warranties expire or are sometimes disputed or not honored; manufacturers sometimes go insolvent. Proper insurance is a must.

(4) *Statutes of Limitations*

- The default statute of limitations to bring an action for a breach of a sales contract is 4 years, however, this period can be reduced by contractual agreement to only 1 year.[35] When you are purchasing a product, pay attention to whether such a reduction is included in the sales contract.

[34] KRS 355.2-316.
[35] KRS 355.2-725.

- Except with regard to warranties for future performance (such as a warranty that a product will last for a fixed number of years, or repair or replacement warranty), the statute of limitations for breach of warranty begins to run as soon as the product is delivered.[36]
- The statute of limitations to bring a claim for professional malpractice (which includes accountants, architects, attorneys and engineers) is 1 year from the date of the occurrence, or when it was, or should have been, discovered.
- By written agreement, parties may extend a statute of limitations.[37] In the case of an architect or engineer, it may be particularly wise to negotiate for such an extension. In a case involving a claim of professional negligence against an engineer, the statute of limitations was held to have begun to run when the damage to a building was discovered, not when it was later determined to be the result of the engineer's negligence.[38]

(5) *Other considerations*

- Be certain to adhere to any routine maintenance or inspection recommended by a manufacturer, or you could risk voiding a warranty.
- Consider including an arbitration clause in the contract. Arbitration typically quicker and less expensive than court litigation, and has more relaxed evidentiary rules. Also, the arbitrator is usually well versed and specialized in the particular area of law or industry at issue, whereas a judge, and certainly a jury, may not be. However, the court process can allow for more in-depth discovery, and the joining of third-parties who may bear some liability (in arbitration, third-parties must consent to being joined). And, with some limited exceptions (fraud or corruption),[39] an arbitration award is final and unassailable, whereas a court judgment is appealable.
- If an architect, engineer, or a manager is hired to oversee a project as a representative of the city, be sure that such person is required to routinely visit the project site, especially when vital aspects of the project or being assembled or installed, and written reports are provided to the city.
- If all else fails, call your lawyer.

[36] KRS 355.2-725(2).
[37] KRS 413.265.
[38] Board of Educ. of Estill Cnty. v. Zurich Ins. Co., 180 F.Supp.2d 890, 892-893 (E.D.Ky. 2002).
[39] *See,* Kentucky Uniform Arbitration Act, KRS 417.150 to 417.180.