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Kasey Washburn

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STUDENT CASE COMMENTARY

THE SCOPE OF THE ECONOMIC LOSS DOCTRINE IN
TENNESSEE

Lincoln Gen. Ins. Co. v. Detroit Diesel Corp., 293 S.W.3d
487 (Tenn. 2009).

*Kasey Washburn*¹

I. Summary

In *Lincoln General Insurance Co. v. Detroit Diesel Corp.*, the Tennessee Supreme Court ruled that Tennessee law does not allow recovery in tort for a defective product that causes damage only to itself, regardless of the manner in which the damage occurs.² The United States District Court for the Middle District of Tennessee brought this issue before the Tennessee Supreme Court through a certified question of law.³ The district court sought to establish the scope of the economic loss doctrine⁴ under Tennessee law, focusing specifically on cases where the damage to the defective product resulted from a sudden, calamitous event.⁵

¹ J.D., pending 2012, Univ. of Tennessee; B.S., Political Science, Univ. of Tennessee. Prior to attending law school, Ms. Washburn interned with United States Senator Lamar Alexander of Tennessee.

² 293 S.W.3d 487, 488 (Tenn. 2009).

³ *Id.*

⁴ The economic loss doctrine applies in products liability cases where a defective product damages itself without causing personal injury or damage to other property; the resulting harm is purely economic because the commercial consumer has lost the value of the product and/or lost profits from its failure to operate in the manner intended. *Id.* at 489.

⁵ *Id.* at 488.

II. Background

The action in *Lincoln General* arose on May 8, 2006, when a bus owned by Senators Rental caught fire due to an alleged engine defect while traveling south on Interstate 65 near Goodlettsville, Tennessee.⁶ Although the engine defect had the potential to cause personal injury or damage to other property, the damage was confined to the bus.⁷ Prevost Car manufactured the bus, whereas Detroit Diesel solely manufactured the engine.⁸ Lincoln General insured Senators Rental and paid \$405,250 for the fire damage to the bus pursuant to its insurance policy.⁹

Following the incident, Lincoln General filed a complaint against both Prevost and Detroit Diesel on numerous counts, including strict products liability.¹⁰ Prevost argued that Lincoln General's tort claims were barred by the economic loss doctrine because the resulting harm was confined to the bus itself. In contrast, Lincoln General argued that the manner in which the damage to the bus occurred established that the defective engine was unreasonably dangerous and therefore should allow a tort claim under products liability.¹¹

III. Court's Conclusions and Rationale

Prior to *Lincoln General*, the United States Supreme Court established a bright-line rule in *East River Steamship Corp. v. Transamerica Delaval, Inc.*, which precludes recovery in tort when a product damages itself without

⁶ *Lincoln General*, 293 S.W.3d at 488.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Lincoln General*, at 490.

causing personal injury or damage to other property.¹² In *East River*, the United States Supreme Court examined three distinct approaches (“minority,” “intermediate,” and “majority”) to the economic loss doctrine that have been applied in various state and federal courts.¹³ The Tennessee Supreme Court evaluated the three approaches in *Lincoln General* and supported the determinations and rationales of the United States Supreme Court concerning the minority and intermediate approaches.¹⁴

One of the approaches rejected by the United States Supreme Court, as well as the Tennessee Supreme Court, is the minority approach, which permits tort recovery for purely economic loss.¹⁵ Courts following this approach argue that the distinction between economic loss and personal injury or property damage is arbitrary because in

¹² *Id.* at 489 (citing *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 871 (1986)).

¹³ *Lincoln General*, 293 S.W.3d at 489.

¹⁴ *Id.* at 491. The United States Supreme Court’s jurisdiction is limited to cases that possess an ingrained federal issue as provided in Article III, Section 2 of the United States Constitution. Thus, in the absence of a federal issue, the individual state supreme courts have the final word on matters of state law that are outside the jurisdiction of the United States Supreme Court. Therefore, the state tort law claim presented in *Lincoln General* is within the sole jurisdiction of the Tennessee Supreme Court; the United States Supreme Court’s decision in *East River* is only persuasive authority. U.S. CONST. art. III, § 2. *See also* U.S. CONST. amend. X; *Int’l Longshoremen’s Ass’n, AFL-CIO v. Davis*, 476 U.S. 380 (1986) (explaining the limitations placed on the United States Supreme Court’s ability to review matters of state law); *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 566 (1977) (“Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.” (quoting *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945))).

¹⁵ *Lincoln General*, 293 S.W.3d at 490.

either case the defendant's conduct caused the harm; therefore, he should be liable for all harm caused by his defective product.¹⁶ The United States Supreme Court rejected this argument in *East River* because “it fails to account for the need to keep products liability and contract law in separate spheres and to maintain a realistic limitation on damages.”¹⁷ Without a limitation on damages for economic loss, such as a contractual agreement, a manufacturer could be held liable for a claim of economic loss that extends further than the manufacturer intended with its initial agreement.

The other rejected approach is the intermediate approach, which permits tort recovery for damage to the defective product in situations that “turn on the nature of the defect, the type of risk, and the manner in which the injury arose.”¹⁸ The intermediate approach seeks to establish tort liability when injury to the defective product alone results from a sudden, calamitous event that renders the defective product unreasonably dangerous.¹⁹ The Tennessee Supreme Court rejected this approach because it would require courts to differentiate between products that expose the owner to an unreasonable risk of harm and those that simply fail to meet the owner's expectations.²⁰ “The *East River* Court rejected the dichotomy between disappointed and endangered product owners as ‘too indeterminate to enable manufacturers easily to structure their business behavior.’”²¹ The Supreme Court clarified

¹⁶ *Id.* (citing *East River*, 476 U.S. at 869).

¹⁷ *Lincoln General*, 293 S.W.3d at 490 (quoting *East River*, 476 U.S. at 870-71).

¹⁸ *Id.*

¹⁹ *Lincoln General*, 293 S.W.3d at 490.

²⁰ *Id.* (citing *East River*, 476 U.S. at 869-70).

²¹ *Lincoln General*, 293 S.W.3d at 491 (quoting *East River*, 476 U.S. at 870).

its disinclination to accept the intermediate approach by stating:

We realize that the damage may be qualitative, occurring through gradual deterioration or internal breakage. Or it may be calamitous. But either way, since by definition no person or other property is damaged, the resulting loss is purely economic. Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss due to repair costs, decreased value, and lost profits is essentially the failure of the purchaser to receive the benefit of its bargain—traditionally the core concern of contract law.²²

The Tennessee Supreme Court similarly rejected the intermediate approach. The court established that “the owner of a defective product that creates a risk of injury and was damaged during a fire, a crash, or other similar occurrence is in the same position as the owner of a defective product that malfunctions and simply does not work.”²³ The court also rejected *Lincoln General’s* argument that by not permitting tort recovery in cases where the damage occurs in a sudden, calamitous event, the manufacturer will have less of an incentive to create a safe and effective product.²⁴ Deterrence will continue to be effectuated through the current products liability law that allows for a tort claim when personal injury or damage to other property results.²⁵ The manufacturer will continue to entertain a threat of liability “because no manufacturer can

²² *Id.*

²³ *Lincoln General*, 293 S.W. 3d at 491.

²⁴ *Id.*

²⁵ *Id.*

predict with any certainty that the damage his unsafe product causes will be confined to the product itself.”²⁶

The Tennessee Supreme Court’s holding in *Lincoln General* is in accordance with the Tennessee Products Liability Act of 1978 that limits products liability to those “actions brought for or on account of personal injury, death, or property damage.”²⁷ Additionally, the Tennessee Supreme Court’s holding is supported by the Restatement (Third) of Torts: Products Liability (1998), which under section 21 “specifically excludes harm to ‘the defective product itself’ from the definition of ‘harm to persons or property’ for which economic loss is recoverable.”²⁸ The United States Supreme Court in *East River* discussed the policy rationales that drive a cause of action under products liability and stated that “products liability grew out of a public policy judgment that people need more protection from dangerous products than is afforded by the law of warranty.”²⁹ Thus, under *East River*, a defective product that causes harm solely to itself is excluded from the protection of a products liability action in tort.³⁰

IV. Analysis

The Tennessee Supreme Court’s decision in *Lincoln General* is beneficial to Tennessee in multiple ways. First, the ruling provides attorneys with a bright-line rule for initiating products liability claims. The prerequisite that a defective product must have caused personal injury or

²⁶ *Id.* at 491 (quoting *Trans States Airlines v. Pratt & Whitney Can., Inc.*, 682 N.E.2d 45, 53 (Ill. 1997)).

²⁷ *Lincoln General*, 293 S.W.3d at 491-92 (quoting Tennessee Products Liability Act, TENN. CODE ANN. § 29-28-102(6) (2000)).

²⁸ *Id.* at 493 (quoting RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 21 (1998)).

²⁹ *East River*, 476 U.S. at 866.

³⁰ *Lincoln General*, 293 S.W.3d at 489.

damage to other property provides the attorney with a clear path to follow in preparing the appropriate claim under either warranty or products liability. Attorneys will be aware of limitations on damages and against whom their complaints should be filed. This will save the attorney, client, and court money by enhancing efficiency in pleadings, discovery, and at trial.

Second, the ruling allows manufacturers to be aware of their potential liability. Manufacturers will continue to be threatened with a products liability claim if their products cause personal injury or damage to other property, thereby maintaining the incentive for manufacturers to create safe and effective products. However, manufacturers will not be on the hook for economic loss that is outside the scope of their contract with commercial consumers. Therefore, without the threat of unlimited liability, manufacturers can focus their attention on creating safe products at an affordable price.

Third, the everyday consumer will benefit because necessary products that may pose some danger, such as lawn mowers, will continue to be available and affordable. If manufacturers had to cover their potential liability for economic loss without a contract limitation, the price of everyday goods would skyrocket in order for manufacturers to stay in business. Additionally, manufacturers may choose to stop producing goods that pose too great a risk of liability. The Tennessee Supreme Court's ruling establishes a limitation on liability that provides consumers with affordable goods and allows Tennessee's economy to grow by encouraging manufacturers to produce and sell.

Finally, the ruling in *Lincoln General* maintains the important distinctions between contract law and tort law. The principles of contract law and tort law, although similar in some respects, have distinct approaches toward damages. Allowing tort law to encroach on contract law would result in creating more liability and would inhibit

contracting between parties. There would be no need for an “assumption of the risk” doctrine because the breaching party would always be open to liability under tort. Contract law encourages parties to work together to accomplish an end result without the fear of liability outside that which has been bargained for in the contract, while tort law seeks to remedy an injustice that was unexpected and one that the innocent party could not have prevented or been insured against.

V. Conclusion

The Tennessee Supreme Court’s ruling in *Lincoln General* permits recovery in tort under products liability for personal injury or damage to other property. Damages that result in injury solely to the defective product are limited to a cause of action under warranty. The Tennessee Supreme Court’s holding protects contract law principles from being engulfed by tort liability, thereby encouraging manufacturers to contract and produce products to commercial consumers without the fear of unlimited liability. Manufacturers will continue to remain liable for harm to persons or other property, thus retaining the incentive for manufacturers to produce products that are safe and effective. The Tennessee Supreme Court’s ruling will also benefit Tennessee through greater efficiency in initiating and preparing for lawsuits, as well as encouraging growth in the economy by allowing consumers to purchase necessary products that are both available and affordable.