

Contract Clauses Limiting Damages

“The NH Supreme Court has enforced contract clauses waiving consequential damages and limiting liability. It has also noted that tort claims asserted when the underlying transaction was based on a contract will be barred by the economic loss doctrine,” posts Stanley A. Martin in *Commonsense Construction Law’s Blog*.

“The plaintiff was an engineering service firm that works with advanced composite materials for Department of Defense clients. The defendant was an IT service provider. The engineering firm had a problem with a drive in one of its servers, and the IT company was brought in to resolve the issue. Unfortunately, the engineering firm lost data because the IT company had ‘failed to properly back it up.’”

“The engineering firm sued for the cost of ‘massively expensive’ testing in order to recover the lost data. It brought claims against the IT company for breach of contract and negligence. The IT company moved to dismiss the costs of testing and any other damages that were not direct damages, and also sought to dismiss the negligence claims. The trial court dismissed the consequential damages, and held that the negligence claim was barred by the economic loss doctrine.”

Read the article.