

April 06 2009 court case sets new precedent

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### **Ruling broadens scope of negligence lawsuits**

**By Howard Fischer**

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PHOENIX — Architects and other design professionals can be sued for negligence even if their mistakes do not result in injury or property damage, the Arizona Court of Appeals has ruled.

In the first decision of its kind in Arizona, the judges acknowledged that case law generally bars someone from recovering economic damages in a tort claim unless there is a showing of physical harm. That has to be either in the form of personal injury or property damage.

Judge John Gemmill, writing for the unanimous court, said the basis of that rule, known as the "economic loss doctrine," is to separate out claims for breach of contract, which have one set of legal premises, and claims strictly for torts — damages — which are governed by a different set.

But Gemmill said that, at least in claims of professional negligence, evidence is not necessary to pursue a tort claim. The judge said proof of economic harm, by itself, is sufficient.

The case involves a contract between Flagstaff Affordable Housing and the firm Design Alliance for the design of apartments in Flagstaff. Construction began in 1995 and was completed a year later. It is not disputed that the project was completed in accordance with the design plans.

In 2004 the U.S. Department of Housing and Urban Development charged the owner with discrimination based on the fact that the apartments did not meet accessibility standards in effect at the time of their construction. The owner was forced to incur what the court called "substantial expense" to remedy the design defects. In 2006, the owner filed suit alleging both breach of contract and professional negligence.

The first claim was withdrawn because the statute of limitations had run out. A trial judge threw out the second claim based on the fact there had been no property damage or injury. But Gemmill said the case law requiring physical harm involves things like construction defects and product liability claims. He

said the logic that calls for some actual injury or property damage does not apply here, as the property was not "damaged."

"The apartments were constructed in complete conformity with architectural plans and specifications," the judge noted. "The alleged error is in the design embodied within the architectural plans and specifications." Gemmill said people hire architects because of their specialized knowledge.

"Indeed, it is the absence of the special knowledge and skills of the layperson and the presence of such in the architect that underscores the importance of the architect's duty to use reasonable care in rendering his or her architectural services, he said.