

Gilbert Texas Construction, L.P. v. Underwriters at Lloyd's London

Year: 2009

Court: Texas Supreme Court

Case Number: 08-0246

The Court held that the standard “contractual liability” exclusion found in the CGL policy essentially is a “breach of contract” exclusion applicable anytime a liability defense, e.g., statute of limitations or economic loss rule, eliminates a negligence cause of action, leaving only a breach of contract claim against the insured. In doing so, the Court more or less found that any time an insured enters into a contract with another party, the insured assumes liability in such contract, which places any breach of contract claim within the terms of the exclusion. In other words, the Court rejected the argument that the contractual liability exclusion requires the assumption of liability of another in the contract. This holding has huge ramifications as there are plenty of times when contracting parties are limited to contractual claims (e.g., economic loss rule). The Court, by its own admission, adopted the minority view.

UP's brief was written pro bono by Micah Skidmore, Esq. of Haynes and Boone, LLP, Richard D. Milone, Esq. and Jennifer Best Vickers, Esq. of Kelley Drye & Warren, LLP and Amy Bach, Esq.