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## Section 553.84: Remedy Without a Cause?

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# Section 553.84: Remedy Without a Cause?

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## **Abstract**

Hurricane Andrew, the third most intense hurricane to hit the United States, not only caused widespread destruction in South Florida but quickly spawned litigation against homebuilders premised on allegations of building code violations.

**KEYWORDS:** building code, economics

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I. INTRODUCTION

Hurricane Andrew, the third most intense hurricane to hit the United States, not only caused widespread destruction in South Florida but quickly spawned litigation against homebuilders premised on allegations of building code violations. The complaints assert a variety of causes of action, however, most do not include claims under section 553.84 of the Florida Statutes, which expressly provides a civil remedy to persons injured by

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violations of any of the State Minimum Building Codes.<sup>1</sup> The neglect of the statutory remedy in the aftermath of the hurricane mirrors the nonuse of this provision generally; only a handful of reported cases have arisen under section 553.84 since its promulgation in 1974.<sup>2</sup> The statutory remedy has attracted recent judicial attention, however, in the Third District Court of Appeal, the jurisdiction of which includes Dade County, site of the recent devastation. This Article will address the remedy afforded by section 553.84, its inherent limitations and the potential role this remedy might play in litigation arising from the hurricane or in construction litigation generally. Section II examines the origin and legislative history of The Florida Building Codes Act, which contains section 553.84. Section III reviews the fundamentals of the South Florida Building Code, particularly those aspects which have been challenged following Hurricane Andrew, and the manner in which the building code may be addressed in judicial proceedings. Section IV analyzes the viability of section 553.84 as a remedy for hurricane damage by identifying potential defendants and the possible limitations on their liability. Section V assesses the possible impact of the economic loss rule on the statutory remedy.<sup>3</sup> Finally, section VI examines whether officers and directors of corporate participants in the construction process may be personally liable under section 553.84 and other available theories of recovery.

## II. ORIGINS OF THE STATUTORY REMEDY

The Florida Building Codes Act (the Act) was enacted on June 11, 1974.<sup>4</sup> The Act required, by January 1, 1975, every city, county and state

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1. FLA. STAT. § 553.84 (1991). Section 553.84 provides:

Statutory civil action: Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this part or the State Minimum Building Codes, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation.

*Id.*

2. See discussion *infra* and text accompanying notes 50-63.

3. The economic loss rule provides that, unless a defective product causes personal injury or damage to property other than the defective product itself, a plaintiff is limited to contract remedies, if any, for the recovery of economic loss caused by the product, and may not recover in tort. *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899, 900-02 (Fla. 1987); see also *infra* text accompanying notes 65-73.

4. 1974 Fla. Laws, ch. 74-163, § 1, codified at FLA. STAT. §§ 553.70-.895 (1991)).

agency in Florida that regulated building construction without benefit of a building code to adopt and enforce one of four statutorily designated State Minimum Building Codes.<sup>5</sup> A common concern about inadequate construction and disparate inspection practices motivated the sponsors of the House and Senate bills which eventually yielded the Act. Local governments regulating building activities often imposed varying requirements or had no building code at all.<sup>6</sup> Thus, both House Bill 3231 and Senate Bill 1080 embraced the concept of minimum statewide standards coupled with an option for local governments to adopt more stringent requirements.<sup>7</sup> The sponsors' objective was "to cover all phases of construction to allow reasonable protection for people at the most reasonable cost."<sup>8</sup>

The legislative history makes little mention of means of enforcement. The staff summary of House Bill 3231 is silent in this regard, focusing on the method of selection of a minimum code and not on subsequent enforcement. The staff evaluation of Senate Bill 1080 merely notes that "[a]ny party damaged as a result of a violation of this act or the codes is specifically given a cause of action."<sup>9</sup>

House Bill 3231 passed unanimously in both the House and Senate in May 1974.<sup>10</sup> The Act required each local government and state agency

5. These codes include the Standard Building Code, promulgated by the Southern Building Code Congress, the EPCOT Code, the One and Two Family Dwelling Code and the South Florida Building Code. The sponsors of House Bill 3231, which became the Act, expressly sought to allow local governments to select among these recognized minimum building codes. FLA. H.R. COMM. ON COMMUNITY AFFAIRS, STAFF ANALYSIS, at 1 (1974) [hereinafter HOUSE ANALYSIS].

6. The staff commentary on Senate Bill 1080, which resembled House Bill 3231 but ultimately died on the Senate calendar, plainly voiced this concern:

Many communities (mostly the smaller ones) have no building codes at all, and are dependent upon state agency administered rules and regulations for the setting of minimum requirements for all aspects of housing construction. The lack of a unified body of such regulations at the state level raises the question of the possibility of sub-standard housing. The wide variation among codes presently in force is far greater than that required to accommodate the differences in climatic and geological conditions.

FLA. SENATE STANDING COMM. ON GOVERNMENTAL OPERATIONS, STAFF EVALUATION, at 2 (1974) [hereinafter SENATE EVALUATION].

7. HOUSE ANALYSIS, *supra* note 5, at 1; SENATE EVALUATION, *supra* note 6, at 1.

8. SENATE EVALUATION, *supra* note 6, at 1.

9. SENATE EVALUATION, *supra* note 6, at 2. The Senate bill also authorized local enforcement agencies to seek injunctive relief to enforce the building code, a feature which became part of the Act. FLA. STAT. § 553.83 (1991).

10. HISTORY OF LEGISLATION, 1974 REGULAR SESSION, HOUSE BILL ACTIONS REPORT, at 332. The Governor signed the measure on June 11, 1974 and the Act became effective

with building construction responsibility to adopt one of the State Minimum Building Codes unless the previous local code, if any, was more stringent than the minimum codes.<sup>11</sup> Further, issuance of building permits was prohibited until the local building official reviewed the proposed plans and specifications for compliance with the applicable State Minimum Building Code.<sup>12</sup> The Act placed enforcement responsibility in the hands of the local governments and permitted code enforcement officials to seek injunctive relief to enjoin construction activity which does not satisfy the requirements of the locally adopted State Minimum Building Code.<sup>13</sup> Section 15 of the Act, now section 553.84 of the Florida Statutes, sets forth a civil cause of action and indicates that such remedy is cumulative with other available avenues of relief.<sup>14</sup>

### III. THE SOUTH FLORIDA BUILDING CODE—AN OVERVIEW

The South Florida Building Code (the Code) was included as one of the four minimum building codes which local governments could adopt to comply with the Act.<sup>15</sup> The Code governed construction activities within Dade and Broward Counties prior to enactment of the statute.<sup>16</sup> The Dade and Broward editions differ, however, having been amended by the respective counties from time to time.

The Code's express purpose plays an important role in its interpretation:

The purpose of this Code is to provide certain minimum standards, provisions and requirements for safe and stable design, methods of construction and uses of materials in buildings and/or structures

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on July 1, 1974. The Florida Building Codes Act, 1974 Fla. Laws ch. 74-167 (codified as amended at FLA. STAT. §§ 553.70-.895 (1991)).

11. FLA. STAT. §§ 553.73, .79 (1991).

12. *Id.* § 553.79.

13. *Id.* §§ 553.80, .83.

14. *Id.* § 553.84.

15. *Id.* § 553.73(2)(d).

16. In Dade County, the Code was originally adopted by the Board of County Commissioners by Ordinance 57-22 in 1957. In 1971, the Florida Legislature by special act enacted the 1970 Dade County edition of the Code as the building code for Broward County. 1971 Fla. Laws ch. 71-575. The special act was incorporated into the Broward County Charter by public referendum as of March 9, 1976. References herein are to the Dade County edition of the Code.

hereafter erected, constructed, enlarged, altered, repaired, moved, converted to other uses or demolished . . . and to regulate the equipment, materials, use and occupancy of all buildings and/or structures.<sup>17</sup>

To accomplish this purpose, subsequent provisions of the Code detail the standards by which buildings must be constructed and against which the performance of systems and materials will be measured.

The Code imposes different construction requirements based upon the proposed use or character, defined as "occupancy," of the building.<sup>18</sup> With respect to all types of occupancies, the Code prescribes standards for, among other things, ingress and egress, structural framework, walls, ceilings, roofs, doors and windows, light and ventilation and plumbing.<sup>19</sup> The Code also includes standards based upon the fire-resistive qualities of the materials used in construction, and contains engineering regulations governing the load-bearing capacities of various design methods and structural building materials and components.<sup>20</sup>

Of particular importance in connection with Hurricane Andrew, the Code prescribes the manner in which roofs must be constructed and the materials required for the fastening of roof components and coverings.<sup>21</sup> Much of the controversy surrounding hurricane-related damage stemmed from the use of staples in lieu of nails, and press board in lieu of plywood in roof construction.

Neither the Dade nor Broward County editions of the Code expressly permit staples for fastening or anchoring the sheathing to roof trusses. The Code contains, however, a mechanism for obtaining approval of products functionally equivalent to those specified in the Code.<sup>22</sup> Pursuant to this procedure, builders in Dade County received approval for the use of staples as functionally equivalent to nails, and pressboard as functionally equivalent to plywood in roof construction.<sup>23</sup>

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17. S. FLA. BLDG. CODE § 102 (1992) (emphasis added).

18. *Id.* § 501.1. Types of occupancies include theaters, auditoriums and similar uses, schools, hospitals, jails, warehouses and similar storage facilities, stores and office buildings, and multiple-residential and single-family dwellings. This article will focus primarily on single-family and condominium occupancies.

19. *Id.* § 501.2.

20. *See id.* Part V, chs. 17-22 (fire resistance of various types of construction), Part VI, chs. 23-30 (engineering and construction regulations).

21. *See id.* ch. 34.

22. *Id.* § 204.

23. The equivalency approval for staples and particle board was rescinded following the hurricane. Dade County, Fla., Ordinance 92-99 (Sept. 15, 1992). Likewise, the Dade County

The Code also governs the characteristics and installation of windows. Standards are prescribed for the design, size, glazing, strength and safety features of windows, glass panels and sliding doors.<sup>24</sup> To establish that a particular product conforms to these requirements, the Code mandates testing of operative window and door assemblies pursuant to the standards of the pertinent industry authority and in accordance with appropriate inward and outward velocity specifications.<sup>25</sup>

Decisions to permit the use of staples as functionally equivalent to nails, and other matters of interpretation and enforcement of the Code in Dade County, are typically made by a Board of Rules and Appeals (the Board).<sup>26</sup> The Board is to be comprised of twenty-one members representing various building trades and design professionals, as well as consumer advocates.<sup>27</sup> The Board's function is "to determine the suitability of alternate materials and types of construction to provide for reasonable interpretation of the provisions of this Code and to assist in the control of the construction of buildings and/or structures."<sup>28</sup>

Such Boards, as is the case in Broward County, are typically independent, and their decisions are final within the administrative process, leaving only a court challenge available for further review.<sup>29</sup> The Board enjoys considerable latitude in interpreting the Code and resolving ambiguities.<sup>30</sup>

Even with this added layer of review, disappointed participants in the Board's review process in Dade County, like their counterparts in other jurisdictions, may still challenge an adverse decision in court. Litigants,

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Board of Rules and Appeals moved quickly to require the use of heavier roofing felt.

24. S. FLA. BLDG. CODE § 3508.

25. *Id.* § 3508.3(b). These requirements have caused confusion. Contrary to popular belief, homes in Dade County do not have to meet a 120 mph requirement, which applies only to structures at least 30 feet in height.

26. Section 203 of the Code creates the Board of Rules and Appeals and delineates its composition and authority.

27. S. FLA. BLDG. CODE § 203.1. The Board's membership includes architects, general contractors, air conditioning contractors, mechanical engineers, electrical engineers, structural engineers, master electricians, fire service professionals, master plumbers, swimming pool contractors, and consumer advocates. *Id.*

28. *Id.* § 203. To carry out these responsibilities, the Board is empowered to hear appeals from decisions of building officials, interpret the Code at the request of building officials, investigate enforcement of the Code, revoke permits and amend the Code. *Id.* § 203.4. The Board may also initiate injunctive proceedings to enforce the provisions of the Code. *Id.*

29. S. FLA. BLDG. CODE § 203.7.

30. *See id.* § 302.5.



however, typically find this avenue quite narrow.<sup>31</sup> Notwithstanding the technical nature of the Code and the problem of interpretation that often lies at the heart of each judicial proceeding in which it is at issue, courts do not permit experts to opine on the proper construction of the Code.<sup>32</sup> Interpretation of the Code is a pure question of law for the trial judge, who generally must defer to the construction advanced by the enforcing official if such construction is permissible, i.e., rational.<sup>33</sup>

The process of code enforcement and interpretation described above principally involves participants in the construction process, particularly contractors and subcontractors. Section 553.84, by contrast, brings the homeowner into the process by affording a cause of action for violation of the building code.<sup>34</sup> Like the concept of "private attorneys general" that infuses the antitrust laws,<sup>35</sup> section 553.84 encourages homeowners to

31. *Id.* § 203.7. The Code permits any person aggrieved by a decision of the Board, whether or not a party to the decision, to apply for a writ of certiorari "to correct errors of law of such decision." *Id.*

32. See *Seibert v. Bayport Beach & Tennis Club Ass'n, Inc.*, 573 So. 2d 889 (Fla. 2d Dist. Ct. App. 1990). In *Seibert*, a condominium association sued the architect who designed the condominium development, alleging improper fire exit design. Both parties presented expert testimony interpreting the fire exit requirements of the applicable building code. The jury found the architect liable for defective fire exit design. The Second District reversed, holding that the trial court erroneously allowed the experts to testify as to their interpretations of the building code. According to the court, "[i]t was the duty of the trial court to interpret the meaning of the code and instruct the jury concerning that meaning. Any conflicts in interpretation were for the court to resolve and their resolution was not a jury issue." *Id.* at 892 (citation omitted).

33. See *id.*; see also *Williams v. Department of Transp.*, 579 So. 2d 226, 230-31 (Fla. 1st Dist. Ct. App. 1991) (error to permit expert testimony that site plan proposals would comply with applicable codes and ordinances); *Harloff v. City of Sarasota*, 573 So. 2d 1324, 1327-28 (Fla. 2d Dist. Ct. App. 1991) (agency interpretations of governing statutes are entitled to great weight); *Humbosco v. Department of Health & Rehabilitative Servs.*, 476 So. 2d 258, 261 (Fla. 1st Dist. Ct. App. 1985) ("when an agency committed with authority to implement a statute construes the statute in a permissible way, that interpretation must be sustained even though another interpretation may be possible or even, in the view of some, preferable"); *Devin v. City of Hollywood*, 351 So. 2d 1022, 1026 (Fla. 4th Dist. Ct. App. 1976) (error to rely upon expert testimony to determine the meaning of terms in the Civil Service Act). Expert testimony may only be presented if the expert's specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. *Seibert*, 573 So. 2d at 891.

34. FLA. STAT. § 553.84 (1991).

35. See *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130-31 (1969) (the "purpose of giving private parties treble-damage and injunctive remedies was not merely to provide private relief, but was to serve as well the high purpose of enforcing the antitrust laws"); see also *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 (1972); *Fortner Enters. v.*

assist in the code enforcement process by attempting to vindicate individual injuries caused by code violations. As discussed below, although this theory is appealing, the limitations inherent in the statute diminish its utility to homeowners in construction defects litigation.

#### IV. AVAILABILITY AND SCOPE OF THE STATUTORY REMEDY

As with many statutory remedies, analysis of section 553.84 presents threshold questions of what duty, if any, is owed, and to whom. The broad language of the statute also prompts an inquiry into the nature and scope of the remedy afforded. The seemingly straight-forward provision of a civil remedy for violation of the building code belies the complexity of the legal issues involved.

##### A. *Who Can Sue?*

Section 553.84 provides that a party may bring a class action to redress violations of the building code.<sup>36</sup> Although this aspect of section 553.84 has not been considered by the courts, legislative prescription that a class action may proceed, without more, is likely an unconstitutional encroachment upon an essentially judicial determination.<sup>37</sup> Although the Florida Rules of Civil Procedure facially permit individual homeowners to serve as class representatives, prospective representatives must, notwithstanding section 553.84, satisfy all requirements and restrictions of a typical class action.<sup>38</sup> In the case of a residential development built by different

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United States Steel Corp., 394 U.S. 495, 502 (1969); Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 139 (1968).

36. FLA. STAT. § 553.84 (1991).

37. See *Avila S. Condominium Ass'n, Inc. v. Kappa Corp.*, 347 So. 2d 599, 607-08 (Fla. 1977) (statutory provision attempting to permit condominium association to maintain class action seeks "to define the proper parties in suits litigating substantive rights" and is thus unconstitutional).

38. FLA. R. CIV. P. 1.220. These requirements include, in all class actions, the numerosity of the class members; common questions of law and fact among the members of the class; the typicality of the class representative's claim; and fair and adequate protection and representation of the class members by the class representative. *Id.* at 1.220(a). In addition, a class action also requires that separate prosecution of claims would create a risk of inconsistent adjudications; the propriety of injunctive relief concerning the class as a whole; or predominance of common questions of law and fact over individual questions of law or fact. *Id.* at 1.220(b). Condominium associations, however, are expressly permitted to maintain class actions, without being subject to the requirements of rule 1.220. *Id.* at

contractors with different materials utilizing different methods of construction, and where residents may have suffered different types of damage, class certification may be unattainable.<sup>39</sup>

The likely unenforceability of the statutory class action provision and the difficulties that will be faced in obtaining class certification under rule 1.220 will effectively thwart efforts by residents of hurricane-ravaged communities to enjoy the benefits of class litigation. Thus, even if hurricane-related lawsuits eventually contain claims under section 553.84, individual homeowners will be left to their own devices, and resources, to pursue their statutory remedies for building code violations.

### B. *Who Can Be Sued?*

One of the most perplexing questions under section 553.84 is the identity of potentially culpable defendants in actions arising under the statute. To answer this question, it is necessary to determine the nature of the statutory remedy in the first instance.

Actions for construction defects typically contain contract and tort claims. Contract based theories ordinarily include claims for breach of express warranties, where the construction or purchase and sale documents include such warranties,<sup>40</sup> and for breach of the judicially implied warranties of habitability, compliance with plans and specifications, and good workmanship and compliance with the building code.<sup>41</sup> Tort claims gen-

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1.221.

39. See *Maner Properties, Inc. v. Siksay*, 489 So. 2d 842, 845-46 (Fla. 4th Dist. Ct. App. 1986) (class action inappropriate to claims by mobile home park residents regarding negligent placement and installation of mobile homes; "where separate fact situations are involved concerning alleged negligence or violations with regard to separate pieces of property, a class action is generally not an appropriate means of resolving the claims"); *Cohen v. Camino Sheridan, Inc.*, 466 So. 2d 1212, 1214 (Fla. 4th Dist. Ct. App. 1985) (class action inappropriate where homeowners alleged liability for leaks in individual roofs, which may have been built at different times and by different people); *K.D. Lewis Enters. v. Smith*, 445 So. 2d 1032, 1034 (Fla. 5th Dist. Ct. App. 1984) (trial court properly refused to allow class action by tenants regarding landlord's noncompliance with housing code as to their individual apartments, because "[t]he extent nature and effect of such omission or non-compliance would unquestionably vary from apartment to apartment and from tenant to tenant").

40. See, e.g., *Rodriguez v. Leonard*, 477 So. 2d 19 (Fla. 3d Dist. Ct. App. 1985) (purchase agreement provided that, at the time of closing, there would be no "violation of applicable building codes" and "the house would conform to the plans submitted").

41. See *Schmeck v. Sea Oats Condominium Ass'n, Inc.*, 441 So. 2d 1092 (Fla. 5th Dist. Ct. App. 1983) (good workmanship and compliance with building code); *David v. B & J*

erally allege negligence in the construction process.<sup>42</sup>

Section 553.84 falls into a third and separate category, that of statutory remedies. As a general proposition, the legislature may grant or create a right, impose an obligation or liability, or give a right of action unknown to the common law.<sup>43</sup> There is an important distinction, however, between substantive rights and statutory remedies. The remedy is merely the means by which the substantive right is enforced. Accordingly, if the legislature intends to differentiate a statutory remedy from existing common law theories of recovery, it is incumbent upon the legislature clearly to define the conditions under which liability will arise for violation of the statute.<sup>44</sup>

Section 553.84 provides a remedy in damages for violation of the building code, but does not specify the standards by which violations should be determined, or identify the parties who may properly be held liable for such violations. In this respect, section 553.84 on its face suggests strict

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Holding Corp., 349 So. 2d 676 (Fla. 3d Dist. Ct. App. 1977) (material compliance with plans and specifications); *Gable v. Silver*, 258 So. 2d 11 (Fla. 4th Dist. Ct. App.), *aff'd*, 264 So. 2d 418 (Fla. 1972) (warranty of habitability). Because this Article treats the statutory remedy provided in § 553.84, rather than contract remedies, warranty claims are not further discussed. It is notable, however, that the legislature has created a statutory warranty in favor of condominium unit owners. Section 718.203 of the Florida Statutes provides a warranty for structural defects for three years from completion or one year from turnover, whichever is greater, but in no event more than five years. FLA. STAT. § 718.203 (Supp. 1992). The statutory warranty, unlike judicially-implied warranties, extends to subsequent purchasers. *Id.*

42. See, e.g., *Continuum Condominium Ass'n v. Continuum VI, Inc.*, 549 So. 2d 1125 (Fla. 3d Dist. Ct. App. 1989); *Drexel Properties, Inc. v. Bay Colony Club Condominium*, 406 So. 2d 515 (Fla. 4th Dist. Ct. App. 1981); *Navajo Circle, Inc. v. Development Concepts Corp.*, 373 So. 2d 689 (Fla. 2d Dist. Ct. App. 1979); *Simmons v. Owens*, 363 So. 2d 142 (Fla. 1st Dist. Ct. App. 1978). The efficacy of the negligence theory has been eroded by judicial embrace of the economic loss doctrine. See *infra* text accompanying notes 65-73. Tort claims for intentional or negligent misrepresentations or nondisclosure, particularly where a developer markets homes or communities by reference to the quality of construction, may also be asserted. Additionally, the Florida Statutes offer civil remedies for false statements in connection with the sale of lots or units and false advertising generally. FLA. STAT. §§ 498.022(1)(b), 817.41(1) (Supp. 1992). Both statutes require plaintiffs to prove each element of the common law tort of fraudulent inducement. See *Vance v. Indian Hammock Hunt & Riding Club, Ltd.*, 403 So. 2d 1367, 1370 (Fla. 4th Dist. Ct. App. 1981). Claims based upon misrepresentations in the marketing process are beyond the scope of this article.

43. See *Drake Lumber Co. v. Semple*, 130 So. 577 (Fla. 1930).

44. Cf. *Thomber v. City of Fort Walton Beach*, 568 So. 2d 914, 918 (Fla. 1990) (the presumption is that no change in the common law is intended unless the statute is explicit in that regard).

liability for construction defects arising from non-compliance with the Code.<sup>45</sup> The Third District Court of Appeal has held in the negligence context, however, that a violation of the Code does not give rise to strict liability,<sup>46</sup> and other courts have similarly rejected attempts to hold developers strictly liable for defects in construction.<sup>47</sup> In view of the importance of the construction industry to Florida's economy and growth, it seems unlikely that the legislature intended section 553.84 to be used to impose strict liability upon participants in the construction process.

Assuming that the legislature did not intend liability without fault, the Third District Court of Appeal, in two recent cases interpreting section 553.84, has applied negligence principles to determine the scope of liability under the statute.<sup>48</sup> The elements of negligence include a duty to protect

45. Strict liability, or liability without fault, governs activities which, though lawful, are so fraught with the possibility of harm to others that the law permits them only if they pay their own way. See *Cities Serv. Co. v. State*, 312 So. 2d 799, 801-02 (Fla. 2d Dist. Ct. App. 1975) (the justification for strict liability is that useful but dangerous activities must pay their own way). The doctrine of strict liability applies primarily to abnormally dangerous, nonnatural uses of land and with respect to products which cause physical injury. See *id.*; *West v. Caterpillar Tractor Co.*, 336 So. 2d 80 (Fla. 1976). Strict liability is imposed by statute upon the owner of a dog which bites a person who is in a public place or who is lawfully on the property of the dog's owner. FLA. STAT. § 767.04 (1986).

46. See *Holland v. Baguette, Inc.*, 540 So. 2d 197, 198 (Fla. 3d Dist. Ct. App. 1989) (violation of South Florida Building Code only constitutes evidence of negligence); *Cadillac Fairview, Inc. v. Cespedes*, 468 So. 2d 417, 421 (Fla. 3d Dist. Ct. App. 1985) (violation of code could not, by itself, support a finding that developer was liable for injuries in worker's compensation action) (citing FLA. STAT. § 553.72 (1988)); *Grand Union Co. v. Rocker*, 454 So. 2d 14, 15-16 (Fla. 3d Dist. Ct. App. 1984) (in personal injury action resulting from fall on ramp which did not comply with building code, it was error to instruct jury that violation constituted negligence per se). The Fourth District has reached the opposite conclusion. See *Brown v. South Broward Hosp. Dist.*, 402 So. 2d 58 (Fla. 4th Dist. Ct. App. 1981). Even in the Third District, however, violations of fire safety provisions are deemed to give rise to per se liability. See *Del Risca v. Industrial Affiliates, Ltd.*, 556 So. 2d 1148 (Fla. 3d Dist. Ct. App. 1990).

47. See *Easterday v. Masiello*, 518 So. 2d 260 (Fla. 1988); see also *Neumann v. Davis Water & Waste, Inc.*, 433 So. 2d 559, 561 (Fla. 2d Dist. Ct. App. 1983) (declining to extend strict liability principles to structural improvements to real estate); *Alvarez v. DeAguires*, 395 So. 2d 213, 216 (Fla. 3d Dist. Ct. App. 1981) (general contractor could not be held strictly liable as a matter of law for allegedly faulty electrical system installed in house); *Strathmore Riverside Villas Condominium Ass'n v. Paver Dev. Corp.*, 369 So. 2d 971, 972-73 (Fla. 2d Dist. Ct. App. 1979) (declining to apply strict liability principles in connection with real estate transactions).

48. This approach logically follows from the Third District's prior holdings that violation of the building code constitutes evidence of negligence (and not negligence per se). See *Holland*, 540 So. 2d at 198; *Cadillac Fairview*, 468 So. 2d at 421; *Grand Union*, 454

others, a failure to perform that duty, and injury or damage to the plaintiff proximately caused by such failure.<sup>49</sup> The Third District has imported the requirements of duty and causation into its analysis of section 553.84.

The Third District first addressed the statutory remedy in *Sierra v. Allied Stores Corp.*<sup>50</sup> In *Sierra*, a restaurant patron in the Omni mall complex in Miami allegedly suffered carbon monoxide poisoning while dining. As related by the court:

The Omni development was constructed around an already existing Jordan Marsh store. An exhaust pipe from Jordan Marsh's emergency generator was originally vented outside the store in accordance with building-code requirements. Subsequently, Omni's builders extended Jordan Marsh's exterior wall in order to provide an inside fire corridor adjacent to the new restaurant. The generator's exhaust pipe was improperly vented through a concealed attic inside the Omni structure. On the night of the restaurant's grand opening, Jordan Marsh's emergency generator was automatically activated by an electrical power failure, emitting carbon monoxide fumes into the restaurant through its air conditioning system.<sup>51</sup>

Sierra sued Omni, Jordan Marsh, its parent Allied Stores, the restaurant and the Omni architects on theories of negligence and building code violations. Following settlements with the restaurant and the architects, the case proceeded to trial against Omni and Jordan Marsh. The jury exonerated Jordan Marsh and Sierra appealed, relying upon section 553.84, arguing that Jordan Marsh should have been held strictly liable.<sup>52</sup>

The Third District recognized that section 553.84 "creates an independent cause of action," but rejected "the proposition that the statute creates strict liability against the owner whose property, although the source of a harmful agent, is not in violation of the building code."<sup>53</sup> The court found that Jordan Marsh's building complied with the building code until altered

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So. 2d at 16. Negligence is the failure to exercise that degree of care, precaution and vigilance that an ordinarily prudent person would exercise. See *De Wald v. Quarnstrom*, 60 So. 2d 919, 921 (Fla. 1952). The Code establishes the minimum standards for construction. S. FLA. BLDG. CODE § 102. Violation of the building code would thus translate into failure to meet the minimum standards of proper construction, which seems more like a formulation of negligence per se than mere evidence of negligence.

49. See *Tieder v. Little*, 502 So. 2d 923, 925 (Fla. 3d Dist. Ct. App. 1987).

50. 538 So. 2d 943 (Fla. 3d Dist. Ct. App. 1989).

51. *Id.*

52. *Id.* at 944.

53. *Id.*

by Omni's contractors, and that Jordan Marsh had not, by conduct or contract, assumed liability for Omni's negligence or that of its contractors.<sup>54</sup>

More importantly for purposes of section 553.84, the Third District cast its conclusions in negligence terminology by examining whether Jordan Marsh owed any duty to Sierra. The court stated that the Code does not impose a duty upon a landowner to supervise construction undertaken by an independent contractor.<sup>55</sup> Quoting section 553.84, the court indicated that liability under the statute is imposed on the person or party who *commits* the violation, which was not Jordan Marsh.<sup>56</sup> Applying these principles, the court held that, as a matter of law, Jordan Marsh owed no duty to Sierra under the Code and thus could not be liable to her under the statute.<sup>57</sup>

The Third District next visited section 553.84 in *Casa Clara Condominium Ass'n, Inc. v. Charley Toppino & Sons, Inc.*<sup>58</sup> In *Toppino* and its companion cases, several condominium unit owners sued a supplier of concrete used in the construction of the condominium. The homeowners alleged that the concrete had an excessive chloride content which caused the reinforcing steel used in the building to rust and expand, in turn causing the structural components of the building to crack. The complaints included claims for breach of implied warranty, negligence, product liability and, pursuant to section 553.84, violation of the Code.

The trial court dismissed all counts with prejudice. The court dismissed the warranty count because of lack of privity and the negligence and product liability counts by applying the economic loss rule.<sup>59</sup> With respect to the statutory claim, the trial court ruled that the building code does not govern suppliers; Toppino thus had no duty to comply with the Code and, as a matter of law, had no liability to the homeowners.<sup>60</sup>

The Third District Court of Appeal affirmed. The court stated that, pursuant to section 553.73(2)(d) of the Act, the State Minimum Building Codes "shall govern the construction, erection, alteration, repair or demolition of any building."<sup>61</sup> As a supplier, Toppino had not performed

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54. *Id.*

55. *Sierra*, 538 So. 2d at 944.

56. *Id.*

57. *Id.*

58. 588 So. 2d 631 (Fla. 3d Dist. Ct. App. 1991). The case is pending on appeal in the Florida Supreme Court under Case Nos. 79-127 and 79-128.

59. For a discussion of the economic loss rule, see *infra* text accompanying notes 65-73.

60. *Toppino*, 588 So. 2d at 633.

61. *Id.* at 634.

any of these functions on the condominium project. The court thus concluded that Toppino had no duty to comply with the building code, absent which the homeowners had no remedy against Toppino under section 553.84.<sup>62</sup>

The *Sierra* and *Toppino* decisions present two significant issues regarding the scope of section 553.84. As discussed above, the first pertains to the identity of potential defendants in an action under the statute. Reading *Sierra* and *Toppino* together, a developer apparently has a duty to comply with the building code but, acting through contractors and subcontractors, arguably cannot itself "commit" a violation of the code. A supplier may "commit" a violation of the standards prescribed in the code, but has no duty of compliance. General contractors typically hire subcontractors, who may have a duty of compliance and may "commit" violations, unless they retain sub-subcontractors. Although general contractors coordinate and supervise the work of subcontractors, and subcontractors, in turn, supervise the work of sub-subcontractors, it is unclear whether negligent supervision equates with "committing" a building code violation under section 553.84.

Who may be liable under section 553.84? Under its present formulation, this is difficult to determine. The answer may turn, however, on the second issue raised but not addressed by *Sierra* and *Toppino*, namely the interrelation between the statutory remedy and the economic loss doctrine, to which we now turn.<sup>63</sup>

## V. SECTION 553.84 AND THE ECONOMIC LOSS RULE

As discussed above, construction defects actions raise both contract and tort issues. Different impulses guide tort and contract duties, however. Tort law focuses on safety and the possibility of physical injury to persons or other property. Contract principles, particularly the principles of warranty, govern product value and quality. The classic formulation of the divergence between contract and tort protections was enunciated by Justice Traynor in *Seely v. White Motor Co.*<sup>64</sup>

The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not

62. *Id.*

63. *Toppino* involved both the economic loss rule and § 553.84, but the Third District did not have occasion to discuss their relationship. See *infra* text accompanying notes 72-79.

64. 403 P.2d 145 (Cal. 1965).



arbitrary and does not rest on the 'luck' of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm. He cannot be held for the level of performance of his products in the consumer's business unless he agrees that the product was designed to meet the consumer's demands. A consumer should not be charged at the will of the manufacturer with bearing the risk that the product will not match his economic expectations unless the manufacturer agrees that it will.<sup>65</sup>

The question in the construction law context, as it has long been in the context of products, is whether economic loss—repair and replacement costs and diminution of value—is recoverable under a tort or a contract theory. Economic loss has traditionally been the province of contract and warranty law.<sup>66</sup> Courts have generally thought the law of sales, with its rules governing the foreseeability of loss and expectation damages, to be better suited to redress purely economic loss.<sup>67</sup> Courts also have cast a wary eye on the expansion of tort law into this area: "[I]f this development were allowed to progress too far, contract law would drown in a sea of tort."<sup>68</sup>

The majority of states, and the United States Supreme Court in *East River*, have thus held that pure economic loss, unaccompanied by physical injury or injury to property distinct from that which causes the damage, is not recoverable in a negligence action, including in the construction context.<sup>69</sup> This is the law of Florida.<sup>70</sup>

65. *Id.* at 151.

66. See *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986); *Seely*, 403 P.2d at 151.

67. See *East River*, 476 U.S. at 866; *Florida Power & Light*, 510 So. 2d at 901.

68. *East River*, 476 U.S. at 866.

69. See, e.g., *Palco Linings, Inc. v. Pavex, Inc.*, 755 F. Supp. 1269 (M.D. Pa. 1990); *Ganton Technologies, Inc. v. Quadion Corp.*, 755 F. Supp. 203 (N.D. Ill. 1990); 2314 Lincoln Park West Condominium Ass'n v. Mann, Gin, Ebel & Frazier, Ltd., 555 N.E.2d 346 (Ill. 1990); *Atherton Condominium Apartment Owners Ass'n Bd. of Directors v. Blume Dev. Co.*, 799 P.2d 250 (Wash. 1990); *Sensen-Brenner v. Rust, Orling & Neale, Architects, Inc.*, 374 S.E.2d 55 (Va. 1988); *State v. Mitchell Constr. Co.*, 699 P.2d 1349 (Idaho 1985); *Minneapolis Soc'y of Fine Arts v. Parker-Klein Assoc. Architects*, 354 N.W.2d 816 (Minn. 1984); *Local Joint Executive Bd., Culinary Workers Union, Local No. 226 v. Stern*, 651 P.2d 637 (Nev. 1982).

70. *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899 (Fla. 1987); see also *AFM Corp. v. Southern Bell Tele. Co.*, 515 So. 2d 180 (Fla. 1987); *Aetna*

In *Toppino*, the Third District reaffirmed the economic loss rule. The court rejected the homeowner plaintiffs' contention that the allegedly defective concrete caused damage to "other property," the steel reinforcing bars and the buildings themselves, removing their claims from the ambit of the economic loss doctrine.<sup>71</sup> *Toppino* "supplied a component which became an integral part of the homeowners' structure."<sup>72</sup> Holding that the entire condominium was the property for purposes of applying the economic loss rule, and finding that the homeowners did not allege personal injury or damage to property apart from their condominium, the court ruled that the plaintiffs could not maintain a cause of action against *Toppino* in tort.<sup>73</sup>

The Third District next addressed the homeowners' claims against *Toppino* for building code violations. The court rejected these claims,<sup>74</sup> but did not discuss whether the economic loss doctrine might bar the statutory remedy. Because Florida Statute section 553.84 is, on its face, a statutory, as opposed to tort or contract, remedy, it is tempting to postulate that the economic loss doctrine does not apply to actions under section 553.84, which permits homeowners to recover purely economic losses stemming from construction defects. If this were the case, the statutory remedy would be of immeasurable value in construction litigation arising from Hurricane Andrew. However, this conclusion would be too easily reached in view of the silence of the legislative history on this issue<sup>75</sup> and the Third District's analysis of the statutory remedy in the language of traditional negligence concepts.<sup>76</sup> It should not be presumed that the legislature intended in 1974 simply to gloss over the long-standing distinctions between contract and tort or would intend today to sweep aside the economic loss doctrine which has taken firm root in Florida. If section 553.84 is predicated upon negligence standards as the Third District's decisions suggest, the economic loss rule would bar recovery of repair and replacement costs made necessary by the hurricane, making the statutory remedy virtually useless in the aftermath of the hurricane.

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Life & Casualty Co. v. Therm-O-Disc, Inc., 511 So. 2d 992 (Fla. 1987); *Toppino*, 588 So. 2d at 633; GAF Corp. v. Zack Co., 445 So. 2d 350 (Fla. 3d Dist. Ct. App.), review denied, 453 So. 2d 45 (Fla. 1984); Cedars of Lebanon Hosp. Corp. v. European X-ray Distrib. of Am., Inc., 444 So. 2d 1068 (Fla. 3d Dist. Ct. App. 1984); Monsanto Agric. Prod. Co. v. Edenfield, 426 So. 2d 574 (Fla. 1st Dist. Ct. App. 1982).

71. *Toppino*, 588 So. 2d at 633.

72. *Id.*

73. *Id.* at 633-34.

74. See *supra* text accompanying notes 60-62.

75. See *supra* text accompanying notes 6-9.

76. See *supra* text accompanying notes 55-57.

Since the purpose of the Act, however, is to "allow reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer,"<sup>77</sup> this formulation is also unpalatable. Under the maxim *ut res magis valeat quam pereat*,<sup>78</sup> courts are required to find ways within the terms of a statute to give effect to its purpose rather than to defeat it.<sup>79</sup>

Moreover, although the Supreme Court stated in *Florida Power & Light v. Westinghouse Electric Corp.*<sup>80</sup> that the economic loss rule was "not a new principle of law in Florida" and had "a long, historic basis,"<sup>81</sup> in 1973, one year before promulgation of section 553.84, the court had ruled that a general contractor who sustained an economic loss at the hands of a negligent architect had a cause of action against the architect notwithstanding the absence of privity.<sup>82</sup> Accordingly, in 1974 the legislature could have believed that there was no economic loss impediment to a statutorily-based negligence action premised on violations of the building code.

The difficulty essentially lies with the legislature's failure to indicate precisely why it included a private right of action. It is unlikely that the legislature desired either to impose strict liability on construction activities or to allow the economic loss doctrine to defeat the statutory cause of action. Because these appear to be the competing alternatives, however, and the legislative history of section 553.84 does not offer any clues, only the legislature can resolve this conundrum.

In so doing, the legislature should measure the distinct purposes of contract and tort law against the stated purpose of the Act to allow

77. FLA. STAT. § 553.72 (1991).

78. "That it may rather become operative than null."

79. See *Department of Legal Affairs v. Rogers*, 329 So. 2d 257, 263 (Fla. 1976); *Overman v. State Bd. of Control*, 62 So. 2d 696, 701 (Fla. 1952); *State ex rel. Davis v. Rose*, 122 So. 225, 230 (Fla. 1929); *Adams v. Gordon*, 260 So. 2d 246, 248 (Fla. 4th Dist. Ct. App. 1972); cf. *Girard Trust Co. v. Tampa Shores Dev. Co.*, 117 So. 786 (Fla. 1928) (holding that by inserting an amendment the legislature is presumed to have intended some useful purpose).

80. 510 So. 2d 899 (Fla. 1987).

81. *Id.* at 902.

82. *A.R. Moyer, Inc. v. Graham*, 285 So. 2d 397 (Fla. 1973). In *Moyer*, the United States Court of Appeals for the Fifth Circuit had certified to the Florida Supreme Court the question, *inter alia*, of whether a general contractor could maintain a direct action against an architect for negligent preparation of plans and specifications in the absence of privity. The supreme court answered that "the principle is established that a third party general contractor, who may foreseeably be injured or sustained an economic loss proximately caused by the negligent performance of a contractual duty of an architect, has a cause of action against the alleged negligent architect, notwithstanding absence of privity." *Id.* at 402.

protection to the public "at the most reasonable cost to the consumer."<sup>83</sup> Clarification of the statutory remedy in a manner which suggests strict liability for construction activities will likely increase the cost of construction to all consumers at the outset by increasing the cost of doing business to all participants in the construction industry. The existing combination of contract and tort remedies available in the construction context, in which the economic loss rule plays a role, may fix responsibility for loss more cost-effectively on the single individual who owes the duty breached. Accordingly, to balance the competing considerations, the legislature may wish to consider amending section 553.84 to provide expressly which participants in the construction process have a duty to comply with the building code. This approach would avoid the difficulties encountered in *Sierra* and *Toppino* and clarify the intended scope of the statutory remedy.

## VI. INDIVIDUAL LIABILITY OF CORPORATE OFFICERS AND DIRECTORS

Assuming that at least some participants in the construction process had a duty to comply with the Code and committed a violation, a likely question in hurricane-related litigation, as it is in construction and civil litigation generally, is whether officers and directors of corporate builders or contractors may be individually liable to homeowners. This question is germane to other potential theories of recovery as well, not only to the statutory remedy.

### A. Section 553.84

Section 553.84 provides a cause of action against "the person or party who committed the violation."<sup>84</sup> In view of the duty requirement interpolated into the statute by the Third District and the requirement that the person sought to be held liable have committed the code violation, it would appear that the statutory remedy would not be available against individual officers and directors unless they actively participated in the conduct alleged to have violated the building code.<sup>85</sup> This would presumably require that

83. FLA. STAT. § 553.72 (1991).

84. *Id.* § 553.84.

85. *See* P.V. Constr. Corp. v. Kovner, 538 So. 2d 502, 504 (Fla. 4th Dist. Ct. App. 1989); McElveen v. Peeler, 544 So. 2d 270, 271 (Fla. 1st Dist. Ct. App. 1989); White-Wilson Medical Ctr. v. Daya Consultants, Inc., 486 So. 2d 659, 661 (Fla. 1st Dist. Ct. App. 1986).

the officer or director have participated in specific aspects of the design and construction process.

## B. Warranty Claims

Contracts and associated sales materials may provide the predicate for express warranty claims, and the judicially implied warranties are available. Warranties, however, express or implied, are corporate responsibilities. Officers and directors are not individually liable for breaches of corporate contracts or corporate warranties.<sup>86</sup> As long as the officer or director does not personally make any warranties to home purchasers or sign any of the sales contracts in a manner suggesting execution in an individual capacity, he should not be held liable on a contract or warranty theory.

## C. Tort Claims

Unlike contract or warranty claims, an officer or director can be held liable for misrepresentation or negligence even though committed during the course of corporate employment and regardless of whether the corporation is also liable.<sup>87</sup> Florida law requires, however, as a prerequisite to individual liability on tort claims, personal participation by the officer or director sought to be held liable.<sup>88</sup> A corporate officer or director must have acted tortiously in his individual capacity to be individually liable.<sup>89</sup> If the officer or director has not himself committed a tort, directed another to do so, or ratified another's tortious conduct, he may not be held liable simply by virtue of his status as an officer or director.<sup>90</sup>

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As a logical matter, if the developer/owner does not "commit" a violation of the building code, see *Sierra*, 538 So. 2d at 944, neither does the developer's officers or directors.

86. See *White-Wilson*, 486 So. 2d at 661; *Naranja Lakes Condominium No. One, Inc. v. Rizzo*, 422 So. 2d 1080, 1080 (Fla. 3d Dist. Ct. App. 1982); *Plaza del Prado Condominium Ass'n v. GAC Properties, Inc.*, 295 So. 2d 718, 720 (Fla. 3d Dist. Ct. App. 1974).

87. See *P.V. Constr. Corp.*, 538 So. 2d at 504; *Naranja Lakes*, 422 So. 2d at 1080; *Adams v. Brickell Townhouse, Inc.*, 388 So. 2d 1279, 1280 (Fla. 3d Dist. Ct. App. 1980).

88. *P.V. Constr. Corp.*, 538 So. 2d at 504; *McElveen*, 544 So. 2d at 271; *White-Wilson*, 486 So. 2d at 661.

89. *McElveen*, 544 So. 2d at 271; *White-Wilson*, 486 So. 2d at 661.

90. See *P.V. Constr. Corp.*, 538 So. 2d at 504; *McElveen*, 544 So. 2d at 272. Courts are inclined to limit personal liability. For example, a bare allegation that a corporate officer personally made a misrepresentation or directed another to disseminate misrepresentations, is not insufficient to maintain a cause of action against such officer. See *Alsop v. Your Graphics Are Showing, Inc.*, 531 So. 2d 222, 224 (Fla. 2d Dist. Ct. App. 1988).

Less clear is whether a corporate officer may be held liable for torts committed by employees acting under their general supervision. It appears, however, that although the corporation itself may be held liable under these circumstances, officers and directors cannot be liable, absent some fault attributable directly to them, knowledge of the tortious conduct, or some special situation imposing a duty upon the officer or director to know of the conduct.<sup>91</sup>

#### D. Claims Against Directors

The foregoing analysis applies equally to officers and directors of a corporation. The Florida Statutes contain specific provisions, however, with respect to the role of directors and their potential liability for decisions and conduct in the course of their direction of the corporation.<sup>92</sup>

Section 607.0830 sets forth the duties of a director, requiring directors to act in good faith, with the care of an ordinarily prudent person in a like position under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation. In discharging these duties, a director is entitled to rely upon information presented by officers and employees of the corporation and others whom the director reasonably believes are reliable or competent in the matters presented, and to consider such other factors as the director deems relevant. Under section 607.0830, "[a] director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section."<sup>93</sup>

Section 607.0831 elaborates on directors' personal liability. The pertinent portion of section 607.0831 provides that a director cannot be personally liable for monetary damages unless his action or omission regarding corporate management or policy constitutes "recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property."<sup>94</sup> This section defines recklessness as "the action, or omission to act, in conscious disregard of a risk . . . [k]nown, or so obvious that

91. See *McElveen*, 544 So. 2d at 272 ("With regard to personal fault, personal liability cannot be imposed upon the officer simply because of his general administrative responsibility for performance of some function of his employment. He must have a personal duty towards the injured third person . . .").

92. FLA. STAT. §§ 607.0830, .0831 (1991).

93. *Id.* § 607.0830(5).

94. *Id.* § 607.0831(1)(b)5.

it should have been known, to the director; and . . . [k]nown to the director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission."<sup>95</sup>

The legislature added these provisions to the Florida Statutes in 1977, and to date no Florida court has had occasion to address them. Commentators have suggested, however, that they purposely pose a very high barrier to individual liability.<sup>96</sup> Moreover, liability under the statute would seemingly require an underlying personal participation in the construction process of the type discussed earlier. Thus, the stringency of the statutory requirements, in conjunction with the deference to business decisions traditionally accorded by the courts, appears to foreclose this statutory remedy to potential homeowner claimants.

## VII. CONCLUSION

Section 553.84 is a remedy in search of a plaintiff, a duty and, perhaps, a purpose. In the wake of Hurricane Andrew, precisely when the statutory remedy could be expected to be of greatest significance, it stands at the intersection of the economic loss rule and strict liability, with no guidance from the legislature as to the direction it should take. Only the legislature can resolve this dilemma, which involves the potential expansion of tort-based liability or contraction of the statutory remedy. In so doing, the legislature should be cognizant of the historic distinctions between different types of remedies and the mechanisms that have been established to apportion liability in the construction context.

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95. *Id.* § 607.0831(2)(a), (b).

96. See Riah Ramlogan Seuradge, Note, *The Personal Liability of Directors in Florida: Whose Corporation is it Anyway*, 15 NOVA L. REV. 1389, 1390-91 (1991).



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