ADVANCE SHEET HEADNOTE
June 23, 2026

2026 CO 52

No. 25SC21, *Veolia Water Techs., Inc. v. Antero Treatment LLC*—Economic Loss Rule—Interrelated Contracts—Fraudulent Inducement.

In this case concerning a dispute that followed a series of contracts between two commercial entities, the supreme court granted certiorari to consider whether the economic loss rule bars a fraud claim when the parties were in a contractual relationship, the fraud claim allegedly sought the same relief as a breach of contract claim, and the fraud allegedly concerned a party's performance under the contract.

The court now concludes that because (1) the interrelated contracts doctrine does not apply to a series of contracts between two parties when each contract represents a stand-alone transaction and (2) the fraud alleged here occurred prior to the formation of the pertinent contract and, on the facts presented, induced the other party to sign that contract, the economic loss rule does not bar the fraud claim in this case.

Accordingly, the court affirms the court of appeals division's decision below, albeit on other grounds, and remands this case with instructions to return the case to the trial court for a determination of the reasonable attorney fees to be awarded to the prevailing party under the pertinent contract's fee-shifting provision.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 52

Supreme Court Case No. 25SC21
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 23CA897

Petitioner:

Veolia Water Technologies, Inc.,

v.

Respondents:

Antero Treatment LLC, Antero Resources Corporation, Antero Midstream Partners LP, and Antero Midstream Corporation.

Judgment Affirmed
en banc
June 23, 2026

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE SAMOUR**, **JUSTICE BERKENKOTTER**, and **JUSTICE BLANCO** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 This dispute arises from a series of agreements between and among Antero Treatment LLC, Antero Midstream Partners LP, Antero Midstream Corporation, and Antero Resources Corporation (collectively "Antero"), on the one hand, and Veolia Water Technologies, Inc. ("Veolia"), on the other, that led to the design and construction of a facility to treat wastewater from hydraulic fracturing ("fracking") operations. Antero asserts claims against Veolia for, among other things, breach of contract and fraud. We granted certiorari to consider whether the economic loss rule bars Antero's fraud claim when, according to Veolia, the parties were in a contractual relationship, the fraud claim sought the same relief as Antero's contract claim, and the fraud concerned Veolia's performance under the contract.

¶2 We now conclude that because (1) the interrelated contracts doctrine does not apply to a series of contracts between two parties when each contract represents a stand-alone transaction and (2) the fraud alleged here occurred prior to the formation of the pertinent contract and, on the facts presented, induced Antero to sign that contract, the economic loss rule does not bar Antero's fraud claim in this case.

¶3 We therefore affirm the court of appeals division's decision below, albeit on other grounds, and we remand this case with instructions to return the case to the trial court for a determination of the reasonable attorney fees to be awarded to

Antero as the prevailing party under the pertinent contract's fee-shifting provision.

I. Facts and Procedural History

¶4 Antero Treatment is an indirect, wholly owned subsidiary of Antero Midstream Corporation, a company that owns, operates, and develops midstream energy assets for Antero Resources, a natural resources company engaged in oil and gas extraction and production. In the summer of 2014, Antero began investigating alternative disposal options for wastewater produced from its fracking operations, which it had previously discarded by trucking the wastewater to disposal wells, a method that was economically and environmentally problematic. Antero approached Veolia, a company that designs and constructs water treatment facilities, to discuss options for the disposal of Antero's wastewater. Veolia subsequently presented Antero with a proposal to build a facility that would use Veolia's technology to separate and crystallize the solids within the wastewater, creating a waste salt that could be landfilled and leaving behind water that was clean enough to reuse or discharge into surface waterways.

¶5 Antero and Veolia initially agreed on a "Bench Scale Proposal" under which Veolia would conduct a study and preliminary engineering for such a wastewater treatment facility. Antero paid Veolia $355,000 to conduct this Bench Scale Study, which culminated in Veolia's issuing two "Bench Scale Reports." Throughout this

study period, Veolia represented to Antero that the facility's waste salt would be solid and stable, with "zero liquid waste," such that the salt would be suitable for landfill disposal. In light of these representations, and at Veolia's suggestion, Antero retained a consultant to design and complete a landfill permit application. This application was based on the information and samples that Veolia had provided regarding the waste salt's physical characteristics.

¶6 After the Bench Scale Proposal work, Antero provided Veolia with two "Limited Notice to Proceed" agreements ("LNTPs"), under which Antero agreed to pay Veolia $1.5 million to conduct additional design work. Following these exploratory agreements, and throughout the summer of 2015, Antero and Veolia negotiated the terms of what would become the parties' Design/Build Agreement ("DBA"), under which Veolia would design and build a turnkey water treatment facility called "Clearwater" for Antero.

¶7 As initially envisioned, the Clearwater facility would treat Antero's wastewater in three stages. First, a pretreatment stage would use chemicals to remove solids and dissolved metals from the water. Second, a thermal stage would crystallize and separate salt from the chemically treated water. This stage would use four sequential chambers, or "effects," in which wastewater would be heated and crystallized waste salt would be separated. This stage would also use "chillers," which would consume significant power, for cooling purposes. Finally,

a post-treatment stage would remove any remaining volatile organic compounds to produce water capable of reuse in oil and gas operations or discharge into freshwater streams. This process would satisfy Antero's objective of producing waste salt that could be landfilled.

¶8 In addition, because the cost of power would be passed through to Antero, Antero made clear to Veolia that any agreement would need to satisfy certain specified power consumption limits.

¶9 As the parties were negotiating the DBA, Veolia became concerned about the potential power consumption required for the chillers used in Clearwater's crystallization process. Veolia specifically became concerned about its ability to satisfy Antero's power consumption requirements. Because of these concerns, and without notifying Antero, Veolia began to redesign Clearwater to split the fourth effect in the second stage of treatment from one chamber to two, to reduce the need for the power-demanding chillers.

¶10 Thereafter, and before the parties entered into the DBA, Veolia further discovered that it had underestimated the chillers' daily power requirements by a significant margin, exacerbating its power consumption concerns. Despite determining that the facility's power consumption would likely exceed Antero's specified maximum consumption requirements, Veolia did not share its calculations with Antero. Instead, it moved forward with the DBA negotiations,

knowing full well that its most recent calculations exceeded Antero's requirements.

¶11 Four days after Veolia discovered this significant but undisclosed miscalculation, the parties signed the DBA, with Antero ultimately agreeing to pay Veolia $255,765,253 once the facility was completed.

¶12 The DBA contained a number of requirements and provisions that are pertinent to this case.

¶13 First, the DBA included two key operating requirements for the Clearwater facility: (1) the DBA's waste salt and sludge specifications required "Free Liquids—Pass, No free liquids" and "Total Solids—no limit, must pass paint filter test," reflecting Antero's requirement that the waste salt be suitable for landfilling; and (2) the facility's power consumption could not exceed 505,500 kilowatt-hour ("kWh") per day with its chillers on or 340,000 kWh per day with the chillers off.

¶14 Second, the DBA had an integration clause, which specifically incorporated the prior Bench Scale Proposal and LNTPs into the DBA. This integration clause provided, in pertinent part, "This Agreement together with each LNTP, the Benchscale Study (excluding the confidentiality provisions contained therein) and the Existing Confidentiality Agreements, sets forth the entire agreement between the Parties with regard to the subject matter of this Agreement . . . ."

¶15 Finally, the DBA included a damages cap clause that limited Veolia's liability to sixty percent of the contract sum for most claims but explicitly provided that this limitation did not apply in the case of, among other things, either party's "gross negligence, *fraud* or willful misconduct." (Emphasis added.)

¶16 After the parties signed the DBA, Veolia's senior management began developing a "plan" to "sell" its proposed design change (i.e., splitting the fourth effect into two separate chambers) as "a WIN/WIN Scenario and benefit for the project." In the course of its internal conversations, however, Veolia had identified a significant risk that splitting the fourth effect might compromise the waste salt's quality and render the waste salt too unstable for Antero's landfill plans. Veolia did not disclose this risk to Antero.

¶17 Then, just eight days after the DBA was signed, Veolia proposed to Antero Change Order 1 to modify the original design of Clearwater by splitting the fourth effect. Consistent with its plan to sell this design change as a win, Veolia presented it to Antero as "design optimizations" and listed the proposed change's alleged benefits. Again, however, Veolia never communicated the potential risk that this design change posed to the waste salt's quality. To the contrary, Veolia repeatedly assured Antero that the salt quality would be of suitable stability for Antero's envisioned landfill strategy. Ultimately, having not been advised of (or having

been misled as to) the material facts, Antero agreed to Change Order 1, and Veolia began constructing Clearwater.

¶18 Two years after the DBA was signed, Clearwater began treating wastewater and producing waste salt. Consistent with the risks that Veolia had identified internally (but did not disclose to Antero) before Change Order 1 was signed, Clearwater produced a "soupy salt" as a result of the splitting of the fourth effect. This salt quality caused a number of problems for Antero. Among other things, the salt leaked out of transport trucks and storage buildings. In addition, the "soupy salt" could not be landfilled using the standard landfilling techniques and equipment that Antero had envisioned. Rather, the salt could be landfilled only after difficult and expensive solidification efforts that had never been part of Antero's landfill strategy.

¶19 As a result of the issues arising from the waste salt's quality, as well as from other mechanical, design, and process-based failures that arose at the facility, Clearwater never satisfied a number of the critical terms of the DBA. Subsequently, Veolia informed Antero that the salt quality would not improve and that it was Antero's problem. Antero terminated the DBA the next day and eventually "mothballed" Clearwater.

¶20 Antero and Veolia thereafter filed suit against one another, and the cases were consolidated. As pertinent here, Antero brought claims against Veolia for both breach of contract under the DBA and for fraud.

¶21 The case proceeded to a bench trial, after which the trial court found that, prior to the execution of the DBA, Veolia knew that Clearwater would not meet Antero's required power consumption guarantee, had fraudulently concealed that fact from and intentionally failed to disclose that fact to Antero, and had failed to disclose to Antero its plan to split the fourth effect, all to induce Antero to execute the DBA. The court further determined that the economic loss rule did not bar Antero's claim for this fraudulent inducement. In its analysis, the court noted that Colorado case law excepts from the economic loss rule "a defendant's pre-contractual conduct because, at that time, there was no contract that could have subsumed identical tort duties."

¶22 In reaching this conclusion, the trial court rejected Veolia's assertion that under Colorado case law, the DBA was part of a "network of contracts" between the parties extending back to the Bench Scale Proposal and LNTPs, such that any misrepresentations occurred during the course of contract performance. The court distinguished the case law on which Veolia had relied, finding that the DBA was not a part of a network of interrelated contracts. Rather, it was the governing

contract, and it was not entered into until after the pertinent misrepresentations were made.

¶23 In light of the foregoing findings, the trial court ultimately ordered Veolia to pay Antero $215.2 million in damages. The court also awarded Antero attorney fees under the DBA's fee-shifting clause, which provided, among other things, that the prevailing party in a lawsuit arising out of or in connection with the DBA was entitled to recover its reasonable attorney fees.

¶24 Veolia appealed, arguing, among other things, that the trial court had erred in finding that the economic loss rule did not bar Antero's fraud claims. A division of the court of appeals affirmed the trial court's judgment, but on different grounds. *Veolia Water Techs., Inc. v. Antero Treatment LLC*, 2024 COA 126, ¶¶ 2, 95, 157, 564 P.3d 1089, 1095, 1108, 1117.

¶25 In its analysis, the division determined, contrary to the trial court, that the Bench Scale Proposal, LNTPs, and DBA functioned as an interrelated network of contracts, such that Veolia's misrepresentations were made after the contracts were executed. *Id.* at ¶ 95, 564 P.3d at 1108. The division further determined, however, that the economic loss rule did not bar Antero's fraud claims because the DBA excepted such claims in its damages cap provision and the tort duties that Veolia had violated were independent of its contractual duties. *Id.* at ¶ 107, 564 P.3d at 1110.

¶26 On this latter point, the division concluded that Veolia's duty to refrain from fraudulently concealing or misrepresenting material facts was independent of Veolia's implied duty of good faith and fair dealing in the allegedly interrelated contracts. *Id.* at ¶ 98, 564 P.3d at 1109. The division reasoned that the implied duty applies only to a party's discretionary authority to determine certain terms of a contract. *Id.* at ¶ 99, 564 P.3d at 1109. Here, however, Veolia had no discretion to modify the DBA's salt quality or power consumption guarantees. *Id.* at ¶¶ 100–01, 564 P.3d at 1109. Accordingly, there was no overlap in Veolia's common law tort duty and its implied contractual duty. *Id.* at ¶ 101, 564 P.3d at 1109. The division thus affirmed, albeit on other grounds, the trial court's determination that Antero's fraud claims were not barred by the economic loss rule. *Id.* at ¶¶ 104, 107, 564 P.3d at 1110.

¶27 Veolia then petitioned this court for certiorari, and we granted its petition.

II. Analysis

¶28 We begin by setting forth the applicable standard of review. We then discuss the pertinent principles of the economic loss rule. Finally, we apply these principles to the facts before us, ultimately concluding that Antero's fraudulent inducement claim is not barred by the economic loss rule.

A. Standard of Review

¶29 The application of the economic loss rule presents a question of law that we review de novo. *Mid-Century Ins. Co. v. HIVE Constr., Inc.*, 2025 CO 17, ¶ 21, 567 P.3d 153, 158. We, however, defer to the trial court's factual findings unless they are clearly erroneous, and we will not overturn such factual findings unless they are unsupported by the record. *Ralph L. Wadsworth Constr. Co. v. Reg'l Rail Partners*, 2026 CO 19, ¶ 21, 587 P.3d 658, 663.

B. The Economic Loss Rule

¶30 The economic loss rule developed to maintain the boundary between contract and tort law. *Town of Alma v. AZCO Constr., Inc.*, 10 P.3d 1256, 1259 (Colo. 2000). Under the rule, a party that suffers only economic loss from the breach of an express or implied contractual duty may not assert a tort claim for that breach absent an independent duty of care under tort law. *Id.* at 1264. The rule thus serves to enforce the expectancy interests created by the parties' contractual promises so that the parties may allocate risks and costs during bargaining, and it ensures predictability in commercial transactions. *Id.* at 1262.

¶31 To determine whether the economic loss rule applies, courts look not to the nature of the damages but to the source of the duty allegedly breached, i.e., the contract or some other source. *Mid-Century Ins.*, ¶ 24, 567 P.3d at 158. To do so, courts consider whether (1) the relief sought in tort is the same as the contractual

relief; (2) there exists a recognized common law duty of care in tort; and (3) the tort and contractual duties differ in any way. *Id.* at ¶ 25, 567 P.3d at 158. "If the parties have memorialized the applicable duty of care in their contract (i.e., if the duty is contained within or imposed under the contract), then no duty exists independent of the contract, and the economic loss rule will apply to bar a tort claim." *Id.* If, however, a recognized common law tort duty exists independent of any contractual obligations, then the economic loss rule does not apply and does not bar a tort claim asserting a violation of that independent duty of care. *See Town of Alma*, 10 P.3d at 1263.

¶32 Applying these principles, we concluded in *Van Rees v. Unleaded Software, Inc.*, 2016 CO 51, ¶ 15, 373 P.3d 603, 607, that tort claims based on misrepresentations made prior to the formation of a contract and that allegedly induced the plaintiff to enter into that contract violated an independent duty in tort and, thus, such claims were not barred by the economic loss rule. In so concluding, we observed that an important distinction exists between "failure to perform the contract itself, and promises that induce a party to enter into a contract in the first place." *Id.* at ¶ 13, 373 P.3d at 607.

¶33 Although questions regarding the application of the economic loss rule frequently arise in disputes involving one-to-one contractual relationships, "[c]ontractual duties arise just as surely from networks of interrelated contracts as

from two-party agreements." *BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66, 72 (Colo. 2004).

¶34 With these principles in mind, we turn to the facts before us.

C. Application

¶35 Veolia contends that the economic loss rule bars Antero's fraud claims because (1) Veolia and Antero were parties to a network of interrelated contracts that established a broad and ongoing contractual relationship; and (2) any misrepresentations were made in the course of that relationship and were therefore governed by the parties' contractual duties, particularly the implied covenant of good faith and fair dealing. We disagree with each premise of Veolia's argument, and thus we disagree with Veolia's conclusion.

¶36 As an initial matter, we disagree with Veolia's assertion that Veolia and Antero were parties to a network of interrelated contracts for purposes of the economic loss rule. As noted above, the parties entered into a series of distinct and stand-alone contracts, none of which obligated either party to proceed to a subsequent contract. Specifically, under the Bench Scale Proposal, Veolia agreed to conduct a study and preliminary engineering for Clearwater to validate the process design and confirm Veolia's proposed treatment approach. Nothing obligated either party to proceed thereafter. Similarly, the LNTPs obligated Veolia to conduct additional design work. Again, however, nothing in those LNTPs

obligated the parties to proceed further. The DBA then followed as a stand-alone agreement.

¶37 *BRW*, 99 P.3d at 72–74, on which Veolia principally relies in arguing that the contracts at issue comprised a network of interrelated contracts, is distinguishable. In *BRW*, we addressed whether the economic loss rule applied in a tort suit for claims of negligent breach of a duty and negligent misrepresentation brought by a subcontractor against a design engineer and its agent when no contract existed between the subcontractor and those parties. *Id.* at 67 & n.1. We began by noting that multiple parties are frequently involved in large construction projects and that "[t]hese parties typically rely on a network of contracts to allocate their risks, duties, and remedies." *Id.* at 72. We further observed that in this context, the parties have the opportunity to define their rights and remedies in a contractual relationship. *Id.* Thus, even though a subcontractor might not have the opportunity to negotiate directly with the engineer or architect, it has the chance to allocate the risks of following specified plans when it contracts with a party involved in the network of contracts. *Id.* In this way, the "application of the economic loss rule encourages a subcontractor to protect itself from risks, holds the parties to the terms of their bargain, enforces their expectancy interests, and maintains the boundary between contract and tort law." *Id.*

¶38 Applying these principles to the facts in that case, we observed that the interrelated contracts at issue contained the duties of care owed by the engineer and its agent and that the subcontractor's remedies therefore existed in contract. *Id.* at 74. Accordingly, we concluded that the economic loss rule barred the subcontractor's negligence claims against the engineer and its agent. *Id.*; s*ee also S K Peightal Eng'rs, LTD v. Mid Valley Real Est. Sols. V, LLC*, 2015 CO 7, ¶ 10, 342 P.3d 868, 872–73 (concluding, in a case in which a later-created entity that acquired title to a spec home sued two soil engineers that had subcontracts with the home's developer but not with the entity, that the economic loss rule could apply to an entity that did not exist at the time the contracts containing the duties at issue were formed if that entity was a party to or a third-party beneficiary of the contract or an interrelated contract).

¶39 Unlike *BRW*, this case does not involve multiple parties entering into a network of interlocking contracts to perform a large transaction or project and in which certain of the parties contracted directly with some but not all of the other parties. Rather, this case involves two parties that entered into a series of contracts with each other. Moreover, the parties' contracts were not interlocking agreements forming parts of a larger transaction or project. To the contrary, although the Bench Scale Proposal and LNTPs were *related* to the DBA, the DBA was a stand-alone, fully integrated agreement governing the construction of

Clearwater, and, thus, it constituted its own distinct and separate transaction. Our case law on the interrelated contracts doctrine is therefore inapposite here.

¶40 Notwithstanding Veolia's assertion to the contrary, the DBA's integration clause does not establish otherwise. As noted above, that clause merely restated as duties under the DBA duties that the parties had undertaken in their prior agreements. The parties, however, were not required to incorporate those duties into the DBA. They did so after separately negotiating the latter agreement.

¶41 Nor are we persuaded by Veolia's reliance on *Dream Finders Homes LLC v. Weyerhaeuser NR Co.*, 2021 COA 143, 506 P.3d 108. In that case, a division of our court of appeals expanded the interrelated contracts doctrine beyond the context of a complex, multi-party, interrelated transaction in which no contract existed between certain of the parties to the transaction. *Id.* at ¶¶ 45–48, 506 P.3d at 119–20. We have not explicitly endorsed such an approach. Even if we did, however, *Dream Finders*, too, is distinguishable.

¶42 *Dream Finders* involved a scenario in which none of a series of documents between and among a joist manufacturer, its distributor, and joist purchasers set forth all of the terms and conditions of the parties' purchase agreement. *Id.* at ¶¶ 46–47, 506 P.3d at 119. In these circumstances, the division agreed with the joist manufacturer that the documents constituted a single agreement governing the sales of the joists. *Id.* at ¶ 48, 506 P.3d at 120. Having thus concluded, the

division further determined that any misrepresentations alleged by the purchasers were post-contractual (because the misrepresentations occurred after the earliest of the documents on which the parties had agreed). *Id.* at ¶¶ 50–52, 506 P.3d at 120. And because the tort duties alleged by the purchasers to have been breached mirrored the duties set forth in the parties' contract, the economic loss rule barred the purchasers' misrepresentation and fraudulent concealment claims. *Id.* at ¶¶ 53–83, 506 P.3d at 120–26.

¶43 Here, unlike in *Dream Finders*, Veolia does not allege that the DBA failed to include all of the terms of the parties' agreement. Indeed, it appears undisputed that the DBA represented a complete recitation of the parties' agreement for Clearwater's construction. Accordingly, even if the *Dream Finders* division's understanding of the interrelated contracts doctrine were correct—an issue that we need not address here—that case does not assist Veolia.

¶44 Lastly, we note that were we to accept Veolia's argument that the contracts in this case were interrelated such that they constitute a broad and ongoing contractual relationship, the economic loss rule would essentially bar fraud claims whenever parties happen to have had a preexisting contractual relationship relating to a particular project or undertaking. Such a rule would require contracting parties to bargain preemptively to allocate risks and costs for

unknown future contracts. We have never extended the economic loss rule or the interrelated contracts doctrine that far, and we decline to do so now.

¶45 For these reasons, we conclude that Veolia and Antero were not parties to a network of interrelated contracts establishing an ongoing contractual relationship that subsumed the violation of a duty to refrain from fraudulent misrepresentations. (To the extent that the division below concluded that Veolia and Antero were parties to a network of interrelated contracts under *BRW*, we respectfully disagree with that conclusion.) Rather, the parties signed a series of independent agreements, and the pertinent misrepresentations occurred prior to, and, on the facts presented, induced Antero to enter into, the DBA. Specifically, Veolia failed to disclose its inability to meet Antero's power consumption requirements prior to the execution of the DBA. And as the trial court found, with ample record support, the power consumption guarantee was critical to Antero and without that guarantee, Antero would not have signed the DBA.

¶46 In short, the facts before us demonstrate that Antero's fraud claim amounts to a straightforward fraudulent inducement claim. Accordingly, we conclude that *Van Rees*, ¶¶ 13–15, 373 P.3d at 607, controls and, therefore, the economic loss rule does not bar that claim.

¶47 In light of this determination, we need not address whether Veolia also fraudulently induced Antero to sign Change Order 1. But for the fraudulent

inducement of the DBA, the parties would not have been in a position to agree to Change Order 1.

¶48 Finally, we note that even if Veolia's misrepresentations and fraudulent concealment could be said to have been post-contractual, we would reach the same result because, as the division below opined, the covenant of good faith and fair dealing, on which Veolia relies, does not apply to nondiscretionary contract terms like those at issue here. *See Veolia Water Techs.*, ¶¶ 99–101, 564 P.3d at 1109. Thus, Antero would not have a viable claim for breach of that implied covenant. *See id.*

¶49 Specifically, as noted above, Veolia contends that if its misrepresentations were post-contractual, then any tort duty to refrain from such misrepresentations would be subsumed by either its express or implied contractual duties and barred by the economic loss rule. Here, however, the parties' agreements did not contain any express duties to refrain from making misrepresentations. In fact, the DBA explicitly contemplated the parties' ability to bring separate claims for fraud, given the damages cap exception for "gross negligence, fraud or willful misconduct." Accordingly, if Veolia had a contractual duty to refrain from making misrepresentations, then that duty had to arise, if at all, from the contract's implied covenant of good faith and fair dealing. *See Former TCHR, LLC v. First Hand Mgmt. LLC*, 2012 COA 129, ¶ 29, 317 P.3d 1226, 1232 (concluding that the disclosure duties that the plaintiff claimed to have been breached arose from and were

expressly described by the parties' preexisting agreement or were subsumed within that agreement's implied covenant of good faith and fair dealing); *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282, 289 (Colo. App. 2009) (noting that the implied covenant of good faith and fair dealing prohibits fraud in the performance of contractual obligations as to which a party has discretionary authority and, thus, the covenant may preclude fraud claims arising out of the party's contractual performance).

¶50 As we have previously recognized, however, "[t]he duty of good faith and fair dealing applies when one party has *discretionary* authority to determine certain terms of the contract, such as quantity, price, or time." *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 498 (Colo. 1995) (emphasis added). In this context, "discretionary authority" refers to a party's ability after contract formation to set or control the terms of performance, and discretion occurs when, at contract formation, the parties defer a decision regarding performance terms of the contract. *Id.*

¶51 Here, as the division below observed, Veolia had no discretion to modify Clearwater's core requirements under the DBA (e.g., the salt quality requirements or power guarantees) without Antero's written consent. *Veolia Water Techs.*, ¶¶ 100–01, 564 P.3d at 1109. As a result, under the settled law described above, Veolia did not owe Antero an implied contractual duty to refrain from making misrepresentations regarding these matters. Consequently, even if Veolia's

misrepresentations were post-contractual, no contractual duty would have subsumed Veolia's common law tort duty to refrain from making misrepresentations, and the economic loss rule still would not bar Antero's fraud claim. *See Town of Alma*, 10 P.3d at 1263 (noting that the economic loss rule does not apply when the court has recognized the existence of a duty independent of any contractual obligations).

III. Conclusion

¶52 For the foregoing reasons, we conclude that (1) the interrelated contracts doctrine does not apply to a series of contracts between two parties when each contract represents a stand-alone transaction and (2) the fraud alleged here occurred prior to the formation of the DBA and, on the facts presented, induced Antero to sign that contract. Accordingly, under *Van Rees*, ¶¶ 13–15, 373 P.3d at 607, the economic loss rule does not bar Antero's fraud claim in this case.

¶53 We therefore affirm the division's judgment below, albeit on other grounds, and we remand this case with instructions that the case be returned to the trial court for a determination of the reasonable attorney fees to be awarded to Antero pursuant to the DBA's fee-shifting provision.