

The personnel director of an investment company told a job applicant during an interview that the company was worth millions of dollars and that the company's portfolio would triple in the next several months. The applicant was very excited about the company's prospects and accepted an offer to work for the company. Two days later, the applicant read in the newspaper that the investment company had filed for bankruptcy reorganization. As a result of reading this news, the applicant suffered severe emotional distress, but he immediately found another comparable position.

Is the applicant likely to prevail in an action for negligent misrepresentation?

- A. No, because the applicant did not suffer any physical injury or pecuniary loss.
- B. No, because the personnel director's statement was purely speculative.
- C. Yes, because the applicant relied on the personnel director's misrepresentations about the investment company.
- D. Yes, because the personnel director should have foreseen that his misrepresentations would cause the applicant to be distressed.

### Explanation:

Liability for **negligent misrepresentation** arises when:

the defendant negligently provides the plaintiff with false information in a **commercial setting** (eg, in the course of the defendant's business or profession) *and*

the plaintiff reasonably relies on that information and suffers **pecuniary loss** (ie, monetary loss)

OR

the defendant negligently provides the plaintiff with false information under circumstances posing a **risk of physical harm** *and*

the plaintiff reasonably relies on that information and suffers **physical harm**.

Here, the personnel director may have negligently misrepresented the company's worth and prospects to the applicant. And the applicant may have reasonably relied on those misrepresentations by accepting an offer to work for the company (**Choice C**). But since the applicant immediately found a comparable position (no pecuniary loss) and faced no risk of—and did not suffer—physical harm, his claim will likely fail.

**(Choice B)** Reliance on *purely speculative* information is generally unreasonable. But since the personnel director's statement appeared to include *factual* information (eg, that the company was worth millions of dollars), the applicant's reliance may have been reasonable. Regardless, the applicant will not prevail because he did not suffer the requisite harm.

**(Choice D)** A victim of negligent misrepresentation can only recover damages for pecuniary loss or physical harm—not *any* foreseeable harm (eg, stand-alone emotional distress). Therefore, whether the personnel director should have foreseen that his misrepresentations would cause the applicant emotional distress is irrelevant.

### Educational objective:

Liability for negligent misrepresentation arises when a defendant negligently provides false information to a plaintiff who reasonably relies on that information (1) in a commercial setting and suffers pecuniary loss *or* (2) under circumstances posing a risk of physical harm and suffers physical harm.

### References

Restatement (Second) of Torts § 552 (Am. Law Inst. 1977) (negligent misrepresentation).

Restatement (Second) of Torts § 311 (Am. Law Inst. 1965) (negligent misrepresentation involving risk of physical harm).

