

A cell phone manufacturer purchased batteries from a battery manufacturer for use in its cell phones. The batteries were defectively designed. The cell phone manufacturer was aware of the defect in the batteries but nevertheless sold the cell phones directly to consumers without any warning regarding this problem. The defect caused the cell phones to function only when plugged into a charger, greatly diminishing their use and value. However, no consumer was injured, and no property damage was sustained, as a result of the defective batteries.

Consumers whose cell phones were adversely affected by the defect in the batteries brought a class action lawsuit against the cell phone manufacturer based in negligence. The consumers now seek replacement of their cell phone batteries.

Assuming that the consumers can clear the procedural hurdles for bringing a class action lawsuit, are they likely to succeed?

- A. No, because the batteries are defective component parts and, therefore, the battery manufacturer is the liable party.
- B. No, because the consumers cannot recover for a purely economic loss.
- C. Yes, because the batteries were defective.
- D. Yes, because the cell phone manufacturer failed to warn the consumers about the defective batteries despite being aware of the defect.

Explanation:

Products liability for a **defective product** can arise under several theories, including negligence. Under a negligence theory, the plaintiff can recover damages resulting from any personal injury or damage to property other than the defective product itself. However, a claim for **purely economic loss** is **not allowed**. In this context, purely economic loss includes any **damage to the defective product** itself.*

Here, the consumers sued the cell phone manufacturer in negligence after the manufacturer sold them cell phones with defectively designed batteries. The defectively designed batteries adversely affected the cell phones themselves but caused no harm to persons or *other* property—eg, had they caused the cell phones to explode and destroy surrounding property. Therefore, the consumers are unlikely to succeed because they are seeking to recover damages for an unrecoverable, purely economic loss.

*Other common examples of purely economic loss include lost profits, the diminished value of the defective product, and the cost of repairing the defective product.

(Choice A) Although the battery manufacturer is liable for the defectively designed batteries, this does not preclude the consumers from suing the cell phone manufacturer that sold them the phones. That is because anyone who supplies a defective product to another owes a duty of care.

(Choices C & D) The cell phone manufacturer was aware that the batteries were defective and nevertheless used them in its cell phones without warning consumers about the defect. While this conduct may show that the cell phone manufacturer was at least negligent (ie, failed to use reasonable care), the consumers cannot recover for harm to the cell phones alone through a negligence action.**

**However, the consumers may be able to bring a contracts-based claim for breach of warranty to recover for this purely economic loss.

Educational objective:

In a products liability action based on negligence, the plaintiff can recover damages stemming from personal injury or damage to property other than the defective product itself. Claims for purely economic loss, which includes any damage to the defective product itself, are not allowed.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 4 cmt. e (Am. Law Inst. 2010) (claims for property damage).

Products liability

