

A driver was injured when one of the tires on her car ruptured, causing the car to veer off the road. The rupture resulted from a defect in the tire that existed at the time it was sold by the manufacturer to a retailer, who sold it to the driver and installed it on her car.

The driver sued the manufacturer on a strict products liability theory. During discovery, the driver's attorney obtained a memorandum that had circulated among engineers employed by the manufacturer. The memorandum acknowledged that undetectable defects would cause ruptures in approximately one out of every 10,000 tires sold. The manufacturer sells approximately 10 million tires per year.

After discovering this memorandum, the driver's attorney filed a timely amended complaint, adding a claim for battery. The manufacturer has moved for partial summary judgment, seeking dismissal of the battery claim, based on the undisputed facts set out above.

If no additional facts are provided to the court concerning the risk of tire rupture, should the court grant the motion?

- A. No, because the evidence would permit a reasonable jury to conclude that a responsible manufacturer would have taken greater care to prevent ruptures.
- B. No, because the evidence would permit a reasonable jury to conclude that the manufacturer knew to a substantial certainty that consumers would be injured by tire ruptures.
- C. Yes, because a battery claim is inconsistent with a claim for strict products liability.
- D. Yes, because the driver cannot establish that the manufacturer intended or knew to a substantial certainty that its placement of the tire into the stream of commerce would cause her to suffer a harmful or offensive contact.

Incorrect

Correct answer D

Collecting Statistics

01 min, 51 secsTime Spent

2023Version

Explanation:

A court should grant a motion for partial summary judgment when there is no genuine issue of material fact and the evidence is legally insufficient for a reasonable jury to find in the nonmovant's favor, so the movant is entitled to judgment as a matter of law. A **battery** claim requires legally sufficient evidence that the defendant (1) **intended** to inflict **harmful or offensive contact** (or create imminent apprehension thereof) and (2) **caused such contact** with the plaintiff. The **intent** requirement is met if the defendant acted with either:

purpose – the desire to cause harmful or offensive contact or imminent apprehension thereof *or*

knowledge – the **substantial certainty** that such contact or apprehension will result.

Here, a memorandum circulated among the manufacturer's engineers shows that the manufacturer was aware that there was a *slight risk* that defects could cause its tires to rupture and harm consumers. However, this evidence is legally insufficient for the driver to establish that the manufacturer intended or knew to a *substantial certainty* that placing the tire into the stream of commerce would cause the driver harmful or offensive contact. Therefore, the court should grant the manufacturer's motion for partial summary judgment to dismiss the battery claim.*

*The motion for partial summary judgment only concerns the battery claim, so the driver can still recover under her [strict products liability](#) claim.

(Choice A) The evidence may permit a reasonable jury to conclude that a responsible manufacturer would have taken greater care to prevent ruptures. However, this would show that the manufacturer acted negligently—not intentionally.

(Choice B) The memorandum acknowledges that defects would cause ruptures in approximately 0.01% of the manufacturer's tires. However, this *slight risk* does not allow a reasonable jury to conclude that the manufacturer knew to a *substantial certainty* that consumers would be injured by tire ruptures.

(Choice C) A plaintiff may assert multiple claims in the same action based on the same set of facts, even if the claims are inconsistent. As a result, the driver may assert both battery and strict products liability claims.

Educational objective:

For battery, intent exists when the defendant acts with the purpose or knowledge to a substantial certainty that harmful or offensive contact, or imminent apprehension thereof, will result.

References

Restatement (Third) of Torts § 1 (Am. Law Inst. 2010) (defining intent).

Restatement (Second) of Torts § 13 (Am. Law Inst. 1965) (setting forth the elements of battery by harmful contact).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Two types of intent

