

A manufacturing plant located near a busy highway uses and stores highly volatile explosives. The owner of the plant has imposed strict safety measures to prevent an explosion at the plant. During an unusually heavy windstorm, a large tile was blown off the roof of the plant and crashed into a passing car, damaging the hood and the windshield. The driver of the car brought a strict liability action against the owner of the plant to recover for the damage to his car.

Is the driver likely to prevail?

- A. No, because the damage to the car did not result from the abnormally dangerous aspect of the plant's activity.
- B. No, because the severity of the windstorm was unusual.
- C. Yes, because the plant's activity was abnormally dangerous.
- D. Yes, because the plant's location near a busy highway was abnormally dangerous.

### **Explanation:**

An **abnormally dangerous activity** is an uncommon activity that poses a foreseeable and highly significant risk of physical harm—even when reasonable care is used. A defendant is **strictly liable** (liable without proof of fault) for bodily harm or property damage **resulting from the abnormal dangers** of that activity.

Here, the manufacturing plant stored highly volatile explosives (uncommon activity) near a busy highway, which created a foreseeable and highly significant risk of a harmful explosion that could not be mitigated by the exercise of reasonable care. However, the damage to the driver's car was caused by a windstorm—a hazard unrelated to the abnormal danger of storing explosives. Therefore, even though the plant engaged in an abnormally dangerous activity (**Choice C**), the driver will not prevail on a strict liability claim.

**(Choice B)** The unusual severity of the windstorm is irrelevant to the driver's strict liability claim. Instead, the driver's claim will fail because the windstorm was unrelated to the danger of storing explosives.

**(Choice D)** The plant's location near a busy highway increased the abnormal danger of the stored explosives. However, the driver will not prevail because his property damage was not caused by a risk associated with storing explosives.

### **Educational objective:**

A defendant is strictly liable for bodily harm or property damage caused by his/her abnormally dangerous activity—not for harm caused by a risk unrelated to the abnormal dangers of the activity.

### **References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 20 (Am. Law Inst. 2010) (strict liability for abnormally dangerous activities).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 29 cmt. d (Am. Law Inst. 2010) (limitations on strict liability).

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## Strict liability for abnormally dangerous activity

