

A mining company that operated a copper mine in a remote location kept dynamite in a storage facility at the mine. The storage facility was designed and operated in conformity with state-of-the-art safety standards. In the jurisdiction, the storage of dynamite is deemed an abnormally dangerous activity.

Dynamite that was stored in the mining company's storage facility and that had been manufactured by an explosives manufacturer exploded due to an unknown cause. The explosion injured a state employee who was at the mine performing a safety audit. The employee brought an action in strict liability against the mining company.

What would be the mining company's best defense?

- A. The mine was in a remote location.
- B. The mining company did not manufacture the dynamite.
- C. The state employee assumed the risk of injury inherent in the job.
- D. The storage facility conformed to state-of-the-art safety standards.

## Explanation:

### Assumption of the risk

(defense to strict liability)

#### Traditional *contributory* negligence jurisdiction

*Bars* recovery when plaintiff voluntarily exposed him/herself to known risk

#### Pure *comparative* negligence jurisdiction\*

*Reduces* recovery when plaintiff voluntarily exposed him/herself to known risk

Narrow exception: *Bars* recovery when plaintiff received *benefit* (eg, financial gain, employment) from his/her exposure to risk

\* Default rule on MBE.

A defendant is **strictly liable** (liable without proof of fault) for bodily harm caused by his/her abnormally dangerous activity. However, in a pure comparative negligence jurisdiction (default rule), **assumption of the risk** is a **defense** to strict liability that:

**reduces recovery** when the plaintiff **knowingly and voluntarily exposed** him/herself to an abnormally dangerous activity *and*

**bars recovery** when the plaintiff **received a benefit** from his/her exposure to that activity.

Here, the mining company's storage of dynamite (abnormally dangerous activity) injured the state employee. But since the employee performed the safety audit as part of his *employment*, he assumed the risk of injury for a *benefit* and his recovery would likely be barred. Therefore, the mining company's best defense is that the state employee assumed the risk of injury inherent in his job.

**(Choice A)** The location of an activity may be relevant to whether that activity is abnormally dangerous. But since this jurisdiction has already determined that storing dynamite is an abnormally dangerous activity, the location of the mine is irrelevant.

**(Choice B)** Although the mining company did not manufacture the dynamite (no strict products liability), the company is still strictly liable for harm caused by storing the dynamite (abnormally dangerous activity).

**(Choice D)** Because strict liability is imposed without proof of fault, the defendant's use of reasonable care is not a defense. Therefore, the storage facility's conformance with state-of-the-art safety standards (evidence of reasonable care) has no effect on the company's strict liability.

### Educational objective:

Assumption of the risk is a defense to strict liability that (1) reduces recovery when the plaintiff knowingly and voluntarily exposed him/herself to a risk of harm (eg, abnormally dangerous activity) and (2) bars recovery when the plaintiff received a benefit from his/her exposure to that risk.

### **References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm §§ 20, 24, 25 (Am. Law Inst. 2010) (assumption of the risk as a defense to strict liability).

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