

A manufacturer of baby gear designed a baby bouncer that allowed infants to jump up and down without parental assistance. The baby bouncer could be attached to a doorframe with a plastic clamp, which was connected to the baby seat via a spring and safety cord. The manufacturer designed the baby bouncer to safely withstand a maximum weight of 20 pounds, but if an infant exceeded that weight, there was a risk that the clamp could slip off of the doorframe and severely injure the infant. For a slightly higher cost, the manufacturer could have used a metal clamp that withstood a maximum weight of 40 pounds, but the manufacturer opted for the cheaper plastic clamp so that it could undercut its competitors. The manufacturer attached a warning label to the baby bouncer stating the weight limit and that if the limit was exceeded, the clamp could slip off the doorframe and injure an infant.

A mother purchased the manufacturer's baby bouncer for her nine-month-old infant who weighed 25 pounds. She read the warning label but chose to ignore the weight limit. After a few uses, the clamp slipped off the doorframe, and the infant suffered a concussion and broken leg from the fall.

The mother brought a strict products liability action against the manufacturer in a jurisdiction that applies traditional contributory negligence.

Who will likely prevail?

- A. The manufacturer, because it put a warning label on the baby bouncer regarding the weight limit.
- B. The manufacturer, because the mother chose to ignore the weight limit on the warning label.
- C. The mother, because the baby bouncer was defectively designed.
- D. The mother, because the weight limit was the result of a manufacturing defect.

## 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 plaintiff can prevail on a **strict products liability** claim if the defendant is a commercial supplier (eg, manufacturer) and its **defective** product caused the plaintiff harm. Under the **risk-utility test**, a product is **defective by design** when:

the design creates a **foreseeable risk** of harm *and*

that risk could have been mitigated by a **reasonable alternative design** (eg, a modification that reduces the risk for a reasonable cost).

However, in jurisdictions that apply the traditional rules of **contributory negligence** (as seen here), **assumption of the risk** completely **bars** a plaintiff's recovery for strict products liability when the plaintiff (1) **knows** of the product's risk of harm and (2) **voluntarily uses** the product **despite that risk**.

Here, the manufacturer's baby bouncer used a plastic clamp that could only withstand a maximum weight of 20 pounds. This created a foreseeable risk that the clamp could slip off and severely injure an infant. And this risk of harm could have been mitigated by using a metal clamp for a slightly higher cost. As a result, the bouncer was defectively designed (**Choice C**). But the mother assumed this risk because she read the warning label describing the risk (knowledge of risk) and chose to ignore it (voluntary use). Therefore, the manufacturer will likely prevail.

**(Choice A)** The fact that the manufacturer put a warning label on the baby bouncer regarding the weight limit is relevant to establishing that the mother knew about the risk of harm. But this fact alone does not absolve the manufacturer from strict products liability.

**(Choice D)** A product has a manufacturing defect if it deviates from the manufacturer's intended design (eg, due to incorrect assembly). Here, the baby bouncer was manufactured

according to the manufacturer's design, so its weight limit was not the result of a manufacturing defect.

**Educational objective:**

In a traditional contributory-negligence jurisdiction, the plaintiff's assumption of the risk—ie, voluntary use of a product despite its known risk of harm—is a complete bar to recovery for strict products liability.

**References**

Restatement (Third) of Torts: Prods. Liab. § 1 (Am. Law Inst. 1998) (defining strict products liability).

Restatement (Second) of Torts: § 523 (Am. Law Inst. 1977) (explaining strict liability and assumption of the risk).

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