

A window manufacturer made windows for a commercial skyscraper. The manufacturer made the windows in strict accordance with the specifications provided by the general contractor for the building and used reasonable care in making the windows. Nevertheless, a defect in the design of the windows resulted in one of the windows suddenly shattering and injuring an office worker who sat next to the window in the completed building.

Is the office worker likely to recover damages in an action against the manufacturer based solely on strict products liability?

- A. No, because the manufacturer strictly adhered to the specifications provided.
- B. No, because the windows' defective design was attributable to the general contractor's negligence.
- C. Yes, because the manufacturer was in privity with the general contractor.
- D. Yes, because the office worker was injured by the defective window.

Explanation:

To recover in an action based on **strict products liability**, the plaintiff must prove the following elements:

The defendant was a commercial seller (eg, manufacturer—as seen here).*

The **product was defective** when it **left the defendant's control**.

The defect caused the plaintiff **physical harm** (ie, bodily harm or property damage).

Here, there was a **defect in the design** of the windows, which necessarily existed when the windows left the manufacturer's control. That defect resulted in one of the windows suddenly shattering and injuring the office worker. Therefore, the office worker is likely to recover damages in an action against the manufacturer based on strict products liability.

*A commercial seller does not include someone who makes casual or occasional sales that are not part of his/her regular business (eg, an individual car owner who sells a car to his neighbor).

(Choices A & B) The manufacturer's strict adherence to the specifications provided by the general contractor shows that the windows' defective design was attributable to the general contractor. But strict products liability is imposed on commercial sellers without proof of fault (eg, negligence)—even if the seller did not create the defect—so long as the defect existed at the time it left the seller's control (as seen with the manufacturer here).

(Choice C) Although the manufacturer and the general contractor were in privity, privity is not a requirement in a strict liability action. Additionally, even if privity were a requirement, it would be based on the relationship of the manufacturer (as defendant) and the office worker (as plaintiff)—not the manufacturer and the general contractor.

Educational objective:

A strict products liability claim requires proof that (1) the defendant was a commercial seller, (2) the product was defective when it left the defendant's control, and (3) the defect caused the plaintiff physical harm.

References

Restatement (Third) of Torts: Prods. Liab. §§ 1, 2(b) (Am. Law Inst. 1998) (liability for products that are defective in design).

Elements of strict products liability

Δ was commercial seller

- Manufacturer
- Distributor
- Retailer

+

**Product defective at time
left Δ 's control**

- Manufacturing defect
- Design defect
- Failure to warn

+

**Defect caused π
physical harm**

- Bodily harm
- Property damage

π = plaintiff; Δ = defendant