

A homeowner purchased an over-the-range microwave and planned to hire someone to install it. The microwave's manual, which the homeowner read, contained a warning that the microwave should not be operated on a kitchen countertop because the underside does not provide a stable surface, hot liquids could spill and cause serious injury, and over time, the position could cause excessive wear on the power cord. Before the homeowner was able to have the microwave installed, he used it while it was resting on his kitchen countertop to heat a cup of coffee. Due to an improperly manufactured thermal fuse in the microwave, the microwave caught fire while heating the coffee and caused extensive damage to the home.

The homeowner has filed a complaint based on strict products liability against the microwave's manufacturer.

Will the homeowner be likely to prevail?

- A. No, because the homeowner assumed the risk by ignoring the manufacturer's warning.
- B. No, because the homeowner was negligent in using the microwave before it was installed.
- C. Yes, because the homeowner's misuse of the microwave while it was unmounted was foreseeable.
- D. Yes, because the microwave contained a manufacturing defect that caused it to catch fire.

## Explanation:

A plaintiff can recover in a **strict products liability** action against a manufacturer, retailer, or other distributor (ie, commercial seller) if the following facts are proved:

The product was **defective** (in manufacture, design, or failure to warn).

The defect existed when the product **left the defendant's control**.

The defect **caused the plaintiff's injuries** when the product was used in an **intended or reasonably foreseeable way**.

A product has a **manufacturing defect** if it deviates from the manufacturer's intended design (eg, due to incorrect assembly).

Here, the microwave contained an improperly manufactured thermal fuse when the microwave left the manufacturer's control. This manufacturing defect caused the microwave to catch fire and damage the home when the homeowner used it to heat a cup of coffee. As a result, the homeowner will likely prevail in a strict products liability action against the manufacturer.

**(Choice A)** **Assumption of the risk** is a defense that reduces the plaintiff's recovery if the plaintiff voluntarily exposed him/herself to a known risk of harm. Here, the homeowner knew the risk associated with using the microwave while it was unmounted—but not the risk stemming from the improperly manufactured thermal fuse that caused his harm. Therefore, this defense does not apply.

**(Choice B)** The homeowner's negligence in using the microwave before installing it is irrelevant because his injury was caused by the defective fuse—not by using the microwave without mounting it.

**(Choice C)** Using a product in an unintended and unforeseeable manner may negate liability if the misuse leads to the plaintiff's harm. Here, the homeowner's misuse was foreseeable because the manufacturer's manual specifically addressed it. But the misuse did not lead to the microwave catching fire (the defective fuse did), so the homeowner will not prevail on this basis.

## Educational objective:

An action based on strict products liability requires proof that the product was defective (eg, in manufacture) when it left the defendant's control AND that the defect caused the plaintiff's injuries when the product was used in an intended or reasonably foreseeable way.

## References

Restatement (Third) of Torts: Prod. Liab. § 2 (Am. Law Inst. 2010) (categories of product defect).

## Elements of strict products liability

### **$\Delta$ was commercial seller**

- Manufacturer
- Distributor
- Retailer

+

### **Product defective at time left $\Delta$ 's control**

- Manufacturing defect
- Design defect
- Failure to warn

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### **Defect caused $\pi$ physical harm**

- Bodily harm
- Property damage

$\pi$  = plaintiff;  $\Delta$  = defendant

