A manufacturer of poultry-feed supplements contracted to purchase methylmercaptopropanol (MMP), a key component of its top-selling supplement, from a chemical company. The chemical company agreed to manufacture the MMP and ship it by rail to the manufacturer. The chemical company subsequently contracted with a rail carrier to ship hundreds of products to and from the chemical company's manufacturing facilities. Among the products to be shipped was the MMP. The rail contract required the rail carrier to "ensure quality service to [the chemical company]" by being "responsive to the special needs of [the chemical company] whenever possible."

The rail carrier inexcusably failed to transport sufficient amounts of MMP to the manufacturer. The reduced supply of MMP forced the manufacturer to suffer a significant reduction in the production and inventory of its top-selling supplement. The manufacturer had to transport smaller amounts of the supplement by faster and more expensive methods to satisfy customer demand.

The manufacturer sued the rail carrier to recover the increased freight costs that resulted from the carrier's breach of the rail contract.

Will the manufacturer be likely to prevail?

A. No, because the manufacturer and the rail carrier were not in privity of contract.

B. No, because the manufacturer received only an incidental benefit under the rail contract.

C. Yes, because the manufacturer had a vested interest in performance of the rail contract.

D. Yes, because the parties intended for the rail contract to directly benefit the manufacturer.

Explanation:

A **third-party beneficiary** is a nonparty to a contract who receives some benefit from the contract. There are two types of beneficiaries: intended and incidental. A **beneficiary is intended** rather than incidental, as the name suggests, if the **contracting parties clearly intended** for **him/her to benefit** from the contract. Courts glean intent from what the parties said in their contract, not what they allegedly meant. And **only intended beneficiaries** (not incidental ones) **can sue to enforce** the contract.

Here, the manufacturer benefited from the rail contract since the MMP was among the products to be shipped pursuant to that contract. However, nothing in the contract shows that the parties clearly intended to benefit the manufacturer—eg, had they included a provision that the contract was made for the manufacturer's benefit or that the manufacturer had the right to enforce it. This means that the manufacturer was, at most, an incidental beneficiary of the contract **(Choice D)**. Therefore, it likely will *not* prevail in its suit against the rail carrier.

(Choice A) Traditionally, the doctrine of privity of contract prevented individuals from enforcing contracts to which they were not a party. But this doctrine has been eroded to allow intended beneficiaries to enforce contracts made for their benefit. Therefore, had the manufacturer been an intended beneficiary of the rail contract, a lack of privity would not have defeated its claim.

(Choice C) An *intended* beneficiary's rights vest when the beneficiary (1) reasonably and detrimentally relies on the rights created, (2) assents to the contract at a party's request, or (3) sues to enforce the contract.* But here, the manufacturer was an *incidental* beneficiary, if any, of the rail contract with no rights to vest. Therefore, neither the manufacturer's suit to enforce the contract nor its reliance on the rail company's promises is relevant.

*Once the beneficiary's rights have vested, the contracting parties are bound to perform the contract. Any efforts to terminate or modify the beneficiary's rights after vesting are void unless the beneficiary agrees.

Educational objective:

A third-party beneficiary is intended (as opposed to incidental) if the contracting parties clearly intended for him/her to benefit from the contract. Only intended beneficiaries can sue to enforce the contract.

References

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (describing intended and incidental beneficiaries).

Third-party beneficiaries