

A chemical company's plant was located in a residential community. The manufacturing process used at the plant generated a toxic chemical as a by-product. The chemical was stored in a state-of-the-art tank on the site before being moved to an off-site disposal facility. The on-site storage arrangement conformed to the requirements of reasonable care and to the applicable government regulations. However, the storage of the toxic chemical created a foreseeable and highly significant risk of physical harm even when reasonable care was exercised.

Despite the chemical company's proper use and care of the storage tank, toxic fumes escaped from the tank and made residents of the area seriously ill.

No state or federal statutes address the issue of the company's liability.

In an action by one of the affected residents against the chemical company, will the resident be likely to prevail?

- A. No, because the chemical company conformed to the requirements of reasonable care and to the applicable government regulations.
- B. No, because the chemical company used a state-of-the-art storage tank.
- C. Yes, because the chemical company is strictly liable in tort for any harm caused by the toxic chemicals it produced.
- D. Yes, because the storage of toxic chemicals in a residential community created a highly significant risk of physical harm even when reasonable care was exercised.

Explanation:

An **abnormally dangerous activity** is an **uncommon** activity that poses a **foreseeable and highly significant risk** of physical harm that cannot be mitigated by the exercise of reasonable care. A defendant is **strictly liable** when (1) the defendant's abnormally dangerous activity causes physical harm and (2) that harm results from the hazards that make the activity abnormally dangerous.

Here, the chemical company's storage of a toxic chemical (uncommon activity) was abnormally dangerous because it posed a foreseeable and highly significant risk of physical harm despite the company's exercise of reasonable care. And since the resident's illness was caused by the chemical's toxicity (the hazard that made storing the chemical abnormally dangerous), the resident will likely prevail.

(Choices A & B) Evidence that the company used a state-of-the-art storage tank, conformed to the requirements of reasonable care, and abided by applicable government regulations shows that the company exercised reasonable care. But these facts are irrelevant since the use of reasonable care is not a defense to strict liability (liability imposed without proof of fault).

(Choice C) A defendant who engages in an abnormally dangerous activity is only strictly liable for harm that results from the abnormal dangers or hazards of that activity. Therefore, the company is strictly liable for harm resulting from the chemical's toxicity (eg, illness caused by exposure to toxic fumes), but not for harm unrelated to that toxicity (eg, car accident caused by toxic fumes that obscured a motorist's view).

Educational objective:

A defendant is strictly liable for physical harm caused by his/her abnormally dangerous activity, as long as that harm resulted from the abnormal dangers or hazards of the activity. The use of reasonable care is no defense.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 20 (Am. Law Inst. 2010) (strict liability for abnormally dangerous activities).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 29 cmt. 1 (Am. Law Inst. 2010) (limitations on strict liability).

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**Strict liability
(abnormal danger must cause harm)**

