

A customer bought a can of corn at a grocery store. While eating the corn later that evening, the customer was injured by a small piece of glass in the corn. The customer sued the canning company that had processed and canned the corn.

At trial, the customer presented evidence that neither the customer nor any third party had done anything after the can of corn was opened that would account for the presence of the glass.

Without any other evidence, is the customer likely to prevail?

- A. No, because it is possible that someone tampered with the can before the customer bought it.
- B. No, because the customer has not shown any direct evidence that the canning company acted negligently.
- C. Yes, because a jury may reasonably infer that the canning company acted negligently.
- D. Yes, because the grocery store could not have discovered the piece of glass by reasonable inspection.

Explanation:

A plaintiff harmed by a **defective product** can prevail on a **negligence** claim against a commercial or noncommercial seller when the plaintiff can prove that the seller's failure to use reasonable care caused the plaintiff harm. But when there is no *direct* evidence of the seller's failure to use reasonable care, the seller's negligence will be **inferred** under the doctrine of **res ipsa loquitur** if:

the plaintiff was harmed by a **type of accident** that is **usually caused by negligence** of a seller in the defendant's position (eg, manufacturer) *and*

the evidence tends to **eliminate other potential causes** of the plaintiff's harm.

Here, the customer was injured by a piece of glass *inside* a can of corn—an accident usually caused by a canner's negligence. And by presenting evidence that neither he nor a third party was responsible for the presence of the glass, the customer eliminated other potential causes of the harmful glass's presence. Therefore, the canning company's negligence can be inferred under *res ipsa loquitur*, and the customer is likely to prevail.

(Choice A) It is possible that someone tampered with the can, but there is no evidence to support that contention. Instead, the canning company's negligence is the most likely explanation for the glass's presence.

(Choice B) Direct evidence of the canning company's negligence is unnecessary because its negligence can be inferred from indirect evidence under the doctrine of *res ipsa loquitur*.

(Choice D) Although the grocery store had a duty to use reasonable care to discover obvious defects in its canned corn, that duty does not eliminate the canning company's prior negligence in sealing the glass in the can.

Educational objective:

Res ipsa loquitur allows the defendant's negligence to be inferred when (1) the plaintiff's harm resulted from a type of accident that is usually caused by negligence of someone in the defendant's position and (2) the evidence tends to eliminate other potential causes of the plaintiff's harm.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 6 (Am. Law Inst. 2010) (negligence liability).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 17 (Am. Law Inst. 2010) (*res ipsa loquitur*).

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