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In determining whether the rulings by the district court were proper Duratires will argue that Maurice the mechanic was a necessary party due to a portion of Pam's claim being for installation and Pam will argue that Duratires failed to meet several discovery requirements prior to filing Motions to compel and that Pam is additionally not required to submit to a medical exam because she was not physically injured in the accident.

1. Did the Court Properly Deny DuraTires' Motion to Dismiss?

Subject Matter Jurisdiction

Subject matter jurisdiction refers to the courts authority to hear a claim. Here, the facts indicate that the federal court had proper jurisdiction over Pam's complaint thus the court has subject matter jurisdiction over Pam's ("P") claim against Duratires ("D").

Products Liability Strict Liability

A manufacturer is strictly liable to a party if they are a manufacturer, the product was defective, the product they manufacturer was sold in the stream of commerce, the product they manufacture was used by a consumer in a foreseeable manner or in its intended use and the product was the proximate and actual cause of the consumer's injury.

Here, P will argue that D is liable because D manufactures and installs specially coated tires that P purchased and D advertises that a scientific report declared that its tires will not go flat for the first 7000 miles of use if driven properly. P will argue that the product was defective because the tire went flat after driving 100 miles and D advertises that the tires will not go flat for 7000 miles. D sells and advertises the tires and P suffered the injury when she was using the tires properly while driving in the manner intended and advertised by D while driving. Additionally, P's injury was caused when the tires she purchased from D went flat after driving 100 miles and thus caused her to swerve and crash into another car.

P will likely be found to be strictly liable to P.

Negligent Manufacturing

Negligent manufacturing occurs when a product is manufactured below the standard of care required to a consumer. Here, there is no indication that D negligently manufactured the tires. However P will argue that the tires were negligently manufactured because one went flat before the 7000 miles and caused her to swerve and crash into another car.

D will likely argue that the tires were purchased brand new and that there may have been an intervening cause to cause the tire to go flat. Additionally D will argue that it was likely an occurrence in the installation by Maurice the mechanic that caused the tire to go flat because he installed the tire on P's car.

D will likely not be found liable for negligent manufacturing.

Breach of Warranty

A manufacturer breaches its implied warranty when the product it manufactures and places in the stream of commerce fails to function in the method intended and causes harm to a consumer. Here, D will argue that it has not breached its implied warranty because the tires were brand new when purchased and were not installed by D. Moreover, D can further argue that there are other factors that caused P's injury and thus are not responsible for the crash.

P will argue that the D guarantees its tires because they are specially coated and D advertises a scientific report that includes a guarantee that the tires will not go flat for the first 7000 miles.

The court will likely find that D breached its warranty.

Joinder of Parties

Parties may be joined to a claim if they are necessary or are required to indemnify another party. Failure to join the parties may result in a dismissal of the claim. A party may be joined by a compulsory or permissive joinder or impleader

Compulsory Joinder

A compulsory joinder is the joinder that joins a party to a claim if that party is necessary and the claim arose out of the same transaction and occurrence.

Here, D will argue that Maurice ("M") is a required party to the claim because M installed the tires on P's car. Additionally, M may have additional knowledge as to what occurred during the installation of the tires and may be responsible for some of the damages suffered by P. M installed all 4 tires on P's car and thus may have responsibility to P for the tire going flat causing P to swerve.

Service Provider

A service provider is generally not responsible for damages as a result of a product malfunctioning and causing harm to a consumer.

Here, M will argue that he was a service provider and did not manufacture the tires that were installed on P's vehicle and is not responsible for the crash as a result of the flat tires.

D will argue that M was more than a service provider and may have misinstalled the tires and as a result he should have been added as a party. D will further argue that they install tires and M is not an employee of them and P should have gone to D to install the tires. Lastly, although facts do not indicate any actions of faulty installation on the part of M, D will argue that as a result of M's faulty installation P's tire went flat and caused P's injury.

The court likely should have ordered P to join M into the claim.

2. Did Court properly grant Duratires' Motions:

a. To compel the statement from Wynne

Discovery Motion to Compel

Discovery is the portion in litigation that involves disclosures to the other party of relevant

information to the case. A party may seek disclosures from the other party and the other party is required to provide pertinent information that may be used at trial. If a party fails to disclose specific information the other party may seek the court's intervention in acquiring that information through a motion to compel. However, prior to filing the motion to compel the party seeking the information must first meet and confer, set a meet and confer deadline to produce the required information then serve the other party with a copy of the motion to compel prior to filing if there is no resolution after the meet and confer deadline.

Here, P served her initial disclosure however omitted Wynne's statement in her initial disclosures. D will argue that they were proper in their filing of the motion to compel because Wynne's statement was pertinent to the case. However, P will argue that the court was proper because D failed to meet the meet and confer and motion to compel requirement. There is no indication that D served P with a meet and confer nor indication that D attempted to meet and confer. Additionally there is no indication that P was served with a copy of the motion to compel prior to D's filing of the motion.

D will argue that Wynne's statement testimony is essential to the case and thus P should have disclosed it however P will argue that W's statement was favorable to her case and thus D is not prejudiced in P not producing the statement. Lastly, D will argue that W suffered a minor injury and thus her statement should have been included in the discovery.

The court properly ruled on the MTC for W's statement.

b. To compel a physical examination of Pam?

Motion to Compel

Discovery is the portion in litigation that involves disclosures to the other party of relevant information to the case. A party may seek disclosures from the other party and the other party is required to provide pertinent information that may be used at trial. If a party fails to disclose specific information the other party may seek the court's intervention in acquiring that information through a motion to compel. However, prior to filing the motion to compel the party seeking the information must first meet and confer, set a meet and confer deadline to produce the required information then serve the other party with a copy of the motion to compel prior to filing if there is no resolution after the meet and confer deadline.

Physical Examination

A physical examination may be required by a party if there is physical injury that is contested in a case. Here, the facts indicate that P was not physically injured in the accident. Moreover P's claim is for breach of warranty and negligent installation and manufacture of the tires. P will argue that the court erred because P was not seeking any claim for physical injury and although she suffered emotional distress as a result a physical examination was not determinate of that injury. Lastly P will argue that there is no dispute of her physical injury and thus she should not be subjected to a physical examination.

D will argue that P is seeking damages for emotional distress and thus a physical examination is required.

The court likely erred in granting the motion to compel for a physical examination.

3. Did the court properly order Duratires to produce its scientific report

Production: Attorney Work Product

Discovery is the portion in litigation that involves disclosures to the other party of relevant information to the case. A party may seek disclosures from the other party and the other party is required to provide pertinent information that may be used at trial. If a party fails to disclose specific information the other party may seek the court's intervention in acquiring that information through a motion to compel. However, prior to filing the motion to compel the party seeking the information must first meet and confer, set a meet and confer deadline to produce the required information then serve the other party with a copy of the motion to compel prior to filing if there is no resolution after the meet and confer deadline.

Attorney Work Product

In litigation and discovery, there are requests for production of important documents in a case. Parties can claim a privilege in a privilege log if some documents are privileged including attorney work product that are documents prepared by legal counsel in the anticipation of litigation and during the litigation that are privileged.

Here, D will likely argue that the scientific report is privileged under the attorney work product because the report was created at the direction of its legal counsel and contained research on flat tire incidents involving D.

However, P will argue that it is not privileged because D relied on the scientific report in its advertisements that included the declaration that the tires would not go flat for the first 7000 miles if driven properly. Additionally, P met the motion to compel requirements because she conferred with D who refused to produce its scientific report. P will further argue that the report contains pertinent information to P's claim because it contains data regarding other flat tire incidents for D and thus should be produced.

The court properly ruled on P's Motion to compel.

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