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Question 1

1. Did the Court properly deny DuraTires' motion to dismiss?

Issue: Was Maurice a necessary party?

Rules: Following service of process, a defendant must file a motion or an answer within 21 days (or 60 days where a waiver). A motion to dismiss is permitted under Rule 12(b). A complaint must include all necessary parties. A necessary party is one who must be included because without being included, he will be prejudiced, or without whom, relief for action cannot be granted. Where a necessary party is not included, the court will have the ability to dismiss the case. A third party who the defendant believes may owe him a contribution or indemnity may be added as an impleader.

Analysis: DuraTires ("DT") filed a motion to dismiss for failure to join Maurice as a defendant. The facts do not stipulate whether the motion was made timely, but if it was, the court should consider whether the reason was valid. The facts state that DT manufacture and install specially coated tires, and advertised they will not go flat for 7,000. The facts don't make it clear whether Maurice was an employee of DT, but because it states Pam ("P") purchased them from DT and then had them installed by Maurice, it would suggest that she used her own mechanic, ie not a mechanic employed by DT. If Maurice was an employer of DT, then in any case DT would be vicariously liable for Maurice's installation, under the doctrine of respondeat superior. In that case, he would not be a necessary party, since P would only need to sue DT, and absent additional facts suggesting Maurice outside scope of employment, he wouldn't be necessary. It is possible that DT could argue their claims re durability is only made where they install their tires, and in this case, they might want to include Maurice as he could be contributorily negligent on basis of his installment. In that case, he should be added as a third party defendant via impleader, as he could owe DT contribution or negligence. P is suing DT on the basis that the tire went flat, and that was the cause of her accident. Not that there was anything wrong with the tire itself. And the advertisement says the guarantee is dependent on whether car is driven properly, not whether installed correctly. Thus, Maurice would not be a necessary party as the court could award damages against DT.

Conclusion: Denial of the motion to dismiss was correct

2. Did the court properly grant DuraTires' motions:

a. To compel production of the statement from Wynne?

Issue: Was Wynne's statement a required disclosure?

Rules: A party must disclose all evidence that may be harmful to their case. A party must disclose all evidence that may be favorable to their case. Disclosure should be of all evidence which is relevant to a party's case, and is broader in scope than requirements for admissibility. Disclosure should be of documents that are within a party's control, and don't cause an unnecessary burden or expense to provide. A court has the power to enforce disclosure and impose sanctions where a party fails to make required disclosures. Sanctions can include

dismissal. Evidence which is not provided in disclosure may not be used as evidence in court. Interrogatories, which are written answers to questions made under oath may also be used in disclosure, as may depositions, which are oral answers to questions under oath.

Analysis: The facts state that Wynne's written statement was gathered by Pam, There is nothing to suggest that it was no longer within her control, and it is unlikely that it's provision would be unduly burdensome on her since she could provide a copy very simply. Therefore, Pam should have disclosed the statement, especially if she intends to rely on it in court. If the document is not in her control for some reason, DT would be able to either use interrogatories or depositions to discover what her statement said.

Conclusion: The court properly granted DT's motion to compel production of Wynne's statement

b, To compel a physical examination of Pam?

Issue: Did the court have the power to require a physical examination of Wynne?

Rules: A physical or mental exam of a party can only be required if the other party makes an application to the court, and the court grants the motion in its discretion. A physical or mental exam will only be granted where the exam is necessary and likely to provide evidence as required by the person asking for the exam in support of their case

Analysis: The facts state that P alleged property damage and emotional distress as a result of the case. In addition, the facts state that she did not suffer physical injury. Therefore, there is no reason for the court to grant a physical exam of P, which would be disproportionate and unnecessary to the case. Since the emotional distress is not stated to be of the kind that requires physical symptoms, we cannot say for sure a physical exam would be required for that reason - if they were, then a physical exam could be necessary to prove that element. If DT had requested a mental exam, this would be different, because Pam does allege emotional distress.

Conclusion: Provided that physical symptoms are not an element required to be proven for P's emotional distress, the court did not properly order a physical exam of P

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

Issue: Was the scientific report required to be disclosed by DT as work product or expert opinion?

Rules: A party must disclose all evidence that may be harmful to their case. A party must disclose all evidence that may be favorable to their case. Disclosure should be of all evidence which is relevant to a party's case, and is broader in scope than requirements for admissibility. Disclosure should be of documents that are within a party's control, and don't cause an unnecessary burden or expense to provide. A court has the power to enforce disclosure and impose sanctions where a party fails to make required disclosures. Sanctions can include dismissal. Evidence which is not provided in disclosure may not be used as evidence in court. Work Product is something which is prepared in anticipation of litigation by a party / its legal counsel, and is privileged. Where there is expert opinion, the name, details, qualifications and description of opinions and basis for them should be disclosed.

Analysis: The scientific report would certainly be relevant for disclosure because it states their tires are specially coated and will last 7,000 miles before going flat. This is the basis for P's claim, ie the tire went flat when it should not have done. Although prepared at direction of legal counsel, it is not work product since it was not prepared in anticipation of litigation, but rather just as part of DT's marketing and advertising. The report also contains research on flat tire incidents of DT tires, which is expert evidence within the report that could be required to be disclosed, particularly if it includes details of experts, how research was conducted, etc that could be useful to P.

Conclusion: The court properly ordered DuraTires to produce its scientific report

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END OF EXAM