

### MEE Question 1

On the evening of July 4, a woman went to the end of her dock to watch a fireworks display on the lake where her house was located. The woman's husband remained inside the house. The fireworks display was sponsored by the lake homeowners association, which had contracted with a fireworks company to plan and manage all aspects of the fireworks display.

The fireworks display was set off from a barge in the middle of the lake. During the finale, a mortar flew out horizontally instead of ascending into the sky. The mortar struck the woman's dock. She was hit by flaming debris and severely injured. When the woman's husband saw what had happened from inside the house, he rushed to help her. In his hurry, he tripped on a rug and fell down a flight of stairs, sustaining a serious fracture.

All the fireworks company employees are state-certified fireworks technicians, and the company followed all governmental fireworks regulations. It is not known why the mortar misfired.

The woman and her husband sued the homeowners association and the fireworks company to recover damages for their injuries under theories of strict liability and negligence. At trial, they established all of the above facts. They also established the following:

- 1) Nationally, accidents involving fireworks cause about 9,000 injuries and 5 deaths each year. About 15% of these accidents are caused by mortars misfiring in the course of professional fireworks displays, and some of these accidents occur despite compliance with governmental fireworks regulations.
- 2) Even with careful use by experts, fireworks mortars can still misfire.
- 3) Although a state statute requires a "safety zone" of 500 feet from the launching site of fireworks when those fireworks are launched on land, the statute does not refer to fireworks launched on water. Neither the homeowners association nor the fireworks company established such a zone.
- 4) The average fireworks-to-shore distance for this display was 1,000 feet. The woman's dock is 450 feet from the location of the fireworks barge; at only three other points on the lake is there land or a dock within 500 feet of the fireworks barge location.

After the conclusion of the plaintiffs' case, both the homeowners association and the fireworks company moved for a directed verdict on the basis that the facts established by the evidence did not support a verdict for the plaintiffs.

The trial judge granted the motion, based on these findings:

1. Fireworks displays are not an abnormally dangerous activity and thus are not subject to strict liability.
2. Based on the evidence submitted, a reasonable jury could not conclude that the conduct of the fireworks company was negligent.
3. The misfiring mortar was not the proximate cause of the husband's injuries.
4. The homeowners association cannot be held liable for the fireworks company's acts or omissions.

As to each of the judge's four findings, was the judge correct? Explain.

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1) Please type your answer to MEE 1 below

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(Essay)

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As a preliminary issue, to grant a directed verdict, the evidence presented must be so that no reasonable juror could differ and the evidence is clearly in favor of the moving party. The evidence is viewed in light most favorable to the nonmoving party.

1) The judge was incorrect regarding the strict liability of firework displays. The issue is whether firework displays are an abnormally dangerous activity. Specifically, can the risk associated with the activity be eliminated with reasonable care. Strict liability can be imposed for abnormally dangerous activities that cause

injuries. To be abnormally dangerous, the risks associated with the activities cannot be eliminated with reasonable care and must not be normal in the area where conducted. Other facts consider the degree of the potential harm and the usefulness of the activity in the community. Further, the harm caused has to be from the abnormally dangerous propensity of the activity for strict liability to apply. Here, nationally, accidents involving fireworks cause about 9,000 injuries and 5 deaths each year. About 15% of these accidents are caused by mortars misfiring in the course of professional firework displays, and some of these accidents occur despite compliance with governmental fireworks regulations. Further, even with careful use by experts, fireworks mortars can still misfire. Eventhough, all the fireworks company employees were state-certified fireworks technicians, and the company followed all governmental fireworks regulations, the potential risk associated with mortars cannot be eliminated. In this case, it is not known why the mortar misfired. Further, the mortar's misfire is what caused the woman's injuries; thus, it was a result of the dangerous propensities of the mortars misfiring. Furthermore, while firework displays may be common in the area during certain holidays, it is not a normal activity in the area. Therefore, in light of this evidence, the judge was incorrect, because there is plenty of evidence that could cause reasonable jurors to differ.