

[Products Liability Law Daily Wrap Up, TOP STORY—HOUSEHOLD PRODUCTS—S.D. N.Y.: Amazon not subject to strict liability for products sold on its website by third parties, \(Aug. 28, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Miriam A. Friedman, J.D.

Amazon.com, Inc. was not within the "chain of distribution" such that it could be considered a "distributor" subject to strict liability for injuries caused by an allegedly defective coffeemaker that was sold on its website by a third-party vendor, a federal district court in New York found. Amazon owed no duty to the consumer with respect to that product and, because it did not make any statement about the coffeemaker, it could not be held liable for breach of express warranty or misrepresentation. As such, the court granted the company's motion for summary judgment (*Eberhart v. Amazon.com, Inc.*, August 27, 2018, Oetken, J.).

The consumer was washing his French press coffeemaker, purchased on Amazon.com, when the glass pot shattered, lacerating his thumb. He allegedly suffered nerve damage and potentially permanent limitations on the use of his thumb. In his lawsuit against Amazon, he asserted strict products liability, negligence, vicarious liability for the manufacturer's negligence, breach of express warranty, and misrepresentation. The website owner moved for summary judgment, arguing that it was not liable for the torts of third-party sellers.

Facts not subject to genuine dispute. The court first pointed out that none of the pertinent facts were subject to dispute. Although the consumer formally denied that a third party sold him the coffeemaker, the court found that he offered no evidence on this point "beyond unsubstantiated speculation." In addition, the website owner offered evidence that the third-party vendor participated in the "Fulfillment by Amazon" program; consequently, Amazon never took title to the product. Finally, the court added, the website owner did not even write or develop the product detail page for the coffeemaker.

Strict products liability. The court noted that as it was sitting in diversity, its task was to predict how the New York Court of Appeals would address this issue of first impression for the state. The federal court concluded that the state high court was unlikely to find that Amazon was "a mandatory link in [the] distributive chain." First, the court found that the failure to take title to a product placed the relevant entity outside the chain of distribution. With regard to the holding in *Brumbaugh v. CEJJ, Inc.*, 547 N.Y.S.2d 699, 700-01 (App. Div. 3d Dep't 1989), in which a state appellate panel held strictly liable a manufacturer's "exclusive 'marketing agent'" for injuries caused by a defective product for which the agent had never "take[n] actual possession, title or control," the court here found that even assuming this holding "remain[ed] good law," its logic would extend strict liability only to "the sole conduit by which [defective products] enter the marketplace." The court concluded that the consumer had "adduced no evidence from which a reasonable jury could draw such a conclusion" in the case at bar.

Second, the court found that Amazon was best characterized as a provider of services and concluded that none of the service activities subjected it to strict liability. Finally, the court pointed out that every court to consider the question of Amazon's liability had concluded that the company was not strictly liable for "defective products sold on its marketplace." As such, to the extent that the state high court would consider laws and judicial opinions of other jurisdictions, it would encounter "an emerging consensus" against construing Amazon as a "seller" or "distributor"—and, therefore, against holding it strictly liable for defective products sold on its website.

Other theories of liability. Moving on to other theories of liability, the court found that because Amazon did not manufacture, sell, or otherwise distribute the allegedly defective coffeemaker to the consumer, it owed him no duty with respect to that product. Furthermore, the consumer did not allege that the website owner acted negligently with respect to any service it provided. Finally, as to claims for breach of express warranty and

misrepresentation, the court accepted Amazon's un rebutted argument that it had not made any statements whatsoever about the coffeemaker.

The case is No. [16-CV-8546 \(JPO\)](#).

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