

**Products Liability Law Daily Wrap Up, TOP STORY—SUPPLY CHAIN LIABILITY ISSUES—M.D. Pa.: Amazon.com can't be held liable for faulty product sold on its online site by third-party vendor, (Dec. 22, 2017)**

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

Amazon.com could not be held liable for personal injuries sustained by an individual whose retractable dog leash purchased from another company through the Amazon Marketplace malfunctioned and struck her in the face, a Pennsylvania federal court ruled, granting summary judgment favoring the online retail giant on the injured individual's products liability and negligence claims. Subjecting Amazon to strict products liability would not further the purposes of the Restatement (Second) of Torts' provision establishing sellers' liability for defective products, the court held, adding that the negligence claims were barred by the federal Communications Decency Act because they attempted to treat Amazon as the "publisher or speaker" of product information provided by the third-party vendor (*Oberdorf v. Amazon.com, Inc.*, December 21, 2017, Brann M.).

A woman suffered a severe and permanent eye injury when the retractable leash she was using while walking her dog suddenly malfunctioned, snapped backwards, and hit her violently in the face. The injured woman had purchased the dog leash from a third-party vendor named "The Furry Gang" via the online marketplace operated by Amazon.com, Inc. Following the accident, the woman and her spouse apparently were unsuccessful in reaching the third-party vendor, after which they filed suit against Amazon in Pennsylvania federal court. Among the causes of action alleged were strict products liability failure to warn and defective design, as well as negligence and negligent undertaking based on Sections 323 and 324A of the Restatement (Second) of Torts. The complaint also sought punitive damages. Amazon responded by moving for summary judgment on all claims.

**Amazon's status as a "seller."** Pennsylvania has adopted Section 402A of the Restatement (Second) of Torts, which creates a strict products liability regime under which a plaintiff can recover against a defendant if he or she can prove that a product was defectively designed or manufactured, or came with an insufficient warning of its dangers. The Restatement provides that an entity that sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his or her property if: (1) the seller is engaged in the business of selling such a product; and (2) it is expected to reach and does reach the user or consumer without substantial change in the condition in which it is sold.

In that regard, although the Pennsylvania Supreme Court has defined "seller" under Section 402A expansively, it did not leave that category without boundaries. For instance, relevant case precedent in the state establishes that an auctioneer is not a "seller" for purposes of the above-mentioned statutory provision. However, the Pennsylvania high court has not yet ruled on whether an online sales listing service like Amazon Marketplace—which enables third-party vendors to decide which products they wish to sell, obtain their stock from manufacturers or upstream distributors, and set their own sales price—qualifies as a "seller" under the Restatement's Section 402A.

In predicting how the state supreme court might rule, it was relevant that like an auctioneer, Amazon merely is a third-party vendor's "means of marketing," inasmuch as the outside vendors choose the products and expose them for sale by means of Amazon's Marketplace. Because of the enormous number of third-party vendors and goods, Amazon is not equipped to pass upon the quality of the myriad of products available on its Marketplace, has no role in the selection of the goods to be sold, and cannot have any direct impact on the manufacturing of the products sold by the third-party vendors. The Amazon Marketplace serves as a sort of newspaper classified

ad section, connecting potential consumers with eager sellers in an efficient, modern, and streamlined manner. Therefore, because subjecting Amazon to strict liability would not further the purposes of Section 402A, the online retail giant could not be held liable to the injured woman and her spouse under a strict products liability theory.

**Negligence/negligent undertaking.** As for the injury victim's negligence and negligent undertaking claims, Section 230 of the Communications Decency Act (CDA) states that no provider or user of an interactive computer service can be treated as the publisher or speaker of any information provided by another information content provider. In its summary-judgment motion, Amazon argued that the plaintiffs' claims attempted to treat the company as the "publisher or speaker" of information product information provided to Amazon by The Furry Gang and, as such, were barred by the CDA.

Although the plaintiffs' complaint framed the negligence and negligent undertaking claims broadly, it was clear that the injured woman and her spouse were attempting to hold Amazon liable for its role in publishing an advertisement for the third-party vendor's product. In other words, they were attempting to treat Amazon as the publisher or speaker of information provided by The Furry Gang. Consequently, the claims were barred by Section 230 of the CDA. Accordingly, Amazon's motion for summary judgment was granted and the case was ordered to be dismissed.

The case is No. [4:16-CV-01127](#).

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