

[Products Liability Law Daily Wrap Up, TOP STORY—SUPPLY CHAIN LIABILITY ISSUES—3d Cir.: Amazon is a ‘seller’ subject to Pennsylvania strict products liability law, \(Jul. 8, 2019\)](#)

Products Liability Law Daily Wrap Up

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By David Yucht, J.D.

An injured consumer's claims against the online retailer for selling an allegedly defective dog leash were reinstated.

The U.S. Court of Appeals for the Third Circuit held that Amazon was a "seller" for purposes of §402A of the Second Restatement of Torts and, thus, was subject to the Pennsylvania strict products liability law. Moreover, a consumer's claims against Amazon were not barred by the Communications Decency Act (CDA) except as they relied upon a "failure to warn" theory of liability. Consequently, the appellate court affirmed the dismissal under the CDA of the failure to warn claims and vacated the remainder of the judgment of the lower court, remanding the case for further proceedings (*Oberdorf v. Amazon.com Inc.*, July 3, 2019, Roth, J.).

Amazon's website is an online marketplace where Amazon retails its own products as well as those of third-party vendors. The third-party vendors decide which products to sell, the means of shipping, and product pricing. Amazon lists the products on the Amazon Marketplace, collects order information from consumers, and processes payments. Amazon collects fees from each third-party vendor. In the current case, a consumer had purchased a retractable dog leash that was sold by a third-party vendor on Amazon.com. While taking her dog for a walk, the dog unexpectedly lunged, causing the D-ring on the collar to break and the leash to recoil back and hit the consumer's face and eyeglasses. As a result, she lost use of her left eye. Neither Amazon nor the consumer was able to locate a representative of the third-party vendor, which had not had an active Amazon account since May 2016.

The consumer sued Amazon.com for failure to warn and defective design strict products liability and negligence, among other things. The trial court dismissed the case, finding that under Pennsylvania law, Amazon was not liable for the injuries because a third-party vendor—rather than Amazon itself—listed the collar on Amazon's online marketplace and shipped the collar directly to the consumer [see *Products Liability Law Daily's* December 22, 2017 [analysis](#)]. The lower court found that Amazon was not subject to strict products liability claims because it was not a "seller" under Pennsylvania law. Also, the claims were barred by the CDA because the consumer sought to hold Amazon liable for its role as the online publisher of third-party content. The consumer appealed.

Strict liability—sellers. The appellate court ruled in favor of the consumer, reversed the trial court, and reinstated all but one of the claims filed against Amazon. The primary dispute on appeal was whether Amazon could be considered a *seller* for purposes of strict products liability under §402A of the Second Restatement of Torts as applied by Pennsylvania's courts. The court looked at four factors established under Pennsylvania law. The appellate court found that Amazon may be the only member of the marketing chain available to the consumer for redress. Here, under Amazon's agreement with its third-party vendors, the third-party vendors may communicate with the customer only through Amazon, enabling them to conceal themselves and leave customers injured by defective products with no direct recourse. Amazon had no vetting process in place to ensure that third-party vendors were amenable to legal process. Moreover, neither the consumer here nor Amazon was able to locate the third-party vendor in this case.

The appellate court also determined that imposing strict liability upon Amazon would serve as an incentive to safety. Although Amazon did not design or manufacture third-party products, Amazon exerted substantial control over third-party vendors via its right to suspend or remove any product listing or terminate its relationship with

any vendor. Consequently, Amazon could remove unsafe products from its website. Moreover, Amazon was in a better position than the consumer to prevent the circulation of defective products. Here, the potential for continuing sales encouraged an ongoing relationship between Amazon and the third-party vendors. Moreover, Amazon was uniquely positioned to receive reports of defective products, which in turn could lead to such products being removed from circulation. Finally, Amazon could distribute the cost of compensating for injuries resulting from defects via its comprehensive indemnification agreements with its third-party vendors which were already in place. The appellate court also noted that under Pennsylvania law, a participant in the sales process may be held strictly liable for injuries resulting from defective products, even if the participant did not take title or possession of those products. Amazon asked that the court use a dictionary definition of the word "seller." However, comments to §402A made clear that the term "seller" applied to manufacturers, wholesalers, retailers, and distributors.

In addition, the appellate court found that the consumer's claims against Amazon were not barred by the CDA except as they relied upon a "failure to warn" theory of liability. To the extent that the negligence and strict liability claims relied on Amazon's role as an actor in the sales process, they were not barred by the CDA. However, to the extent the consumer alleged that Amazon failed to provide or to edit adequate warnings regarding the use of the dog collar, the appellate court concluded that this activity fell within the publisher's editorial function and, accordingly, was protected by the CDA.

The case is No. [18-1041](#).

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