

Products Liability Law Daily Wrap Up, SUPPLY CHAIN LIABILITY ISSUES—CHEMICAL PRODUCTS—Wash. App.: Parents' claims against Amazon dismissed upon appeal in children's suicide cases, (Dec. 3, 2024)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Pankhuri Bhatnagar, B.A. LL.B.

The parents failed to show that Amazon owed them the specific duties they alleged or that the seller's acts or omissions proximately caused the deaths of their children.

In a suit brought against a drug seller by the estates of individuals who died by suicide after ingesting a drug they purchased from the seller, the Washington Court of Appeals reversed a trial court's denial of the seller's motions to dismiss. The appellate court found that the estates' negligence claims were preempted by the state's product liability act while the consumer protection claims improperly sought redress for personal injuries as opposed to business or property injuries. The product liability counts also failed because a seller's duty does not extend to protecting against intentional misuse of a product for self-harm and the decedent's voluntary choices to commit suicide superseded any seller liability (*Scott v. Amazon.com, Inc.*, No. 84933-6-I (Wash. App. Nov. 25, 2024)).

Background. These consolidated cases arose from the deaths of four individuals who each ordered sodium nitrite on Amazon.com (seller) and ingested it to cause their own deaths by suicide. Three of the decedents were teenagers suffering from depression while one was a 27-year old man who had been dealing with schizoaffective, bipolar, and anxiety disorders for 10 years. While a diluted level (6 percent purity) of sodium nitrite is safely used as a meat preservative and ingredient in curing salts, the drugs purchased in these cases—HiMedia Sodium Nitrite and Loudwolf Sodium Nitrite—were 98 percent and 99.6 percent pure, making them highly dangerous and toxic. The compound's soluble nature allowed the purchasers to consume it orally after mixing it with water. The decedents' parents/estates brought suit against Amazon alleging products liability and negligence under the Washington product liability act (WPLA), common law negligence, negligent infliction of emotional distress (NIED), and violations of the Washington Consumer Protection Act (CPA). Amazon moved to dismiss under CR 12(b)(6), disclaiming liability for the purchasers' intentional misuse of the product to commit suicide. The trial courts denied and this court granted discretionary review.

WPLA. Since the WPLA is the exclusive remedy for product liability claims and common law remedies for product-related harms are preempted by it, the parents' causes of action based on common law negligence theories were expressly preempted, *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 323, 858 P.2d 1054 (1993). Next, the WPLA subjects product sellers to liability only if the plaintiff's harm was proximately caused by the seller's negligence, breach of an express warranty, or the seller's intentional misrepresentation of facts about the product, RCW 7.72.040(1).

Misrepresentation. The estates asserted that Amazon intentionally concealed (1) the drug's warnings on its website; (2) negative product reviews that warned consumers of the products' use for suicide; (3) its provision of independent accounts to minors; and (4) from vendors that the product was being purchased by children and vulnerable adults. Moreover, it misrepresented that it was advisable that purchasers of sodium nitrite should also purchase anti-vomit medication, a suicide manual with instructions on death via sodium nitrite, and a personal scale. The court agreed with the seller that these allegations were not sufficient to state a claim under the plain language of RCW 7.72.040(1)(c), which requires an intentional misrepresentation or concealment "of facts about the product" or "information about the product."

Negligence. Amazon relied on the analogous case of *McCarthy v. Amazon.com, Inc.* 679 F. Supp. 3d 1058, 1069 (W.D. Wash. 2023) to argue that WPLA negligence claims are limited to those involving defective products.

But the purchaser there did not dispute this contention, unlike here. Further, the plain language of RCW 7.72.040(1)(a) does not contain any defective product predicate and courts “must not add words where the legislature has chosen not to include them.” *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). However, this court agreed with *McCarthy’s* holding that the warnings on the sodium nitrite were sufficient as the “label identified the product’s general dangers and uses, and the dangers of ingesting [s]odium [n]itrite were both known and obvious” to the purchasers who deliberately sought and swallowed the drug for its fatal properties. Even if Amazon owed a duty to provide additional warnings about the dangers of ingesting sodium nitrite, its failure to do so was not the proximate cause of the deaths at issue.

Duty. The parents’ claim that the seller had a duty to not assist in a suicide attempt and not supply a substance likely to be used for self harm, failed because “suicide is ‘a voluntary willful choice determined by a moderately intelligent mental power’ who is ‘both the victim and the actor’ and ‘no duty exists to avoid acts or omissions that lead another person to commit suicide.’” *Hepner v. Dep’t of Lab. & Indus.*, 141 Wash. 55, 59, 250 P. 461 (1926). The parents then relied on *Bernethy v. Walt Failor’s, Inc.*, 97 Wn.2d 929, 933, 653 P.2d 280 (1982) to state that under the Restatement (Second) of Torts § 390, Amazon owed vulnerable people a duty not to supply them with sodium nitrite—a harmful chattel—that it knew was being used for self-harm. In *Bernethy*, a gun shop owner placed ammunition in the hands of a visibly intoxicated person. In contrast, the purchasers here had no face-to-face transaction with Amazon that might have alerted the online retailer to the fact that any one of them may be “an incompetent” who may misuse the product. Although Amazon had a duty to exercise reasonable care under § 281 to avoid the foreseeable consequences of its acts, the scope of this duty plainly does not extend to “avoid[ing] acts or omissions that lead another person to commit suicide” *Webstad v. Stortini*, 83 Wn. App. 857, 866, 924 P.2d 940 (1996).

Causation. Even if the seller’s duties extended to encompass the estates’ causes of action here, the claims would fail due lack of proximate causation. Nearly a century ago, the state high court established that liability does not attach to a death by suicide unless the “injuries inflicted by the defendant caused the decedent[s] to enter into a state of delirium or frenzy or to become subjected to an insane and uncontrollable impulse to commit suicide, resulting in death at [their] own hand[s].” *Arsnow v. Red Top Cab Co.* 159 Wash. 156 P. 436 (1930). In *Orcutt v. Spokane County*, 58 Wn.2d 846, 850, 364 P.2d 1102 (1961), it was clarified that “if the suicide is during a lucid interval, when [they are] in full command of [their] faculties but [their] life has become unendurable to [them], it is agreed that [their] voluntary choice is an abnormal thing, which supersedes the defendant’s liability.” Here, there was no allegation that Amazon injured any of the purchasers in a manner that resulted in their “uncontrollable impulse to commit suicide.” Rather, the individuals themselves initiated contact with the seller to attain a drug to end their lives, showing that they were in command of their faculties and made voluntary choices to commit suicide. Accordingly, their actions superseded any potential liability for Amazon and the authority of the Washington Supreme Court controlled over secondary sources like the Restatement.

Consumer protection. The parents finally contended that Amazon’s marketing of sodium nitrite and “other recommended products to complete suicide” and delivery of the drug at residential addresses was an unfair or deceptive act in violation of the CPA. The seller rightly pointed out that the state creates a right of action only for “[a]ny person who is injured in [their] business or property.” RCW 19.86.090. “Personal injuries, as opposed to injuries to ‘business or property,’ are not compensable and do not satisfy the injury requirement.” *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 57, 204 P.3d 885 (2009). Thus, “damages for mental distress, embarrassment, and inconvenience are not recoverable.” Although the parents framed their claim as a mere attempt to recover the purchase price of the product, the claim was premised on the same factual allegations that formed the basis of their WPLA claims. The court accordingly dismissed these claims, explaining that “the CPA was not designed to give personal injury claimants such backdoor access to compensation they were denied in their personal injury suits.” *Ambach v. French*, 167 Wn.2d 167, 174 n.3, 216 P.3d 405 (2009).

The case is No. [84933-6-I](#).

Judge: Hazelrigg, C.

Attorneys: Corrie Johnson Yackulic (Corrie Yackulic Law Firm PLLC) and Philip Albert Talmadge (Talmadge/Fitzpatrick) for Ruth Scott, Jeff Muhleman and Cindy Cruz. Gregory Franklin Miller (Perkins Coie LLP) for Amazon.com, Inc.

Companies: Amazon.Com, Inc.

Cases: CourtDecisions SCLIssuesNews ChemicalNews WarningsNews CausationNews WashingtonNews GCNNews