AMAZON SUBJECT TO STRICT LIABILITY FOR DEFECTIVE PRODUCTS OFFERED ON ITS WEBSITE BY THIRD-PARTY SELLERS

August 20, 2020

By: Heidi Howard Tandy and Justen S. Fischer

A California court recently ruled that Amazon can be subject to strict products liability for defective products sold in its virtual marketplace by third-party sellers. In a unanimous decision issued by Judge Patricia Guerrero, the Fourth District Court of Appeals made clear that "[u]nder established principles of strict liability, Amazon should be held liable if a product sold through its website turns out to be defective."

The ruling comes after several years of litigation arising from personal injuries sustained by the plaintiff, Angela Bolger, who alleged that a replacement computer battery she purchased on Amazon exploded, resulting in severe burns and a two-week stint in the hospital. Ms. Bolger sued Amazon and several other defendants, including the third-party seller of the defective battery, Lenoge Technology (HK) Ltd. ("Lenoge"), under legal theories of strict products liability, negligent products liability, breach of implied warranty, breach of express warranty, and negligent undertaking.

In the Bolger matter, Amazon defended against the claims by primarily arguing that the doctrine of strict products liability (and other similar tort theories of liability) did not apply because it did not distribute, manufacture, or sell the product in question. However, as the product at issue was sold through its "Fulfilled By Amazon" program ("FBA"), Amazon actually did keep the item in its warehouse, and shipped it from there to the customer; the ruling might have been different if the product was shipped directly from the seller, and merely advertised on Amazon.

The Court further noted that Amazon created the environment that allowed Lenoge to offer the product for sale, set the terms of Lenoge's involvement, took possession of the product, and then demanded fees in exchange for Lenoge's participation. Lenoge was not involved in the sales transaction, did not approve the sale before it was made, and may not have even known the sale had occurred until it received a report from Amazon.

If Amazon's planned appeal is unsuccessful, it risks being treated as a retailer or facilitator of products from businesses to purchasers, rather than a flea market or auction house. Such a determination could increase its responsibility to consumers for products sold via its Marketplace, which could in turn change Amazon's rules for businesses that wish to sell products in and through the Amazon Marketplace.

While Amazon has not promulgated new rules or policies yet for businesses selling in its marketplace, it could choose to do so; one option it may consider is obligating those selling certain products through the Marketplace, especially those sold through its FBA, to obtain and hold meaningful insurance policies with well-respected US carriers, which name Amazon as an additional-insured. This could, in turn, increase prices for such products sold through Amazon.

We at Berger Singerman are watching this case closely as it moves through the appellate process; if you sell products through Amazon, or plan to do so, please reach out to us so we can discuss the potential

ramifications of this litigation on your business model and growth plans. Additionally, please contact our firm should your business face any issues with defective products purchased through the Amazon Marketplace.

Related Practice Teams

Dispute Resolution

Related Team Member(s)

Heidi Howard Tandy

Justen S. Fischer

Topics

Amazon