

CLIENT ALERT

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LOOMIS V. AMAZON: STRICT PRODUCTS LIABILITY IN THE WORLD OF ECOMMERCE

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On April 26, 2021, the California Court of Appeal issued its decision in *Loomis v. Amazon.com LLC*, which could have drastic consequences for operators of e-commerce sites being sued for strict liability for injuries incurred as a result of defective products sold on their platforms.

In *Loomis*, Kisha Loomis brought suit against Amazon.com LLC ("Amazon") for injuries she suffered from an allegedly defective hoverboard that was sold by a third-party seller named TurnUpUp through the Amazon website. The California appellate court was tasked with deciding whether Amazon may be held strictly liable for Loomis's injuries from the defective product. In rendering its decision under California strict liability law, the appellate court relied on another recent decision from the California Court of Appeal, *Bolger v. Amazon, LLC*, wherein the court held that Amazon "is an integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products." *Bolger v. Amazon.com, LLC*, 53 Cal.App.5th 431, 267 Cal.Rptr.3d 601 (2020).

In *Loomis*, Amazon argued that it should not be held liable for Loomis's injuries because it is not a manufacturer, seller, or supplier, but merely a service provider and is thus not subject to strict products liability. The appellate court rejected Amazon's argument, explaining that Amazon provided "a service to TurnUpUp in the form of a website to list its product and, . . . was also instrumental in the sale of the product by placing itself squarely between TurnUpUp and Loomis." The court thus held that, because Amazon was "pivotal" in bringing the product to the consumer, it could be held strictly liable for defective products.

The *Loomis* court also considered the public policy reasons for holding Amazon strictly liable for defective products sold on its platform. Amazon argued that it has no proactive authority over product design or manufacture because its relationship is typically with the distributor or retailer, not the manufacturer, and that it can only reactively address safety issues by removing or suspending sellers after a product has been shown to be unsafe. The appellate court rejected this argument, in part because Amazon takes steps to ensure product safety, thus refuting Amazon's contention that it cannot proactively affect product safety.

As demonstrated by *Loomis*, courts are increasingly willing to hold e-commerce platforms, like Amazon, strictly liable for injuries resulting from defective products sold on their platforms. If other courts adopt the holding in *Loomis*, e-commerce platforms could face an increased risk of liability. Courts may be willing to hold various entities in the distribution chain strictly liable for injuries incurred as a result of defective products, if those entities were "pivotal" in bringing the

product from the manufacturer to the consumer. In *Loomis*, the buck stopped with Amazon.

But, the buck might also stop with you. While you may not be an Amazon, if you operate your own e-commerce site and sell third-party products, you may be held strictly liable for product defect claims arising from such products. Say you manufacture supplements or skincare products and sell them on your site, and say, along with your own products, you sell complementary products manufactured by others as well, like nutritional bars or micro-needling pens. This is where you need to tread carefully.

Yes, of course, having a contract with an indemnity provision with everyone along your supply chain is a great starting place, but a products liability attorney should also review it. What happens when the indemnitor does not have the financial wherewithal to indemnify, defend and hold you harmless? Let's inspect that insurance provision. Let's inspect your own company's insurance policy. Do you recall the last time you updated your site's Terms and Conditions? Never, you say? Perhaps today is the day.

The attorneys at Dickinson Wright PLLC have extensive experience in strict products liability cases and advising clients on how to avoid potential pitfalls. Our attorneys can review and update clients' Terms and Conditions, advise on cost-effective measures to avoid liability, and assist in implementing policy measures to ensure compliance with laws and regulations.

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