

## Summary of Key Online Marketplace Product Liability Litigation

By Jeremy Robinson

CaseyGerry, LLP

Current as of September 13, 2021

### CASES FINDING ONLINE MARKETPLACE POTENTIALLY LIABLE FOR DEFECTIVE PRODUCT

Case Name/Court	Product/Holding	Status
<p><i>Bolger v. Amazon.com, LLC</i>, 53 Cal.App.5th 431 (2020).</p> <p>Court of Appeal for the State of California, Fourth Appellate District, Division One</p>	<p>Exploding replacement laptop battery.</p> <p><b>Held:</b> Amazon strictly liable under California law in case where product was Fulfilled by Amazon. No immunity under the Communications Decency Act (“CDA”).</p>	<p>Petition for Review denied; decision final.</p>
<p><i>Loomis v. Amazon.com, LLC</i>, 63 Cal.App.5th 466 (2021).</p> <p>Court of Appeal for the State of California, Second Appellate District, Division Eight</p>	<p>Exploding hoverboard.</p> <p><b>Held:</b> Amazon strictly liable under California law even where product was not Fulfilled by Amazon. Amazon was a participant in the stream of commerce for strict liability purposes. Amazon could also be potentially liable for negligence.</p>	<p>Decision final.</p>
<p><i>Oberdorf v. Amazon.com Inc.</i>, 930 F.3d 136, <i>rehearing en banc granted and opinion vacated</i>, 936 F.3d 182 (2019).</p> <p>United States Court of Appeals, Third Circuit (Pennsylvania)</p>	<p>Defective dog collar that partially blinded the plaintiff.</p> <p><b>Held:</b> Panel held Amazon could be strictly liable under PA law. Rehearing en banc was granted and that opinion was vacated. The en banc</p>	<p>Case settled for an undisclosed amount before being briefed at the PA Supreme Court.</p>

	<p>court certified the question to the PA. Supreme Court.</p>	
<p><i>State Farm Fire and Casualty Company v. Amazon.com, Inc.</i>, 390 F.Supp.3d 964 (W.D. Wis. 2019).</p> <p>United States District Court for the Western District of Wisconsin</p>	<p>Defective faucet flooded home.</p> <p><b>Held:</b> Amazon was seller within meaning of Wisconsin strict products liability statute, not immune from liability under CDA</p>	<p>Decision final.</p>
<p><i>McMillan v. Amazon.com, Inc.</i>, 433 F.Supp.3d 1034 (S.D. Tex. 2020).</p> <p>United States District Court for the Southern District of Texas</p>	<p>Child swallowed batteries from defective television remote and suffered permanent damage to esophagus.</p> <p><b>Held:</b> Amazon could be strictly liable for selling defective remote but claims for failure to warn were barred by CDA.</p>	<p>Reversed on certified question to Supreme Court of Texas, <i>Amazon.com, Inc. v. McMillan</i>, 625 S.W.3d 101 (Tex. 2021).</p>
<p><i>State Farm Fire &amp; Cas. Co. v. Amazon.com Servs., Inc.</i>, 70 Misc. 3d 697, 137 N.Y.S.3d 884 (N.Y. Sup. Ct. 2020)</p> <p>Supreme Court, Onodaga County, New York</p>	<p>Wireless thermostat caused house fire.</p> <p><b>Held:</b> Amazon’s motion for summary judgment denied. Genuine issue of material facts as to whether Amazon could be distributor or seller of product under New York law.</p>	<p>Case ongoing.</p>
<p><i>Love v. Weecco™</i>, 774 F. App’x 519, 521 (11th Cir. 2019).</p> <p>United States Court of Appeals, Eleventh Circuit (Georgia)</p>	<p>Hoverboard caught fire and burned the plaintiff and the plaintiff’s home.</p> <p><b>Held:</b> Reversed grant of Amazon’s motion to dismiss</p>	<p>Case in litigation, <i>Love v. Weecco™, Inc.</i>, 1:18-cv-00540 (N.D. Ga.).</p>

	on negligent failure to warn claim.	
<p><i>State Farm Fire and Casualty Company v. Amazon.com, Inc.</i>, 2019 WL 5616708 (N.D. Miss., Oct. 31, 2019, No. 3:18CV166-M-P)</p> <p>United States District Court for the Northern District of Mississippi</p>	<p>Defective hoverboard and batteries caught fire causing severe property damage.</p> <p><b>Held:</b> Amazon’s motion for judgment on the pleadings on the basis of not being the product’s seller denied.</p>	<p>Later voluntary dismissal entered as to Amazon. Summary judgment granted to Samsung (alleged manufacturer) on the basis that Amazon receipt was inadmissible hearsay.</p>
<p><i>Papataros v. Amazon.com, Inc.</i>, 2019 WL 4011502 (D.N.J., Aug. 26, 2019, No. Civ. No. 17-9836KMMAH).</p> <p>United States District Court for the District of New Jersey</p>	<p>Defective scooter caused injury.</p> <p><b>Held:</b> Amazon could be strictly liable for selling defective scooter because it could be a “seller” under the New Jersey Product Liability Act.</p>	<p>Litigation ongoing. The parties agreed to a withdrawal of Amazon’s summary judgment motion.</p>

**CASES FINDING ONLINE MARKETPLACE NOT LIABLE FOR DEFECTIVE PRODUCT**

<b>Case Name/Court</b>	<b>Product/Holding</b>	<b>Status</b>
<p><i>Erie Insurance Company v. Amazon.com, Inc.</i>, 925 F.3d 135 (4th Cir. 2019).</p> <p>United States Court of Appeals, Fourth Circuit (Maryland)</p>	<p>Defective LED headlamp caught fire and burned house.</p> <p><b>Held:</b> Under Maryland law, Amazon is not a “seller” and thus not strictly liable for the defective headlamp. Case not barred by the CDA.</p>	<p>Decision final.</p>
<p><i>Fox v. Amazon.com, Inc.</i>, 930 F.3d 415 (6th Cir. 2019).</p>	<p>Defective hoverboard burned house and caused various physical injuries.</p>	<p>Case settled for undisclosed amount.</p>

<p>United States Court of Appeals, Sixth Circuit (Tennessee)</p>	<p><b>Held:</b> Amazon was a “seller” of the hoverboard under Tennessee Product Liability Act but did not exercise enough control over the product to be held strictly liable under the Act. Amazon could be liable for negligence in warning plaintiffs of hoverboard’s dangers.</p>	
<p><i>Stiner v. Amazon.com, Inc.</i>, 2020-Ohio-4632, 162 Ohio St. 3d 128, 164 N.E.3d 394.  Supreme Court of Ohio</p>	<p>Teenager died from caffeine powder purchased on Amazon marketplace. Decedent did not purchase the product but was given it by a friend.  <b>Held:</b> Amazon was not a “seller” of the caffeine powder under the Ohio Product Liability Act.</p>	<p>Decision final.</p>
<p><i>Amazon.com, Inc. v. McMillan</i>, 625 S.W.3d 101 (Tex. 2021).  Supreme Court of Texas</p>	<p>Child was injured from swallowing batteries in defective remote control.  <b>Held:</b> On certified question from the Fifth Circuit, Supreme Court of Texas held Amazon was not the “seller” of the defective product under Texas’s statutory definition of that term.</p>	<p>Decision final.</p>
<p><i>Eberhart v. Amazon.com, Inc.</i>, 325 F.Supp.3d 393 (S.D.N.Y. 2018).  United States District Court for the Southern District of New York</p>	<p>Defective coffee maker shattered.  <b>Held:</b> Amazon was not a seller given its “failure to take title to a product.” Amazon’s role in “warehousing and shipping goods” under the FBA</p>	<p>Decision final. But called into doubt by <i>State Farm Fire &amp; Cas. Co. v. Amazon.com Servs., Inc.</i>, 70 Misc. 3d 697, 137 N.Y.S.3d 884 (N.Y. Sup. Ct. 2020).</p>

<p>See also <i>Philadelphia Indemnity Ins. Co. v. Amazon.com, Inc.</i>, 2019 WL 6525624 (E.D.N.Y., Dec. 4, 2019, No. 17CV03115DRHAKT) (followed <i>Eberhart</i>)</p>	<p>program was not enough to subject it to strict liability.</p>	
<p><i>Garber v. Amazon.com, Inc.</i>, 380 F.Supp.3d 766 (N.D. Ill. 2019).</p> <p>United States District Court for the Northern District of Illinois</p>	<p>Child swallowed batteries from defective television remote and suffered permanent damage to esophagus.</p> <p><b>Held:</b> Amazon not strictly liable; Amazon’s “level of participation” did not establish that it was a “seller” because Amazon merely “provid[ed] a venue and marketplace for third-party sellers ... to connect with buyers.”</p>	<p>Decision final. See also <i>Great N. Ins. Co. v. Amazon.com, Inc.</i>, No. 19 C 684, 2021 WL 872949 (N.D. Ill. Mar. 9, 2021) (Amazon not liable for hoverboard fire).</p>
<p><i>Carpenter v. Amazon.com, Inc.</i>, 2019 WL 1259158 (N.D. Cal., Mar. 19, 2019, No. 17-CV-03221-JST).</p> <p>United States District Court for the Northern District of California.</p>	<p>Hoverboard caught fire and burned the plaintiff and the plaintiff’s home.</p> <p><b>Held:</b> Amazon not strictly liable because there was no evidence that Amazon “played a dominant role in creating the market for hoverboards, took steps to assist hoverboard manufacturers in marketing hoverboards, or engaged in any other activities that led to the creation of the initial hoverboard market.”</p>	<p>Settled during appeal. No longer good law following <i>Bolger</i> and <i>Loomis</i>.</p>
<p><i>Allstate New Jersey Insurance Company v. Amazon.com, Inc.</i>, 2018 WL 3546197</p>	<p>Replacement laptop battery caught fire, causing property damage.</p>	<p>Decision final.</p>

<p>(D.N.J., July 24, 2018, No. CV172738FLWLHG)</p> <p>United States District Court for the District of New Jersey</p>	<p><b>Held:</b> Amazon was not strictly liable because it was not a “seller” under New Jersey law.</p>	
<p><i>State Farm Fire &amp; Cas. Co. v. Amazon.com, Inc.</i>, No. 3:19-CV-151, 2021 WL 1124787 (W.D. Ky. Mar. 24, 2021).</p> <p>United States District Court for the Western District of Kentucky.</p>	<p>Defective hoverboard caught fire and burned house.</p> <p><b>Held:</b> Amazon was not strictly liable because it was not a “seller” or “manufacturer” under Kentucky Product Liability Act.</p>	<p>Decision final.</p>
<p><i>State Farm Fire &amp; Cas. Co. v. Amazon.com Inc.</i>, 407 F. Supp. 3d 848 (D. Ariz. 2019).</p> <p>United States District Court for the District of Arizona</p>	<p>Defective hoverboard caught fire and burned the insured’s house.</p> <p><b>Held:</b> Amazon not strict liable under Arizona law because not enough evidence it “participated significantly in the stream of commerce” for hoverboards.</p>	<p>Affirmed, <i>State Farm Fire &amp; Cas. Co. v. Amazon.com, Inc.</i>, 835 F. App’x 213 (9th Cir. 2020).</p>
<p><i>Indiana Farm Bureau Ins. v. Amazon.Com, Inc.</i>, No. 119CV01568JRSTAB, 2020 WL 9424669 (S.D. Ind. Jan. 28, 2020).</p> <p>United States District Court for the Southern District of Indiana.</p>	<p>House fire caused by defective remote control boat.</p> <p><b>Held:</b> Amazon not strictly liable under Indiana law because that law limits liability to manufacturers. Exception where manufacturer is outside court’s jurisdiction inapplicable on the facts.</p>	<p>Decision final. <i>See also Indiana Farm Bureau Ins. v. Shenzhen Anet Tech. Co.</i>, No. 419CV00168TWPDMML, 2020 WL 7711346 (S.D. Ind. Dec. 29, 2020) (Wal-Mart not liable for fire caused by 3D printer sold by third party on Wal-Mart’s online marketplace).</p>

