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## Insurer Can't Revive Defective-Lamp Suit Against Amazon

By **Rick Archer**

Law360 (May 22, 2019, 10:42 PM EDT) -- The Fourth Circuit on Wednesday found Amazon isn't liable for selling a lamp that allegedly started a house fire, saying the online marketplace never owned the lamp and therefore can't be sued by Erie Insurance Co. under Maryland product liability law.

A three-judge panel agreed with a district court that at no point in the chain of events that brought the allegedly defective lamp into the Maryland home of an Erie policyholder did Amazon.com Inc. hold title to it. Therefore, under Maryland law, the online retail giant was no more liable than the company that delivered the package, the panel said.

According to Erie, Trung Cao had purchased the lamp through a posting on Amazon's site from a company called Dream Light and gave it as a gift to Erie policyholders Minh Nguyen and Anh Nguyen. Erie contended that a defect in the lamp started a fire that caused \$313,000 in damage to the couple's Burtonsville, Maryland, home.

Erie **filed suit in 2016**, claiming Amazon had sold an unsafe product. But Amazon argued, and the **Maryland district court agreed**, that title for the lamp had passed directly from Dream Light to Cao and that Amazon was therefore not liable as a seller. The court also found the suit couldn't stand under the federal Communications Decency Act, which bars claims against online service providers for third-party content.

On appeal, Erie argued that Amazon controlled so many aspects of the transaction, from operating the website and handling payment to storage and shipping, that it effectively became the seller, noting Dream Light and Cao had no direct contact.

But on Wednesday, the Fourth Circuit agreed that Amazon was not a seller under Maryland law and therefore was not liable.

"Although Amazon's services were extensive in facilitating the sale, they are no more meaningful to the analysis than are the services provided by UPS Ground, which delivered the headlamp to Cao," said U.S. Circuit Judge Roger Gregory, writing the opinion for the panel.

The court did nix the district court's ruling that the suit was barred by the CDA, saying the law barred suits over the publication of speech, not the sale of products.

In a concurring opinion, U.S. Circuit Judge Diana Gribbon Motz agreed that Amazon is not liable under current Maryland law. But she said state courts and legislatures were free to make changes to deal with the product liability issues raised by Amazon's business model.

"By design, Amazon's business model cuts out the middlemen between manufacturers and consumers, reducing the friction that might keep foreign (or otherwise judgment-proof) manufacturers from putting dangerous products on the market," she said.

Erie counsel John Weston told Law360 on Wednesday this has been an issue in product liability suits involving products sold through Amazon. "That's a problem in these cases, you're faced with an entity you have no real chance of recovering from," he said.

He said the ruling on the CDA was significant, saying Amazon has consistently raised it as a defense in product liability cases and this is the first time he's aware of it being struck down.

"It has removed Amazon's grounds for federal jurisdiction where diversity doesn't exist," he said.

Counsel for Amazon declined to comment.

Judges Roger L. Gregory, Paul V. Niemeyer and Diana Gribbon Motz sat on the panel for the Fourth Circuit.

Erie Insurance is represented by John Kerry Weston and Jesse M. Cohen of Sacks Weston Diamond LLC.

Amazon is represented by Brendan Murphy, Eric D. Miller and Laura Hill of Perkins Coie LLP.

The case is Erie Insurance Co. v. Amazon.com Inc. et al., case number 18-1198, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Abbie Sarfo.

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