

Negligent Undertaking Claim Against Amazon May Succeed Where a Products Liability Claim Fails

Michael DeBona
The Subrogation Strategist
4.29.24

In *Johnson v. Amazon.com, Inc.*, No. 4:22-CV-04086, 2024 U.S. Dist. LEXIS 59196, the United States District Court for the Southern District of Texas held that Amazon.com, Inc. (Amazon) can be liable for negligent undertaking claims when products sold on its website are defective.

In *Johnson*, the Plaintiff, Joshua Johnson (Johnson), purchased a bathmat on Amazon. The bathmat was designed, manufactured and sold by Comuster, a Chinese entity. Nine months after purchasing the bathmat, the bathmat shifted while Johnson was taking a shower and caused him to fall. Johnson sustained a severe cut on his arm that required surgery and left significant scarring.

Johnson brought suit against Amazon and Comuster, asserting a strict products liability claim against both. Amazon moved to dismiss the complaint under Rule 12(b)(6), arguing that Texas law precludes a strict liability claim against Amazon because Amazon is not a "seller" under Texas law, but, rather, an online marketplace where third parties can sell their products. In response, Johnson amended his complaint as to Amazon by removing the strict liability claim but adding a negligent undertaking claim. Amazon moved to dismiss the amended complaint, this time on the basis that Johnson did not state a viable claim for negligent undertaking under Texas law.

Under Texas law, a negligent undertaking claim against Amazon requires that a plaintiff show that (1) Amazon undertook to perform services that it knew or should have known were necessary for plaintiff's protection; (2) Amazon failed to exercise reasonable care in performing those services; and (3) the plaintiff relied on Amazon's performance, or Amazon's performance increased the plaintiff's risk of harm. Amazon argued that Johnson's negligent undertaking claim should be dismissed for two reasons. First, Amazon argued that Johnson did not allege sufficient facts for Amazon to have assumed a duty to Johnson with respect to the bathmat. Second, even if Amazon had undertaken some duty, Johnson failed to allege sufficient facts to show that Amazon increased his risk of harm or that Johnson detrimentally relied on Amazon's performance.

Did Amazon Undertake Services Necessary for Johnson's Protection

Johnson alleged that Amazon undertakes to provide safety-related services for the benefit of those who purchase products through its website. Amazon's alleged goal is to vet the safety and reliability of Amazon sellers and their products. Johnson cited to a 2019 website statement discussing a \$400 million investment by Amazon for the purpose of protecting its store and its customers and to ensure products sold on its website are "safe, compliant and authentic." Johnson also cited Amazon's Help and Customer Service page, where Amazon states that it "works to protect customers from risks of injury associated with products offered on Amazon by looking into and taking action on reported complaints and incidents."

Amazon insisted that this mere promotional material provided only "general broad descriptions" of Amazon's product-safety measures. The court, however, disagreed. The court reasoned that the various statements go far beyond promotional material and describe "with sufficient detail the processes through which Amazon vets sellers and their products." The court specifically cited several key actions by Amazon:

- Before a seller ever sells a single product on Amazon.com, the seller is vetted. This vetting process includes “a number of verifications and the use of proprietary machine learning technology that stops bad actors before they can register or list a single product.”
- Amazon continuously scans its product listings to identify products that might be a concern.” Every few minutes, [Amazon’s] tools review the hundreds of millions of products, scan the more than five billion attempted daily changes to product detail pages, and analyze the tens of millions of customer reviews that are submitted weekly for signs of a concern and investigate accordingly.”
- All products offered for sale on Amazon.com must comply with applicable laws and regulations as well as Amazon’s own policies.
- Amazon “provides a number of ways for regulatory agencies, industry organizations, brands, customers, and [Amazon’s] customer service teams to report safety issues” and when Amazon receives safety reports, “it moves quickly to protect customers by removing unsafe products from its store.”

Did Johnson Rely on Amazon’s Performance or Did Amazon’s Performance Increase Johnson’s Risk of Harm

Amazon argued that Johnson’s complaint failed to show that Johnson relied on Amazon’s statements when purchasing the bathmat from Amazon.com. In response, Johnson argued that he was very familiar with Amazon’s seller and product vetting processes, asserted specific safety-related statements made by Amazon, and alleged that he specifically relied on Amazon’s undertaking. Even more importantly, Johnson alleged that he selected Comuster’s bathmat over others “because it was sold on Amazon’s website.”

For these reasons, the court found that Amazon’s product-safety program constitutes an undertaking and that Johnson relied on Amazon’s undertaking when purchasing the bathmat. Accordingly, the court denied Amazon’s motion to dismiss the negligent undertaking claim against it. *Johnson* is an interesting decision that may provide a basis for claims against Amazon when it does not qualify as a seller under a state’s products liability laws.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

