

## Amazon Can be Liable in Louisiana

Michael J. Ciamaichelo  
*The Subrogation Strategist*  
7.8.24

In June 2024, the Supreme Court of Louisiana held that (1) Amazon can be considered a "seller" of defective products sold by third parties on its website; and (2) Amazon can be liable under a theory of negligent undertaking for third-party products. In *Pickard v. Amazon.com, Inc.*, No. 2023-CQ-01596, 2024 La. LEXIS 1112, a Louisiana man, Archie Pickard, died from burns sustained in a house fire allegedly caused by a defective battery charger purchased on Amazon from a third-party seller located in China. Mr. Pickard's family filed a lawsuit against Amazon in the United States District Court for the Western District of Louisiana alleging claims under the Louisiana Products Liability Act (LPLA) and for negligent undertaking. Amazon filed a motion for summary judgment, which prompted the federal court to certify questions to the Supreme Court of Louisiana regarding these two claims.

### Amazon Can be a "Seller" Under the Louisiana Products Liability Act

Amazon does not neatly fit within the definition of "seller" under the LPLA because the LPLA was drafted in 1988, before the internet existed. The LPLA defines a "seller" as a person or entity (who is not the manufacturer) who conveys title or possession of the product to another for something of value. La R.S. 9.2800.53(s) (emphasis added). The Supreme Court of Louisiana determined that Amazon was a "seller" because it conveyed "possession" of the charger to Mr. Pickard through the "Fulfillment by Amazon" (FBA) program, which provides storage, delivery, customer service, and returns of third-party products sold on Amazon. Most products on Amazon are sold by third parties, rather than Amazon. Many third-party sellers are small or medium-size companies, and some are individuals seeking to make supplemental income. Amazon offers the FBA program to handle storage and logistics to third-party sellers. When a product is sold through the FBA program, the seller sends the product to Amazon's warehouses, where it is stored until it is purchased. When an FBA-product is purchased, Amazon collects payment, delivers the product (often in an Amazon van), and handles the potential return of the product. The Supreme Court of Louisiana determined that Amazon was a "seller" of the battery charger even though Amazon did not pass title to Mr. Pickard because: (1) Amazon had physical custody of the charger while stored in the warehouse; and (2) Amazon controlled the transaction and logistics through its FBA program.

### Amazon Can be Liable for a Negligent Undertaking

A claim for "negligent undertaking" arises when a party, who does not owe a duty, assumes a duty by acting, either gratuitously or for consideration. Once the duty is assumed, it must be properly performed with reasonable care to avoid injury to the party who is relying upon the undertaking. In *Pickard*, the plaintiffs argued that Amazon has tools to scan product reviews and customer feedback to identify defective products and remove them from the website. The court held that Amazon could be liable for a negligent undertaking if it meets the standards outlined in Section 324A of the Restatement (Second) of Torts related to a negligent undertaking.

The *Pickard* decision provides leverage for subrogating carriers to make recoveries from Amazon in Louisiana under the LPLA, but only if the product is part of the FBA program. In a prior decision in Louisiana from 2021, *Skaggs v. Amazon.com, Inc.*, 334 So.3d 780 (La. Ct. App. 2021), a state appellate court determined that Amazon was not a "seller" under the LPLA of a defective laptop battery sold by a third-party seller that was not part of the FBA program. The *Skaggs* court determined Amazon was not a "seller" under the LPLA because it did not convey title or possession (because Amazon never touched the battery). These two decisions, *Pickard* and *Skaggs*, display the significance of determining whether a product sold by a third-party is fulfilled through the FBA program.

*Pickard* also displays the importance of examining product reviews on Amazon for complaints of other fires, malfunctions, injuries, etc. Any notice given to Amazon of a potential product defect may allow a subrogating carrier to sustain supplemental claims against Amazon, such as negligent undertaking, negligence, etc.

Perhaps most significantly, *Pickard* displays the impact of certifying questions regarding Amazon to state supreme courts. Since Amazon's business model is unique and relatively new, the law in many jurisdictions is murky regarding Amazon's liability for defective third-party products. Certifying questions to the states' respective supreme courts should (eventually) provide subrogation professionals with definitive answers regarding Amazon's liability for third-party product claims in each state.

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.