



## Update from CAOC Lea-Ann Tratten

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# The wheels of justice

IN *LOOMIS v. AMAZON* AND AB 1182, THE COURT SYSTEM AND THE LEGISLATIVE PROCESS COLLIDED, AND CONSUMERS WON

## SACRAMENTO UPDATE

As they say, the wheels of justice grind slowly. However, in the case of Amazon and other online retailers, the appellate court system lapped the legislative process.

Last year, cases were piling up around the country where courts held that Amazon was different from a brick-and-mortar store and a “buyer beware” policy seemingly was enveloping the explosive online retail industry. Out of concern for consumer safety, Assembly Member Mark Stone took on the battle in the legislature and introduced AB 3262, a Consumer Attorneys of California-sponsored bill that would have clarified those online marketplaces would be held to the same strict product liability standards as any other online retailer.

Amazon, Etsy, and eBay went into a tailspin and vociferously opposed the legislation, despite amendments taken by the author that clarified all the usual protections for used products and items sold at auction applied. An exception was even addressed for handmade goods. No amendment deterred the opposition. Etsy and eBay simply wanted a carve-out.

AB 3262 overwhelmingly passed the Assembly floor, on a bipartisan vote. Then COVID hit. Then the *Bolger* decision came down in August and pandemonium struck.

### ***Bolger v. Amazon***

Angela Bolger purchased a battery for her laptop through Amazon. The product had good reviews, so Angela felt safe making the purchase. Unfortunately, the battery wasn't safe. When Angela held the laptop – on her lap – it exploded, sending shrapnel throughout her body. Amazon refused to pay for the horrific injury caused by the battery, claiming that it was not a retailer. The

trial court sided with Amazon. CAOC member Jeremy Robinson took the case to the court of appeal; the court of appeal swiftly disagreed. Amazon fulfilled the product order and exerted control throughout the process. Amazon was held to account. (*Bolger v. Amazon.com, LLC* (2020) 53 Cal.App.5th 431).

Left open was the question of liability in a situation where the online retailer did not take possession of the product. Amazon, seeing the writing on the wall, removed its opposition; however, it took the position that all online retailers should be held to the same standard. They feared Amazon would be at an unfair competitive advantage. Etsy and eBay disagreed, and then online retail giants like Google came out of the woodwork in opposition to the bill. As COVID restrictions curtailed usual lobbying, as senatorial tempers grew short, and as the battle of the e-commerce giants escalated, Assembly Member Stone made the decision to hold the bill and start anew in 2021.

AB 1182 was introduced this year, and it took a simpler approach to crafting definitions and establishing liability. Amazon was silent. Etsy, eBay, and Google were not.

### ***Loomis v. Amazon***

Meanwhile, another appellate case was wending its way through the courts, *Loomis v. Amazon*. (B297995 (Cal.Ct.App. Apr. 26, 2021).) Unlike the *Bolger* case, Amazon did not take possession of the product (an exploding hoverboard). On February 22, 2021, the Second District Court of Appeal issued a tentative decision (rare at the appellate level) in favor of the plaintiff. Oral argument ensued and reminded me of my first-year torts class. Amazon's attorney looked like the unfortunate law student who came to class unprepared. The Loomis's attorney,

CAOC past president Chris Dolan, took no prisoners.

In Sacramento, we held our breath. If the tentative ruling stood, how would that affect the legislative effort? Assembly Member Mark Stone, Chair of the Assembly Judiciary Committee, delayed hearing the bill until the very last policy committee before the deadline to pass bills. Pressure began to increase from Google and other e-giants. Every retailer wanted a carve-out because they were not like Amazon (yes, there was legislative sympathy for poor little Google).

On April 26, in one of the most important tort decisions issued in decades, the court affirmed the tentative decision in favor of the Loomis family. It is an opinion (and concurrence) intended to be appeal-proof. Even Prosser would be in awe of the analysis. The sweeping decision outlined the basic premise of tort law: to deter and protect. “Amazon thus must face strict liability for Loomis's fiery encounter with the hoverboard she bought from Amazon's site. Imposing this duty on Amazon creates financial incentives that back up Amazon's good words about its concern for customer safety.” No exceptions were made.

CAOC's intrepid legislative volunteers, Doug Saeltzer, Chris Dolan, and Jeremy Robinson, were called to a meeting with Chair Stone: what to do with the legislation? The deadlines for moving the bill would expire before the period for appeal to the California Supreme Court. The team weighed the reality of the legislative process. Compromises would have to be made. Ultimately the bill was held in the Assembly Judiciary Committee where it can be resurrected in January 2022 should it be necessary.

The court system and the legislative process collided, and consumers won. 🎉