



Unraveling the Webs to Hold Online Retailers Accountable

BY RAOUL SHAH

We are all familiar with the webs woven by companies to avoid liability. Major online retailers are no exception to this game, using a network of subsidiaries, contractors, and third-party partners to insulate themselves. As plaintiff's lawyers, there are several steps we can take in cases involving these online retailers to maximize our clients' potential recovery.

Identify the (Likely Many) Defendants

Many major online retailers use a business model which purposely includes a wide range of entities, from the core e-commerce platform to various subsidiaries, contractors, and third-party service providers. It is critical to identify all involved parties early on in your investigation to ensure that evidence held by any party that may be involved can be preserved, and to make sure that all possible lines of coverage can be tapped.

- **The Corporate Mothership (aka the Parent Company):** Always target the parent company, even if they may not appear to be "directly" involved. In many instances, you will be able to establish some type of claim against them. For example, Amazon's parent company is Amazon.com, Inc. However, Amazon Logistics, Inc., is the entity that works most directly with local delivery partners and drivers.
- **Contractors and Delivery Services:** Online retailers partner with a network of contractors and delivery services known as delivery service partners, and fulfillment centers which are often responsible for specific aspects of product handling and delivery. In many instances, you can identify these parties by sending your representation and preservation letters to the parent company, and/or the vehicle lessor for cases involving delivery drivers or vehicles.
- **Vehicle Lessors:** While the Graves Amendment (49 U.S.C. § 30106) limits the liability of vehicle rental companies and leasing companies for accidents caused

by their lessors or customers, it does not protect rental companies from negligence or wrongdoing on their own part. This could include negligent maintenance, providing defective vehicles, or possibly even negligently leasing the vehicle to an unqualified lessee.

Preserve and Gather Evidence

Beyond the usual types of investigation, evidence to gather the case of major online retailers also includes:

- **Electronic Evidence:** Dash camera videos; on-board monitoring systems.
- **Control Data:** Data evidence that shows levels of control that the mothership holds over contractors/subsidiaries. This can include telematics and data metrics for routes; package count data; delivery stop sequences; driver efficiency data; data evidence and metrics, including historic data and metrics, related to monitoring driver conduct or behaviors and/or scores for such conduct or behaviors; documents dictating process and procedures for the delivery network.
- **Employment/Agency Documents:** Documents outlining hiring requirements, uniforms, onboarding and other training materials, incentive pay made to the driver or delivery service partners.
- **Correspondence:** Emails, messages, and chat logs with the retailer's customer service, or the third-party seller, contractor, or delivery service involved.
- **Order Records:** Copies of order confirmations, shipping information, and transaction history.
- Never forget to seek additional witness statements from other consumers, co-workers, or contractors who might have observed or experienced similar issues. There may be other delivery drivers who are willing to speak to the culture at play and provide strong liability information.

Stack Your Claims

Point out all of the avenues of liability available. Offer the defense a choose-your-own-adventure path to a Plaintiff's verdict!

- **Vicarious Liability:** It is well established that an employer is liable for torts committed by its employee in the course and scope of employment. *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11, 15 (Minn. 1979). The same is true of a principal's liability for torts committed by an agent in the course and scope of their agency. *Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 535 (Minn. 1992).

- **Joint Venture/Enterprise:** Under Minnesota law, a joint venture exists when: 1) both parties contribute money, property, time, or skill into a common undertaking; 2) the parties exercise a mutual right of control; 3) the parties share in the profits of the venture; and 4) there is an express or implicit contract to enter a joint venture. *Meyers v. Postal Finance Co.*, 287 N.W.2d 614, 617-18 (Minn. 1979). See *Walton v. Fujita Tourist Enterprises Co.*, 380 N.W.2d 198, 202 (Minn. Ct. App. 1986), *review denied* (Minn. March 21, 1986) (holding that parties in a joint venture are jointly liable); *Krengel v. Midwest Automatic Photo, Inc.*, 203 N.W.2d 841, 846 (1973) (holding that defendants in a joint venture will have their fault aggregated for comparison to any fault of the plaintiff)

- **Negligent Hiring/Retention:** Investigate your individual delivery driver's history to see if a claim can be made against the employers for hiring or retaining an unqualified driver.

- **Negligent Selection of an Independent Contractor:** While the corporate mothership will argue that the other companies and persons involved were merely independent contractors, Minnesota law also imposes liability if an independent contractor was negligently selected. See *Alonzo v. Menholt*, 9 N.W.3d 148 (Minn. 2024).

Conclusion

Taking legal action against major online retailers requires us to defeat their attempts to avoid liability. By identifying the correct parties and marshalling all available evidence – and showing these companies that you are knowledgeable and ready from the first preservation letter – you will be best prepared to turn over the shells and hold these wrongdoers accountable and generate large recoveries for your clients. **T**



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