

CHICAGO LAWYER

CLIFFORD'S NOTES

RULES OF THE ROAD

Verdicts offer clarity on Amazon's liability for negligent delivery drivers

By **BOB CLIFFORD**

In an age of e-commerce dominance, Amazon is the global leader in rapid delivery services. It has revolutionized consumer expectations around convenience and speed. With promises of same-day, next-day or sometimes even delivery within hours, Amazon's logistical network has expanded to include hundreds of thousands of drivers and delivery services.

Its rapid growth and aggressive delivery timelines have raised the legal issue whether Amazon can be held liable for accidents caused by drivers who speed or are negligent in an effort to meet tight deadlines. The answer is a resounding yes in some courts.

Take the case of a Georgia child who suffered severe injuries when he was hit by an Amazon delivery van in 2022. The jury returned a \$16.5 million verdict against Amazon Logistics and a service partner in August 2024 (*Bradfield v. Amazon Logistics, et al.*, 22-C-07003-S7). The van struck and ran over the child, fractured his pelvis and degloved his skin that required multiple grafts. The child was left with lifelong scarring.

The Gwinnett County State Court jury apportioned 85% liability to Amazon for failure to provide proper driver training and 10% to the Fly Fella Logistics delivery driver. Jurors concluded that Amazon exercised sufficient control over defendant Fly Fella to render it liable for the driver's negligence as his employer. Jurors also apportioned 5% liability to a non-party neighbor who had agreed to watch the child.

In another case, an Amazon contract driver hit and severely injured a 45-year-old motorcyclist in South Carolina. It resulted in a \$44.6 million verdict against Amazon in 2023, including \$30 million in punitive damages (*Shaw v. Amazon.com Inc., et al.*, 2022 EL 22910805). The plaintiffs' lawyers said Amazon not only had the right to control the driver, it exercised actual control over every aspect of his hiring, training, execution and delivery process. It collected data and measured the metrics of the

driver's behavior and deliveries on a weekly basis. Amazon then used those metrics to determine payments to Delivery Service Partners, a third party it controlled. Amazon also provided job tools and maintained the right to terminate or "offboard" the drivers if they violated its policies. In some cases, Amazon's delivery algorithms dictated the pace and order of deliveries, leaving drivers little choice but to speed or take risks to avoid penalties.

In the South Carolina case, Amazon owned the van operated by the at-fault driver, selected his route on the date of the collision, assigned all packages to that route and monitored the driver through eDriving, an application that tracks unsafe driving behavior like speeding, hard braking, cornering and distracted driving events.

During discovery, the driver was found to have had more than 90 counts of distracted driving in his five months of employment before the September 2021 collision. All these events were reported and recorded by the Amazon-required eDriving app. Additionally, a forensic review of his cellphone records revealed extremely high data usage on the date of the collision.

A primary legal challenge in holding Amazon liable for delivery accidents stems from its classification of many drivers as independent contractors. Amazon may boast it can deliver billions of packages during the holiday season, but it cannot do it without the help of thousands of drivers. Despite Amazon hiring drivers who it says are not employees, the public is left with the opposite impression. The drivers are driving Amazon-marked vehicles, wearing company uniforms and delivering boxes marked with its logo.

California attempted to define employment status through the passage of Assembly Bill 5 in 2019. Known as the "Gig Workers Law," AB-5 alters worker classification in California by codifying the "ABC test" set forth in the landmark decision *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018). The



test presumes workers are employees unless the hiring entity can prove three things: (1) the worker is free from the hirer's control, (2) the work is outside the hiring entity's usual business, and (3) the worker is engaged in an independently established trade. This shift is significant in industries where gig work is prevalent such as transportation and delivery services. Theories of negligent hiring and supervision also may come into play.

By utilizing third-party delivery companies through its Delivery Service Partner program or relying on gig workers via Amazon Flex, the company improperly attempts to insulate itself from direct liability for the actions of these drivers. Laws like AB-5 may mean that businesses need to reevaluate their workforce models.

The pressure to deliver packages can lead to unsafe driving and courts may consider whether Amazon's delivery system creates a foreseeable risk of harm. If the company imposes delivery demands that cannot be safely met without violating traffic and safety laws, it could be argued that Amazon has created a system that encourages, if not necessitates, negligence.

Amazon has a duty to ensure its delivery demands do not compromise public safety. The cost of convenience for corporations cannot sacrifice accountability for people's safety. ☐

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