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11th Circ. Revives Hoverboard Fire Suit Against Amazon

By **Hailey Konnath**

Law360 (May 16, 2019, 9:29 PM EDT) -- The Eleventh Circuit on Thursday resuscitated a Georgia man's suit over a hoverboard he bought through Amazon that started a fire, destroyed his home and severely injured him, finding it's plausible Amazon knew about the risk when it sold the product.

Irvin Love Jr. alleged enough facts to show it was likely Amazon had at least some knowledge that the offending hoverboard had the potential to start a fire, a three-judge panel ruled in an unpublished opinion overturning a Georgia federal court's decision in October to cut Amazon loose from the suit.

Love had alleged that other lithium-ion battery-powered hoverboards in the same model as his had started fires and that Amazon had been sent written notification of at least four of those fires, the Eleventh Circuit noted in its nine-page decision. He'd also alleged that U.S. customs authorities had seized thousands of the hoverboards based on concerns about their "potentially explosive" batteries, the panel said. And at this stage in the proceedings, that's enough, the panel found.

"Accepting plaintiff's factual allegations as true and construing them in plaintiff's favor, plaintiff alleged enough facts from which one may infer reasonably that Amazon had at least constructive knowledge of the potential risk of fire associated with the hoverboard," the panel said in its decision.

Love purchased his hoverboard in late 2015, according to court filings. At the time, Amazon didn't warn or notify him of the possibility it could catch fire, he said. A few months later, in early 2016, the hoverboard started the fire that razed his home, injured him and sparked his suit, according to the filings.

His complaint, filed in February 2018, claimed that Amazon was negligent and had violated Georgia law by failing to warn consumers about the fire risks associated with the hoverboard. His suit also named a handful of other defendants involved in the Chinese product's manufacture, import and sale, per the filings.

In October, the district court found that Love hadn't adequately shown that Amazon had knowledge of the hoverboard's dangers, according to court filings.

But that decision was a mistake, the Eleventh Circuit found Thursday, rejecting Amazon's arguments that Love hadn't provided enough detail about the written notifications it supposedly received and that the dates of those notifications were too close to the date of Love's purchase to trigger the retail giant's duty to warn.

"The time-insufficiency of the written notifications is not so obvious that it can be decided on this motion to dismiss," the Eleventh Circuit found.

Darren Penn, counsel for Love, told Law360 on Thursday that his client is thankful for the Eleventh Circuit's ruling and looking forward to getting to the merits of his claims.

"This case is important because of the dangerous climate created by companies like Amazon that provide an open marketplace for literally any individual or company in the world, whether they have

met applicable safety standards or not, to sell defective products directly to Americans without any consequences whatsoever," Penn said.

He continued, Amazon has a "duty to act reasonably" regardless of if it directly sells a product or simply provides access to it.

Counsel for Amazon declined to comment Thursday.

Circuit Judges Beverly B. Martin, Kevin Newsom and J.L. Edmondson sat on the panel for the Eleventh Circuit.

Love is represented by Darren W. Penn and Laura H. Penn of Penn Law LLC.

Amazon is represented by Brendan Murphy and Gregory F. Miller of Perkins Coie LLP and Michael J. Goldman and Willie C. Ellis Jr. of Hawkins Parnell & Young.

The case is Love Jr. v. Weecoo(TM) et al., case number 18-14823, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Kelly Duncan.

Update: This story has been updated to include comment from Love's counsel.

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