



## Cal Supreme Court Refuses to Review Lower Court Decision on Amazon's Prop. 65 Liability

LITIGATION, PROPOSITION 65, APPELLATE CASES, WARNINGS, PRODUCTS OF INTEREST, CHEMICALS OF INTEREST

By ROGER PEARSON, July 5, 2022

In March California's First District Court of Appeal issued a landmark opinion holding Amazon potentially liable for Proposition 65 liability for third party sales of products on its internet platform [see **Appellate Court Rules that Amazon Cannot Avoid Prop. 65 Warning Requirement As An Internet Platform**<sup>1)</sup>, March 28, 2022].

On June 15 the California Supreme Court declined to review the Appellate Court decision in **Lee v. Amazon.com**<sup>2)</sup> and separately declined an opportunity to depublish the decision.

**The First District decision in Lee**<sup>3)</sup>, issued on March 11, involved a Prop. 65 private party claim that skin-lightening creams sold on Amazon's internet platform contained mercury. The First District's most significant ruling was that the plaintiff's claim could be pursued, despite **Section 230 of the federal Communications Decency Act**<sup>4)</sup>, which generally bars any state law imposing liability on an interactive computer service provider for content posted on its site by a third-party provider. The Court held the plaintiff was not seeking to hold Amazon liable as a "publisher" of the information. Instead, the plaintiff is simply trying to hold Amazon accountable for violation of its own independent obligation as part of the distribution chain of the face cream products

The Court also denied a separate request by the California Retailers Decision to depublish the First District decision, which would have eliminated its use as precedent in future cases.

### Resources for this article

1. **Appellate Court Rules that Amazon Cannot Avoid Prop. 65 Warning Requirement As An Internet Platform**

<https://prop65clearinghouse.com/articles/14983>

2. **Lee v. Amazon.com**

<https://prop65clearinghouse.com/cases/3630>

3. **The First District decision in Lee**

<https://prop65clearinghouse.com/documents/75824>

4. **Section 230 of the federal Communications Decency Act**

<https://prop65clearinghouse.com/documents/74408>