

# Legal NEWSLETTER

## *This Issue*

**GOING IT ALONE IN COURT**

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**PREPARING FOR YOUR ESTATE PLANNING MEETING**

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**CAN AMAZON BE HELD LIABLE FOR FAULTY PRODUCTS?**

*This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.*



## **GOING IT ALONE IN COURT**

*By Attorney Daniel Schmeackle*

Individuals have a right to self-representation in Wisconsin courts and in federal court. Pro se is Latin for “on one’s own behalf.” When a litigant proceeds without legal counsel, they are said to be proceeding “pro se.” See, e.g. *Rivera v. Florida Department of Corrections*, 526 U.S. 135 (1999). Although proceeding pro se is allowable, that does not mean it is advisable.

The proliferation of legal self-help books such as: *Law for Dummies* and *Free Legal Help Made E-Z* create the perception that anyone can successfully self-represent

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ANDERSON O'BRIEN LLP

# PREPARING FOR YOUR ESTATE PLANNING MEETING

By Attorney Katherine Young

The thought of preparing an estate plan can be overwhelming. This thought is especially true if you are completing the estate planning process for the first time.

When preparing for your initial meeting to discuss your estate plan, it is very helpful to bring a list of your current assets and liabilities. In addition, it is also important to provide the attorney with information regarding how the assets are titled and whether you have any existing beneficiary designations. This information will help the attorney recommend the most appropriate plan for you and discuss estate tax and probate avoidance concerns.

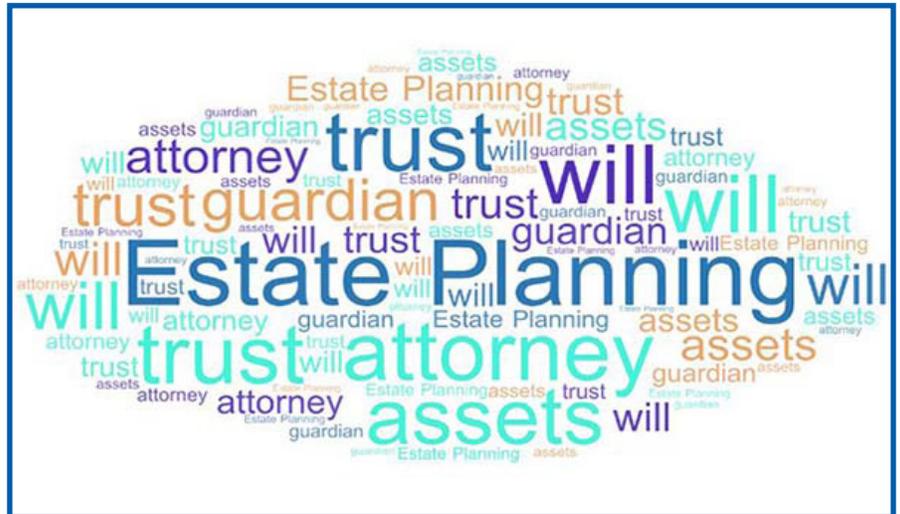
To have a comprehensive estate plan, you must nominate people and/or entities to act in certain capacities on your behalf. Below is a list of some of the different roles they may play in your estate plan.

**Personal Representative.** Your personal representative, also known as your executor, will handle the settlement of your estate upon your death. In most instances, the personal representative selects an attorney for the estate.

**Guardian.** This person will be responsible for the care and custody of your minor children upon your death. The guardian of the estate oversees the child's property, while the guardian of the child is responsible for the child's day-to-day care.

**Trustee.** The trustee will be responsible for managing the assets of the trust, employing advisors to help with the trust, generally tracking the beneficiary's needs and ensuring the trust is administered according to its terms.

**Durable General Power of Attorney.** A Durable General Power of Attorney nominates an agent and alternate agent to act on your behalf regarding the management of your property and other financial issues. You may



establish your Durable General Power of Attorney to be effective immediately or to become effective at a later time when you voluntarily activate it or when a physician certifies that you are incapacitated.

**Health Care Power of Attorney.** A Health Care Power of Attorney allows you to name an agent and an alternate agent to make health care decisions on your behalf if the appropriate medical personnel certify that you are incapacitated, including end-of-life decision-making.

**Decide on Your Beneficiaries.** Prior to your initial meeting, you should consider who you want to name as the primary and contingent beneficiaries in your estate plan.

Finally, you should consider whether you want your beneficiaries to receive their bequests outright, or if you want to place certain restrictions on the bequests to help ensure the funds are managed appropriately for minor beneficiaries or those with special needs. This can often be accomplished by using a variety of different trusts that fit your situation.

When you have completed the above steps and you have your documents in order, please reach out to one of our experienced estate planning attorneys, they would be happy to assist you. ♡

Lawyers where you live.

# CAN AMAZON BE HELD LIABLE FOR FAULTY PRODUCTS?

By Attorney Richard Fuller

Amazon, the e-commerce giant, sells over 350 million products online, which includes millions of products from third-party vendors. More than 95 million Americans now have Amazon Prime memberships. What happens if someone gets seriously injured by using a defective product manufactured by a third-party vendor which Amazon sells on its website? Can Amazon be held liable? The short answer is YES.



There is very little regulation when third-party vendors place their products on Amazon. Amazon has argued that it is just the intermediary between buyers and its third-party sellers on Amazon's marketplace, and therefore it should not be held liable for these defective products. Until recently, Amazon has won several lawsuits escaping liability for selling defective products. However, the tide is now shifting against Amazon. In 2020 a landmark case was decided in California, where a woman purchased a replacement battery for her laptop computer from Amazon. This battery was manufactured by a third-party vendor. After several months, the battery exploded, and the woman suffered third degree burns. The California Court of Appeals ruled that Amazon could be held liable for selling this defective product. In finding that Amazon may be held liable, the Court held that regardless of what role Amazon had – whether it was a retailer, distributor, or mere facilitator – it was pivotal in bringing the product to the consumer.

A similar result was decided in a Wisconsin federal court case in 2019 in the Western District of Wisconsin. (*State Farm v. Amazon.com, Inc.*) In this case, a Chinese manufacturer functioning as a third-party and having no presence in the United States, sold a bathtub faucet adapter on Amazon. A month after a homeowner purchased the item, the adapter failed

due to a defect and caused flooding to their home. The Court found that the Chinese manufacturer could be held liable but that it was not subject to a lawsuit because it had no presence in the United States. The Court then went on to analyze the potential liability of Amazon for selling the defective product. The Court held that Amazon could be strictly liable because it found that Amazon took on more than a peripheral role in putting the product into the stream of commerce. The Court focused on key facts about the manufacturer's relationship with Amazon, such that Amazon provided payment processing for the manufacturer and guaranteed the purchases. It also highlighted that the manufacturer participated in Amazon's Fulfillment By Amazon (FBA) Program pursuant to which Amazon stored the manufacturer's products and fulfilled its orders. Amazon also required the manufacturer to register its products for sale and reserved the right to refuse registration. Finally, Amazon required the manufacturer to indemnify Amazon for any injury or property damage caused by the manufacturer's products.

As shopping online becomes more and more prevalent compared to shopping at brick and mortar stores,

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no matter how complicated the case. This, in turn, plays into the overconfidence effect, which biases our judgment in three ways: “(1) overestimation of one’s actual performance; (2) over placement of one’s performance relative to others; and (3) over precision in expressing unwarranted certainty in the accuracy of one’s beliefs.” Overconfidence can be dangerous. No self-help book would convince a logical person to perform an invasive surgery on themselves. Although the risks of self-representation are less drastic, the likelihood of failure is equally high.

In court, the self-represented are bound by the same rules that apply to attorneys. The right to self-representation is “[not] a license not to comply with relevant rules of procedural and substantive law.” While some leniency may be allowed to pro se litigants, “neither a trial court nor a reviewing court has a duty to walk pro se litigants through the procedural requirements or to point them to the proper substantive law.” A court’s patience will run thin quickly if a pro se litigant fails to follow the rules. As one commentary states: “Although the court may make special concessions in certain pro se appeals, it cannot be said that pro se appellants have any advantage over appellants who are represented by counsel. Whatever minor procedural deviations are allowed, a pro se appellant cannot compensate for the lack of legal training and therefore has a greatly reduced likelihood of success on appeal.”

Based on the “greatly reduced likelihood of success,” most lawyers would never recommend that someone proceed without assistance of counsel. However, there are certain situations where it is a viable option. For instance, given the lower stakes in small claims action, small claims court can be an acceptable arena for proceeding pro se. The Wisconsin courts’ website publishes free legal forms for small claims. [www.wicourts.gov](http://www.wicourts.gov)

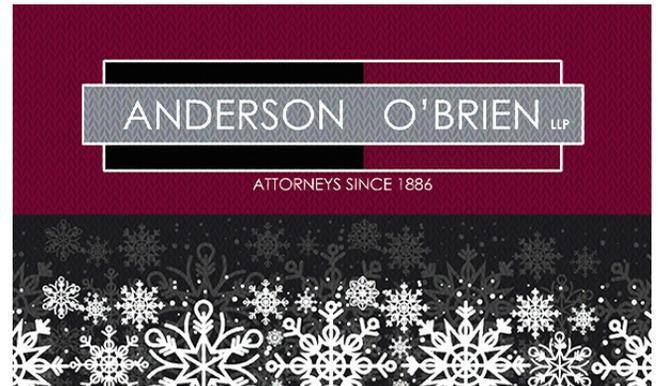
In short, there are a lot of factors that influence the decision of whether to retain an attorney or go it alone. If you have any self-doubt about self-representation then you should seek professional legal advice. ♦



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the courts appear to be finding remedies for online buyers who purchase defective and dangerous products from third-party vendors. In response to these lawsuits and court holdings, Amazon has developed a new policy in 2021 where it will pay customers up to \$1,000 for defective products sold on its marketplace by third-party merchants that cause property damage or personal injury. Amazon claims that 80% of its defective product claims are worth less than \$1,000. Amazon states that it may pay higher than this amount if the manufacturer is nonresponsive or rejects a valid claim. This damage amount is clearly insufficient for serious injuries and damages, which can require litigation to obtain the full value from Amazon. Amazon still maintains its position that it is not legally liable for selling defective products. It does appear that the company is taking a proactive approach on this issue in order to potentially avoid further legislation and regulations that may make it more difficult for Amazon to sell third-party products online.

If you experience a defective product that causes serious damages and injuries, it is important to speak to an attorney in a timely manner in order to preserve any potential claims that you may have. If you have questions, please do not hesitate to reach out to one of our personal injury attorneys. ♦



*Wishing you a happy  
new year!*

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