

PHOTOCOPY
PRESERVATION

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

ALEX PENELAS, Mayor of Miami-Dade
County, and MIAMI-DADE COUNTY, a
Political subdivision of the State of Florida,

GENERAL JURISDICTION DIVISION

CASE NO. 99-01941

CAOF

Plaintiffs,

vs.

ARMS TECHNOLOGY, INC., B. L.
JENNINGS, INC., BERETTA U.S.A.
CORP., BROWNING ARMS CO.,
BRYCO ARMS, INC., CARL WALTHER
GmbH, COLT'S MANUFACTURING
COMPANY, INC., DAVIS INDUSTRIES,
INC., FMJ (A.K.A. "FULL METAL
JACKET"), FORJAS TAURUS, S.A.,
GLOCK, INC., GLOCK GmbH, H&R 1871
INC., MKS SUPPLY INC. d/b/a HI-POINT
FIREARMS, INTERNATIONAL ARMAMENT
CORP. d/b/a INTERARMS INDUSTRIES, INC.,
KEL-TEC CNC INDUSTRIES, INC., LORCIN
ENGINEERING CO., INC., NAVEGAR, INC.
d/b/a INTRATEC U.S.A., INC., PHOENIX
ARMS, PIETRO BERETTA Sp. A., RAVEN
ARMS, INC., SIGARMS, INC., SMITH &
WESSON CORP., STURM, RUGER &
COMPANY, INC., SUNDANCE INDUSTRIES,
INC., TAURUS INTERNATIONAL
MANUFACTURING, INC., AMERICAN SHOOTING
SPORTS COUNCIL, INC., NATIONAL
SHOOTING SPORTS FOUNDATION, INC.,
SPORTING ARMS AND AMMUNITION
MANUFACTURERS' INSTITUTE, INC.,

THE ORIGINAL FILED

ON JAN 27 1999

IN THE OFFICE OF
CLERK OF COURT DADE CO. FL

COMPLAINT

Defendants.

Plaintiffs Alex Penelas, as duly-elected Mayor of Miami-Dade County, and Miami-Dade
County sue the below-named defendants and allege:

1. Under the Constitution of the State of Florida and the Home Rule Charter of Miami-Dade County, Miami-Dade County and its Board of County Commissioners and Mayor Alex Penelas are responsible for the health, safety and welfare of the County's citizens.

2. This is an action against the below-named defendants in which the damages exceed \$15,000 exclusive of interest, costs and attorneys' fees.

3. For many years, Miami-Dade County and its residents have suffered harm and incurred significant costs and expenses associated with the manufacture, marketing, promotion, and sale of firearms which are unreasonably dangerous under the laws of the State of Florida. In addition to other unreasonably dangerous design features, lack of safety features, and inadequate warnings described herein, defendants' firearms are unreasonably dangerous because they can be and are fired by unauthorized users, including but not limited to children, criminals, mentally unstable persons and others who put themselves and others at risk when they possess such a firearm.

4. This action is brought under the laws cited herein to recover damages, and for other relief as may be obtained, for the harm unjustly, intentionally and wrongfully done and continuing to be done to Miami-Dade County and its residents by the various defendants. These defendants have been and continue to be unjustly enriched at the expense of the County and its residents.

5. The defendants are companies and organizations who manufacture, distribute, promote, market, sell and/or instruct in the use of firearms that are sold: 1) without the means to prevent their being fired by unauthorized users; 2) without adequate warnings that would prevent such shootings by alerting users of the risks of guns and of the importance of proper storage of

guns; and 3) without other available safety features and warnings that would prevent shootings by unauthorized users.

6. The actions by these defendants have caused Miami-Dade County to incur tremendous costs and expenses in order to provide necessary services including, but not limited to, medical, police, court, corrections and emergency services. All of these costs are borne by the County as a result of the defendants' wrongful conduct. Further, the County also has lost substantial tax revenues due to lost productivity and tourism as well as reduced property values.

7. At all pertinent times, the defendants have been able to manufacture, market, sell, and/or promote firearms that prevent shootings by unauthorized users, including firearms that incorporate safety devices intended to prevent unauthorized users from firing firearms when they come into possession of them. Despite the availability of these safety devices, defendants have failed to incorporate them into their firearms.

8. Defendants' guns are inherently and unreasonably dangerous in that they enable any person who gains access to them, including children, to fire them. This is true despite the fact that it was feasible to design the guns to prevent unauthorized users from firing them. Defendants' guns are also inherently and unreasonably dangerous in that these guns were not distributed with adequate warnings and instructions as to their risks and as to proper storage of them. In fact, these firearms were marketed and promoted in a manner which suggested that they did not pose such risks to users and their households. Instead, these marketing practices suggested, promoted, and encouraged unsafe storage practices. Defendants' guns are also inherently and unreasonably dangerous in that their design features insufficiently warn all foreseeable users, including unintended users such as children, that a round of ammunition may be housed in the firing chamber.

9. At all pertinent times, it was reasonably foreseeable that without the aid of an additional design feature and/or warning device, defendants' guns would end up being used in tragic, preventable shootings by unauthorized users. Many of these shootings are unintentional shootings, often by children who do not fully understand or appreciate how to properly handle a gun, or understand the risks associated with a gun.

10. With regard to semi-automatic firearms, at all pertinent times it was reasonably foreseeable that users, including adolescents, would mistakenly believe that a semi-automatic gun would not fire if the ammunition magazine was removed. At all pertinent times, it was reasonably foreseeable that users of semi-automatic guns would not understand or appreciate that an undetectable round of ammunition may be housed in the firing chamber of the gun even though the detectable ammunition magazine had been removed or unloaded. Consequently, it was reasonably foreseeable that this hazardous design feature would result in preventable, unintentional shootings given defendants' designs.

11. Defendants were at all pertinent times aware of these inherent and unreasonable dangers in the design of their firearms.

12. The design of defendants' guns, which enable any person who gains possession of them to fire them, and which do not make users aware that a round of ammunition is housed in the firing chamber, results in thousands of unintentional shooting deaths and non-fatal injuries every year. The General Accounting Office estimates that each year, 23% of the 1,400 to 1,500 unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the gun's firing chamber. This results in as many as 320 to 345 deaths nationwide each year. For each of these deaths, there are countless other

unintentional shooting injuries that are not fatal. A number of these unintentional shootings occur in Miami-Dade County.

13. Numerous deaths caused by an undetected round of ammunition in the firing chamber occur as a result of the accidental shooting of one person by an unintended user of a gun. Such incidents often involve an adolescent. According to the General Accounting Office, approximately 35% of all unintentional shooting deaths involve users of guns who were between the ages of 13 and 16. A number of these unintentional shootings occur in Miami-Dade County. Adolescents are naturally attracted to accessible guns and notoriously discount the risks associated with handling a firearm.

14. The design of defendants' guns, which enable any person who gains possession of them to fire them, also results in thousands of adolescent suicides. The odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home. A youth aged 10-19 commits suicide with a gun every six hours. Guns are the method used in 85% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm-related suicides accounted for 81% of the increase in the overall rate of suicide from 1980-1992. A number of such firearm-related teen suicides occur in Miami-Dade County.

15. The design of defendants' guns, which enable any person who gains possession of them to fire them, also results in thousands of homicides by unauthorized users, including juveniles. Many of these homicide victims are themselves children and teenagers. These perpetrators often gain access to guns in their homes or through theft.

16. At all pertinent times, it was reasonably foreseeable that defendants' guns would fall into the hands of unintended users. The Federal Centers for Disease Control and Prevention estimate that 1.2 million elementary-aged, latch-key children have access to guns in their homes.

There are guns in approximately one-half of the homes in this country. One survey reports that 30% of these gun-owners who have children in the home keep their guns loaded. Another survey reports that 36% of gun owners with children in the home keep their guns unlocked. In one survey, nearly 60% of children between the ages of 10 and 19 responded that they can acquire a gun should they want one. The same survey reports that 15% of children between the ages of 10 and 19 reported that they had carried a gun on their person in the past 30 days. At all such times it was reasonably foreseeable that when unintended users gain access to these guns, the guns are loaded or the user can easily obtain ammunition.

17. At such times it was also reasonably foreseeable that when unintended users gained access to defendants' guns, tragic, preventable shootings would result. It was reasonably foreseeable at these times that many of these shootings would be unintentional, and many would involve children -- as victims and/or as shooters. It was also reasonably foreseeable that many of these shootings would involve suicides by children and adolescents. Lastly, it was reasonably foreseeable that many of these shootings would involve homicides by juveniles.

18. At the time the defendants manufactured, distributed, promoted and/or sold these guns, defendants knew or should have known of the unreasonable dangers of their guns, including those described in the foregoing paragraphs. Defendants were also aware of, and had available to them, safety devices, warnings, and other measures, which would prevent and/or decrease these dangers. Defendants failed to remedy these deficiencies in their guns, warnings, instructions, promotions and advertising. Defendants also failed to adequately warn customers of these dangers, failed to inform customers or distributors of available devices and measures which could prevent or decrease these dangers and failed to incorporate these life-saving devices into their guns.

19. Residents of Miami-Dade County, particularly its children, repeatedly have been victimized by defendants' unreasonably dangerous products. Year after year, a staggering number of children in Miami-Dade County are grievously injured and/or killed because defendants' firearms are sold without the means to prevent their use by unauthorized users, without adequate warnings that would prevent such shootings by alerting users of the risks of firearms and without adequate instruction regarding the importance of proper storage of firearms.

The following examples illustrate the effects of defendants' actions on Miami-Dade County:

- In May of 1996, a two-year old northwest Miami-Dade boy was unintentionally killed when his father, who is a Miami-Dade Correctional Officer, went into a Publix Supermarket, leaving his wife in the front seat and his two children, ages two and three, in the back seat. As the mother was looking through a book, the three-year old found the father's Glock .40 caliber semi-automatic pistol, which the father had stored under the driver's seat. The three-year old discharged the firearm once, striking his two-year old brother in the head and killing him.
- In May of 1998, a thirteen-year old southwest Miami-Dade boy was unintentionally killed when a .45 caliber semi-automatic pistol discharged after the victim and another 13-year old boy found the handgun in a nightstand in the master bedroom of the victim's home.
- In October of 1993, a sixteen-year old northwest Miami-Dade boy was killed in an unintentional shooting at a friend's home where he and several other teens were passing around a .38 caliber revolver, each loading and unloading it. When the revolver was passed to the victim, he seemingly unloaded it, but unbeknownst to the boy, a single round remained, which subsequently discharged, killing him.
- In March of 1991, a twelve-year old northwest Miami-Dade boy was killed when his cousin found a Taurus .357 magnum in a cedar chest in the bedroom of the boy's grandparents. The cousin first pointed the firearm in the air, pulled the trigger, and the firearm did not discharge. The cousin then pointed the firearm at the boy and pulled the trigger. This time, the firearm discharged one round, striking the victim in the chest and killing him.
- In May of 1995, an eight-year old northwest Miami-Dade boy was killed when he and his cousins found a Beretta .25 caliber semi-automatic pistol in a zippered bag in his grandmother's bedroom. The victim dared his cousin to remove the firearm

20. At all times pertinent, these defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users. Further, defendants knew or should have known that their warnings and instructions were inadequate to alert owners and foreseeable users of the risks posed by their guns, and that the advertising used to promote those products were likely to cause many owners to store their guns unlocked and/or loaded.

21. At all times pertinent, these defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users. The defendants further knew that by failing to use such means, it was reasonably foreseeable that guns stolen from private residences, gun stores and other locations could be employed by unauthorized users in violent criminal acts.

22. Furthermore, these defendants purposefully and intentionally engaged in these activities knowing full well that citizens and police officers of Miami-Dade County would foreseeably fall victim to death or serious injuries caused by the actions of unintended users of guns. As a consequence, it was also reasonably foreseeable that Miami-Dade County would be forced to bear substantial expenses as a result of these acts.

23. At all times pertinent, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the County, in its role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services, pension benefits, health care and other necessary services due to the threat posed by the use of defendants' products. In addition, defendants knew or should have known

that the County would be harmed as a result of the injuries to certain of its citizens and police officers caused by the defendants' products, as well as by the loss of substantial tax revenue.

24. At all times pertinent, defendants, who account for most of the handguns sold to the general public, have acted in concert with respect to, among other things:

- (a) their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement other safety features; and
- (d) their failure to issue adequate warnings alerting users of the risks of guns and to the importance of proper storage of guns.

25. At all times pertinent, defendants have tacitly agreed, colluded, or cooperated with respect to:

- (a) their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement their safety features; and
- (d) their failure to issue adequate warnings alerting users to the risks of guns and to the importance of proper storage of guns.

26. At all times pertinent, defendants have adhered to industry-wide standards or customs relating to:

- (a) their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement their safety features; and
- (d) their failure to issue adequate warnings alerting users to the risks of guns and to the importance of proper storage of guns.

The Parties

27. Miami-Dade County (the "County") is a political subdivision of the State of Florida, which includes (i) county departments, such as the Miami-Dade Police Department, the Miami-Dade Fire Department, the Department of Human Services and the Department of the Medical Examiner, and (ii) county instrumentalities, such as the Public Health Trust, which operates Jackson Memorial Hospital. The County also funds, at least in part, the criminal and civil courts within the County, including the clerk of courts, the state attorney's office and the public defender's office within Miami-Dade County.

28. Alex Penelas is a resident of and the Mayor of Miami-Dade County, and sues in his individual capacity as a taxpayer and in his official capacity as Mayor on behalf of Miami-Dade County and its citizens.

29. The following defendants manufacture, distribute or sell firearms that are found in Miami-Dade County (hereinafter referred to as the "Defendant Manufacturers"):

- a. Arms Technology, Inc. ("Arms") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. Arms is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Arms is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- b. B.L. Jennings, Inc. ("Jennings") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada. Jennings is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such,

Jennings is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

- c. Defendant Beretta U.S.A. Corp. ("Beretta U.S.A.") is a corporation organized and existing under the laws of the State of Maryland with its principal place of business in Maryland, and imports firearms manufactured by defendant Pietro Beretta Sp. A., a corporation organized and existing under the laws of Italy with its principal place of business in Italy. Beretta U.S.A. is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Beretta U.S.A. is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- d. Defendant Browning Arms Co. ("Browning") is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah. Browning is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Browning is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- e. Defendant Bryco Arms, Inc. ("Bryco") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in California. Bryco is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Bryco is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

- f. Defendant Carl Walther GmbH ("Carl Walther") is a corporation organized and existing under the laws of Germany with its principal place of business in Germany. Carl Walther is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Carl Walther is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- g. Defendant Colt's Manufacturing Company, Inc. ("Colt") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut. Colt is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Colt is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- h. Defendant Davis Industries, Inc. ("Davis") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Davis is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Davis is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- i. Defendant FMJ (a.k.a. "Full Metal Jacket") is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Tennessee. FMJ is engaged in the business of manufacturing and selling firearms through distributors to entities in

Florida. As such, FMJ is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

- j. Defendant Forjas Taurus, S.A. ("Forjas Taurus") is a corporation organized and existing under the laws of Brazil with its principal place of business in Brazil. Forjas Taurus is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Forjas Taurus is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- k. Defendant Glock, Inc. is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Georgia, and imports firearms manufactured by defendant Glock GmbH, an Austrian corporation with its principal place of business in Austria. Glock, Inc. is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Glock, Inc. is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- l. Defendant Glock GmbH is a corporation organized and existing under the laws of Austria with its principal place of business in Austria. Glock GmbH is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Glock GmbH is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

- m. Defendant H&R 1871 Inc. ("H&R") is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts. H&R is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, H&R is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- n. Defendant MKS Supply Inc. d/b/a Hi-Point Firearms ("Hi-Point") is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Ohio. Hi-Point is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Hi-Point is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- o. Defendant International Armament Corp. d/b/a Interarms Industries, Inc. ("Interarms") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Virginia, and imports firearms manufactured by defendant Carl Walther GmbH, a German corporation with its principal place of business in Germany. Interarms is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Interarms is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

- p. Defendant Kel-Tec CNC Industries, Inc. ("Kel-Tec") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Florida. As such, it is subject to the jurisdiction of Florida's courts.
- q. Defendant Lorcin Engineering Co., Inc. ("Lorcin") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Lorcin is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Lorcin is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- r. Defendant Navegar, Inc. d/b/a Intratec U.S.A., Inc. ("Intratec") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida. As such, it is subject to the jurisdiction of Florida's courts.
- s. Defendant Phoenix Arms ("Phoenix") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Phoenix is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Phoenix is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.
- t. Defendant Pietro Beretta Sp. A. ("Pietro Beretta"), is a corporation organized and existing under the laws of Italy with its principal place of business in Italy. Pietro Beretta is engaged in the business of

manufacturing and selling firearms through distributors to entities in Florida. As such, Pietro Beretta is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

- u. Defendant Raven Arms, Inc. ("Raven Arms") is a corporation organized and existing under the laws of the State of California, with its principal place of business in California. Raven Arms is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Raven Arms is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.**
- v. Defendant Sigarms, Inc. ("Sigarms") is a corporation organized in the State of New Hampshire, with its principal place of business in New Hampshire. Sigarms is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Sigarms is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.**
- w. Defendant Smith & Wesson Corp. ("Smith & Wesson") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts. Smith & Wesson is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Smith & Wesson is conclusively presumed**

to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

x. Defendant Sturm, Ruger & Company, Inc. ("Sturm Ruger") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut. Sturm Ruger is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Sturm Ruger is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

y. Defendant Sundance Industries, Inc. ("Sundance") is a corporation organized and existing under the laws of the State of California with its principal place of business in California. Sundance is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Sundance is conclusively presumed to be doing business in this state and is thereby subject to the jurisdiction of Florida's courts.

z. Defendant Taurus International Manufacturing, Inc. ("Taurus") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida, and imports firearms manufactured by defendant Forjas Taurus, S.A., a Brazilian corporation with its principal place of business in Brazil. Taurus is engaged in the business of manufacturing and selling firearms through distributors to entities in Florida. As such, Taurus is conclusively presumed to be doing

business in this state and is thereby subject to the jurisdiction of Florida's courts.

30. The following defendants are industry trade associations (hereinafter referred to as the "Defendant Trade Associations"), which are composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers:

- a. Defendant American Shooting Sports Council, Inc. ("ASSC") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Georgia with its principal office in Georgia. ASSC is an industry trade association composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers.
- b. Defendant National Shooting Sports Foundation, Inc. ("NSSF") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. NSSF is an industry trade association composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers.
- c. Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. ("SAAMI") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code organized and existing under the laws of the State of Connecticut with its principal office in Connecticut. SAAMI is an industry trade association composed of firearms manufacturers and sellers, including some or all of the Defendant Manufacturers.

COUNT I

NEGLIGENT DESIGN (DEFENDANT MANUFACTURERS)

31. The Defendant Manufacturers were under a duty to design and manufacture their firearms and ammunition so that the firearms and ammunition would be reasonably safe for their intended uses and for other uses that were reasonably foreseeable.

32. The Defendant Manufacturers breached their duty by negligently failing to design their firearms and ammunition to be reasonably safe for those in the vicinity of its reasonably foreseeable use by failing to employ alternative designs and/or safety devices, including, but not limited to, alternative designs and/or safety devices that would have:

- a. Prevented such firearms from being fired by unauthorized users;
- b. Alerted users that a round was in the chamber;
- c. Prevented such firearms from being fired when the magazine was removed from them.

Inclusion of such alternate designs and/or safety devices would have reduced, if not prevented, many of Plaintiffs' damages.

33. The negligent design of the firearms and ammunition was the legal cause of the damages suffered by Plaintiffs.

COUNT II

STRICT LIABILITY FOR DEFECTIVE DESIGN (DEFENDANT MANUFACTURERS)

34. The Defendant Manufacturers placed firearms and ammunition on the market with the knowledge that they would be used without inspection for defects.

35. The firearms and ammunition manufactured and/or distributed by Defendant Manufacturers contained defects and were defectively designed, so as to be unreasonably

dangerous to those in the vicinity of its reasonably foreseeable use because the firearms and ammunition did not include alternative designs and/or safety devices, including, but not limited to, alternative designs and/or safety devices that would have:

- a. Prevented such firearms from being fired by unauthorized users;
- b. Alerted users that a round was in the chamber;
- c. Prevented such firearms from being fired when the magazine was removed from them.

36. The defects contained in the firearms and ammunition were the legal cause of the damages suffered by Plaintiffs.

COUNT III

UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING (DEFENDANT MANUFACTURERS)

37. The Defendant Manufacturers were the manufacturers and distributors of products that, at the time they left the control of Defendant Manufacturers, were unreasonably dangerous in the hands of foreseeable users, including children. These dangers are attributable not only to their design, but also to the absence of suitable warnings or instructions as to the risks of the weapons, including but not limited to, adequate warnings of the risk that minors could gain access to guns, adequate instructions regarding how to properly store weapons, warnings that a round may be hidden in the chamber of a pistol, warnings that their pistols could be fired even with the ammunition magazine removed and adequate warnings of the attendant risks that could and did thereby occur.

38. In addition to failing to provide adequate or suitable warnings or instructions to users, including households with children, Defendant Manufacturers actively promoted and advertised their guns in a manner that did not alert customers and potential customers, as well as to retail dealers who would be expected to sell and recommend their guns, to the risks of guns.

On the contrary, the advertising employed to promote these products suggested that by purchasing guns for their households, purchasers would become safer, that the design of the guns was safe, and that families could safely store guns without the use of gunlocks.

39. For the foregoing reasons, Defendant Manufacturers' guns were unreasonably dangerous because of inadequate warning.

COUNT IV

NEGLIGENCE (DEFENDANT TRADE ASSOCIATIONS)

40. At all times pertinent, Defendant Trade Associations have been associations in which some or all of the Defendant Manufacturers have been members.

41. At all times pertinent, Defendant Trade Associations have acted in concert with, tacitly agreed with, colluded, cooperated with and aided and abetted the Defendant Manufacturers with respect to, among other things:

- a. their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- b. discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- c. their failure to develop and implement other safety features; and their failure to issue adequate warnings alerting users to the risk of guns and to the importance of the proper storage of guns.

42. It was reasonably foreseeable that, as a result of the above-described conduct of Defendant Trade Associations, the Defendant Manufacturers would continue to manufacture and/or sell guns that, because of their unreasonably dangerous design and lack of suitable warnings, would be used to harm the residents of and visitors to Miami-Dade County and that the County, in its role of providing protection and care to citizens, would provide or pay for additional health care services, police protection, emergency services, pension benefits, court

costs, correction and rehabilitation costs and other necessary services due to the use of Defendants' firearms.

WHEREFORE, Plaintiffs, Mayor Alex Penelas and Miami-Dade County, demand a trial by jury, judgment for compensatory damages for the sums expended by Plaintiffs as a result of defendants' wrongful conduct, punitive damages and such other and further relief as the Court deems just and proper, to which Plaintiffs may be entitled.

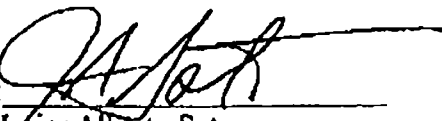
Respectfully submitted,

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and

By: 
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VERSUS

SMITH & WESSON CORP., STURM RUGER & CO., BERETTA U.S.A., COLT'S
MANUFACTURING CO., GLOCK, INC., TAURIJS INTERNATIONAL MARKETING,
INC., SIGARMS, INC., LORCIN ENGINEERING CO., INC., BRYCO ARMS, B.L.
JENNINGS, INC., PHOENIX ARMS, DAVIS INDUSTRIES, NAVEGAR, INC.(D/B/A/
"INTRATEC"), FMJ (A.K.A. "FULL METAL JACKET"), INC., ARMS TECHNOLOGY,
INC., CASH AMERICA PAWN OF NEW ORLEANS, MAGIC MONEY PAWN SHOP,
NEW ORLEANS PAWN SHOP, ALBERT'S JEWELRY & LOAN PAWN,
PROFESSIONAL SPORT SHOP, INC., AMERICAN SHOOTINGS SPORTS COUNCIL,
INC., NATIONAL SHOOTING SPORTS FOUNDATION, INC., SPORTING ARMS AND
AMMUNITION MANUFACTURERS' INSTITUTE, INC.

FILED : _____ DEPUTY CLERK _____

PETITION

MARC H. MORIAL, a person of the full age of majority and the duly elected and
present MAYOR OF THE CITY OF NEW ORLEANS, brings this action on behalf of the
other named plaintiff, the CITY OF NEW ORLEANS and respectfully represents:

1.

Under the Constitution of the State of Louisiana, and the Home Rule Charter for the
City of New Orleans, the Mayor and the City of New Orleans are responsible for the health,
safety and welfare of their citizens, and the Mayor has the duty to protect the interest of
the general public.

2.

For many years the City has suffered harm and has incurred significant expenses
associated with the manufacture, marketing, promotion, and sale of firearms which are
unreasonably dangerous under Louisiana law, for the reasons stated herein. In addition
to the other unreasonably dangerous design features, lack of safety features, and
inadequate warnings described herein, defendants' guns are unreasonably dangerous as
they can be and are fired by unauthorized users, including but not limited to children,
criminals, mentally unstable persons, and others who put themselves and/or others at risk

relief as may be obtained, for the harm unjustly, intentionally and wrongfully done and continuing to be done to the City of New Orleans, the Police Department of the City of New Orleans and to the People of New Orleans by the various defendants, who have been and continue to be unjustly enriched thereby at the expense of the City and its residents.

4.

The defendants are companies and organizations who manufacture, distribute, promote, market, sell and/or instruct in the use of firearms which are sold without the means to prevent their being fired by unauthorized users, without adequate warnings which would prevent such shootings by alerting users of the risks of guns and of the importance of proper storage of guns, and without other safety features and warnings which would prevent shootings by unauthorized users.

Actions by defendants have caused the city to pay out large sums of money to provide services including but not limited to necessary police, medical, and emergency services, health care, police pension benefits and related expenditures, as well as to have lost substantial tax revenues due to lost productivity.

5.

At all pertinent times the defendants have been able to manufacture, market, sell and/or promote firearms which prevent shootings by unauthorized users, including firearms which incorporate safety devices intended to prevent unauthorized users from firing firearms if and when they come into possession of them. However, defendants have failed to do so.

6.

Defendants' guns are inherently and unreasonably dangerous in that they enable any person who gains access to them – including but not limited to children, who can be expected to be unable to properly handle them or understand their risks – to fire them, even though it was feasible to design the guns to prevent unauthorized users from firing them. Defendants' guns are also inherently and unreasonably dangerous in that these

suggested, promoted, and encouraged unsafe storage practices. Defendants' guns are also inherently and unreasonably dangerous in that their design features insufficiently warn all foreseeable users, including unintended users, that a round of ammunition may be housed in the firing chamber.

At all pertinent times it was reasonably foreseeable to defendants that without the aid of some other design feature and/or warning device, defendants' guns would end up being used in a tragic, preventable shooting by an unauthorized user. Many of these shootings are unintentional shootings, often by children who do not fully understand or appreciate how to properly handle a gun, or understand its risks.

With regard to those guns of defendants which are semi-automatics, at all pertinent times it was foreseeable that users, including adolescents, would mistakenly believe that a semi-automatic gun would not fire if the ammunition magazine is removed. At all pertinent times it was foreseeable that users of semi-automatic guns would not understand or appreciate that an undetectable round of ammunition may be housed in the firing chamber of the gun even though the detachable ammunition magazine has been removed or unloaded, and that preventable, unintentional shootings would result given defendants' designs.

Defendants were at all pertinent times aware of these inherent and unreasonable dangers in the design of their firearms.

7.

The design of defendants' guns, which enable any person who gains possession of them to fire them, and which does not make users aware that a round of ammunition is housed in the firing chamber, results in thousands of unintentional shooting deaths and non-fatal injuries every year. The General Accounting Office estimates that 23% of the annual 1,400 to 1,500 unintentional shooting deaths occur because the user of the gun was not aware that a round of ammunition had been loaded into the gun's firing chamber —

ammunition in the firing chamber occur when an unintended user of the gun, such as an adolescent, unintentionally shoots another person. According to the General Accounting Office, approximately 35% of all unintentional shooting deaths involve users of guns who were between the ages of 13 and 18. Adolescents are naturally attracted to accessible guns and notoriously discount the risks associated with handling a firearm.

The design of defendants' guns, which enable any person who gains possession of them to fire them, also results in thousands of adolescent suicides. The odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home. A youth aged 10-19 commits suicide with a gun every six hours. Guns are the method used in 65% of male teen suicides and 47% of female teen suicides. Among 15-19 year-olds, firearm-related suicides accounted for 81% of the increase in the overall rate of suicide from 1980-1992.

The design of defendants' guns, which enable any person who gains possession of them to fire them, also results in thousands of homicides by unauthorized users, including juveniles. Many of these homicide victims are themselves children and teenagers. Many of these perpetrators gained access to guns in homes or through theft.

At all pertinent times it was foreseeable that defendants' guns would fall into the hands of unintended users. The Centers for Disease Control estimate that 1.2 million elementary-aged, latch-key children have access to guns in their homes. There are guns in approximately one-half of the homes in this country, and one survey reports that 30% of these gun-owners who have children in the home keep their guns loaded. Another survey reports that 36% of gun owners with children in their home keep their guns unlocked. In one survey, nearly 60% of the children between the ages of 10 and 19 responded that they can acquire a gun should they want one. The same survey reports that 15% of the children between the ages of 10 and 19 reported that they had carried a gun on their person in the past 30 days. At all such times it was also foreseeable that when unintended users would gain access to these guns, that either the guns would be

at these times that many of these shootings would be unintentional, and many would involve children – as victims and/or as shooters. It also was foreseeable that many of these shootings would involve suicides by children and adolescents. It also was foreseeable that many of these shootings would involve homicides by juveniles, whose victims are juveniles.

8.

At the time the defendants manufactured, distributed, promoted and/or sold these guns, defendants knew and should have known of the unreasonable dangers of their guns, including those described in the foregoing paragraphs. Defendants were also aware of safety devices, warnings, and other measures which would prevent and decrease these dangers. Defendants failed to remedy these deficiencies in their guns, warnings, instructions, promotions and advertising; failed to adequately warn customers of these dangers; and failed to inform customers or distributors or retailers of these devices and measures which could prevent or decrease these dangers and failed to determine whether devices were feasible or effective.

9.

Citizens of the City of New Orleans, particularly its children, repeatedly have been victimized by defendants' unreasonably dangerous products. Year after year, New Orleans children are grievously injured or killed because defendants' guns are sold without the means to prevent their use by unauthorized users, without adequate warnings which would prevent such shootings by alerting users of the risks of guns and of the importance of proper storage of guns, and without other safety features which would prevent shootings by unauthorized users. For example, in New Orleans,

– In April of 1996, a six-year old boy was unintentionally wounded by his nine-year old brother when the boys found a .38 caliber revolver in a trash bin.

unintentionally shot his two younger sisters, ages four and three.

– In July of 1994, a twelve-year-old boy was shot to death by his fourteen-year-old neighbor who found a loaded .357 magnum revolver under a mattress.

– In July of 1994, a fourteen-year-old boy was killed in an unintentional shooting at the friend's home where he and two other teens were playing with guns.

– In May of 1994, three boys, a fourteen-year-old and a ten-year-old were booked on charges of negligent homicide in the fatal shooting of a ten-year-old boy as he was riding his bicycle.

– In December, of 1993, an eleven-year-old was shot while he and his thirteen-year-old brother played with guns in their home.

These tragedies, and others like them, demonstrate that the citizens of the City of New Orleans are under a continuing threat of injury and death, particularly to children, from defendants' unreasonably dangerous products.

10.

At all times pertinent, these defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users, and that their warnings and instructions were inadequate to alert owners and foreseeable users of the risks posed by their guns, and the importance and means of properly storing guns, and that the advertising used to promote those products were likely to cause many owners to store their guns unlocked and/or loaded, which would enable unauthorized users to fire them.

At all times pertinent, these defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that their products could be sold and/or made with the means to prevent their firing by unauthorized users, and that by failing to use such means, made it possible for guns stolen from private residences, gun

others would be substantially certain to suffer injuries and substantial expenses due to shootings and crimes which would result, and to the threat of shootings and crimes, and that the city and its people would be injured thereby.

At all times pertinent, the defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that the city, in its role of providing protection and care for their citizens, would provide or pay for additional police protection, emergency services, pension benefits, health care and other necessary facilities and services due to the threat of use of defendants' products and for certain of their citizens and police officers harmed by the use of the defendants' products, as well as lose substantial tax revenue due to lost productivity and, in the absence of performance of such duty by the defendants, that the city itself thereby would be harmed.

11.

At all times pertinent, defendants, who account for most of the handguns sold to the general public, have acted in concert with respect to, among other things:

- (a) their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement other safety features; and
- (d) their failure to issue adequate warnings alerting users to the risk of guns and to the importance of proper storage of guns.

At all times pertinent, defendants have tacitly agreed, colluded, or cooperated with respect to:

- (a) their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement their safety features; and
- (d) their failure to issue adequate warnings alerting users to the risk of guns

- (a) the failure to develop and implement the means to prevent guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement other safety features; and
- (d) their failure to issue adequate warnings alerting users to the risk of guns and to the importance of proper storage of guns.

12.

VENUE

Venue for this action arises under Louisiana Code of Civil Procedure Article 42, *et seq.* as certain defendant corporations are domiciled in the Parish of Orleans and organized in the State of Louisiana and the actions of other co-defendants took place in the City of New Orleans. As well, the damages suffered by plaintiffs occurred in the City of New Orleans, State of Louisiana.

13.

PARTIES

PLAINTIFFS:

PLAINTIFF MARC H. MORIAL is a resident of the Parish of Orleans, State of Louisiana, and at all times pertinent was and is the Mayor of the City of New Orleans, Louisiana. As mayor, Marc H. Morial has the capacity to initiate legal action on behalf of the City and its police department.

PLAINTIFF THE CITY OF NEW ORLEANS is a body politic, as constituted under the Constitution of the State of Louisiana and operating under their Home Rule Charter has the authority and obligation to initiate legal actions through the person of the duly elected mayor, Marc H. Morial. He does so hereby.

MANUFACTURER/SELLER DEFENDANTS:

Defendant SMITH AND WESSON CORP. is a corporation organized in the State of Massachusetts, with its principal place of business in the State of Massachusetts, that

Delaware, with its principal place of business in the State of Connecticut, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

Defendant BERETTA U.S.A. is a corporation organized in the State of Maryland, with its principal place of business in the State of Maryland, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

COLT'S MANUFACTURING CO. is a corporation organized in the State of Connecticut, with its principal place of business in the State of Connecticut, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

GLOCK, INC. is a corporation organized in the State of Georgia, with its principal place of business in the State of Georgia, that manufactures and regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

TAURUS INTERNATIONAL MANUFACTURING, INC. is a corporation organized in the State of Florida, with its principal place of business in the State of Florida, that regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

SIGARMS, INC. is a corporation organized in the State of New Hampshire, with its principal place of business in the State of New Hampshire, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

LORCIN ENGINEERING CO., INC. is a corporation organized in the State of California, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users

advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

B.L. JENNINGS, INC. is a corporation organized in the State of Nevada, with its principal place of business in the State of Nevada, that regularly sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

PHOENIX ARMS is a corporation organized in the State of Arizona, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

DAVIS INDUSTRIES is a corporation organized in the State of California, with its principal place of business in the State of California, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

NAVEGAR, INC. (D/B/A INTRATEC) is a corporation organized in the State of Florida, with its principal place of business in the State of Florida, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

FMJ (A.K.A. "FULL METAL JACKET"), INC. is a corporation organized in the State of Tennessee that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

ARMS TECHNOLOGY, INC. is a corporation organized in the State of Utah, with its principal place of business in the State of Utah, that regularly manufactures, sells, ships and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

CASH AMERICA PAWN OF NEW ORLEANS Trade name Cash America of Louisiana is a corporation organized in the State of Louisiana, with its principal place of

with its principal place of business in the Parish of Orleans, State of Louisiana, that regularly sells, and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

NEW ORLEANS PAWN SHOP is a corporation organized in the State of Louisiana, with its principal place of business in the Parish of Orleans, State of Louisiana, that regularly sells, and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

ALBERT'S JEWELRY & LOAN PAWN is a corporation organized in the State of Louisiana, with its principal place of business in the Parish of Orleans, State of Louisiana, that regularly sells, and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

PROFESSIONAL SPORTS SHOP, INC. is a corporation organized in the State of Louisiana, with its principal place of business in the Parish of Orleans, State of Louisiana, that regularly sells, and advertises firearms that can be fired by unauthorized users in the City of New Orleans and State of Louisiana.

TRADE ASSOCIATION DEFENDANTS:

Defendant AMERICAN SHOOTING SPORTS COUNCIL, INC. ("ASSC") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code with its principal office in the State of Georgia. ASSC is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller defendants.

Defendant NATIONAL SHOOTING SPORTS FOUNDATION, INC. ("NSSF") is a tax exempt business league under section 501(c)(6) of the Internal Revenue Code with its principal office in Newtown, Connecticut. NSSF is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller

the Internal Revenue Code with its principal office in Newtown, Connecticut. GRAIN is an industry trade association composed of firearms manufacturers and sellers, including some or all of the manufacturer/seller defendants.

14.

FIRST CAUSE OF ACTION
LSA-R.S. 9:2800 LOUISIANA PRODUCTS LIABILITY ACT:
UNREASONABLY DANGEROUS IN DESIGN

Plaintiffs incorporate all paragraphs by this reference as if fully set forth.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800.56 *et seq.* as their products were unreasonably dangerous in design at the time these weapons left the manufacturers' control and such defects in design were the proximate cause of the damages suffered by plaintiffs.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800.56 *et seq.* as they failed to employ alternative designs which would have reduced, if not prevented many of plaintiffs' damages. Their failure to employ these alternative designs was a proximate cause of the damages suffered by plaintiffs.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800.56 *et seq.* as they each knew the likelihood that their products designs would cause plaintiffs' injuries and they knew the gravity of these injuries.

Defendants are liable under the Louisiana Products Liability Act, LSA-RS. 9:2800.56 *et seq.* as they each knew or reasonably should have known that the gravity of the damages which might be and which have been suffered by plaintiffs would greatly outweigh the burden on them as manufacturers and makers of adopting such alternative designs, and the gravity of those damages would outweigh the adverse effect, if any, on the legitimate utility of the products.

Defendants are liable for the damage caused as a result of the design defects of their products, including the damage incurred by plaintiffs.

Defendants' conduct was a direct and proximate cause of the injuries suffered by

Plaintiffs specifically allege that alternative design would have reduced the injuries suffered by the city, police, emergency services, health services and other agencies which he represents.

15.

SECOND CAUSE OF ACTION
LSA-R.S. 9:2800 LOUISIANA PRODUCTS LIABILITY ACT
FAILURE TO INCLUDE SAFETY DEVICES IN DESIGN

Plaintiffs incorporate all paragraphs reference as if fully set forth.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800.56 *et seq.* as the products were unreasonably dangerous in design, at the time these weapons left the manufacturers' control and such defects in design were the proximate cause of the damages suffered by plaintiffs and that alternative designs which incorporated safety devices, including but not limited to devices which would:

1. prevent these weapons from being fired by unauthorized users;
2. alert users that a round was in the chamber;
3. prevent these weapons from being fired when the magazine was removed from them.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800.56 *et seq.* as they each participated in the design and/or manufacture of products which were defective because they did not incorporate available safety devices and/or participated in the manufacture of those defective products which were the proximate cause of the damages suffered by plaintiffs.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800.56 *et seq.* as they failed to employ alternative designs incorporating safety devices which would have reduced, if not prevented many of plaintiffs' damages.

Their failure to employ these alternative designs incorporating safety devices was a proximate cause of the damages suffered by plaintiffs.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S.

9:2800.56 et seq. as they each knew or reasonably should have known that the gravity of the damages which might be and which had been suffered by plaintiffs would greatly outweigh the burden on them as manufacturers and makers of adopting such alternative design, and the gravity of those damages would outweigh the adverse effect, if any, on legitimate utility of the products.

16.

THIRD CAUSE OF ACTION
LSA-R.S. 9:2800.57 LOUISIANA PRODUCTS LIABILITY ACT:
UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

Defendants are liable under the Louisiana Products Liability Act, LSA-R.S. 9:2800 et seq. at the time the guns were manufactured, and at the time they left the control of defendants, the guns were unreasonably dangerous in the hands of reasonably foreseeable users, including households with children, not only because of their design, but because they did not have a suitable warning or instruction as to the risks of the weapon, including, but not limited to, adequately warning owners of the risks that minors could gain access to guns, how to properly store weapons, that a round may be hidden in the chamber of a pistol, that their pistols could be fired even with the ammunition magazine removed and the attendant risks that could and did thereby occur.

In addition to failing to provide an adequate or suitable warnings or instructions to users, including households with children, defendants actively promoted and advertised their guns in a manner which did not alert customers and potential customers, as well as retail dealers who would be expected to sell and recommend their guns, to the risks of guns, and which, on the contrary, suggested that by purchasing guns for their households they would become more safe, that the design of the guns was safe, and that families could safely store guns unlocked and accessible to minors.

For the foregoing reasons as well, defendants' guns were unreasonably dangerous.

FOURTH CAUSE OF ACTION
NEGLIGENCE IN THE SALE OF FIREARMS:
DEFENDANTS PAWN SHOPS AND RETAILERS

Plaintiffs reassert all paragraphs above and allege the same as if fully set forth herein.

Defendants knew, or in the exercise of care should have known, that at the time they left control of defendant, certain of the firearms it sold were unreasonably dangerous in that they could be fired by unauthorized users, failed to alert users that a round is in the chamber and/or could be fired when the magazine is removed.

Defendants knew, or in the exercise of care should have known, that at the time they left control of defendant, certain of the firearms it sold were unreasonably dangerous in the hands of reasonably foreseeable users, including households with children, not only because of their design, but because they did not have a suitable warning or instruction as to the risks of the weapon, including, but not limited to, adequately warning owners of the risks that minor could gain access to guns, how to properly store weapons, and the attendant risks that could and did thereby occur.

It was reasonably foreseeable that firearms sold by defendant, because of their unreasonably dangerous design and lack of suitable warnings, would be used to harm the city's citizens and that the city, in its role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services, pension benefits, health care and other necessary facilities and services due to the threat of use of defendants' firearms and for certain of their citizens and police officers harmed by the use of defendant's firearms, as well as lost substantial tax revenues due to lost productivity.

in which some or all of the manufacturer/seller defendants have been members.

At all times pertinent, defendants ASSC, NSSF and SAAMI have acted in concert with, tacitly agreed with, colluded, cooperated with and aided and abetted the manufacturer/seller defendants, with respect to, among other things:

- (a) their failure to develop and implement the means to prevent their guns from being fired by unauthorized users;
- (b) discouraging the development and implementation of the means to prevent guns from being fired by unauthorized users;
- (c) their failure to develop and implement other safety features; and their failure to issue adequate warnings alerting users to the risk of guns and to the importance of the proper storage of guns.

It was reasonably foreseeable that, as a result of the above-described conduct of defendants ASSC, NSSF and SAAMI, the manufacturer/seller defendants would continue to manufacture and/or sell guns that, because of their unreasonably dangerous design and lack of suitable warnings, would be used to harm the City's citizens and that the City, in its role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services, pension benefits, health care and other necessary facilities and services due to the threat of use of defendants' firearms and for certain of its citizens and police officers harmed by the use of defendants' firearms, as well as lost substantial tax revenues due to lost productivity.

19.

DAMAGES

Plaintiffs re-allege and incorporate herein the foregoing allegations. As a direct and proximate result of the actions and occasions of the defendants as alleged above, plaintiffs have been obligated to pay and have paid millions of dollars in the past to enhance police protection, emergency services, police pension benefits, medical care, facilities and services due to the threat of use of defendants' products and for certain of those aforementioned citizens injured by the defendants' actions and products, and have lost

aforementioned sums.

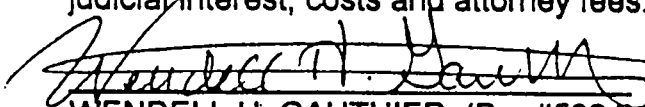
To prevent an unjust enrichment, the defendants should indemnify the city for its enhancement of police protection, emergency services, police pension benefits, medical care, facilities and services, as well as lost tax revenues, due to defendants' products and actions.

Wherefore the plaintiffs pay for relief and judgment against the defendants, jointly and *in solido* as follows:

- a. For damages in an amount which is sufficient to provide restitution and re-pay the plaintiffs for the sums they have expended on account of the defendants' wrongful conduct, with said amount to be determined at trial;
- b. For damages in restitution for the sums of money to be paid by plaintiffs in the future on account of the defendants' wrongful conduct;
- c. For pre-judgment interest, as well as plaintiffs' reasonable attorneys' fees, expert witness fees and other costs of this action;
- d. For punitive damages in such amount as will sufficiently punish the defendants for their conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- e. For such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that plaintiffs have an effective remedy; and
- f. For such other and further relief, as the Court deems just and proper, to which plaintiffs may be entitled.

Plaintiff requests a trial by jury.

WHEREFORE, plaintiff prays that defendants be cited with petition and after all due process had, judgment be entered in favor of plaintiffs for all damages, including judicial interest, costs and attorney fees.


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PLEASE SERVE:

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LOUISIANA
through their registered agent
Theresa Kahbau c/o Capital Document
Service, Inc.
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Suite 702A
Baton Rouge, Louisiana 70809

Magic Money Pawn Shop
4628 Downman Road
New Orleans, Louisiana 70126

New Orleans Pawn Shop
4730 Magazine Street
New Orleans, Louisiana 70115

Albert's Jewelry & Loan Pawn

SERVICE WILL BE MADE THROUGH
THE LOUISIANA LONG ARM STATUTE:

SMITH AND WESSON CORPORATION

BERETTA U.S.A

COLT'S MANUFACTURING COMPANY

GLOCK, INC.

TAURUS INTERNATIONAL
MANUFACTURING, INC.

SIGARMS, INC.

LORCIN ENGINEERING COMPANY,
INC.

B.L. JENNINGS, INC.

PHOENIX ARMS

Bryco Arms

DAVIS INDUSTRIES

NAVEGAR, INC. d/b/a INRACTEC

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MANUFACTURES' INSTITUTE, INC.
("SAAMI")

CRIME -

CITY ^{LAW} SUITS

SAFE CITIES

FIGHTING ILLEGAL GUNS



CITY OF CHICAGO
RICHARD M. DALEY, MAYOR

SUMMARY OF COMPLAINT

THE CONCEPT OF PUBLIC NUISANCE

I. INTRODUCTION

Chicago, like many other major cities, is faced with a high level of violent crime. One of the major contributors to the level and severity of violent crime in Chicago is the widespread availability of guns. To limit their availability and thereby reduce the level of violent crime, the City has enacted among the strictest gun control ordinances in the United States, essentially banning every type of gun except for shotguns and rifles. However, thousands of illegal guns -- many of them new guns -- still are recovered every year in Chicago. These recovered guns represent only a fraction of the number of illegal guns still on the streets.

The lawsuit alleges that the continuing availability of illegal firearms in Chicago is caused in large part by the practices of gun manufacturers, distributors and dealers, whom the City and County have named as defendants in this lawsuit. The defendants are aware of the high demand for illegal guns in Chicago, and through their marketing and distribution practices, they seek to maintain and supply that demand.

The lawsuit alleges that firearms manufacturers and distributors facilitate the illegal use of firearms. First, they design weapons better suited for criminal than lawful uses. Second, the defendants distribute their guns so as to ensure that they are available to persons who live in areas where guns are impermissible. For instance, the defendants saturate the markets just outside Chicago, where gun control laws are more permissive, knowing that many guns purchased there will be brought into Chicago through an illegal and underground market. For their part, many gun dealers will sell their guns to persons whom any reasonable person would understand intend to possess or use them improperly. Simply by virtue of selling their guns to Chicago residents, a gun dealer should be aware that there is a high probability that the guns will be brought into

Chicago. Nonetheless, dealers rarely concern themselves with their purchasers' residence, and, even though they know that their purchasers are from Chicago, they rarely take any steps to ensure that the guns will be kept by the purchasers outside of Chicago. Dealers will sell guns under other circumstances where they should know that the weapons will be used illegally. For instance, they will sell a large number of guns to an individual within a short period, knowing that the individual intends illegally to transfer the guns to others; they will also illegally sell to individuals who are not licensed to purchase guns. Compounding this problem is the ease with which almost anyone can become a federally licensed gun dealer, and the resulting high number of irresponsible persons selling guns.

The entire gun industry is aware of how their conduct causes guns to continue flooding the streets of Chicago; in fact, that is what they intend. They know that the widespread availability of these illegal weapons threatens the safety and well-being of Chicago's residents, and creates a public nuisance. Yet no standards for responsible sales practices are followed in the industry. Manufacturers and distributors knowingly and eagerly provide more efficient, powerful and dangerous guns to the very persons they know will use them illegally. Their conduct is no different from the tavern that plies a patron with alcoholic drinks and then sends him off to drive home intoxicated. Just as the tavern must pay for irresponsibly putting an intoxicated driver behind the wheel, the defendant members of the gun industry should be held liable for the public nuisance they create by supplying loaded weapons to persons they know will use them illegally.

This lawsuit is not brought for the purpose of limiting the rights of law-abiding citizens to own guns. Rather, it is brought to force those who illegally, irresponsibly and immorally arm criminals to pay for the damage they cause, and to compel them to stop acting with utter disregard

for the safety, health and well-being of the public.

II. PUBLIC NUISANCE AND FIREARMS DISTRIBUTION

The earliest use of the public nuisance doctrine in Illinois appears to be in Village of Des Plaines v. Poyer, 123 Ill. 348 (1888), in which the Illinois Supreme Court held that the common law protects the right “to be free from disturbance and reasonable apprehension of danger to person and property.” Illinois has since adopted the definition of a public nuisance found in the Second Restatement of Torts, defining a nuisance as any “unreasonable interference with a right common to the general public.” E. g., Wheat v. Freeman Coal Mining Corp., 23 Ill. App. 3d 14, 18 (5th Dist. 1974); City of Chicago v. Commonwealth Edison Co., 24 Ill. App. 3d 624, 631 (1st Dist. 1974). The most recent decision of the Illinois Supreme Court in this area defines a public nuisance as “an act or omission which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all.” Village of Wilsonville v. SCA Services, Inc., 86 Ill. 2d 1, 21 (1981).

A claim for nuisance may be predicated either on (1) a violation of an ordinance designed to protect the public from a threat to its health, welfare or safety, see Chicago National League Ball Club, Inc. v. Thompson, 108 Ill. 2d 357, 365-66 (1985), or on (2) other unreasonable actions including negligence. Gilmore v. Stanmar, Inc. 261 Ill. App. 3d 651, 633 N.E.2d 985, 993 (1st Dist. 1994); Restatement (Second) of Torts, § 821B, comment e.

[T]he defendant is held liable for a public nuisance if his interference with the public right was intentional or was unintentional and otherwise actionable under the principles controlling liability for negligent or reckless conduct or for abnormally dangerous activities.

Restatement (Second) of Torts, Sec. 821B, comment e. If the interference was intentional, then it must also have been unreasonable. Id.

Whether the defendant's actions were unreasonable and whether the interference was significant are factual determinations. Gilmore, 633 N.E.2d at 993. The Restatement sets forth the following three circumstances that may sustain a determination that the interference was unreasonable:

- (1) whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience; or
- (2) whether the conduct is proscribed by statute, ordinance or administrative regulation; or
- (3) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Restatement (Second) of Torts, Sec. 821B.

On both bases, the illegal possession of firearms in the City of Chicago constitutes a public nuisance. First, Chicago's gun control ordinances were enacted to protect the public's health, welfare and safety, and, therefore, the defendants' conduct that causes violations of those ordinances constitutes a nuisance. Second, the defendants knowingly continue their conduct which causes illegal firearms to end up in the City; the effect of their conduct is a long-term injury that significantly interferes with the public health, welfare and safety, and with the public's right to be free from disturbances and reasonable apprehension of danger. Their conduct is unreasonable, and creates a public nuisance.

Liability under public nuisance requires unreasonable conduct by the defendant that gives rise to the public nuisance. When a firearms dealer sells to an individual whom he knows or should know will use that weapon illegally, the conduct gives rise to liability. In fact, there are cases from around the country that impose liability on a theory of negligent sales when a firearms dealer sells a firearm to an individual whom the dealer knows or should know is not permitted to possess the firearm. For example, in Rubin v. Johnson, 550 N.E.2d 324 (Ind. Ct. App. 1990), the court held that a pawn shop was liable for damages caused when it sold a firearm to an individual that it knew or should have known was mentally ill. Similarly, in Kitchen v. K-Mart, 697 So. 2d 1200 (Fla. 1997), the Florida Supreme Court held that a dealer could be held liable for a shooting that occurred after it sold a firearm to an obviously intoxicated buyer. In Jasoves v. United Merchandising Corp., 11 Cal. Rptr. 2d 468 (Cal. App. 1992), the court held that a seller can be held liable when it has reason to know that the purchaser of a firearm is likely to be a danger to himself or others.

While no Illinois court has yet determined a negligent marketing claim to lie, the concept of negligent marketing is available in Illinois. See Pitts v. Vasile, 45 Ill. 2d 49, 52-53 (1955) (adopting negligent marketing as defined in the Second Restatement of Torts, but finding it unproven in the case at bar). Accordingly, if it can be shown that dealers sell firearms when they know or should know that the purchaser is likely to use them illegally -- for example, by bringing a firearm into Chicago in violation of its gun control ordinance, illegally reselling the firearm, or using the firearm to commit a crime -- then a claim of negligent marketing exists.

There are few cases discussing whether a manufacturer can be held liable for public nuisance based on the use of its product. Applying Illinois law, in City of Bloomington v.

Westinghouse Electric Corp., 891 F.2d 611 (7th Cir. 1989), the court held that a defendant-manufacturer could not be held liable for the creation of a nuisance caused by the use of its product by its buyer; however, the court stressed that the manufacturer in that case had not participated in the conduct that gave rise to the nuisance. See id. at 613. The Second Restatement of Torts permits the imposition of liability on a manufacturer if it participates to a substantial extent in creating or carrying on a nuisance. See Restatement (Second) of Torts, § 834 (1977). The City and County allege that firearms manufacturers attempt to appeal to a criminal market through their design and marketing practices, and that they fail to take reasonable measures to discourage their distributors from selling these weapons to persons likely to use them illegally. Such conduct constitutes substantial participation in the creation or carrying on of a nuisance, and should justify the imposition of liability on manufacturers.

Illinois law permits a municipality to sue to abate a nuisance. See 65 ILCS 11-60-2. The remedies available once a nuisance is proved are an injunction and a suit for damages. See Village of Wilsonville v. SCA Services, Inc., 86 Ill. 2d 1, 22 (1981). Accordingly, the City and County can seek an injunction against the defendants' conduct which contributes to the creation of a nuisance, and they may recover damages proximately caused by the nuisance, such as the costs of prosecuting firearms cases and the cost of treating victims of firearms violence.

Illinois courts can enjoin the activities of an out-of-state defendant who is causing an injury in Illinois and who is subject to the jurisdiction of Illinois courts. Mergenthaler Linotype Co. v. Leonard Storch Enterprises, Inc., 66 Ill. App. 3d 789, 792 (1st Dist. 1978) (activities in New York which caused an injury in Illinois could be enjoined by an Illinois court). In this case, an Illinois court may hold out-of-state defendant manufacturers and distributors liable because they

are causing an injury in Illinois, and because they are subject to jurisdiction in Illinois. And courts have found that an out-of-state defendant who was doing business in Illinois, and whose out-of-state actions caused an injury in Illinois, was subject to personal jurisdiction in Illinois. Reidy v. Janmark, 132 F.3d 1200, 1202 (7th Cir. 1997).

The Illinois Supreme Court has stated that manufacturers who “sell[] [their] products in circumstances such that [they] know[] or should reasonably anticipate that they will ultimately be resold in a particular state” are subject to personal jurisdiction in the state where their products are resold. Connelly v. Uniroyal Englebert Belgique, 75 Ill.2d 393, 405-06, 389 N.E.2d 155, 160 (1979), quoting Buckeye Boiler Co. v Superior Court, 71 Cal.2d 893, 902, 458 P.2d 57, 64 (1969). See also Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 176 N.E.2d 761 (1961); Cameron v. Owens-Corning Fiberglass Corp., 296 Ill. App. 3d 978, 990, 695 N.E.2d 572, 580 (4th Dist. 1998) (Cook, J concurring). The manufacturer and distributor defendants know that their firearms are being resold in Illinois, and therefore, they are subject to jurisdiction in Illinois.

III. THE CITY'S INVESTIGATION

The Chicago Police Department recently performed an undercover investigation into the practices of firearms dealers. The investigation revealed conduct by the defendant firearms dealers which exhibits what can only be described as a brazen and utter disregard for local, state, and federal firearms laws. Their investigation confirms the role these dealers play in creating the public nuisance caused by the presence of so many illegal firearms in Chicago.

The defendant dealers readily sell firearms when they know or should know that the purchasers are not permitted to purchase or possess the firearm, or will illegally transfer them to

others. The City's investigation involved undercover Chicago police officers purchasing firearms from dealers located near the City of Chicago, under circumstances where the dealers knew -- and in some cases even acknowledged -- that the firearms would be used illegally. The dealers unabashedly sold firearms to undercover officers posing as persons who were likely to use the firearms illegally, either by bringing the firearms into Chicago in violation of City ordinances, or by reselling or otherwise transferring them. Specifically, the investigation uncovered widespread practices by dealers of: (1) selling to Chicago residents firearms that are illegal in Chicago; (2) selling firearms to individuals who are obviously making the purchase for another individual who is himself prohibited from purchasing firearms, some of whom even admit to the dealers that they are purchasing firearms for others; (3) selling large numbers of guns to a single individual over a short period of time; (4) selling guns to individuals who indicate that they will be using the gun for illegal purposes; (5) selling guns to individuals who demonstrate that they illegally will be concealing the gun on their person; (6) counseling purchasers on how to evade existing firearms regulations; and (7) knowingly selling outlawed guns.

The defendant firearms dealers' actions are driven by their desire to sustain sales of their firearms. The dealers know that a sizeable portion of their sales are to individuals who will use the firearms illegally. The dealers also know that if they refuse to sell firearms to those individuals, then they simply will purchase firearms from another dealer. The defendant dealers knowingly sacrifice public safety in order to sustain their sales. Their unreasonable conduct contributes to the creation of a public nuisance in the City of Chicago and necessitates the imposition of an injunction against them.

The defendant firearms manufacturers and distributors participate in the dealers'

unreasonable conduct by failing to discourage dealers from selling to persons likely to use their products illegally, including establishing standards for responsible conduct and monitoring dealers' sales. The defendant manufacturers and distributors also know that there is a significant illegal market for firearms, and they do not wish to see the dealers limit sales of their products.

IV. CONCLUSION

The defendants' unreasonable conduct contributes to the creation of a public nuisance in the City of Chicago. The City and County are entitled to an injunction prohibiting continuation of their conduct, and to an award of damages for the resulting harm.



OFFICE OF THE MAYOR

CITY OF CHICAGO

RICHARD M. DALEY
MAYOR

November 12, 1998

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

On November 12, 1998, my administration filed a lawsuit on behalf of the people of the City of Chicago against the gun industry. This \$433 million suit charged that the industry has flooded Chicago with illegal guns, knowing that they will be used to murder, rob and terrorize our citizens.

The gun industry has perpetuated a myth, claiming that illegal guns are acquired illegally. According to them, gun control efforts are not a matter for the Congress, state legislatures, or the courts, but for the police. This myth has now been dispelled by an undercover Chicago Police Department investigation, the results of which were announced last Thursday.

This investigation establishes that area gun dealers routinely encourage customers to deceive federal, state and local police. "Straw" buyers regularly buy dozens of guns for street gangs. Manufacturers and retailers knowingly market and distribute to criminals in Chicago and other communities where the possession of a gun is illegal. Current state and federal law is inadequate to stem the flood of illegal guns into our communities. Changes must be made to protect our families, children and police officers.

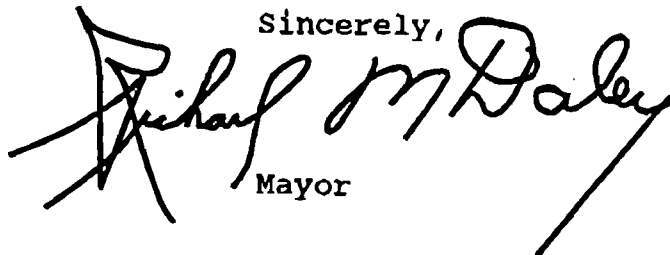
As a result of this investigation, I am proposing state and federal legislation to curb these abuses. The state legislation provides for state licensing of firearm dealers; a limitation of one firearm purchase per month; enhanced penalties for gunrunning and straw purchases; and civil liability for any damages resulting from the illegal possession or use of a firearm when the seller has reason to know that it will be used or possessed illegally.

The Honorable Janet Reno
November 12, 1998
Page 2

The federal legislation will provide an improved federal firearms tracing system to enable federal, state and local authorities to far more readily identify gun runners who supply criminals with firearms; require that all firearm sales be reported within one week to the United States Bureau of Alcohol, Tobacco and Firearms; forbid the purchase of multiple firearms within any 30-day period; and forbid gun dealers from making sales whenever the seller has reason to believe that the purchaser intends to use or transfer the weapon illegally.

In addition to these proposed legislative changes, the City of Chicago and Cook County have filed a civil lawsuit to hold the gun industry accountable for the costs to society resulting directly from their negligent business practices. These negligent practices constitute a public nuisance. We hold polluters accountable for poisoning our environment; we hold liquor stores accountable for serving minors. It is time to hold the gun industry accountable for its actions.

Sincerely,



Richard M. Daley
Mayor



Office of the Mayor
Richard M. Daley
Mayor

News Release

November 12, 1998

Contact: Mayor's Press Office
(312) 744-3334

THEY NEEDED HANDGUNS TO "TAKE CARE OF BUSINESS" IN CHICAGO; SUBURBAN GUN SHOPS PROVIDED PLENTY -- NO QUESTIONS ASKED

Posing as street-gang members, undercover Chicago police officers swaggered into suburban gun shops, telling the clerks they needed handguns to settle a score or "take care of business" on the street.

They asked for guns that could be easily -- and illegally -- concealed. They made it clear the weapons would be used in Chicago, where handgun ownership is illegal.

They made blatant "straw purchases," a common street-gang tactic in which a person with a valid state firearm owner's identification (FOID) card illegally buy guns for those with criminal records. To obtain an FOID card, you must be at least 18 (21 to purchase handguns), have no criminal record and not have been in a mental institution.

Time and again, the sales clerks responded in the same way: They took the money and sold them the guns.

As a bonus, the clerks frequently offered advice on how to evade federal laws regulating multiple purchases of guns.

The officers purchased 171 guns from 12 gun stores in the suburbs ringing Chicago.

The ease of purchase, even by people with clear criminal intent, is the cornerstone of Chicago and Cook County's lawsuit contending the gun industry is creating a public nuisance by knowingly supplying handguns to residents of a city that bans them.

The investigation, known as Operation Gunsmoke, enlisted three teams of undercover police officers. One team posed as street-gang members; a second as motorcycle toughs; the third as soldiers of fortune, wearing camouflage.

On one occasion, an undercover officer fondled a gun and stated: "This should be able to get the job done." The sales clerk agreed.

Straw purchases were easy. An undercover officer told a salesman at Bell's Gun & Sport Shop, 3315 N. Mannheim Rd., Franklin Park, that he had no FOID card. He openly handed \$600 to his FOID-card-carrying partner, who gave the cash to the clerk.

-MORE-

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The partner then asked the card-carrying officer to buy him one more gun. He did.

A Bell's clerk recommended a particular bullet that explodes on impact, because "it doesn't go through the target and hit a little girl on the next block."

Gun shops sold guns to the officers even when they made it clear they intended to use them in street killings.

One officer purchased guns at B & H Sports, Ltd., 9725 Southwest Highway, Oak Lawn, after telling the clerk he hung out on the street, lost his gun while being chased by the police and intended to use the new gun to "settle up" with someone who had reported him to the police.

B & H also sold a gun to an officer who said he needed it for his "spot" (a street term for a drug sales location) and needed a size women could hide easily. (Concealed weapons are illegal in Illinois.) The same shop sold a gun to an undercover officer who said he needed it to retaliate against an accomplice who owed him money.

"You made a good choice," the clerk told him after selling him an assault weapon. "This will take care of business."

On another occasion, the B & H clerk accepted a \$350 deposit for two guns from an officer who had no FOID card.

At Chicago Ridge Gun Shop & Range, Inc., 10349 Southwest Highway, Chicago Ridge, the clerk allowed an undercover policeman with no FOID card to handle a gun (which is illegal), then allowed his policewoman partner to make a straw purchase. After she bought the gun, the policeman hugged her and thanked her for the present.

At Chuck's Gun Shop & Pistol Range, 14310 S. Indiana, Riverdale, undercover officers bought two handguns at a time, but were advised to pick them up separately so the store would not have to notify the U.S. Bureau of Alcohol, Tobacco and Firearms (ATF) of a multiple gun purchase.

The Sportsman's Center/Illinois Gun Works, Ltd., 7229 W. Grand Ave., Elmwood Park, sold guns to an undercover officer who said he needed them for "my females," who did not have FOID cards.

When the sales clerk told another store employee that the gun buyers were "crazy gang bangers," the employee told him not to worry about it.

Operation Gunsmoke was directed by Commander Harvey Radney of the Gang Investigation Section and conducted by Lt. Randolph Barton, Sgt. Kenneth Barnas, and Officers Jeanne Brandmayr, James Henk, Bernard Kelly, George Klinger, Lawrence Kynsch, Judy Longos, Robert McClain and William Rogers.

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Office of the Mayor
Richard M. Daley
Mayor

News Release

November 12, 1998

Contact: Mayor's Press Office
(312) 744-3334

FROM SUBURBAN GUN SHOPS TO THE STREETS OF CHICAGO, HANDGUNS LEAVE A TRAIL OF DEATH AND DEVASTATION

Contrary to popular belief, the majority of guns used in crimes were originally purchased from "legitimate" gun stores and passed along to criminals. A relatively small number were stolen or obtained through a "black market." Here are the stories behind some of those weapons.

CHUCK'S GUN SHOP, 14310 S. Indiana Avenue, Riverdale

December 28, 1997 Ezra Evans, an unemployed 27-year-old who lives at 12007 S. Normal Ave., buys a Smith & Wesson .357 revolver from Chuck's Gun Shop. He buys a total of 13 handguns between August 1997 and July 1998 - seven from Chuck's and six from The Sports Authority, 7720 S. Cicero, Burbank.

August 15, 1998 Chicago Police Officer Michael Ceriale is shot in the abdomen. Police arrest Michael Tolliver, a 16-year-old gang member, and they recover the Smith & Wesson revolver bought by Evans. Ceriale dies a week later.

August 18, 1998 Evans is arrested and charged with gunrunning, a Class 1 felony. He admits that he has been purchasing guns for resale to the Gangster Disciples street gang. Eleven of the 13 guns Evans bought are still on the streets.

B & H SPORTS, LTD., 9725 Southwest Highway, Oak Lawn

February 24, 1995 A Bryco 9mm. semi-automatic pistol is sold to Thomas M. Sanders, 27, of 8540 S. Muskegon Ave. Sanders had purchased seven pistols and a shotgun during 1994 and 1995.

March 20, 1996 A 37-year-old janitor is accosted by two men on his way home from work near 52nd and Hermitage. One points a gun at his face. The stick-up men take \$7.90 from the victim.

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and flee. The offenders are arrested the same evening and the gun purchased by Sanders is found in their home. Steven Walters, 23, and Muhammad Gibson, 20, are charged with armed robbery. Gang investigators cannot find a Thomas Sanders at the address he provided the gun store. None of the other seven weapons he purchased has been recovered.

March 18, 1997

James F. Smith, 30, of 1341 S. Springfield Ave., buys a Smith & Wesson 9mm. semi-automatic pistol, one of eight handguns he purchases during 1995-1997.

February 22, 1998

An internal dispute among members of the New Breed Street gang results in a gangland-style shootout in a car wash at 4438 W. 5th Ave. Marcellus Boyce, 28, is killed and two others wounded. Numerous semi-automatic weapons are used during this incident, including the Smith & Wesson bought by James Smith at B & H Sports. Leroy "Lucky" Burton is charged with Boyce's murder. Subsequent investigation by Area 4 detectives reveals that James Smith is a member of the New Breed and that he frequently acts as an armed bodyguard for leaders of the gang.

ILLINOIS GUN WORKS, 7229 W. Grand Ave., Elmwood Park

June 16, 1995

A Bryco Arms 9mm. semi-automatic pistol is sold to Shaundra Oliver, 22, of 2854 W. Warren Blvd. She had purchased 10 semi-automatic pistols and 4 revolvers from two gun stores during the previous seven months.

August 2, 1996

The gun is recovered by Chicago police officers from the 10th District when they arrest a 23 year-old gang member following a high-speed car chase. Oliver later admits that she often buys guns for a friend who is a convicted drug dealer.

August 19, 1996

Renard Johnson, 26, of 3833 S. Langley Ave., buys a Cobray "Full Metal Jacket" 9mm. machine pistol, one of three 9mm. handguns he buys in 1996.

June 12, 1997

The Cobray is one of several used in a drive-by shooting at 633 E. Bowen Ave. Five members of the Black Disciples drive through a neighborhood controlled by a rival gang and

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open fire on a group of young men on the street. Two are struck. Their injuries are not fatal. All five offenders, admitted gang members in their late teens and early 20s, are arrested and charged with aggravated battery.

CHICAGO RIDGE GUN SHOP, 10349 Southwest Highway, Chicago Ridge

- November 16, 1996** Victor Jordan Caruth, 36, of 6920 S. King Dr., buys a Bryco Arms Model 59 9mm. semi-automatic pistol. Caruth purchases a total of six handguns during 1996.
- December 5, 1996** Ernest Jarrett, 28, is shot three times in the chest with the gun while he is leaving a fast-food restaurant at 435 E. 71st St. The shots were fired from a passing car by someone who threw the gun out and sped away.
- April 18, 1998** Two tactical officers from the 12th District respond to a call of a man with a gun at 1200 W. Roosevelt Rd. When they exit their car, a group of gang members begin firing at them. The officers call for help and the offenders are chased into the building. Three teenagers are arrested following a search of the building, which also turns up four of the gang's guns. One of the guns had been purchased by Caruth in 1996.

GUN WORLD, 421 E. Irving Park Rd., Bensenville

- June 30, 1997** An Imez 9mm. pistol is sold to Samuel Hwang, 24, of Skokie.
- October 7, 1997** Two 4th District police officers try to make a traffic stop at 87th and Muskegon. The driver flees the stolen 1983 Chevy Caprice on foot. The 9mm. pistol purchased three months previously by Hwang is found on the floor of the car.

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Office of the Mayor
Richard M. Daley
Mayor

November 12, 1998

Contact: Mayor's Press Office
(312) 744-3334

**GUN INDUSTRY FLOODS CHICAGO WITH ILLEGAL WEAPONS,
CITY AND COUNTY CHARGE IN LANDMARK \$433 MILLION LAWSUIT
Suburban stores willingly sell guns to undercover "gang members"**

Mayor Richard M. Daley announced today that Chicago and Cook County have filed a \$433 million lawsuit against the gun industry, charging it with flooding Chicago with illegal guns, knowing they will be used to murder, rob and terrorize Chicagoans.

The suit, first of its kind in the nation, was filed today in Cook County Circuit Court. It climaxed a three-month investigation in which Chicago police officers, posing as criminals, bought 171 guns from suburban gun shops, whose personnel repeatedly helped them evade gun laws.

Investigators also revealed that suburban gun stores were the source of many Chicago murder weapons, including the gun used to kill Chicago Police Officer Michael Ceriale last August 15.

"Gun manufacturers and retailers know exactly what they're doing," Mayor Daley said at a news conference at the Homan Square Police Facility, 3340 W. Fillmore St. "They knowingly market and distribute their deadly weapons to criminals in Chicago and refuse to impose even the most basic controls.

"In doing so, they put you, me, our families, our children and our police officers in grave danger."

The mayor added: "If money is the only language they understand, then money is the language we will use to make them understand that they have no business in Chicago.

"We're going to hit them right where it hurts -- in their bank accounts -- and we won't stop hitting until they stop flooding our streets with guns."

Named as defendants in the suit are 12 gun shops in suburbs ringing Chicago, 22 gun manufacturers and 4 gun distributors.

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The suit, intended to become a national test case, says the defendants have "created a public nuisance" because they "knowingly design, market and distribute firearms in order to facilitate their illegal entry into and possession in Chicago, where they are illegal to possess, and where they often are used in the commission of crimes.

"Defendants know and foresee that their conduct contributes to crime in Chicago, and creates an unreasonable threat to public health and safety," the lawsuit continues. "The defendants' conduct undermines the City's efforts to protect the public health, safety and welfare through stringent gun control ordinances which make it illegal to possess most types of guns in the City."

Chicago has some of the nation's most restrictive gun laws. They prohibit the private ownership of handguns unless they were registered prior to March 30, 1982. Under Mayor Daley Chicago, has led the nation in the confiscation of handguns, seizing and destroying more than 178,000 in the last 10 years.

Yet guns continue to flood the city because it is ringed by suburban gun shops, whose manufacturers and distributors supply them with many more guns than are necessary to serve a suburban clientele. The gun stores, distributors and manufacturers knowingly supply huge numbers of guns to the illegal Chicago market, the lawsuit contends.

"The gun manufacturers are saturating gun stores just outside Chicago's border with far more guns than the lawful gun market could possibly absorb, because they know there is a large, illegal market for guns in the city," Corporation Counsel Brian Crowe said.

"They know that the guns they're making and selling are being used for criminal purposes," Crowe said. "These guns are designed for easy concealment and for excessive firepower -- for street fighting, not hunting or self-protection."

City officials explained that the gun industry creates a public nuisance in Chicago comparable to a suburban industry spewing poison gas into the city.

"We hold polluters accountable for poisoning the environment," Mayor Daley said. "We hold liquor stores accountable for selling to minors. It's time to hold the gun industry accountable for the direct costs imposed on us."

The Mayor also countered "the myth that most guns used in crimes are stolen -- and therefore gun control is really a matter for police, not for the gun industry.

"In fact," he noted, "most guns used in crimes are purchased legally by straw buyers."

-MORE-

The undercover police officers easily purchased guns at the suburban gun shops, even after implying that they needed them to retaliate against others. The officers made it clear that they lived in Chicago, where handguns are illegal, and that they intended to transfer the guns to others. In many cases a gun buyer made it plain that he was buying the gun for someone who lacked a state Firearm Owners Identification Card.

Mayor Daley said the conduct of the gun shop personnel made it clear that the gun industry knows its products are being used illegally.

"I want to force the gun industry to sit down face-to-face with the family of Michael Ceriale and justify the system that put a gun in the hand of a 16-year-old, so he could shoot that brave young police officer working undercover to fight drug dealers and gangs," Mayor Daley said.

"I want them to sit down face-to-face with police officers all across America and explain why they are selling guns that can shatter police vests -- guns that can pierce the door of a police car -- and guns that can hold a hundred rounds of ammunition in a single clip.

"Let them spend a day, or a week, or a year at Schwab Rehabilitation Hospital, watching children cope with crippling spinal cord injuries because they just happened to get caught in the crossfire of gang-related gun violence."

The Mayor was joined at the news conference by Crowe, Cook County State's Attorney Dick Devine, Chicago Police Superintendent Terry Hillard and Commander Harvey Radney of the police Gang Investigation Section, which conducted the investigation.

The \$433 million in damages is a conservative estimate of gun-related costs incurred since 1994 by the Chicago Police Department, the Chicago Fire Department's emergency medical services, the City Law Department, Cook County Hospital and the Cook County criminal justice system. Last year, 570 people were murdered with guns in Chicago. Nationally, 35,957 people died from firearms in 1995. Of those, 15,835 were homicides.

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The 12 gun shops named as defendants are:

Bell's Gun & Sport Shop, 3315 N. Mannheim Rd., Franklin Park
B&H Sports, Ltd., 9725 Southwest Highway, Oak Lawn
Bob's Sports Headquarters, 8017 W. 79th St., Justice
Breit & Johnson Sporting Goods, Inc., 2724 N. Harlem Ave., Franklin Park
Chicago Ridge Gun Shop & Range, Inc., 10349 Southwest Highway, Chicago Ridge
Chuck's Gun Shop & Pistol Range, Inc., 14310 S. Indiana, Riverdale
Gun World, 421 E. Irving Park Rd., Bensenville
Midwest Sporting Goods, 8565 W. Plainfield Rd., Lyons
Sportsmen's Center/Illinois Gun Works, Ltd., 7229 W. Grand Ave., Elmwood Park
Shore Galleries, Inc., 3318 W. Devon Ave, Lincolnwood
The Sports Authority, 7720 S. Cicero Ave., Burbank
Suburban Sporting Goods, 2036 W. North Ave., Melrose Park

Manufacturers named as defendants are Beretta U.S.A. Corp.; Browning Arms Co.; Bryco Arms; Colt Manufacturing Co., Inc.; Davis Industries, Inc.; Glock, Inc.; H&R 1871, Inc.; International Armament Corp. d/b/a Interarms Industries, Inc.; Kel-Tec CNC Industries, Inc.; Lorcin Engineering Co., Inc.; Navegar, Inc. d/b/a Intratec; Phoenix Arms, Inc.; Smith & Wesson Corp.; Sturm, Ruger & Co., Inc.; Sundance Industries, Inc.; Taurus Firearms, Inc.; Hi-Point; Raven Arms, Inc.; Pietro Beretta Sp.A.; Glock GmbH; Carl Walther GmbH; and Forjas Taurus, S.A.

Distributors named as defendants are Jennings Firearms, Inc.; Faber Brothers, Inc.; Riley's, Inc.; and Ashland Shooting Supplies, Inc.

David Kairys of Temple University School of Law in Philadelphia is the City's legal consultant on the suit. The City also received assistance from the Johns Hopkins University Center for Gun Policy and Research; the Center to Prevent Handgun Violence and the Violence Policy Center, both in Washington, D.C.; David W. Stewart, professor of marketing at the University of Southern California; Philip J. Cook, director of the Terry Sanford Institute of Public Policy at Duke University. John Schmidt of the law firm of Mayer, Brown & Platt has volunteered to provide legal assistance to the City and County at no charge, along with other volunteer attorneys from that firm.

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High Court to Review Privacy Ruling But Declines Long-Distance-Phone Case

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

A Louisiana state-court judge ruled New Orleans may proceed with its trail-blazing lawsuit against the gun industry. District Court Judge Lloyd Medley Jr. of the Parish of Orleans ruled a pair of state statutes enacted last year specifically to block the New Orleans suit against the gun industry are invalid.

In a 21-page written opinion, Judge Medley concluded the state legislature tried retroactively and improperly to impair the city's "fundamental right" to file suit to try to hold the gun industry liable for the public costs of firearm violence.

The New Orleans suit, filed in October 1998, had been closely watched nationally because it led a wave of municipal litigation against the gun industry. The ruling, while only a preliminary development in one state, could have broader ramifications because the gun industry has pinned some of its hopes for defeating municipal lawsuits on statutes of the sort Judge Medley struck down.

"This is a very strong decision that should send a strong message to the National Rifle Association and the gun manufacturers that political might—the ability to enact these statutes—is not going to thwart our efforts," New Orleans Mayor Marc Morial said in an interview.

Judge Medley based his ruling on provisions of the Louisiana and U.S. constitutions, finding it is unfair for a state to try to kill an already-launched municipal legal action. The NRA heavily lobbied the Louisiana legislature to stop the New Orleans antgun suit. Lawmakers exceeded their authority, however, when they tried "to eliminate this lawsuit for the immediate benefit of a certain class of private citizens"—the gun companies—"not the general public welfare," the judge said.

A total of 29 cities and counties have sued the gun industry. Before this ruling, there had been preliminary rulings in four other suits, with judges dismissing actions filed by Miami-Dade County, Fla., Bridgeport, Conn., and Cincinnati. A Georgia state judge allowed a suit by Atlanta to proceed. Rulings on suits by other cities, including Chicago, Cleveland and Detroit, are expected soon.

Scott Delacroix, a New Orleans lawyer representing two of the largest and most influential defendants, Smith & Wesson Corp., a unit of Britain's Tomkins PLC, and Sturm, Ruger & Co., Southport, Conn., said in an interview his side will file an appeal with the Louisiana Supreme Court. Mr. Delacroix noted "overwhelming majorities of the Louisiana House and Senate" approved the antilawsuit statutes.

The defense lawyer also pointed out the 15 manufacturer defendants had reason to cheer the ruling. Judge Medley in passing noted New Orleans could proceed with its suit only on the theory firearms are defective products, in that they lack safety devices that would protect against misuse by children and criminals. The city tried to expand its legal attack in September to include a variety of other theories, including the notion guns create a "public nuisance," akin to industrial pollution. But Judge Medley said the exclusive basis in Louisiana for challenging gun makers is under state product-liability law.

It wasn't immediately clear how that part of the ruling will apply to the other defendants, a group of gun dealers and industry trade groups.

If the Louisiana Supreme Court upholds the ruling, the case will come back to the district court. The defendants would then have an opportunity to argue the city's product-liability theory is too flimsy to warrant a trial. The industry's arguments include the contention guns are legal products that function as they are intended and their manufacturers and retailers shouldn't be held responsible for the misuse of firearms by others.

By ROBERT S. GREENBERGER

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The Supreme Court agreed to review whether a South Carolina hospital is violating some pregnant patients' constitutional rights by testing them for drug use and then telling the police who tests positive.

In other action, the high court declined to review a lower-court decision that blocked plans by regional phone company U S West Inc. to market to its customers Qwest Communications International Inc.'s long-distance telephone services.

In the drug-testing case, 10 pregnant women sued the city of Charleston, S.C., which operated a program to detect and prosecute pregnant women using crack cocaine. Medical University of South Carolina, where the women sought obstetrical care, began working with the program in 1989. The hospital discontinued the program after the women's 1993 lawsuit was filed, awaiting resolution of the matter.

The women claimed the drug testing violated their Fourth Amendment protections against "unreasonable searches." The case will test the scope of the so-called special-needs exception to the Fourth Amendment that permits warrantless searches in special cases, such as to inspect for building-code violations. A U.S. district court in South Carolina ruled against the pregnant women, and the U.S. Court of Appeals for the Fourth Circuit, in Richmond, Va., upheld that ruling. The Supreme Court is expected to decide the case next year.

In their filing with the Supreme Court, the women warned that the Fourth Circuit's decision would "permit law enforcement or other governmental officers to engage in searches as a means of gaining evi-

dence for arrests and prosecutions, without a warrant or individualized suspicion, so long as the government can present a health or safety reason for its actions."

But the city of Charleston countered that, "In the balance, the Medical Center's special interest in protecting the health of its pregnant patients and their children significantly outweighed the minimal intrusion." The program is based on a state law that makes it a crime to deny proper care and attention in a way that endangers or could endanger a child.

A number of health groups joined in a friend-of-the-court brief in support of the women. In their filing, they said that "drawing on the trust inherent in the doctor-patient relationship to obtain bodily fluids for use as incriminating evidence is especially offensive to the Fourth Amendment's core personal privacy concerns."

(Ferguson vs. Charleston)

In the U S West case, the high court rejected an appeal by Denver-based U S West, which said the Federal Communications Commission erred when it blocked the marketing alliance in 1998. The FCC said the marketing plan violated the 1996 telecommunications reform law, which requires the Baby Bells to open their local markets to rivals before they are allowed to offer long-distance services in their own markets.

U S West intended to sell Qwest's long-distance services to its own customers, in order to provide them with local and long-distance calling services. The effort was challenged by other long-distance carriers, such as AT&T Corp. and MCI WorldCom Inc., which sued to block it. U S West has since agreed to be acquired by Qwest, the nation's No. 4 long-distance carrier, in a deal the two companies expect to complete within several months.

(U S West vs. FCC)

Separately, about 185 people were arrested outside the high court yesterday as protestors against the death penalty demanded a new trial for Mumia Abu-Jamal, a man sentenced to death for killing a Philadelphia police officer in 1981. The police arrested demonstrators who jumped a barrier to enter the plaza in front of the court, or sat in the street outside the building. Demonstrators were also arrested in San Francisco, the Associated Press reported.

Major Firms Propose Central Order System And Single Regulator

By MICHAEL SCHROEDER
And RANDALL SMITH

Staff Reporters of THE WALL STREET JOURNAL

Wall Street's largest broker-dealers have quietly lobbied the Securities and Exchange Commission to adopt a sweeping new market system that includes a central display of all stock quotes and a single self-regulating group.

While the proposal faces stiff opposition, and the SEC won't make any decision on changes to the market for months, it would, if adopted, reduce the importance of both the National Association of Securities Dealers' Nasdaq and the New York Stock Exchange by giving greater authority to broker-dealers and other market participants.

The proposals are outlined in a confidential "white paper" submitted to the SEC last month on behalf of five firms: Merrill Lynch & Co., Goldman Sachs Group Inc., Morgan Stanley Dean Witter, Edward Jones, and ABN Amro Holding NV's ABN Amro North America Inc. The 29-page document was submitted for the firms by Harvey Pitt, a prominent Washington attorney and a former SEC general counsel.

The document, drafted by firms calling themselves a "working group," was intended to offer the institutional Wall Street perspective to the SEC as it prepared to begin a dialogue with the industry on how the markets should be revamped. SEC Chairman Arthur Levitt has become increasingly concerned that today's markets are more fragmented because investors can place orders among a growing number of competing exchanges, electronic systems and stand-alone dealers. At issue is whether the proliferation is hindering investors' ability to get trades executed at the best price.

Yet some securities firms such as Charles Schwab Corp. oppose a device that would centralize stock trading into a single electronic order book, arguing it could stifle innovation. The clash of views between the Wall Street constituencies will be on display today as members of the Senate Banking Committee listen to views on the future of markets from representatives of several major securities firms and stock exchanges.

Any moves to revamp the markets will need the support of lawmakers. But Banking Chairman Phil Gramm (R., Texas) has warned Mr. Levitt to err on the side of less regulation and not to impose a vast new market framework. "A central market structure could be very anticompetitive," he told The Wall Street Journal. "I'm

concerned about it."

Last week, the SEC asked for comments in a concept release on six options for electronically linking markets together in ways that might make trading fairer. Mirroring the working group's proposal, the SEC said it might consider whether all price quotes should be visible to market professionals so that the best customer orders are executed first.

Some lawmakers are concerned that the SEC's thinking is being unduly guided by a few of the largest and most powerful Wall Street firms. "The SEC's concept release tracks a number of recommendations in the firms' paper," said a House Commerce Committee aide. "It gives us pause that the SEC would be contemplating market structure changes symbiotically with the biggest participants."

House Commerce Committee Chairman Thomas Bliley (R., Va.) said he has long had an interest in market structure and competition and likely will hold hearings soon on the relationship between the big firms and the SEC.

Secrecy Fuels Controversy

Fueling the controversy is the secrecy between the working group and the SEC. In a Jan. 14 cover letter to the draft, the firms requested that the SEC "keep this draft confidential, and that, once you receive the final version of this paper, you return (or otherwise dispose of) all copies of the draft."

Mr. Pitt said the request was made because the draft doesn't have the approval of all the members. The group's final proposal will be submitted as a comment letter responding to last week's SEC release, he said.

The debate over market structure isn't a simple one, pitting one side against another. There are several discrete groups of market participants with different agendas. The common thread is how each may be affected by rapid technological changes—both at traditional exchanges confronted by newer rival trading systems, and at traditional securities firms confronted by the rise of online trading by individual investors.

The New York Stock Exchange, for example, faces a huge challenge to its franchise of running the trading for the biggest stocks in the U.S. from faster, cheaper electronic rivals called electronic communications networks, or ECNs. It has already been forced to drop a rule curtailing the trading of New York Stock Exchange-listed stocks by its own member firms. The Nasdaq Stock Market, the Big Board's longtime rival, has made more advances on this front because it is already an all-electronic system linking securities dealers which trade its stocks.

As evidenced by the working group proposals, leading the market-structure debate are the big three traditional Wall Street securities firms: Goldman Sachs, Merrill Lynch, and Morgan Stanley. These firms are looking for electronic order executions that are faster and cheaper than available at the New York Stock Exchange, and their proposals could help them keep their longtime domination of stock trading based on their ties to institutional investors such as mutual funds and pension funds.

In calling for an overhaul, the working group advocates updating the existing "inefficient and obsolete" system that links

markets together—the so-called Intermarket Trading System operated by the exchanges and Nasdaq. The working group proposes upgrading the ITS technology and governance to create a "Super National Market System."

The new market would be built around a central order book with price-time priority, which means orders to buy a stock at a particular price would be executed across different markets in the order received, no matter which trading system they are placed on. That could effectively force firms such as Schwab to give other firms more access to their orders.

The big firms complain that their customers' orders to buy or sell at prices posted publicly on the exchanges may remain unexecuted while online brokers execute their own customers' orders at the same prices, even if they are received later. The online brokers contend that the big firms want to withhold their own larger institutional orders from any central limit-order book as well.

The loudest voice against the central limit-order book proposals has come from Schwab, which has the biggest share of the burgeoning market for online trading at discount commissions by individual investors. Schwab and other online brokers keep control over their customers' order flow either by executing the orders within their own trading operations, or by shipping them out to firms that pay for such orders. Schwab executives have publicly compared a central limit-order book to a Russian-style collective that would stifle innovation driven by competition.

New Framework Is Proposed

The working group also proposes a new regulatory framework to govern the linked market. The current system is dominated by regulatory arms of the NYSE and NASD, which operates Nasdaq. The system presents an inherent conflict because all broker-dealers and new electronic markets, such as Island ECN, must be licensed members of the NYSE and NASD, which are competing with their own members for trading business, the big firms argue.

The working group advocates a central independent industry regulatory body organized as a corporation. The governing board members should be expanded from exchanges and the NASD members to include broker-dealers, new electronic markets, and public members. Furthermore, the group proposes that the SEC eliminate "redundant and inconsistent" rules imposed by each of the self-regulatory arms of markets.

Separately, Mr. Levitt is scheduled to meet this afternoon with Rep. Dan Burton (R., Ind.), who has asked the SEC chairman to supply documents explaining what was discussed at a series of nonpublic meetings he held last year with the heads of large investment firms. Mr. Levitt's aides dismiss the suggestion that certain firms have undue influence. "We solicited the opinions of a broad cross-section of the marketplace and look forward to an open dialogue in these issues," said Annette Nazareth, director of the SEC's market-regulation division.



Journal Link: See the full text of the brokerage industry's proposed market reorganization in The Wall Street Journal Interactive Edition at <http://wsj.com>

The Associated Press State & Local Wire

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February 29, 2000, Tuesday, PM cycle

00:49 Eastern Time

SECTION: State and Regional

LENGTH: 680 words

HEADLINE: Judge throws out laws voiding New Orleans suit against gun industry

BYLINE: By ALAN SAYRE, AP Business Writer

DATELINE: NEW ORLEANS

BODY:

The Legislature moved quickly last year to ban New Orleans from suing gun manufacturers and sellers. The firearms industry is expected to move just as quickly to ask the Louisiana Supreme Court to reinstate the shield.

On Monday, Civil District Judge Lloyd Medley dealt the industry a blow by ruling unconstitutional laws passed by the lawmakers last year to protect the gun industry from local government lawsuits.

The Legislature changed the state's products liability law in favor of firearms makers, and barred cities from filing such suits.

The laws, strongly backed by Gov. Mike Foster and the National Rifle Association, were passed after New Orleans became the first city to file such a suit in October 1998. The city claimed gun makers should be held responsible for making products without adequate safety devices.

About 30 other cities and county governments followed with similar suits - including Atlanta, Miami-Dade County, Chicago, Cleveland, Cincinnati, Newark and Boston.

Rep. Steve Scalise, R-Jefferson, who sponsored the legislation, said Medley's decision would be appealed to the Louisiana Supreme Court. The state's highest court will take the appeal directly the issue focuses on state constitutional issues.

"I'm disappointed, but not surprised," Scalise said. "But I think the Supreme Court will uphold the will of the Legislature and the Second Amendment (right to bear arms)."

M. David Gelfand, an attorney for the city, said he was pleased with the decision. He said the

case has implications far beyond the gun industry.

"Any other favored group could come along and, with a majority of legislators, stop a suit in midstream because it has more popularity than the plaintiff in a suit," Gelfand said.

The change in the law barred suits against gun makers and sellers if the buyer of the gun used it in a way "inconsistent with the purpose for which it was intended," such as in a crime. The law also exempted makers and sellers of guns without safety devices, thus giving the industry immunity from damages stemming from accidental shootings.

The gun industry said the changes in the products liability law were merely "interpretative," but Medley said the new laws were substantive changes that could not be applied retroactively.

The judge also said the law violated a provision of the state constitution barring local or special laws dealing with civil and criminal cases, and stepped on New Orleans' broad authority under its home-rule charter.

Medley also rejected the industry's contention that the suit illegally stepped on the state's police power.

The judge also threw the question of federal rights into the mix, ruling that a retroactive ban violated the U.S. Constitution's due-process and equal-protection clauses, as well as similar provisions in the state constitution.

Mayor Marc Morial said the decision "vindicates what we have said all along: That the Legislature cannot pass retroactive laws, and that gunmakers should be treated like any other industry, subject to the same liability as other companies who manufacture products that are inherently dangerous."

So far, the cities' suits have had mixed success in courts. Judges dismissed state court suits filed by Bridgeport, Conn. and Cincinnati, but other judges have allowed suits filed by Atlanta and Chicago to proceed and ordered the gun industry to open its files. Georgia also has passed an anti-suit law.

Gelfand said the question of state laws barring city suits would vary from state to state, but the ruling dealing with federal constitutional rights could have a wide-ranging effect.

Gun backers also have fought back in court. Twenty-three city leaders, including New Orleans Mayor Marc Morial, were accused in a lawsuit filed in December of conspiring to take away the rights of Americans to own firearms and defend themselves.

The suit, filed by Second Amendment Foundation, alleges the mayors intended to bankrupt federally licensed gun manufacturers and dealers by forcing them to pay to defend themselves in court.

LANGUAGE: ENGLISH

LOAD-DATE: February 29, 2000

February 25, 2000 Friday, CHICAGO SPORTS FINAL EDITION

SECTION: METRO CHICAGO; Pg. 1; ZONE: N

LENGTH: 823 words

HEADLINE: CITY SEEKS MORE TIME IN GUN INDUSTRY SUIT;
ATTORNEYS TELL JUDGE OF NEW DATA FROM ATF

BYLINE: By Todd Lighty, Tribune Staff Writer.

BODY:

Seeking to revive its legal assault against the firearms industry, Mayor Richard Daley's administration on Thursday again asked for more time to strengthen its case aimed at holding 40 gun manufacturers, dealers and distributors accountable for gun violence.

Lawyers for the city told Circuit Judge Stephen A. Schiller in a brief hearing that they recently obtained information from federal agents that they believe bolsters their case and asked to amend their lawsuit.

The city's legal maneuver comes just two weeks after Schiller dealt the Daley administration a blow by dismissing a major component of their lawsuit. The city's request was quickly branded a last-ditch effort by lawyers for the firearms industry, who have noted that similar legal challenges have been thrown out elsewhere.

Schiller granted the city 30 days to file its amended complaint but cautioned that time was running out on its 15-month-old lawsuit that contends the gun industry violates public nuisance laws.

Larry Rosenthal, a deputy corporation counsel, said the new information comes from the Bureau of Alcohol, Tobacco and Firearms, which traces stolen guns and guns used in crimes.

For the first time, Rosenthal said, the ATF has provided the city with the names of the manufacturers, dealers and distributors responsible for most of the guns used in crimes in the city, and the city may name additional defendants to the suit.

"The manufacturers have known for years that a small group of bad apples are responsible for the guns used in crimes," Rosenthal said. "Rather than cut off the bad apples, they continue to supply them."

But James Dorr, lawyer for three of the manufacturers being sued by the city and Cook County, said ATF agents do not provide manufacturers with tracing information or provide the details of law enforcement investigations. That information is shared, he said, with other police agencies.

"ATF conducted all of these investigations. They know whose guns have been traced," Dorr said. "The only way to find out if someone did something wrong is to conduct a criminal investigation."

The anti-**gun lawsuit**, filed in November 1998 and championed by the mayor, argues guns have created a public nuisance, threatening residents' health and safety. Gun manufacturers should be treated like polluting factories or bar owners who serve minors, the city alleges.

Chicago, like several other municipalities nationwide, is trying to collect damages from the industry to cover the cost of medical, police and other services required as a result of handgun violence.

But municipalities have struggled in their legal challenges against the firearms industry.

In December, judges in Florida and Connecticut dismissed similar lawsuits. As in Chicago, officials from Bridgeport, Conn., and Miami-Dade County claimed negligence and public nuisance in their suits.

Chicago first withdrew and amended its suit last year to bring in another element: "negligent entrustment."

Negligent entrustment suits claim, in part, that someone negligently entrusted something to someone else, such as a car to a drunken person or, in the city's argument, guns to suspected criminals.

On Feb. 10, Schiller dismissed the negligent entrustment element of the case. He reserved ruling on whether guns were a public nuisance.

In the newly amended suit, Rosenthal said the city and county likely would revive the negligent entrustment element and make new allegations based on data from ATF's National Tracing Center.

Whenever police seize a firearm, ATF can trace the gun from manufacturer to distributor, dealer and buyer.

The city will spend the next several weeks analyzing the trace data. But Rosenthal said a preliminary review indicates that about 1 percent of Chicago-area retailers sell about 60 percent of the guns used in crimes.

Rosenthal said this tracing process puts manufacturers and others on notice their guns

were used in crimes.

"The new information that the (city) has received strongly corroborates the factual allegations in the current complaint that the defendant manufacturers, distributors and dealers knowingly supply an underground market in firearms, and unreasonably facilitate the illegal possession and use of firearms in Chicago," according to a city motion seeking to amend the complaint.

Irving B. Levinson, a lawyer for the Sports Authority store, had been prepared to argue Thursday that the city's case be dismissed when the city changed course. He told Schiller he was concerned the case was dragging on.

"I find it very disturbing that after all these months . . . here we are being told there's a new complaint out there," Levinson said.

Michael A. Forti, a deputy corporation counsel, dismissed the suggestion that the legal maneuver was a last grasp by the city.

ATF authorities provided the new, vital information just 10 days ago, Forti said. "This isn't last-ditch at all," he said.

LANGUAGE: ENGLISH

LOAD-DATE: February 25, 2000



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Firearms Litigation:

Current Cases

Adm -
Ct. Scts

Twenty-five municipalities have filed suit against the gun industry to recover damages for inadequate safety devices and negligent distribution of their products. A summary of the recently filed cases follows.

ATLANTA

City of Atlanta v. Smith & Wesson Corp., No. 99vs0149217J
(Ga. Cir. Ct. filed Feb. 4, 1999).

BOSTON

City of Boston v. Smith & Wesson Corp., No. 99-2590C
(Mass. Sup. Ct. Suffolk County filed June 3, 1999).

BRIDGEPORT

City of Bridgeport v. Smith & Wesson, Inc. et al., No. CV-99-0361279
(Conn. Super. Ct., filed January 27, 1999).

CAMDEN CITY

City of Camden v. Beretta U.S.A. Corp., No. 451099
(Sup. Ct. Camden County filed June 21, 1999).

CAMDEN COUNTY

Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp., No. 99-2518
(D.N.J. filed June 1, 1999).

CHICAGO

City of Chicago and County of Cook v. Beretta U.S.A. Corp., No. 98-CH15596
(Cir. Ct. Cook County filed Nov. 12, 1998.)

CINCINNATI

City of Cincinnati v. Beretta U.S.A. Corp., No. A99-02369
(Ohio Ct. C.P. Hamilton County filed April 28, 1999).

CLEVELAND

City of Cleveland v. Hi-Point Firearms, No. CV-99-381897
(Ohio Ct. C.P. filed April 8, 1999).

DETROIT & WAYNE COUNTY

Archer v. Arms Technology, Inc., No. 99912658-NZ
(Mich. Cir. Ct. Wayne County filed April 26, 1999)

&

McNamara v. Arms Technology, Inc., No. 99912662-NZ
(Mich. Cir. Ct. Wayne County filed April 26, 1999).

MIAMI-DADE COUNTY

Miami-Dade County v. Arms Technology, Inc., No. 99-01941-CA-06
(Fla. Cir. Ct. filed Jan. 27, 1999).

NORTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. 303753
(Sup. Ct. San Francisco filed May 25, 1999).

NEW ORLEANS

City of New Orleans v. Smith & Wesson Corp., No. 98-18578
(Civ. D. Ct. Parish of Orleans filed Oct. 30, 1998)

NEWARK

Sharpe v. Arcadia Machine & Tool, Inc., No. ESX-L-6059-99
(Sup. Ct. Essex County filed June 9, 1999).

SOUTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. BC210894
(Sup. Ct. Los Angeles filed May 25, 1999).

ST. LOUIS

City of St. Louis v. Cernicek, No. CV-992-01209
(Cir. Ct. St. Louis. 22nd. Jud. Dt. filed April 30, 1999).

ATLANTA

City of Atlanta v. Smith & Wesson Corp., No. 99vs0149217J
(Ga. Cir. Ct. filed Feb. 4, 1999).

The City of Atlanta, Georgia, has filed a suit alleging products liability and negligence against members of the firearm industry to recover damages for the manufacture, sale, marketing, promotion and distribution of guns which are defective, unreasonably dangerous and negligently designed under Georgia law.

The lawsuit, similar to one filed in Miami-Dade County, Florida, names 14 handgun manufacturers and 3 firearm industry trade associations as defendants, including inter alia, Smith & Wesson Corp.; Sturm, Ruger & Company, Inc.; Glock, Inc.; Beretta U.S.A.; Davis Industries; Colt's Manufacturing Company; and American Shooting Sports Council, Inc.

The complaint alleges that the defendant manufacturers are liable for (1) defective and negligent design because the risks of the product design outweigh the benefits; (2) failing to provide adequate warnings as to the risks of guns; and (3) failing to include certain safety devices in design. These safety devices include devices that would prevent firearms from being fired by unauthorized users, alert users that a round is in the chamber, and prevent guns from being fired when the magazines are removed from them. (Compl. at 21.) The City of Atlanta argues that the inclusion of such safety devices would prevent many adolescent suicides, unintentional shootings by children and homicides by unauthorized users of guns.

The complaint also alleges that certain firearm trade associations and gun manufacturers are negligent because they have tacitly agreed with, colluded with and cooperated with one another to fail to develop and implement safety features and to inadequately warn users of the risks of guns. (Compl. at 24.)

The City of Atlanta asserts that, as a result of gun violence, the city has been obligated to pay millions of dollars to enhance police protection and emergency health services and has lost substantial tax revenue because of lost productivity of those citizens injured.

Atlanta Mayor Bill Campbell filed the lawsuit on behalf of the city on February 4, 1999, in the state court of Fulton County. Mayor Campbell announced that "today we act to hold gun manufacturers accountable -- companies that create instruments of destruction -- for their failure to make products safer and to warn of their inherent danger." *Announcement of City of Atlanta Filing a Lawsuit*, (Office of the Mayor, Atlanta, Ga.) Feb. 4, 1999, at 1. Mayor Campbell stated that the lawsuit is about protecting children, not about the city budget or the crime rate. *See id.*

After the City of Atlanta filed this lawsuit, Governor Roy Barnes signed into law a bill that makes Georgia the first state to prohibit its cities and counties from filing product liability suits against the firearm industry. The bill affects any future or pending suit. At this time, it is unclear how Georgia's new law will affect the Atlanta suit.

BOSTON

City of Boston v. Smith & Wesson Corp., No. 99-2590C
(Mass. Sup. Ct. Suffolk County filed June 3, 1999).

The City of Boston, Massachusetts, and the Boston Public Health Commission have filed a lawsuit against thirty-one gun manufacturers, distributors and industry trade associations, alleging public nuisance, negligent marketing and distribution, negligence, unjust enrichment and breach of warranty.

The complaint was filed on June 3, 1999, in the Suffolk County Superior Court, Massachusetts, by City of Boston Mayor Thomas Menino. At a press conference at City Hall, Mayor Menino announced, "It's high time the gun industry started to take responsibility for the toll its products take on the public health. As I look around our City and our nation - I ask the Court to decide - how many more deaths, suicides and assaults will be committed before we crack down on the gun industry?" *Mayor Menino Files Lawsuit Against Gun Industry: Boston Becomes 20th City to Prepare Gun Litigation* (Office of the Mayor, Boston, Mass.), June 3, 1999. Manufacturers named as defendants in the lawsuit include, *inter alia*, Smith & Wesson, Corp.; Beretta U.S.A. Corp.; Glock Corp.; Davis Industries Corp.; Sturm, Ruger & Co.; Hi-Point Firearms Corp.; and Harrington & Richardson Corp.

According to the complaint, the defendants have designed, manufactured, marketed and distributed firearms, which lack adequate safety features and warnings, in a manner that permits the acquisition of firearms by unauthorized and irresponsible persons, including children and criminals, through an illegal, secondary firearms market. (Compl. at 1-2.) The defendants, through their conduct and business practices, have allegedly continuously supplied and maintained this illegal, secondary firearms market.

In particular, thousands of guns have entered the illegal, secondary firearms market through methods of diversion, which include straw purchasing, multiple sales, sales by kitchen table dealers, sales at gun shows and theft from retail dealers who have failed to provide adequate security of their premises. (Compl. at 7-8.) The defendant firearms manufacturers take no action to stop or limit these practices from occurring. Instead, the defendants continue to supply their products to the gun dealers and retailers who participate in these practices.

The plaintiffs also allege that the design of the defendants' guns is unsafe and defective because it fails to incorporate feasible safety features, including magazine-disconnect safeties and chamber load indicators, and fails to implement safer gun designs, including "personalized" gun technology, which would prevent unauthorized users from firing their products. (Compl. at 9-10.) In addition, the plaintiffs claim that the defendants have failed to issue adequate warnings or instructions alerting consumers about the risks of guns and of the importance of proper gun storage. As a result of the unsafe and defective design of defendants' guns and the lack of adequate warnings or instructions issued, thousands of unintentional shooting deaths and injuries and thousands of adolescent suicides, homicides and other crimes occur. (Compl. at 9-10.)

In addition, the plaintiffs claim that the defendants have made false and deceptive advertising claims regarding the safety of firearms within the home. (Compl. at 11.) Defendants have allegedly advertised that having a firearm within the home increases one's protection and security while knowing that studies and statistics show that home ownership of guns actually increases the risk of harm to firearm owners and their families. (Compl. at 11.)

In the first count of the complaint, the plaintiffs allege that the defendants are liable for public nuisance because their ongoing conduct creates and supplies an illegal, secondary firearms market and results in injury and death to the residents of the City of Boston, thereby causing a significant interference with the public health, safety and general welfare. (Compl. at 12.) Plaintiffs claim that the defendants' ongoing conduct of defectively designing and distributing unsafe firearms that do not incorporate essential safety features, failing to adequately warn of the risks of guns and making false and deceptive advertising statements concerning the safety of having guns within the home has also contributed to the creation and maintenance of a public nuisance. (Compl. at 12.)

In the second count of the complaint, the plaintiffs allege that the defendants are liable for negligent marketing and distribution because they have failed to exercise adequate supervision or control over the distributors and dealers who sell their products to the public and have marketed and distributed their products in a manner which permits the acquisition of firearms by unauthorized and irresponsible persons. (Compl. at 13.) This conduct violates the defendants duty of care to market and distribute their products in a responsible manner so as not to create an unreasonable risk of harm to the residents of the City of Boston. As a result of the breach of their

duty of care, the plaintiffs claim the defendants have proximately caused harm to the City of Boston and its residents. (Compl. at 13-14.)

In the third and fourth counts of the complaint, the plaintiffs allege that the defendants are liable for breach of warranties. Defendants have allegedly breached their implied warranties of merchantability of fitness for a particular purpose because they have manufactured, marketed and sold defectively designed firearms that fail to incorporate feasible safety features, thereby making their products unreasonably dangerous. (Compl. at 14.) Defendants have also allegedly breached their warranties by failing to adequately warn or instruct consumers as to the risks associated with the use, handling and storage of firearms. (Compl. at 15.)

In the fifth count, the plaintiffs allege that the defendants are liable for negligence because they have breached their duty of care to the residents of Boston by negligently designing, marketing and distributing firearms, which do not contain adequate safety devices or warnings, in a manner that permits the acquisition of firearms by unauthorized and irresponsible persons, including criminals and juveniles. (Compl. at 16-17.)

In the sixth count, the plaintiffs allege that the defendants are liable for unjust enrichment because they have reaped substantial profits from the sale and transfer of guns to unauthorized or prohibited purchasers, the sale of unreasonably dangerous firearms and sales based on false and deceptive advertising at the City's expense. (Compl. at 18.) While the defendants have profited from the sale of firearms to prohibited persons, the plaintiffs claim the City has been forced to pay for the costs resulting from the use of those guns, including police services, emergency services, social services and health care. (Compl. at 18.) Plaintiffs also claim to have lost substantial tax revenue as a result of individuals being injured by guns and diminished property values.

The City of Boston and the Boston Public Health Commission will be represented in the lawsuit by the Boston Public Health Commission Office of the General Counsel and the firms of Brown, Rudnick, Freed & Gesmer; Lieff, Cabraser, Heimann & Bernstein; Sullivan, Weinstein & McQuay; and Cohen, Milstein, Hausfeld & Toll, as well as The Center to Prevent Handgun Violence.

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BRIDGEPORT

City of Bridgeport v. Smith & Wesson, Inc. et al., No. CV-99-0361279
(Conn. Super. Ct., filed January 27, 1999).

The City of Bridgeport, Connecticut has filed a lawsuit against members of the firearm industry alleging that the handgun industry has facilitated the flow of illegal weapons to criminals and has failed to implement available safety devices in their products.

The city has filed a lawsuit against gun manufacturers and sellers, pawn shops, firearm trade associations and gun retailers to recover the expenses incurred by the city from handgun violence, including health care, police and social service costs and reduced property values. Manufacturers named as defendants in the lawsuit include, *inter alia*, Smith & Wesson, Inc.; Sturm, Ruger & Co.; Beretta U.S.A. Corp.; Colt's Manufacturing Co.; Glock, Inc.; Bryco Arms; and B.L. Jennings, Inc.

Specifically, the City of Bridgeport's lawsuit alleges violations of the Connecticut Unfair Trade Practices Act, public nuisance, products liability, civil conspiracy, unjust enrichment and negligence. The complaint first alleges that the defendants are liable under common law negligence and under the Connecticut Products Liability Act, Conn.Gen.Stat. §52-572, for the negligent design, manufacture, marketing and sale of their products because those products failed to incorporate readily available safety devices and failed to provide adequate warnings or instructions regarding the dangerous nature of guns. The city claims that alternative safety designs are available, including devices that would alert users that a round is in the chamber, prevent weapons from being fired when the magazine is removed and prevent weapons from being fired by unauthorized users by way of self-locking features. *See* Complaint at 16, *Bridgeport*, No. CV-99-0361279.

Secondly, the complaint also alleges that the defendants have violated the Connecticut Unfair Trade Practices Act, Conn.Gen.Stat. §42-110b(a), because they engaged in unfair and deceptive advertising and sales practices. The city asserts that the defendants engaged in unfair and deceptive advertising practices, including misrepresenting the dangers of guns by falsely

advertising that home ownership of guns increases home safety and security . . . while knowing that home ownership of guns actually increases the risk of homicides, suicides and accidental injuries or death. *See* Complaint at 20. The city also alleges that the defendants have engaged in unfair and deceptive sales practices by making multiple sales of firearms to individual buyers who will resell or use the guns in the commission of crimes and by selling guns that do not incorporate feasible safeties and self-locking devices that would prevent misuse by unauthorized users. *See id.* at 21.

Next, the complaint alleges that the defendants have created and maintained a public nuisance by marketing, selling and distributing guns to persons who resell those guns into the illegal handgun market. Defendants' conduct results in a higher level of crime, death and injury to the residents of Bridgeport, thereby causing a significant and unreasonable interference with the public health, peace, comfort and convenience.

In addition, the complaint alleges that defendants have acted in conspiracy among themselves by engaging in unlawful acts by failing to develop and implement safety features, failing to issue adequate warnings as to the risks of guns, and failing to implement procedures that would have prevented their guns from ending up in the underground market and used in the commission of crimes. *See id.* at 32, 33. The city also asserts that the defendant gun retailers conspired with the buying public by making multiple sales of handguns, selling guns to individuals who will illegally transfer or resell those handguns, and selling guns even when the buyer's words or conduct indicated that they would illegally resell or transfer those guns. *See id.* at 33.

Finally, the complaint alleges that the defendants have been unjustly enriched at the expense of the City of Bridgeport by the sale of guns in and around the city. While the defendants have gained significant profits from the sale of firearms, the city has been forced to increase expenditures for medical care, emergency personnel, police investigations, human services, courts and prisons. *See id.* at 34. The city has also lost tax revenues due to lost productivity of those injured and has suffered reduced property values. *See Id.*

On January 27, 1999, Bridgeport Mayor Joseph Ganim filed the lawsuit on behalf of the city, announcing "For too long Bridgeport taxpayers and residents have been responsible for the cost of handgun violence . . . By taking this action, we are saying to the handgun industry, 'From now on, you are responsible for the costs associated with your dangerous products.'" Myron Levin, *Gun Makers Face 2 More Lawsuits from Cities*, Fresno Bee, January 28, 1999. The lawsuit seeks to obtain injunctive relief and to recover the monetary expenses incurred by the city as a result of gun violence.

The Legal Action Project of the Center to Prevent Handgun Violence, along with Updike, Kelly & Spellacy, P.C. and the Bridgeport City Attorney's Office, is acting as co-counsel to the City of Bridgeport.

CAMDEN CITY

City of Camden v. Beretta U.S.A. Corp., No. 451099
(Sup. Ct. Camden County filed June 21, 1999).

The City of Camden has filed suit against twenty-two members of the gun industry, alleging that the defendants created a public nuisance, negligently designed their products, failed to adequately warn consumers of the risks associated with gun ownership and use, facilitated the creation and continuation of an illegal, secondary firearms market and violated the New Jersey Consumer Fraud and Products Liability Acts.

The suit was filed in the Superior Court of New Jersey, Camden County, on June 21, 1999. Named defendants in Camden City's suit include, *inter alia*, Beretta U.S.A. Corp.; Bryco Arms Corp.; Colt's Manufacturing Corp.; Glock, Corp.; Navegar Inc.; Smith & Wesson Corp.; and Sturm, Ruger & Co. Corp. The City will be represented in its lawsuit by the City Attorney's Office, The Center to Prevent Handgun Violence, and the firms of Trujillo, Rodriguez & Richards, LLC; Cohen, Milstein, Hausfeld & Toll; Lieff, Cabraser, Heimann & Bernstein; and Kairys, Rudovsky, Epstein, Messing & Rau.

The City alleges that it is subject to numerous injuries and deaths each year because of the defendants' "unsafe products and irresponsible marketing." (Compl. at 3.) According to the City, these injuries and deaths place economic burdens on Camden City in the form of increased expenditures on emergency and law enforcement services, health care and preventive and protective services, as well as decreased property values and lost tax revenues.

In count one, the plaintiff alleges that the defendants have created a public nuisance by creating and supplying the illegitimate, secondary firearms market; designing and distributing unsafe guns,

which lack essential safety features that would prevent unauthorized use; failing to adequately warn consumers of the risks associated with the use, handling, storage and operation of their guns; and falsely advertising and promoting their products. (Compl. at 21-22.) Plaintiff claims that this conduct has interfered with the right of Camden City's citizens to be free from "avoidable injury and death" and has damaged the public health, safety and general welfare. (Compl. at 21.)

In count two, the plaintiff alleges that the defendants are liable for violation of the New Jersey Consumer Fraud Act (NJCFRA) §§ 56:8-1 *et seq.* by engaging in "unconscionable commercial practices, deception, fraud, false pretense, false promise and misrepresentation." (Compl. at 22.) This "unconscionable" conduct on the part of the defendants includes: (1) marketing, distributing and selling their products in a manner likely to cause harm to young children and other residents of Camden City; (2) marketing, distributing and selling their products in a manner likely to contribute to criminal activity, homicides, suicides and accidental deaths and injuries; (3) falsely advertising ownership of their products as a means of increasing home safety despite knowledge that home ownership of guns actually increases the risk of injury or death in the home; (4) selling excessive numbers of guns to individual buyers despite knowledge that all of the guns in multiple sales are not intended for individual use; and (5) selling guns that fail to incorporate available safety devices, such as safeties and self-locking devices. (Compl. at 23.) As provided in the NJCFRA, the plaintiff seeks reimbursement of "all ascertainable losses," in addition to treble damages. (Compl. at 24.)

In count three, the plaintiff alleges that the defendants negligently marketed and distributed their products by failing to take "reasonable steps to reduce the risk of their products being sold to persons likely to misuse them." (Compl. at 24.) Such reasonable steps by defendants might have included limiting straw purchases, prohibiting or restricting sales to kitchen table and corrupt dealers, inhibiting multiple purchases, inhibiting diversion of their guns at gun shows, requiring distributors and dealers to secure their guns from theft, manufacturing their products in a manner that would prevent serial number obliteration, inhibiting gun trafficking from states with weak gun control laws to areas with stronger gun control laws, supervising distributors and dealers to prevent acquisition by unauthorized users and marketing their products in a manner that conveyed the dangers associated with gun use and ownership. (Compl. at 24-25.) According to the plaintiff, the defendants' failure to take these precautions constituted a breach of their duty of care to market and distribute their products in a responsible manner. In addition, the plaintiff claims the defendants negligently marketed their products by falsely claiming that gun ownership would enhance household security. (Compl. at 25.)

Plaintiff alleges in count four that the defendants violated the New Jersey Products Liability Act (NJPLA) §§ 2A:58C-1 *et seq.* by defectively designing their products. (Compl. at 26.) Plaintiff claims the defendants' products were not "reasonably fit, suitable or safe" for their intended purpose because they failed to incorporate designs that would: (1) prevent them from being fired by unauthorized users; (2) increase the pressure required to activate the trigger; (3) alert users that a round is in the chamber; (4) prevent them from being fired after the magazine has been removed; and (5) inhibit their illegal sale and distribution. (Compl. at 27.) Defendants were allegedly aware of the gravity of the injuries that would result to Camden City citizens as a result of these defects and could have reduced these injuries by incorporating the above-described, feasible designs. (Compl. at 27.)

In count five, the plaintiff alleges that the defendants violated the NJPLA by failing to warn consumers about their guns' "dangerous propensities." (Compl. at 28.) Plaintiff claims the defendants' products should have included warnings about the risks posed to children by guns, proper gun storage, the likelihood of criminal use of guns following their theft, the possibility that a round of ammunition may be housed in the chamber, the possibility that the gun could fire despite magazine removal, the lack of safety devices on their guns, the importance of training to ensure safe handling of guns and the fact that household gun ownership increases the risk of injury to household members. (Compl. at 28.) Instead of including warnings about these dangers, the plaintiff alleges that the defendants actively promoted their products as safe and as a means of increasing household safety. (Compl. at 29.)

Plaintiff alleges in count six that the defendant manufacturers, distributors and dealers are liable for negligent design and failure to warn. (Compl. at 29.) The plaintiff claims the defendants' products are negligently designed because they lack safety devices, which would prevent unauthorized use, accidental discharge and illegal sales and distribution. (Compl. at 30.) The plaintiff also alleges that the defendants are liable for failure to warn because they failed to adequately alert consumers about the potential risks of their products. (Compl. at 30-31.) Furthermore, the defendants allegedly acted in concert to prevent the development and implementation of safety features and other means to prevent the unauthorized use of their products, as well as in their failure to issue adequate warnings. (Compl. at 31.)

The plaintiff alleges in count seven that the defendants are liable for unjust enrichment at the City of Camden's expense. (Compl. at 31-33.) Defendants have allegedly profited from the sale and

transfer of their guns to unauthorized users, the sale of defective and unreasonably dangerous guns and gun sales prompted by their deceptive advertising. (Compl. at 31.) The plaintiff claims it has been and will continue to be forced to bear the economic burden and negative consequences of the defendants' conduct and seeks monetary compensation, apportioned among defendants under a market share liability theory, for all of its expenditures resulting from the defendants' alleged conduct. (Compl. at 32-33.) In addition to monetary compensation, the plaintiff seeks injunctive relief requiring defendants to implement standards for gun dealers and distributors who sell their guns, implement appropriate safety devices on all of their products, fund a public education campaign to inform Camden City citizens about the dangers of guns and fund a violence prevention program in each school and correctional facility in Camden City. (Compl. at 34.) Finally, the plaintiff seeks punitive damages to deter future intentional and reckless conduct by defendants that would endanger Camden City residents. (Compl. at 34.)

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CAMDEN COUNTY

Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp., No. 99-2518
(D.N.J. filed June 1, 1999).

The Camden County Board of Chosen Freeholders has filed a lawsuit alleging public nuisance, products liability, negligence, assault and intentional interference with an economic advantage against members of the firearms industry.

This suit was filed on June 1, 1999, in the United States District Court for the District of New Jersey, Camden Vicinage, by the Camden County Board of Freeholders. Camden County seeks injunctive relief and compensatory, punitive and treble damages for the harm incurred by the county and its citizens as a result of the defendants' alleged conduct. Firearms manufacturers named as defendants in the suit include, *inter alia*, Beretta U.S.A. Corp.; Bryco Arms, Inc.; Colt's Manufacturing Co.; Glock, Inc.; Navegar, Inc.; Raven Arms, Inc.; Smith & Wesson Corp.; and Taurus International Manufacturing, Inc. Camden County is being represented in the suit by the Office of Camden County Counsel.

According to the plaintiff, the defendants have oversupplied the national firearms market with their products in areas that maintain weak gun control laws, knowing that these weapons will be illegally possessed and used in stricter gun control jurisdictions, including Camden County. (Compl. at 9.) In addition, the defendants have allegedly permitted the sale of certain firearms, including assault weapons, to Camden County residents in jurisdictions outside of Camden, knowing that it is illegal to use or possess such firearms in the State of New Jersey. (Compl. at 9.) The plaintiff claims that the defendants, through their marketing and distribution practices, which include sales to non-dealers, non-residents, straw purchasers, dealers with multiple criminal traces and dealers who sell dangerous firearms at gun shows, have ensured the continued existence of an illegal, secondary firearms market in Camden County. (Compl. at 10.)

In the complaint, the plaintiff also claims that the defendant manufacturers have designed and marketed firearms, including firearms whose design features focus on concealability, rapid fire and high capacity magazines, with the intent of appealing to those who would use their product for criminal or dangerous purposes. (Compl. at 11.)

In addition, the plaintiff asserts that the defendants have manufactured and distributed firearms that are defective because they fail to incorporate adequate warnings, fail to prevent use by unauthorized persons, fail to prevent accidental discharges resulting from a round housed in the chamber, permit ready use of large ammunition magazines, permit ready concealability and allow for the unreasonably rapid discharge of bullets. (Compl. at 17.) The plaintiff alleges that the defendants knew their defective designs promoted criminal activity; caused physical, emotional and economic injury to Camden County residents; jeopardized the public health and safety; and caused the County to spend substantial amounts of money on alleviating these harms. (Compl. at 18.)

In the first count of the complaint, the plaintiff alleges that the defendants are liable for public nuisance because their ongoing conduct of causing the presence of illegal firearms, defective firearms and firearms linked to violence and crime in Camden County has unreasonably interfered with the public's right to enjoy their private property and the public land of Camden County and has endangered the public's health, safety and welfare. (Compl. at 19.) Furthermore, the defendants' ongoing conduct has allegedly caused the County to spend large amounts of its financial resources on abating the harms caused by these firearms. (Compl. at 19.)

In the second count, the plaintiff alleges that the defendants are liable for manufacturing and selling defective firearms which are not reasonably fit, suitable or safe for their intended purposes. (Compl. at 20.) Plaintiff claims these firearms are defective because they possess features that permit ready concealability, use of large ammunition magazines and fail to provide adequate warnings and prevent unauthorized use. (Compl. at 20.) Further, certain of these firearms possess semi-automatic features, which allow for the rapid discharge of bullets, permit user modifications to produce automatic function, and fail to incorporate safety features to prevent accidental discharges when a round is housed in the chamber of the gun. (Compl. at 20.) According to the plaintiff, technically feasible, alternative designs existed that would have corrected these defects without substantially impairing any legitimate function of the firearms. (Compl. at 20.) These defective firearms have allegedly subjected the residents of Camden County to innumerable harms, including suicides, homicides and accidental injuries and deaths, and has subjected the County to the costs associated with these harms.

In the third count of the complaint, the plaintiff alleges that the defendants are liable for negligence because they have breached their duty of reasonable care to the residents of Camden County by negligently, carelessly and recklessly marketing and distributing firearms linked to crime and violence, illegal firearms and defective firearms to persons residing in or entering Camden County. (Compl. at 22.)

In the fourth count, the plaintiff alleges that the defendants are liable for assault because the proliferation of firearms in Camden County, promoted by the defendants' conduct, has led residents to apprehend an immediate threat of injury and bodily harm, including suicide, homicide and accidental injury and death. (Compl. at 22-23.)

In the fifth and final count of the complaint, the plaintiff alleges that the defendants are liable for intentional interference with an economic advantage because their conduct has forced the County to spend its resources on controlling and abating the harms caused by the presence of illegal and defective firearms instead of financing the economic development and expectations of the County. (Compl. at 23-24.)

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CHICAGO

City of Chicago and County of Cook v. Beretta U.S.A. Corp., No. 98-CH15596
(Cir. Ct. Cook County filed Nov. 12, 1998.)

On November 12, 1998, the City of Chicago and Cook County filed suit against members of the gun industry alleging that the practices of gun manufacturers, distributors, and dealers unjustifiably disrupt public safety and health, constituting a public nuisance. Defendants in the suit are 12 gun shops, 4 gun distributors, and 22 gun manufacturers, including *inter alia*, Beretta U.S.A.; Bryco Arms; Colt's Manufacturing Co.; Davis Industries, Inc.; Glock, Inc.; Navegar, Inc.; Raven Arms; and Smith & Wesson Corp.

Chicago Mayor Richard Daley announced the suit against the gun industry, which seeks \$433 million in damages incurred by the city since 1994. Daley claims the suit is designed to "hit [the gun industry] right where it hurts - in their bank accounts" and vows that the city "won't stop hitting until they stop flooding our streets with guns." News Release, Office of the Mayor, City of Chicago, November 12, 1998.

Chicago marks the second city to file against the industry, and it takes a considerably different approach from the suit filed by the city of New Orleans. Chicago's suit alleges that the continuing availability of illegal firearms in Chicago is caused by the practices of defendants who intentionally seek to maintain and supply the high demand for guns in the city. The city hopes to hold the defendants liable under a theory of public nuisance for their design, marketing, and distribution practices.

The city filed suit following a three-month investigation conducted by the Chicago police department in which they sent undercover officers to suburban Chicago stores to purchase guns. During the course of the operation, police officers posed as "straw purchasers" as well as criminals and gang members who were looking to "take care of business." At the close of the investigation, the officers had "illegally" purchased 171 guns. News Release, Office of the Mayor, City of Chicago, November 12, 1998.

The complaint alleges that firearms manufacturers and distributors "knowingly exploit the market for illegal weapons." Complaint at 54. Chicago claims that these manufacturers and distributors

oversupply the market with weapons in areas with relaxed gun control laws, such as those surrounding Chicago. In doing so, they "saturate" these areas with guns, knowing that the guns will be brought into areas in which they are outlawed, such as Chicago.

The Chicago complaint also alleges that defendant manufacturers and distributors do not take proper precautions to ensure that the dealers sell their guns responsibly. The city maintains that defendant manufacturers make "no meaningful efforts to supervise, regulate, or impose standards on the distribution practices" of the distributors and that the distributors, in turn, fail to do the same with the dealers. *Id.* at 56. According to former Smith & Wesson executive Robert Haas, "None of the [gun makers], to my knowledge, investigate, screen or supervise the wholesale distributors and retail outlets to ensure that their products are distributed responsibly." *City Weighs Suit Against Gun Makers*, *Baltimore Sun*, November 13, 1998. Chicago alleges that defendants know or should know that this practice causes thousands of firearms to be illegally possessed and used in Chicago, resulting in increased crime, injury, and death.

In addition, the Chicago complaint alleges that manufacturers intentionally design and advertise their products to appeal to those who would illegally use their weapons, including criminals and gang members. Allegations include the claim that gun manufacturers intentionally make their guns unreasonably attractive to criminals by advertising that their guns are, *inter alia*, concealable and fingerprint resistant. Complaint at 59. The city claims that defendants know or should know that they market their guns to be unreasonably attractive for criminal uses.

Chicago also maintains that this conduct constitutes a public nuisance. In order to properly plead a nuisance claim in Illinois, the city must show that 1) defendants created the nuisance, 2) an existing public right has been violated, and 3) damages were incurred as a result. *City of Bloomington v. Westinghouse*, 891 F.2d 611, 614 (7th Cir. 1989). First, the city claims that defendants' practices oversupply the black market with their guns, creating a public nuisance.

Next, the complaint alleges the defendants violated the public right of Chicago residents to be free from "conduct that creates an unreasonable jeopardy to the public's health, welfare, and safety, and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property." Complaint at 67.

The complaint alleges that defendants' conduct violates the city's gun control ordinances, which were specifically enacted to protect the "public's health, welfare, and safety." Through their unreasonable practices, defendants' conduct violates this public right. Finally, the complaint alleges that defendants' unreasonable conduct "creates a disturbance and reasonable apprehension of danger" among the residents of Chicago.

The suit was filed November 12, 1998, in Cook County Circuit Court.

CINCINNATI

City of Cincinnati v. Beretta U.S.A. Corp., No. A99-02369
(Ohio Ct. C.P. Hamilton County filed April 28, 1999).

The City of Cincinnati has filed a lawsuit against sixteen firearms manufacturers and three industry trade associations, alleging products liability, negligence, unfair and deceptive advertising practices, public nuisance, fraud, negligent misrepresentation and unjust enrichment.

In a complaint filed on April 28, 1999, in the Court of Common Pleas, Hamilton County, Ohio, the City of Cincinnati sued certain firearm manufactures, including, *inter alia*, Beretta U.S.A. Corp.; Colt's Manufacturing Co., Inc.; Lorcin Engineering Co., Inc.; Smith & Wesson Corp.; and Sturm, Ruger & Co., Inc. Also named as defendants are the industry trade associations of American Shooting Sports Coalition, Inc.; National Shooting Sports Foundation, Inc.; and Sporting Arms and Ammunition Manufacturers Institute, Inc.

In the complaint, the plaintiff alleges that the defendants have failed to implement available technology that would make guns safer, deceived citizens by promoting the fallacy of better home protection with the purchase of a gun and engaged in conduct which sustains an illegal gun market. (Compl. at 4-5.) In addition, the plaintiff alleges that the defendants have engaged in the practice of designing, manufacturing and selling unsafe firearms. (Compl. at 10-18.) The plaintiff also claims that the defendants gave false or misleading statements in their advertisements, (Compl. at 18-19), and were negligent in the marketing and distribution of their products, (Compl. at 20-28).

As a result of the defendants' alleged reckless conduct, the plaintiff claims that it has suffered harm and incurred financial damages and seeks compensatory damages, punitive damages and

injunctive relief. The lawsuit seeks to enjoin all defendants from distributing handguns without safety devices and from using unfair or deceptive advertising and sales practices. (Compl. at 41.)

Finally, the plaintiff seeks to make the gun manufacturers create and implement standards for handgun distribution in an effort to reduce the illegal market, provide adequate warnings about risk of ownership and proper storage and fund programs about gun owner responsibility with the goal of reducing handgun violence. (Compl. at 41.)

In the first and second counts of the complaint, the plaintiff alleges strict products liability, claiming that the products were defective in design in that, at the time they left the defendant manufacturers' control, the guns were unreasonably dangerous. (Compl. at 28.) The plaintiff also alleges that manufacturers failed to give adequate warnings or instructions. (Compl. at 30.)

The plaintiff alleges in the third and fourth counts that the defendants are liable for negligence. According to the plaintiff, the defendants had a duty to use reasonable care in the design, manufacture, advertisement and distribution of their products in order to ensure that the products were safe for their intended, foreseeable use. (Compl. at 31.) The defendants allegedly failed to use reasonable care even though they knew or should have known of the harm caused by their products. (Compl. at 31.) Plaintiffs also contend that defendants were negligent in failing to use reasonable care to provide an adequate warning to consumers of the risks associated with firearms. (Compl. at 32.)

In the fifth count of the complaint, the plaintiff alleges that defendant manufacturers are using unfair and deceptive advertising practices in violation of Ohio Revised Code Sections 1345.02 and 1345.03. (Compl. at 32-34.) The plaintiff claims that the defendants use their advertising to promote the fallacy that gun ownership increases home safety and protection despite the fact that they knew or should have known, as a result of available studies and statistics, that guns in the home actually contribute to higher rates of homicide, suicide and accidental death. (Compl. at 19, 33.)

The plaintiff alleges in the sixth count that the defendants' actions constitute a public nuisance. The plaintiff claims that its residents have a right to be free from conduct that creates an unreasonable jeopardy to their health, welfare and safety and that the conduct of the defendants interferes with this right. (Compl. at 34.) As a result of the defendants' conduct, Cincinnati residents continue to be killed and injured by firearms and continue to live in fear for their safety. (Compl. at 35.)

In the seventh count, the plaintiff alleges that the defendants have engaged in fraud and fraudulent concealment, either in concert or individually. (Compl. at 37-38.) The plaintiff claims that the defendants have made false representations about their products and omitted material facts about the safety of their products, such as the risks associated with firearms, with the intent to deceive consumers. (Compl. at 37.) The residents of Cincinnati justifiably relied on these assertions and allegedly purchased the defendants' products based on those misrepresentations. (Compl. at 37-38.)

In the eighth count of the complaint, the plaintiff alleges that the defendants' actions constitute negligent misrepresentation. (Compl. at 38-39.) The plaintiff claims that the defendants made misrepresentations and omissions about the safety of their products and, moreover, have over-promoted the utility of handguns for self-defense and home protection purposes, while disregarding the risk of accidents, homicides and suicides associated with handgun ownership. (Compl. at 19.) The plaintiff asserts that these misrepresentations were made without a reasonable basis and that the defendants negligently concealed this from consumers. (Compl. at 38-39.)

In the ninth and final count of the complaint, the plaintiff alleges that the defendant manufacturers are liable for unjust enrichment and restitution, claiming that the manufacturers have reaped enormous profits from handgun sales in and around Cincinnati at the city's expense. The plaintiff claims it has suffered an increase in its expenditures for medical care, police investigations, emergency personnel, human services, courts and prisons as a result of the sale of defendants' products. (Compl. at 39-40.)

The firm of Waite, Schneider, Bayless & Chesley Co., L.P.A., along with the Cincinnati City Solicitor's Office and The Center to Prevent Handgun Violence, is representing the City of Cincinnati in this lawsuit.

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CLEVELAND

City of Cleveland v. Hi-Point Firearms, No. CV-99-381897
(Ohio Ct. C.P. filed April 8, 1999).

The City of Cleveland, Ohio, has filed a lawsuit against seventeen handgun manufacturers and three firearms trade associations alleging violations of the Ohio Products Liability Act, as well as negligence, unjust enrichment and public nuisance.

Cleveland Mayor Michael White, who filed the lawsuit on behalf of the city on April 8, 1999, seeks to recover damages for the expenses incurred by the city as a result of gun violence, including police, emergency, medical, court and jail costs. Manufacturers named as defendants in the lawsuit include, *inter alia*, Hi-Point Firearms; Smith & Wesson Corp.; Sturm, Ruger & Co.; Lorcin Engineering Co., Inc.; Glock, Inc.; Colt's Manufacturing Co.; Bryco Arms; and Davis Industries.

The complaint states that fifty-one young lives have ended within the past five years as a result of handgun violence in the city and that these deaths are a direct consequence of the handgun manufacturers' refusal to incorporate feasible, available safety devices into their products, which would prevent guns from being fired by unauthorized users. (Comp. at 11.) According to the complaint, the design of defendants' guns, which does not make users aware that a round of ammunition is housed in the firing chamber and enables all people, including children, to fire the weapons upon gaining possession, results in thousands of unintentional shooting deaths and non-fatal injuries ever year, thousands of adolescent suicides and thousands of homicides by unauthorized users. (Compl. at 13-14.)

In the first two counts of the complaint, the plaintiff alleges that the defendant manufacturers are liable under common law negligence and under Ohio Products Liability Act R.C. 2307.75 for the unreasonably dangerous and defective design of their products. (Compl. at 18-21.) Plaintiff alleges that the defendants' handguns are unreasonably dangerous and defective in design because they fail to incorporate feasible safety features that would prevent the harm caused by the use of guns in the city, even though the safety features would not compromise the utility of the guns. (Compl. at 18-19.) The plaintiff alleges that the harm caused by the use of the defendants' handguns would have been prevented or reduced if the defendants had employed alternative designs which incorporated safety devices that (1) prevented weapons from being fired by unauthorized users, including children; (2) alerted users that a round is in the chamber; and (3) prevented weapons from being fired when the magazine is removed from them. (Compl. at 20.)

In the third count, the plaintiff alleges that the guns manufactured by the defendants are unreasonably dangerous under Ohio Products Liability Act R.C. 2307.76 because they do not include adequate warnings or instructions about the risk of guns. (Compl. at 21-22.) Plaintiffs allege that the defendants failed to provide adequate warnings or instructions to customers concerning the proper storage of weapons, the risks associated with minors' access to guns, the possibility of a round being hidden in the chamber of the gun and the possibility of the gun firing when the ammunition magazine is removed. (Compl. at 21-22.)

In the fourth count of the complaint, the plaintiff alleges that the defendants are liable for unjust enrichment. (Compl. at 22-23.) While the defendant manufacturers have reaped substantial profits from the sale of guns in the City of Cleveland, the City has been forced to pay for the costs associated with the use of those guns. (Compl. at 22.) Therefore, the defendant manufacturers have allegedly been unjustly enriched at the expense of the City from the sale of their handguns. (Compl. at 22-23.)

The plaintiff alleges in count five that the defendants are subject to nuisance abatement under Cleveland City Code 203.01 because their products, which contain inadequate measures and warnings, cause significant harm and death to the people of Cleveland, thereby endangering their lives and health. (Compl. at 23.)

In count six, the plaintiff alleges that the defendants are liable for public nuisance because their ongoing conduct of designing, distributing and selling guns without available safety devices causes a significant and unreasonable interference with the public's health, peace, comfort and convenience. (Compl. at 24.)

Finally, in count seven, the plaintiff alleges that the defendant trade associations are negligent because they have acted in concert with, tacitly agreed with and aided and abetted the defendant manufacturers to (1) avoid developing and implementing safety features that would prevent guns from being fired by unauthorized users and (2) inadequately warn users of the risks of guns. (Compl. at 25.)

Upon filing the lawsuit, Mayor White announced, "For years, Cleveland's taxpayers have been bearing the enormous social costs of gun-related violence.... It is time this multi-billion dollar industry pays for its irresponsible and reckless business practices that are killing our citizens, including innocent children." *City of Cleveland Files Suit Against Gun Industry* (Office of Mayor Michael R. White, Cleveland, Ohio) April 8, 1999, at 1. The City of Cleveland Law Department and the firm of Climaco, Pecka, Wilcox, Lefkowitz & Garofoli Co. are representing the City of Cleveland in this lawsuit.

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DETROIT & WAYNE COUNTY

Archer v. Arms Technology, Inc., No. 99912658-NZ (Mich. Cir. Ct. Wayne County filed April 26, 1999)

&
McNamara v. Arms Technology, Inc., No. 99912662-NZ (Mich. Cir. Ct. Wayne County filed April 26, 1999).

The City of Detroit and Wayne County, Michigan, have filed two separate but similar lawsuits against certain members of the firearms industry, alleging public nuisance, negligence, alternative liability, concert of action and exemplary damages.

The lawsuits, filed on April 26, 1999, by the Mayor of Detroit, Dennis Archer, and Wayne County Executive Edward McNamara, allege that the practices of the manufacturers, distributors and dealers of guns create a public nuisance affecting the health and safety of its citizens and that the defendants have been negligent in allowing their firearms to come into possession of minors, criminals and other irresponsible people. Each plaintiff seeks compensatory and exemplary damages in the amount of \$400 million. The City of Detroit is also seeking injunctive relief. Manufacturers named as defendants in both lawsuits include, *inter alia*, Beretta U.S.A.; Bryco Arms, Inc.; Glock, Inc.; Hi-Point Firearms; Smith & Wesson Corp.; and Sturm, Ruger & Co.

In their suits, both plaintiffs claim that the lax distribution practices of the defendant manufacturers and dealers directly and indirectly supply firearms to juveniles, criminals and other prohibited persons. They allege that the defendants knew or should have known of the methods of illegal diversion and could have prevented or controlled the diversions into the illegal market but chose not to do so. (Archer Compl. at 20; McNamara Compl. at 22.) These methods of illegal diversion include straw purchasing, multiple sales, sales by kitchen table dealers, theft from retail dealers who failed to provide adequate security of their premises and obliteration of the serial numbers to prevent tracing of the firearm by law enforcement. (Archer Compl. at 21-22; McNamara Compl. at 23-24.)

An undercover investigation conducted by the Wayne County Sheriff's Office during the months of March and April, 1999, confirms these negligent distribution practices. During the course of this investigation, police officers discovered that gun dealers were participating in the illegal practices of straw purchasing and multiple sales of firearms. (Archer Compl. at 21; McNamara Compl. at 30.)

The plaintiffs in both lawsuits allege that the defendants' conduct, practices and negligence have allowed for the creation of an illegitimate, secondary market for guns. Plaintiffs also claim that defendants plan their manufacturing strategies and distribute their products without self-regulation in order to allow the firearms to be purchased by unauthorized persons. The plaintiffs claim that the gun industry has knowledge of these illegal transactions and relies on them to provide millions of dollars in profit. (Archer Compl. at 26; McNamara Compl. at 34.)

In the first count of their complaints, both plaintiffs allege that the defendants are liable for public nuisance because their ongoing conduct of directly and indirectly supplying firearms to the illegitimate, secondary firearms market results in deaths and injuries to the citizens of Detroit and Wayne County, thereby causing a significant and unreasonable interference with the public health, safety, peace, comfort and convenience. Plaintiffs claim that the defendants knew or should have known the conduct to be of a continuous nature which produces significant and permanent negative effects on the public, such as citizens being killed or living in fear. The presence of the illegal firearms proximately results in significant costs to Detroit and Wayne County. (Archer Compl. at 36-37; McNamara Compl. at 44-45.)

In the second count of their complaints, both plaintiffs allege that the defendants' conduct was negligent. The plaintiffs assert the defendants had a duty to the citizens of Detroit and Wayne County not to create an unreasonable risk of foreseeable harm. The defendants' conduct

constitutes a breach of the duty owed to the citizens and has thereby proximately caused substantial and foreseeable harm to the City of Detroit and Wayne County. Plaintiffs seek compensatory damages for costs incurred and exemplary damages to compensate for the malicious, willful and wanton conduct of the gun industry. (Archer Compl. at 38; McNamara Compl. at 46.)

The plaintiffs also allege that defendants are liable on the counts of alternative liability, (Archer Compl. at 38-39; McNamara Compl. at 46); concert of action, (Archer Compl. at 39; McNamara Compl. at 47); and exemplary damages, (Archer Compl. at 39; McNamara Compl. at 47).

The firm Charfoos & Christensen, P.C., along with the City of Detroit Law Department is representing the City of Detroit in the lawsuit. Wayne County is being represented by Thurswell, Chayet & Weiner, P.C.; Thomas, Garvey, Garvey & Sciotti, P.L.L.C.; Corporation Counsel and The Center to Prevent Handgun Violence.

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MIAMI-DADE COUNTY

Miami-Dade County v. Arms Technology, Inc., No. 99-01941-CA-06
(Fla. Cir. Ct. filed Jan. 27, 1999).

Miami-Dade County, Florida, has filed a products liability and negligence claim against 26 handgun manufacturers and 3 firearm-industry trade associations to recover damages for the manufacture, sale and distribution of guns that fail to incorporate safety features that would prevent (1) guns from being used by children, criminals and other unauthorized users; (2) alert users that a round is in the chamber; and (3) prevent firearms from being fired when the magazine is removed from them.

In its lawsuit, Miami-Dade County argues that the inclusion of such safety devices would reduce or prevent many unintentional shootings by children, adolescent suicides and homicides by unauthorized users of guns. Manufacturers named in the suit as defendants include, *inter alia*, Smith & Wesson Corp.; Glock, Inc.; Sturm, Ruger & Company, Inc.; Beretta U.S.A. Corp.; and Colt's Manufacturing Company, Inc.

Specifically, the complaint alleges that the gun manufacturers are liable for the negligent and defective design of their firearms and ammunition because they failed to design their products to be reasonably safe for those in the vicinity of its reasonably foreseeable use by failing to include alternative designs and/or safety features. (Compl. at 20.) The complaint also alleges that the gun manufacturers failed to adequately warn or instruct users as to the risks of guns and that the manufacturers actively promoted and advertised their guns in a manner which did not alert customers and dealers to the risks of guns. (Compl. at 21.) Further, Miami-Dade County alleges that the defendant trade associations have tacitly agreed with, colluded with and cooperated with the gun manufacturers to fail to develop and implement safety features and to inadequately warn users of the risks of guns. (Compl. at 22.)

Mayor Alex Penelas filed this lawsuit on behalf of Miami-Dade County on January 27, 1999, after the Board of County Commissioners authorized him to file suit by a vote of 12-1. Mayor Penelas filed the suit to compel gun manufacturers to design safer, childproof guns and to recoup the damages incurred from gun violence. *See* News Release, (Office of the Mayor, Miami-Dade County, Fla.), Jan. 27, 1999, at 1. Mayor Penelas announced that "[e]very gun death or injury in our community is not only tragic, but also comes with a bill paid largely by local taxpayers. It's time to send the bill to the gun industry that clearly favors profits over public safety. And it's also time to make gun manufacturers design safer guns so that kids don't continue getting hurt." *Id.*

After Miami-Dade filed this lawsuit, Rep. George Albright, R-Ocala, sponsored a bill to ban any local government from filing lawsuits against gun manufacturers. The bill would make it a crime punishable by up to five years in jail and a \$5,000 fine for any local government official or employee to file a lawsuit against gun manufacturers. The bill also provides for a retroactive provision which would quash the suit filed by Miami-Dade County.

The Legal Action Project of The Center to Prevent Handgun Violence, along with the Miami-Dade County Attorney's Office, is representing Miami-Dade County in the suit.

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NORTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. 303753
(Sup. Ct. San Francisco filed May 25, 1999).

Municipalities in Northern California have filed suit against members of the firearms industry alleging public nuisance and unfair and deceptive business practices. The Cities of San Francisco, Sacramento, Berkeley and San Mateo and Alameda Counties have joined together to file suit in the San Francisco County Superior Court. A parallel lawsuit has been filed by the Southern California cities of Los Angeles, Compton and West Hollywood in Los Angeles County Superior Court.

The complaint was filed on May 26, 1999, in San Francisco court. Upon announcing the Northern California suit, Louise Renne, City Attorney of San Francisco, stated, "Our purpose is to compel gunmakers to share responsibility for protecting public health from the unsafe use of handguns and assault weapons. In their unwillingness to police themselves, and their false and deceptive advertising, they have created a domestic arms race that has left all issues of safety and legality aside." *San Francisco Sues Gun Makers: City Attorney Says Gun Industry Fuels "Domestic Arms Race,"* (City Att'ys Office, San Francisco, Cal.) May 25, 1999, at 1. The City Attorneys of San Francisco, Berkeley and Sacramento, the San Mateo County Counsel, The Center to Prevent Handgun Violence, and the firms of Milberg, Weiss, Bershad, Hynes & Lerach and Lieff, Cabraser, Heimann & Bernstein, LLP will represent the plaintiffs in this lawsuit.

According to the complaint, the defendants design, market, distribute and sell handguns in a manner which facilitates their use in criminal acts, fails to incorporate reasonable safety devices, deceives the public about the dangers of possessing a gun and evades federal, state and local laws. Manufacturers named as defendants in the Northern California lawsuit include, *inter alia*, Arcadia Machine & Tool, Inc.; Bryco Arms, Inc.; Beretta U.S.A. Corp.; Colt's Manufacturing Co.; Glock, Inc.; Navegar, Inc.; and Smith & Wesson Corp.

In the complaint, the plaintiff-municipalities claim that the marketing and distribution policies of the defendants have created and maintained a secondary, illegitimate firearms market where minors, criminals and other unauthorized users obtain firearms manufactured, distributed and sold by the defendants. Specifically, the defendants have allegedly facilitated and supplied a secondary, illegitimate firearms market by over-saturating the legitimate firearms market, over-saturating weak gun control jurisdictions, distributing firearms without exercising adequate controls or precautions over their distributors or dealers, facilitating multiple sales and straw purchases, selling guns to "kitchen table" dealers and designing, manufacturing and selling firearms that do not incorporate a design or feature preventing unauthorized use. (Compl. at 14-18.)

The plaintiffs also claim that the defendants have designed their products, which stress lethality and concealability, to appeal to criminals and have manufactured, distributed and sold firearms in a manner calculated to evade federal, state and local gun control legislation. For example, certain defendants continue to market and sell firearms substantially similar to those firearms banned by the United States 1968 Gun Control Act and the California Roberti-Roos Assault Weapons Control Act of 1989. (Compl. at 20.)

Additionally, the plaintiffs state that the firearms designed, manufactured and sold by the defendants are defective because they fail to incorporate feasible, available safety features, such as a "chamber load indicator" and a "magazine-disconnect safety," and fail to provide adequate warnings as to the risks of guns, including proper storage and use of firearms. (Compl. at 22-23.) As a result, thousands of preventable, unintentional shootings, often involving adolescents, occur every year. The plaintiffs also charge that the defendants have failed to compete with one another to develop firearms with personalized safety technology, which would prevent access to firearms by unauthorized users and thereby prevent thousands of shootings by adolescents and criminals. (Compl. at 26.)

The plaintiffs further assert that the defendants have made unfair, false and deceptive statements concerning the safety of possessing firearms within the home. The defendants have advertised and promoted, in order to increase their sales and profits, that ownership of guns increases home safety and security while knowing studies have demonstrated that home ownership of guns increases the risks of homicides, suicides and unintentional shootings. (Compl. at 26-27.) In addition, defendants have allegedly failed to include in their advertisements and promotions any warnings about the risks of possessing firearms within the home.

In count one of the complaint, plaintiffs allege that the defendants are liable for public nuisance. Plaintiffs charge that the defendants' ongoing conduct of creating and supplying an illegitimate, secondary firearms market results in the deaths and injuries of California residents and creates an unreasonable interference with the public's health, safety, peace and comfort, thereby causing a public nuisance.

In the second count, the plaintiffs claim that the defendants have violated California Business and Professions Code §§ 17500 *et seq.* by making false and misleading statements and advertisements concerning the safety of firearms within the home. The defendants have advertised and promoted that ownership of guns increases home safety and security while failing to disclose the risks of having firearms within the home. (Compl. at 31.) Defendants' advertising and promotions, then, allegedly deceive the public about the dangers of possessing a firearm.

Plaintiffs allege in count three that the defendants have violated California Business and Professions Code §§ 17200 *et seq.* because they have engaged in unlawful, unfair and fraudulent business practices in the manufacture, marketing and sale of their products. (Compl. at 32.) Defendants' business practices are unlawful and fraudulent because they violate California law, encourage gun sales to unauthorized users, fail to adequately supervise or regulate the distributors or dealers who sell their firearms to the public, fail to incorporate feasible, safety features in the design of the weapons and increase the demand for firearms by illegal users. (Compl. at 32-35.)

The plaintiffs seek to obtain civil penalties and restitution and to enjoin the defendants, handgun manufacturers and distributors and their industry trade associations, from continuing their unfair and unlawful business practices.

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NEW ORLEANS

City of New Orleans v. Smith & Wesson Corp., No. 98-18578
(Civ. D. Ct. Parish of Orleans filed Oct. 30, 1998)

The City of New Orleans has filed a product liability claim against members of the firearms industry, alleging that their products are unreasonably dangerous because they do not incorporate available safety technology that would prevent a gun from being fired by an unauthorized user.

Specifically, the city filed a lawsuit against a group of gun manufacturers, pawnshops, and firearms-trade associations, alleging that the defendants should be held responsible for manufacturing, distributing, promoting, marketing, selling, and/or instructing in the use of firearms which are sold without the means to prevent them from being fired by unauthorized users and without a number of other safety devices and warnings. New Orleans argued that the gun industry's collective failure to incorporate such technology and implement such measures constitutes inherently and unreasonably dangerous activity because it has been reasonably foreseeable to the gun industry that without such devices and warnings, the defendants' guns would end up being used in tragic, preventable shootings by unauthorized users - particularly adolescents.

New Orleans is currently one of the most violent cities in America, with nearly 150 people shot to death this year alone. World: America's New Orleans Takes on Gun Lobby, BBC, November 1, 1998. New Orleans Mayor Marc Morial filed the suit on behalf of the city, announcing "[t]hat today is a day that the victims of handgun violence and the citizens who live with violence on the streets of this city will know that somebody has decided to do something about it." New Orleans Initiates Suit Against Gunmakers, Washington Post, October 31, 1998. The complaint names as defendants some of the gun industry's most prominent manufacturers, including *inter alia*, Smith & Wesson Corp.; Sturm Ruger & Co.; Beretta U.S.A.; Colt's Manufacturing Co.; Glock, Inc.; Lorcin Engineering Co.; Bryco Arms; Jennings Firearms, Inc.; Phoenix Arms; Davis Industries, Inc.; and Navegar, Inc.

Morial hopes that cities across the nation will follow New Orleans' lead in the crusade against gun violence. The mayor asserts that the gun industry should be held liable for the enormous expenses that cities nationwide are forced to incur annually on medical bills, emergency services, police protection, lost tax revenue, and other costs associated with gun violence. *Id.* The ultimate goal is to involve gun manufacturers in the same sort of litigation that has "cost the tobacco industry billions of dollars and forced tobacco companies into battle in courtrooms across the nation." *Id.* These lawsuits have already brought tens of billions of dollars in settlements from tobacco

manufacturers and instigated talks that could lead to billions more. A team of lawyers who were active in the tobacco litigation, including Wendell Gauthier, a New Orleans-based lawyer who litigated a landmark class action case against the tobacco industry, will represent the city. New Orleans Files Handgun Suit, Associated Press, October 31, 1998.

The complaint first alleges that gun manufacturers should be held responsible for the shooting deaths and injuries in New Orleans because they have not used available technology to make guns safer. This technology includes personalized gun locks and different systems to block unauthorized users. Bob Delfay, director of defendant Sporting Arms and Ammunition Manufacturers Institute, stated that "for a suit to seek to collect damages from an industry for not incorporating an unproven, virtually nonexistent technology seems backwards." *Id.* However, Dennis Henigan, Division Director of Legal Action for the Center to Prevent Handgun Violence, alleges that this technology could have been perfected a long time ago, but the industry focuses its research on "greater lethality, not safety." New Orleans Initiates Suit Against Gunmakers, Washington Post, October 31, 1998.

The complaint also alleges that the gun industry has not included adequate safety warnings with its guns. The complaint details seven separate incidents of children shooting other children in New Orleans - three of which were fatal to the shooting victims and asserts that "these tragedies, and others like them, demonstrate that the citizens of the city of New Orleans are under a continuing threat of injury and death, particularly to children, from defendants' unreasonably dangerous products." Richard Feldman of defendant American Shooting Sports Council asserts that the Council has "done a tremendous job of making our products as safe as possible." New Orleans Aims Lawsuit at Gunmakers, CNN, October 30, 1998. Henigan disagrees, however. He believes the gun industry has not done enough and remarks that "if we can childproof medicine bottles, why can't we childproof guns?" *Id.*

Another issue specifically noted in the New Orleans complaint is the frequent lack of a chamber load indicator in semiautomatic guns. The city specifically claims that it was foreseeable to the defendants that someone using a semiautomatic gun without a chamber load indicator would mistakenly believe that the gun would not fire if the ammunition magazine were removed and would not understand that a round of ammunition might remain in the firing chamber of the gun. *Id.*

The City of New Orleans filed this complaint in Louisiana State Court on October 30, 1998.

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NEWARK

Sharpe v. Arcadia Machine & Tool, Inc., No. ESX-L-6059-99
(Sup. Ct. Essex County filed June 9, 1999).

Mayor James Sharpe and the city of Newark, New Jersey, have filed suit against gun manufacturers, trade associations and gun distributors, claiming that the defendants' negligent design, marketing and distribution of their guns caused the city financial damages.

On June 9, 1999, Mayor Sharpe filed this suit on behalf of the city of Newark and its citizens in the Essex County Superior Court of New Jersey. The plaintiffs' eight-count lawsuit names twenty-eight gun manufacturers, two trade associations and two distributors as defendants, including, *inter alia*, Beretta U.S.A.; Bryco Arms Co.; Colt's Manufacturing Co.; Full Metal Jacket, Inc.; Glock, Inc.; Navegar, Inc.; Phoenix Arms; Smith & Wesson Corp; Sturm, Ruger & Company, Inc.; and National Shooting Sports Foundation, Inc. (NSSF). Plaintiffs seek compensatory damages for the costs of injuries, emergency and law enforcement services, health care, lost productivity, lost tax revenues and decreased property values sustained by the city as a result of defendants' alleged conduct. In addition, the plaintiffs seek punitive damages, alleging that the defendants willfully and wantonly disregarded Newark's citizens' safety, and injunctive relief to prevent the defendants from continuing the negligent design, marketing, distribution and promotion of their products. (Compl. at 30-31.) The plaintiffs are being represented by the Newark Corporation Counsel and the firm of Brown & Brown in this lawsuit.

In count one of the complaint, the plaintiffs allege that the named manufacturers are liable for the defective and negligent design of their products. The plaintiffs claim that defendants' products are unsafe, that alternative designs existed which would have reduced Plaintiffs' injuries, that the

defendants should have foreseen that Plaintiffs' damages would outweigh the burden of implementing these designs and that failure to implement these designs proximately caused Plaintiffs' injuries. (Compl. at 21.) Consequently, the defendants' failure to implement these designs constitutes negligent design.

The plaintiffs also allege defective and negligent design in count two but specifically address the manufacturers' failure to include certain safety devices in the design of their products. The plaintiffs claim alternative designs existed which would (1) prevent guns from being fired by unauthorized users; (2) alert users that a round was in the chamber; and (3) prevent weapons from firing once the magazine had been removed. (Compl. at 22.) Plaintiffs claim that the defendants should have foreseen the injuries and financial damages which would befall the city as a result of their alleged conduct and that the defendants should therefore have taken measures to reduce the plaintiffs' injuries and financial damages. (Compl. at 23.)

In count three, Plaintiffs allege that the defendants negligently failed to provide adequate warnings about their products' hidden dangers and adequate instructions to ensure safe use of guns. (Compl. at 23.) Furthermore, the plaintiffs claim that the defendants promoted gun ownership as a means of increasing household safety despite the known risks associated with guns. (Compl. at 24.) Plaintiffs claim this negligent advertising and promotion caused them to suffer the financial damages described above.

In count four, the plaintiffs claim the defendants negligently marketed and distributed their guns through their failure to supervise, regulate and control the promotion and sales of their products, (Compl. at 25), and that the defendants were aware that these failures resulted in the introduction of their guns into the illegal market and the subsequent use of their guns in violence and crime in Newark, (Compl. at 25). Thus, the defendants' knowing and negligent marketing and distribution practices contributed to gun-related injuries and deaths among Newark's citizens.

Plaintiffs allege in count five that the defendant trade associations aided and abetted the defendant manufacturers in failing to develop safety devices, including those which would prevent firing by unauthorized users, and failing to issue adequate warnings about gun risks. (Compl. at 26.) This negligent conduct by the defendant trade associations allegedly increased the plaintiffs' injuries.

In count six, the defendants are accused of negligent design, marketing and sale of firearms, conduct which has created an ongoing public nuisance that threatens the health, safety and welfare of Newark's citizens. (Compl. at 27.) The plaintiffs claim the defendants were aware that their negligent conduct permitted trafficking of their products from areas where guns are easily accessible, such as the South, to locations where gun regulations are more stringent, such as Newark. (Compl. at 27.) Furthermore, the manufacturers were allegedly aware that their conduct facilitated acquisition of firearms by illegal owners, thereby increasing crime, injury, death and fear in Newark. This continuing public nuisance places financial burdens on the city for which compensation is sought in this lawsuit.

In count seven, the plaintiffs allege that the defendants were unjustly enriched by the sales of handguns in and around the city of Newark at the city's expense. (Compl. at 29.) The plaintiffs claim the city was forced to bear the financial burden of increased emergency services, law enforcement personnel, lost productivity, lost tax revenues and decreased property values while the defendants avoided financial responsibility and reaped profits instead. (Compl. at 29-30.)

Finally, in count eight of the lawsuit, the plaintiffs seek punitive damages in light of the defendants' alleged willful and wanton disregard for the lives of those Newark citizens harmed by their negligent conduct. (Compl. at 30.) This blatant disregard allegedly increased the rates of injuries and death in Newark, consequences which the plaintiffs believe the defendants could and should have ameliorated. (Compl. at 30-31.)

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SOUTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. BC210894
(Sup. Ct. Los Angeles filed May 25, 1999).

The Southern California cities of Los Angeles, Compton and West Hollywood have joined together to file suit in Los Angeles County Superior Court against members of the firearms industry, alleging public nuisance and unfair and deceptive business practices.

This lawsuit is the counterpart to the suit filed in San Francisco County Superior Court by the

Cities of San Francisco, Sacramento, Berkeley and San Mateo and Alameda Counties. The complaint was filed on May 26, 1999. Los Angeles City Attorney Jim Hahn announced the Southern California lawsuit, stating "This lawsuit is about assuring that the gun industry can no longer continue doing business as usual. They can no longer engage in a business which results in the tragically easy access and use of guns by young people." *Hahn Files Lawsuit Accusing Gun Industry of Unfair Business Practices and Public Nuisance as Part of Nation's First Statewide, Multi-City Effort Against Gun Industry Misconduct Relating to Gun Violence and Safety*, (City Att'y's Office, Los Angeles, Cal.), May 25, 1999, at 2. The City Attorneys of Compton, West Hollywood and Los Angeles will represent the plaintiffs in this lawsuit.

In the first four counts of their complaint, the plaintiffs allege that the defendants are in violation of California Business and Professions Code Sections §§ 17200 *et seq.* for Unlawful, Unfair or Fraudulent Business Practices. According to the plaintiffs, the first violation by defendants is supplying firearms to an illegitimate, illegal, secondary market. (Compl. at 34.) The plaintiffs allege that the defendants encourage sales to unauthorized users by marketing their products to appeal to minors and criminals and by producing more products than could reasonably be sold to a legitimate market. The plaintiffs claim that the defendants fail to train or screen dealers who distribute their products and continue to make sales to dealers who supply the secondary market. (Compl. at 35-36.)

In the second count of the complaint, the plaintiffs allege that the defendants fail to provide adequate warnings and fail to incorporate technologically feasible safety features in firearms, all of which would prevent intentional and accidental shootings. According to the plaintiffs, the defendants have discouraged the implementation of devices, such as personalized gun technology, which would prevent unauthorized users from gaining access to handguns. (Compl. at 38.) The plaintiffs claim that defendants fail to give adequate warnings and instructions on the storage of their products. The plaintiffs also allege that the defendants over-promote the self defense and home protection benefits of guns while disregarding the fact that guns actually increase the risk of death and injury. (Compl. at 38-39.)

The plaintiffs, in the third and fourth counts of the complaint, allege that the defendants have unlawfully created a public nuisance as defined by Penal Code Section 370 and Civil Code Sections 3479 and 3480 and have unlawfully created a private nuisance as defined by Civil Code Sections 3479 and 3481. (Compl. at 39-40.)

In the fifth and final count, the plaintiffs allege that the defendants' conduct creates a public nuisance. (Compl. at 40.) They claim that the conduct by the defendants is an unreasonable interference with the common rights enjoyed by the public. This interferes with the public's health, safety, peace, comfort and convenience. According to the plaintiffs, the defendants' conduct is continuous and produces a long lasting negative effect on the rights of the public. (Compl. at 41.) The plaintiffs allege that the ongoing conduct by the defendants creates a nuisance because the firearms that they directly or indirectly supply to the secondary market will remain in the possession of unauthorized users for years. As a result of this continued illegal possession of handguns, the residents of Los Angeles, Compton and West Hollywood will continue to be killed, injured and live in fear for their health, safety and welfare. (Compl. at 41.)

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ST. LOUIS

City of St. Louis v. Cernicek, No. CV-992-01209
(Cir. Ct. St. Louis. 22nd. Jud. Dt. filed April 30, 1999).

The City of St. Louis, Missouri, has filed suit against members of the gun industry to recover damages resulting from the industry's alleged negligent design, marketing, distribution and sale of guns, as well as its failure to prevent the transfer of guns to the illegal market.

On April 30, 1999, the lawsuit was filed in the Circuit Court of St. Louis, twenty-second Judicial District, by Mayor Clarence Harmon on behalf of the city. The mayor commented, "The gun makers are aware that their products are used frequently in crimes and accidental killings, yet they refuse to build in safety features that would drastically reduce gun violence. . . They have demonstrated an utter lack of concern about how their products are distributed." *City of St. Louis Files Suit against Gun Industry* (State Att'y's Office, St. Louis, Mo.), April 30, 1999, at 1. The Mayor stressed that the lawsuit was intended to make guns safer and the industry more accountable, not to limit the rights of law-abiding citizens. *See id.* St. Louis is being represented by the Office of the City Counselor in this lawsuit.

The city's five-count lawsuit names thirty manufacturers, dealers, distributors, sellers, agents and trade associations as defendants. Named defendants include, *inter alia*, Smith & Wesson Corp.; Sturm, Ruger & Co.; Colt's Manufacturing Co.; Beretta U.S.A. Corp.; Navegar, Inc. d/b/a Intratec Firearms; Taurus International Marketing, Inc.; Bryco Arms; Davis Industries; and Sporting Arms & Ammunition Manufacturers' Institute, Inc. The City of St. Louis seeks damages for costs it sustained as a result of gun violence, such as police services, health care, lost tax revenues due to lost productivity, pension benefits and loss of population. In addition, the city seeks punitive damages for the industry's conscious disregard of the damages its practices were inflicting on the city and its unjust enrichment at the city's expense.

In count one of the complaint, the City alleges that the defendants are liable for creating an on-going public nuisance because they fail to prevent the transfer of their products to illegal markets and thereby contribute to increases in city crime. Specifically, the City alleges that the defendants manufacture and sell guns lacking sufficient warnings and inadequately monitor the distribution practices of the distributors and retailers who sell their unsafe guns to the public. (Compl. at 21.) The resultant increases in crime, damage, injuries and deaths significantly and unreasonably interfered with the public's health, safety, welfare and right to be free from disturbance and apprehension of danger. (Compl. at 22.)

In count two, the City claims that the defendants are subject to nuisance abatement under the City of St. Louis Code because their unsafe guns endanger the health, safety and welfare of St. Louis citizens. The City claims that the defendants are aware their manufacturing, distribution and sale of these guns constitutes a public nuisance but have failed to take any remedial actions. (Compl. at 25.) In addition to damages, the city seeks court-mandated abatement for the defendants' conduct.

In count three, the City alleges civil conspiracy among the defendants with respect to the manufacture, distribution and sale of their products. The City claims the defendants, acting in concert, failed to develop and implement means to prevent guns from being fired by unauthorized users, discouraged the development of such means, failed to develop and implement safety features, failed to implement means of preventing guns from reaching illegal markets and being used for criminal purposes, failed to issue adequate warnings regarding gun risks and storage and failed to inspect, train and monitor distributors and retailers to prevent illegal sales. (Compl. at 27.) Allegedly, this ongoing conspiracy is intended to further the profits and unjust enrichment of the defendants while avoiding liability for the costs of gun violence borne by the City. (Compl. at 28.)

The City alleges in count four that the defendant manufacturers and trade organizations negligently designed, manufactured, assembled and promoted their products. The City alleges that the manufacturers and trade organizations failed to develop and implement available safety designs, including smart technology, manual safety devices, childproof devices and user-recognition devices. (Compl. at 30.) The City claims these omissions amount to negligent design because the defendants knew or should have known that the benefits of preventing gun injuries would outweigh the burdens of including safety devices in their products. (Compl. at 30.) The City also claims that the defendants' guns lacked suitable warnings and instructions concerning proper use and storage, access by minors, rounds remaining in the chamber and the ability of the gun to fire after magazine detachment. (Compl. at 31.) Furthermore, the defendants are accused of negligently marketing their guns because they inadequately train and monitor dealers, distributors and retailers. (Compl. at 31.)

Finally, the City asserts that the defendants promoted their guns in a manner suggesting they were safe and would provide safety in the home instead of alerting purchasers to the potential and documented risks of gun ownership. (Compl. at 31.) In total, these negligent acts resulted in monetary damages to the city in the form of services, health care and lost productivity.

In count five of the lawsuit, the City alleges that the defendants were unjustly enriched through sales of their guns at the expense of the City of St. Louis. The City claims the defendants reaped "substantial and unconscionable profits" from the negligent, conspiratorial and purposeful conduct described above. (Compl. at 33.) To correct this injustice, the City of St. Louis asks the court for compensation in the amount equal to the defendants' profits from the last five years. (Compl. at 35.)

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Firearms Litigation:

Current Cases

Twenty-five municipalities have filed suit against the gun industry to recover damages for inadequate safety devices and negligent distribution of their products. A summary of the recently filed cases follows.

ATLANTA

City of Atlanta v. Smith & Wesson Corp., No. 99vs0149217J
(Ga. Cir. Ct. filed Feb. 4, 1999).

BOSTON

City of Boston v. Smith & Wesson Corp., No. 99-2590C
(Mass. Sup. Ct. Suffolk County filed June 3, 1999).

BRIDGEPORT

City of Bridgeport v. Smith & Wesson, Inc. et al., No. CV-99-0361279
(Conn. Super. Ct., filed January 27, 1999).

CAMDEN CITY

City of Camden v. Beretta U.S.A. Corp., No. 451099
(Sup. Ct. Camden County filed June 21, 1999).

CAMDEN COUNTY

Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp., No. 99-2518
(D.N.J. filed June 1, 1999).

CHICAGO

City of Chicago and County of Cook v. Beretta U.S.A. Corp., No. 98-CH15596
(Cir. Ct. Cook County filed Nov. 12, 1998.)

CINCINNATI

City of Cincinnati v. Beretta U.S.A. Corp., No. A99-02369
(Ohio Ct. C.P. Hamilton County filed April 28, 1999).

CLEVELAND

City of Cleveland v. Hi-Point Firearms, No. CV-99-381897
(Ohio Ct. C.P. filed April 8, 1999).

DETROIT & WAYNE COUNTY

Archer v. Arms Technology, Inc., No. 99912658-NZ
(Mich. Cir. Ct. Wayne County filed April 26, 1999)
&
McNamara v. Arms Technology, Inc., No. 99912662-NZ
(Mich. Cir. Ct. Wayne County filed April 26, 1999).

MIAMI-DADE COUNTY

Miami-Dade County v. Arms Technology, Inc., No. 99-01941-CA-06
(Fla. Cir. Ct. filed Jan. 27, 1999).

NORTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. 303753
(Sup. Ct. San Francisco filed May 25, 1999).

NEW ORLEANS

City of New Orleans v. Smith & Wesson Corp., No. 98-18578
(Civ. D. Ct. Parish of Orleans filed Oct. 30, 1998)

NEWARK

Sharpe v. Arcadia Machine & Tool, Inc., No. ESX-L-6059-99
(Sup. Ct. Essex County filed June 9, 1999).

SOUTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. BC210894
(Sup. Ct. Los Angeles filed May 25, 1999).

ST. LOUIS

City of St. Louis v. Cernicek, No. CV-992-01209
(Cir. Ct. St. Louis. 22nd. Jud. Dt. filed April 30, 1999).

ATLANTA

City of Atlanta v. Smith & Wesson Corp., No. 99vs0149217J
(Ga. Cir. Ct. filed Feb. 4, 1999).

The City of Atlanta, Georgia, has filed a suit alleging products liability and negligence against members of the firearm industry to recover damages for the manufacture, sale, marketing, promotion and distribution of guns which are defective, unreasonably dangerous and negligently designed under Georgia law.

The lawsuit, similar to one filed in Miami-Dade County, Florida, names 14 handgun manufacturers and 3 firearm industry trade associations as defendants, including inter alia, Smith & Wesson Corp.; Sturm, Ruger & Company, Inc.; Glock, Inc.; Beretta U.S.A.; Davis Industries; Colt's Manufacturing Company; and American Shooting Sports Council, Inc.

The complaint alleges that the defendant manufacturers are liable for (1) defective and negligent design because the risks of the product design outweigh the benefits; (2) failing to provide adequate warnings as to the risks of guns; and (3) failing to include certain safety devices in design. These safety devices include devices that would prevent firearms from being fired by unauthorized users, alert users that a round is in the chamber, and prevent guns from being fired when the magazines are removed from them. (Compl. at 21.) The City of Atlanta argues that the inclusion of such safety devices would prevent many adolescent suicides, unintentional shootings by children and homicides by unauthorized users of guns.

The complaint also alleges that certain firearm trade associations and gun manufacturers are negligent because they have tacitly agreed with, colluded with and cooperated with one another to fail to develop and implement safety features and to inadequately warn users of the risks of guns. (Compl. at 24.)

The City of Atlanta asserts that, as a result of gun violence, the city has been obligated to pay millions of dollars to enhance police protection and emergency health services and has lost substantial tax revenue because of lost productivity of those citizens injured.

Atlanta Mayor Bill Campbell filed the lawsuit on behalf of the city on February 4, 1999, in the state court of Fulton County. Mayor Campbell announced that "today we act to hold gun manufacturers accountable -- companies that create instruments of destruction -- for their failure to make products safer and to warn of their inherent danger." *Announcement of City of Atlanta Filing a Lawsuit*, (Office of the Mayor, Atlanta, Ga.) Feb. 4, 1999, at 1. Mayor Campbell stated that the lawsuit is about protecting children, not about the city budget or the crime rate. *See id.*

After the City of Atlanta filed this lawsuit, Governor Roy Barnes signed into law a bill that makes Georgia the first state to prohibit its cities and counties from filing product liability suits against the firearm industry. The bill affects any future or pending suit. At this time, it is unclear how Georgia's new law will affect the Atlanta suit.

BOSTON

City of Boston v. Smith & Wesson Corp., No. 99-2590C
(Mass. Sup. Ct. Suffolk County filed June 3, 1999).

The City of Boston, Massachusetts, and the Boston Public Health Commission have filed a lawsuit against thirty-one gun manufacturers, distributors and industry trade associations, alleging public nuisance, negligent marketing and distribution, negligence, unjust enrichment and breach of warranty.

The complaint was filed on June 3, 1999, in the Suffolk County Superior Court, Massachusetts, by City of Boston Mayor Thomas Menino. At a press conference at City Hall, Mayor Menino announced, "It's high time the gun industry started to take responsibility for the toll its products take on the public health. As I look around our City and our nation - I ask the Court to decide - how many more deaths, suicides and assaults will be committed before we crack down on the gun industry?" *Mayor Menino Files Lawsuit Against Gun Industry: Boston Becomes 20th City to Prepare Gun Litigation* (Office of the Mayor, Boston, Mass.), June 3, 1999. Manufacturers named as defendants in the lawsuit include, *inter alia*, Smith & Wesson, Corp.; Beretta U.S.A. Corp.; Glock Corp.; Davis Industries Corp.; Sturm, Ruger & Co.; Hi-Point Firearms Corp.; and Harrington & Richardson Corp.

According to the complaint, the defendants have designed, manufactured, marketed and distributed firearms, which lack adequate safety features and warnings, in a manner that permits the acquisition of firearms by unauthorized and irresponsible persons, including children and criminals, through an illegal, secondary firearms market. (Compl. at 1-2.) The defendants, through their conduct and business practices, have allegedly continuously supplied and maintained this illegal, secondary firearms market.

In particular, thousands of guns have entered the illegal, secondary firearms market through methods of diversion, which include straw purchasing, multiple sales, sales by kitchen table dealers, sales at gun shows and theft from retail dealers who have failed to provide adequate security of their premises. (Compl. at 7-8.) The defendant firearms manufacturers take no action to stop or limit these practices from occurring. Instead, the defendants continue to supply their products to the gun dealers and retailers who participate in these practices.

The plaintiffs also allege that the design of the defendants' guns is unsafe and defective because it fails to incorporate feasible safety features, including magazine-disconnect safeties and chamber load indicators, and fails to implement safer gun designs, including "personalized" gun technology, which would prevent unauthorized users from firing their products. (Compl. at 9-10.) In addition, the plaintiffs claim that the defendants have failed to issue adequate warnings or instructions alerting consumers about the risks of guns and of the importance of proper gun storage. As a result of the unsafe and defective design of defendants' guns and the lack of adequate warnings or instructions issued, thousands of unintentional shooting deaths and injuries and thousands of adolescent suicides, homicides and other crimes occur. (Compl. at 9-10.)

In addition, the plaintiffs claim that the defendants have made false and deceptive advertising claims regarding the safety of firearms within the home. (Compl. at 11.) Defendants have allegedly advertised that having a firearm within the home increases one's protection and security while knowing that studies and statistics show that home ownership of guns actually increases the risk of harm to firearm owners and their families. (Compl. at 11.)

In the first count of the complaint, the plaintiffs allege that the defendants are liable for public nuisance because their ongoing conduct creates and supplies an illegal, secondary firearms market and results in injury and death to the residents of the City of Boston, thereby causing a significant interference with the public health, safety and general welfare. (Compl. at 12.) Plaintiffs claim that the defendants' ongoing conduct of defectively designing and distributing unsafe firearms that do not incorporate essential safety features, failing to adequately warn of the risks of guns and making false and deceptive advertising statements concerning the safety of having guns within the home has also contributed to the creation and maintenance of a public nuisance. (Compl. at 12.)

In the second count of the complaint, the plaintiffs allege that the defendants are liable for negligent marketing and distribution because they have failed to exercise adequate supervision or control over the distributors and dealers who sell their products to the public and have marketed and distributed their products in a manner which permits the acquisition of firearms by unauthorized and irresponsible persons. (Compl. at 13.) This conduct violates the defendants duty of care to market and distribute their products in a responsible manner so as not to create an unreasonable risk of harm to the residents of the City of Boston. As a result of the breach of their

duty of care, the plaintiffs claim the defendants have proximately caused harm to the City of Boston and its residents. (Compl. at 13-14.)

In the third and fourth counts of the complaint, the plaintiffs allege that the defendants are liable for breach of warranties. Defendants have allegedly breached their implied warranties of merchantability of fitness for a particular purpose because they have manufactured, marketed and sold defectively designed firearms that fail to incorporate feasible safety features, thereby making their products unreasonably dangerous. (Compl. at 14.) Defendants have also allegedly breached their warranties by failing to adequately warn or instruct consumers as to the risks associated with the use, handling and storage of firearms. (Compl. at 15.)

In the fifth count, the plaintiffs allege that the defendants are liable for negligence because they have breached their duty of care to the residents of Boston by negligently designing, marketing and distributing firearms, which do not contain adequate safety devices or warnings, in a manner that permits the acquisition of firearms by unauthorized and irresponsible persons, including criminals and juveniles. (Compl. at 16-17.)

In the sixth count, the plaintiffs allege that the defendants are liable for unjust enrichment because they have reaped substantial profits from the sale and transfer of guns to unauthorized or prohibited purchasers, the sale of unreasonably dangerous firearms and sales based on false and deceptive advertising at the City's expense. (Compl. at 18.) While the defendants have profited from the sale of firearms to prohibited persons, the plaintiffs claim the City has been forced to pay for the costs resulting from the use of those guns, including police services, emergency services, social services and health care. (Compl. at 18.) Plaintiffs also claim to have lost substantial tax revenue as a result of individuals being injured by guns and diminished property values.

The City of Boston and the Boston Public Health Commission will be represented in the lawsuit by the Boston Public Health Commission Office of the General Counsel and the firms of Brown, Rudnick, Freed & Gesmer; Lieff, Cabraser, Heimann & Bernstein; Sullivan, Weinstein & McQuay; and Cohen, Milstein, Hausfeld & Toll, as well as The Center to Prevent Handgun Violence.

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BRIDGEPORT

City of Bridgeport v. Smith & Wesson, Inc. et al., No. CV-99-0361279
(Conn. Super. Ct., filed January 27, 1999).

The City of Bridgeport, Connecticut has filed a lawsuit against members of the firearm industry alleging that the handgun industry has facilitated the flow of illegal weapons to criminals and has failed to implement available safety devices in their products.

The city has filed a lawsuit against gun manufacturers and sellers, pawn shops, firearm trade associations and gun retailers to recover the expenses incurred by the city from handgun violence, including health care, police and social service costs and reduced property values. Manufacturers named as defendants in the lawsuit include, *inter alia*, Smith & Wesson, Inc.; Sturm, Ruger & Co.; Beretta U.S.A. Corp.; Colt's Manufacturing Co.; Glock, Inc.; Bryco Arms; and B.L. Jennings, Inc.

Specifically, the City of Bridgeport's lawsuit alleges violations of the Connecticut Unfair Trade Practices Act, public nuisance, products liability, civil conspiracy, unjust enrichment and negligence. The complaint first alleges that the defendants are liable under common law negligence and under the Connecticut Products Liability Act, Conn.Gen.Stat. §52-572, for the negligent design, manufacture, marketing and sale of their products because those products failed to incorporate readily available safety devices and failed to provide adequate warnings or instructions regarding the dangerous nature of guns. The city claims that alternative safety designs are available, including devices that would alert users that a round is in the chamber, prevent weapons from being fired when the magazine is removed and prevent weapons from being fired by unauthorized users by way of self-locking features. See Complaint at 16, *Bridgeport*, No. CV-99-0361279.

Secondly, the complaint also alleges that the defendants have violated the Connecticut Unfair Trade Practices Act, Conn.Gen.Stat. §42-110b(a), because they engaged in unfair and deceptive advertising and sales practices. The city asserts that the defendants engaged in unfair and deceptive advertising practices, including misrepresenting the dangers of guns by falsely

advertising that home ownership of guns increases home safety and security . . . while knowing that home ownership of guns actually increases the risk of homicides, suicides and accidental injuries or death. *See* Complaint at 20. The city also alleges that the defendants have engaged in unfair and deceptive sales practices by making multiple sales of firearms to individual buyers who will resell or use the guns in the commission of crimes and by selling guns that do not incorporate feasible safeties and self-locking devices that would prevent misuse by unauthorized users. *See id.* at 21.

Next, the complaint alleges that the defendants have created and maintained a public nuisance by marketing, selling and distributing guns to persons who resell those guns into the illegal handgun market. Defendants' conduct results in a higher level of crime, death and injury to the residents of Bridgeport, thereby causing a significant and unreasonable interference with the public health, peace, comfort and convenience.

In addition, the complaint alleges that defendants have acted in conspiracy among themselves by engaging in unlawful acts by failing to develop and implement safety features, failing to issue adequate warnings as to the risks of guns, and failing to implement procedures that would have prevented their guns from ending up in the underground market and used in the commission of crimes. *See id.* at 32, 33. The city also asserts that the defendant gun retailers conspired with the buying public by making multiple sales of handguns, selling guns to individuals who will illegally transfer or resell those handguns, and selling guns even when the buyer's words or conduct indicated that they would illegally resell or transfer those guns. *See id.* at 33.

Finally, the complaint alleges that the defendants have been unjustly enriched at the expense of the City of Bridgeport by the sale of guns in and around the city. While the defendants have gained significant profits from the sale of firearms, the city has been forced to increase expenditures for medical care, emergency personnel, police investigations, human services, courts and prisons. *See id.* at 34. The city has also lost tax revenues due to lost productivity of those injured and has suffered reduced property values. *See Id.*

On January 27, 1999, Bridgeport Mayor Joseph Ganim filed the lawsuit on behalf of the city, announcing "For too long Bridgeport taxpayers and residents have been responsible for the cost of handgun violence . . . By taking this action, we are saying to the handgun industry, 'From now on, you are responsible for the costs associated with your dangerous products.'" Myron Levin, *Gun Makers Face 2 More Lawsuits from Cities*, Fresno Bee, January 28, 1999. The lawsuit seeks to obtain injunctive relief and to recover the monetary expenses incurred by the city as a result of gun violence.

The Legal Action Project of the Center to Prevent Handgun Violence, along with Updike, Kelly & Spellacy, P.C. and the Bridgeport City Attorney's Office, is acting as co-counsel to the City of Bridgeport.

CAMDEN CITY

City of Camden v. Beretta U.S.A. Corp., No. 451099
(*Sup. Ct. Camden County* filed June 21, 1999).

The City of Camden has filed suit against twenty-two members of the gun industry, alleging that the defendants created a public nuisance, negligently designed their products, failed to adequately warn consumers of the risks associated with gun ownership and use, facilitated the creation and continuation of an illegal, secondary firearms market and violated the New Jersey Consumer Fraud and Products Liability Acts.

The suit was filed in the Superior Court of New Jersey, Camden County, on June 21, 1999. Named defendants in Camden City's suit include, *inter alia*, Beretta U.S.A. Corp.; Bryco Arms Corp.; Colt's Manufacturing Corp.; Glock, Corp.; Navegar Inc.; Smith & Wesson Corp.; and Sturm, Ruger & Co. Corp. The City will be represented in its lawsuit by the City Attorney's Office, The Center to Prevent Handgun Violence, and the firms of Trujillo, Rodriguez & Richards, LLC; Cohen, Milstein, Hausfeld & Toll; Lieff, Cabraser, Heimann & Bernstein; and Kairys, Rudovsky, Epstein, Messing & Rau.

The City alleges that it is subject to numerous injuries and deaths each year because of the defendants' "unsafe products and irresponsible marketing." (Compl. at 3.) According to the City, these injuries and deaths place economic burdens on Camden City in the form of increased expenditures on emergency and law enforcement services, health care and preventive and protective services, as well as decreased property values and lost tax revenues.

In count one, the plaintiff alleges that the defendants have created a public nuisance by creating and supplying the illegitimate, secondary firearms market; designing and distributing unsafe guns,

which lack essential safety features that would prevent unauthorized use; failing to adequately warn consumers of the risks associated with the use, handling, storage and operation of their guns; and falsely advertising and promoting their products. (Compl. at 21-22.) Plaintiff claims that this conduct has interfered with the right of Camden City's citizens to be free from "avoidable injury and death" and has damaged the public health, safety and general welfare. (Compl. at 21.)

In count two, the plaintiff alleges that the defendants are liable for violation of the New Jersey Consumer Fraud Act (NJCFCA) §§ 56:8-1 *et seq.* by engaging in "unconscionable commercial practices, deception, fraud, false pretense, false promise and misrepresentation." (Compl. at 22.) This "unconscionable" conduct on the part of the defendants includes: (1) marketing, distributing and selling their products in a manner likely to cause harm to young children and other residents of Camden City; (2) marketing, distributing and selling their products in a manner likely to contribute to criminal activity, homicides, suicides and accidental deaths and injuries; (3) falsely advertising ownership of their products as a means of increasing home safety despite knowledge that home ownership of guns actually increases the risk of injury or death in the home; (4) selling excessive numbers of guns to individual buyers despite knowledge that all of the guns in multiple sales are not intended for individual use; and (5) selling guns that fail to incorporate available safety devices, such as safeties and self-locking devices. (Compl. at 23.) As provided in the NJCFCA, the plaintiff seeks reimbursement of "all ascertainable losses," in addition to treble damages. (Compl. at 24.)

In count three, the plaintiff alleges that the defendants negligently marketed and distributed their products by failing to take "reasonable steps to reduce the risk of their products being sold to persons likely to misuse them." (Compl. at 24.) Such reasonable steps by defendants might have included limiting straw purchases, prohibiting or restricting sales to kitchen table and corrupt dealers, inhibiting multiple purchases, inhibiting diversion of their guns at gun shows, requiring distributors and dealers to secure their guns from theft, manufacturing their products in a manner that would prevent serial number obliteration, inhibiting gun trafficking from states with weak gun control laws to areas with stronger gun control laws, supervising distributors and dealers to prevent acquisition by unauthorized users and marketing their products in a manner that conveyed the dangers associated with gun use and ownership. (Compl. at 24-25.) According to the plaintiff, the defendants' failure to take these precautions constituted a breach of their duty of care to market and distribute their products in a responsible manner. In addition, the plaintiff claims the defendants negligently marketed their products by falsely claiming that gun ownership would enhance household security. (Compl. at 25.)

Plaintiff alleges in count four that the defendants violated the New Jersey Products Liability Act (NJPLA) §§ 2A:58C-1 *et seq.* by defectively designing their products. (Compl. at 26.) Plaintiff claims the defendants' products were not "reasonably fit, suitable or safe" for their intended purpose because they failed to incorporate designs that would: (1) prevent them from being fired by unauthorized users; (2) increase the pressure required to activate the trigger; (3) alert users that a round is in the chamber; (4) prevent them from being fired after the magazine has been removed; and (5) inhibit their illegal sale and distribution. (Compl. at 27.) Defendants were allegedly aware of the gravity of the injuries that would result to Camden City citizens as a result of these defects and could have reduced these injuries by incorporating the above-described, feasible designs. (Compl. at 27.)

In count five, the plaintiff alleges that the defendants violated the NJPLA by failing to warn consumers about their guns' "dangerous propensities." (Compl. at 28.) Plaintiff claims the defendants' products should have included warnings about the risks posed to children by guns, proper gun storage, the likelihood of criminal use of guns following their theft, the possibility that a round of ammunition may be housed in the chamber, the possibility that the gun could fire despite magazine removal, the lack of safety devices on their guns, the importance of training to ensure safe handling of guns and the fact that household gun ownership increases the risk of injury to household members. (Compl. at 28.) Instead of including warnings about these dangers, the plaintiff alleges that the defendants actively promoted their products as safe and as a means of increasing household safety. (Compl. at 29.)

Plaintiff alleges in count six that the defendant manufacturers, distributors and dealers are liable for negligent design and failure to warn. (Compl. at 29.) The plaintiff claims the defendants' products are negligently designed because they lack safety devices, which would prevent unauthorized use, accidental discharge and illegal sales and distribution. (Compl. at 30.) The plaintiff also alleges that the defendants are liable for failure to warn because they failed to adequately alert consumers about the potential risks of their products. (Compl. at 30-31.) Furthermore, the defendants allegedly acted in concert to prevent the development and implementation of safety features and other means to prevent the unauthorized use of their products, as well as in their failure to issue adequate warnings. (Compl. at 31.)

The plaintiff alleges in count seven that the defendants are liable for unjust enrichment at the City of Camden's expense. (Compl. at 31-33.) Defendants have allegedly profited from the sale and

transfer of their guns to unauthorized users, the sale of defective and unreasonably dangerous guns and gun sales prompted by their deceptive advertising. (Compl. at 31.) The plaintiff claims it has been and will continue to be forced to bear the economic burden and negative consequences of the defendants' conduct and seeks monetary compensation, apportioned among defendants under a market share liability theory, for all of its expenditures resulting from the defendants' alleged conduct. (Compl. at 32-33.) In addition to monetary compensation, the plaintiff seeks injunctive relief requiring defendants to implement standards for gun dealers and distributors who sell their guns, implement appropriate safety devices on all of their products, fund a public education campaign to inform Camden City citizens about the dangers of guns and fund a violence prevention program in each school and correctional facility in Camden City. (Compl. at 34.) Finally, the plaintiff seeks punitive damages to deter future intentional and reckless conduct by defendants that would endanger Camden City residents. (Compl. at 34.)

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CAMDEN COUNTY

Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp., No. 99-2518
(D.N.J. filed June 1, 1999).

The Camden County Board of Chosen Freeholders has filed a lawsuit alleging public nuisance, products liability, negligence, assault and intentional interference with an economic advantage against members of the firearms industry.

This suit was filed on June 1, 1999, in the United States District Court for the District of New Jersey, Camden Vicinage, by the Camden County Board of Freeholders. Camden County seeks injunctive relief and compensatory, punitive and treble damages for the harm incurred by the county and its citizens as a result of the defendants' alleged conduct. Firearms manufacturers named as defendants in the suit include, *inter alia*, Beretta U.S.A. Corp.; Bryco Arms, Inc.; Colt's Manufacturing Co.; Glock, Inc.; Navegar, Inc.; Raven Arms, Inc.; Smith & Wesson Corp.; and Taurus International Manufacturing, Inc. Camden County is being represented in the suit by the Office of Camden County Counsel.

According to the plaintiff, the defendants have oversupplied the national firearms market with their products in areas that maintain weak gun control laws, knowing that these weapons will be illegally possessed and used in stricter gun control jurisdictions, including Camden County. (Compl. at 9.) In addition, the defendants have allegedly permitted the sale of certain firearms, including assault weapons, to Camden County residents in jurisdictions outside of Camden, knowing that it is illegal to use or possess such firearms in the State of New Jersey. (Compl. at 9.) The plaintiff claims that the defendants, through their marketing and distribution practices, which include sales to non-dealers, non-residents, straw purchasers, dealers with multiple criminal traces and dealers who sell dangerous firearms at gun shows, have ensured the continued existence of an illegal, secondary firearms market in Camden County. (Compl. at 10.)

In the complaint, the plaintiff also claims that the defendant manufacturers have designed and marketed firearms, including firearms whose design features focus on concealability, rapid fire and high capacity magazines, with the intent of appealing to those who would use their product for criminal or dangerous purposes. (Compl. at 11.)

In addition, the plaintiff asserts that the defendants have manufactured and distributed firearms that are defective because they fail to incorporate adequate warnings, fail to prevent use by unauthorized persons, fail to prevent accidental discharges resulting from a round housed in the chamber, permit ready use of large ammunition magazines, permit ready concealability and allow for the unreasonably rapid discharge of bullets. (Compl. at 17.) The plaintiff alleges that the defendants knew their defective designs promoted criminal activity; caused physical, emotional and economic injury to Camden County residents; jeopardized the public health and safety; and caused the County to spend substantial amounts of money on alleviating these harms. (Compl. at 18.)

In the first count of the complaint, the plaintiff alleges that the defendants are liable for public nuisance because their ongoing conduct of causing the presence of illegal firearms, defective firearms and firearms linked to violence and crime in Camden County has unreasonably interfered with the public's right to enjoy their private property and the public land of Camden County and has endangered the public's health, safety and welfare. (Compl. at 19.) Furthermore, the defendants' ongoing conduct has allegedly caused the County to spend large amounts of its financial resources on abating the harms caused by these firearms. (Compl. at 19.)

In the second count, the plaintiff alleges that the defendants are liable for manufacturing and selling defective firearms which are not reasonably fit, suitable or safe for their intended purposes. (Compl. at 20.) Plaintiff claims these firearms are defective because they possess features that permit ready concealability, use of large ammunition magazines and fail to provide adequate warnings and prevent unauthorized use. (Compl. at 20.) Further, certain of these firearms possess semi-automatic features, which allow for the rapid discharge of bullets, permit user modifications to produce automatic function, and fail to incorporate safety features to prevent accidental discharges when a round is housed in the chamber of the gun. (Compl. at 20.) According to the plaintiff, technically feasible, alternative designs existed that would have corrected these defects without substantially impairing any legitimate function of the firearms. (Compl. at 20.) These defective firearms have allegedly subjected the residents of Camden County to innumerable harms, including suicides, homicides and accidental injuries and deaths, and has subjected the County to the costs associated with these harms.

In the third count of the complaint, the plaintiff alleges that the defendants are liable for negligence because they have breached their duty of reasonable care to the residents of Camden County by negligently, carelessly and recklessly marketing and distributing firearms linked to crime and violence, illegal firearms and defective firearms to persons residing in or entering Camden County. (Compl. at 22.)

In the fourth count, the plaintiff alleges that the defendants are liable for assault because the proliferation of firearms in Camden County, promoted by the defendants' conduct, has led residents to apprehend an immediate threat of injury and bodily harm, including suicide, homicide and accidental injury and death. (Compl. at 22-23.)

In the fifth and final count of the complaint, the plaintiff alleges that the defendants are liable for intentional interference with an economic advantage because their conduct has forced the County to spend its resources on controlling and abating the harms caused by the presence of illegal and defective firearms instead of financing the economic development and expectations of the County. (Compl. at 23-24.)

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CHICAGO

City of Chicago and County of Cook v. Beretta U.S.A. Corp., No. 98-CH15596
(Cir. Ct. Cook County filed Nov. 12, 1998.)

On November 12, 1998, the City of Chicago and Cook County filed suit against members of the gun industry alleging that the practices of gun manufacturers, distributors, and dealers unjustifiably disrupt public safety and health, constituting a public nuisance. Defendants in the suit are 12 gun shops, 4 gun distributors, and 22 gun manufacturers, including *inter alia*, Beretta U.S.A.; Bryco Arms; Colt's Manufacturing Co.; Davis Industries, Inc.; Glock, Inc.; Navegar, Inc.; Raven Arms; and Smith & Wesson Corp.

Chicago Mayor Richard Daley announced the suit against the gun industry, which seeks \$433 million in damages incurred by the city since 1994. Daley claims the suit is designed to "hit [the gun industry] right where it hurts - in their bank accounts" and vows that the city "won't stop hitting until they stop flooding our streets with guns." News Release, Office of the Mayor, City of Chicago, November 12, 1998.

Chicago marks the second city to file against the industry, and it takes a considerably different approach from the suit filed by the city of New Orleans. Chicago's suit alleges that the continuing availability of illegal firearms in Chicago is caused by the practices of defendants who intentionally seek to maintain and supply the high demand for guns in the city. The city hopes to hold the defendants liable under a theory of public nuisance for their design, marketing, and distribution practices.

The city filed suit following a three-month investigation conducted by the Chicago police department in which they sent undercover officers to suburban Chicago stores to purchase guns. During the course of the operation, police officers posed as "straw purchasers" as well as criminals and gang members who were looking to "take care of business." At the close of the investigation, the officers had "illegally" purchased 171 guns. News Release, Office of the Mayor, City of Chicago, November 12, 1998.

The complaint alleges that firearms manufacturers and distributors "knowingly exploit the market for illegal weapons." Complaint at 54. Chicago claims that these manufacturers and distributors

oversupply the market with weapons in areas with relaxed gun control laws, such as those surrounding Chicago. In doing so, they "saturate" these areas with guns, knowing that the guns will be brought into areas in which they are outlawed, such as Chicago.

The Chicago complaint also alleges that defendant manufacturers and distributors do not take proper precautions to ensure that the dealers sell their guns responsibly. The city maintains that defendant manufacturers make "no meaningful efforts to supervise, regulate, or impose standards on the distribution practices" of the distributors and that the distributors, in turn, fail to do the same with the dealers. *Id.* at 56. According to former Smith & Wesson executive Robert Haas, "None of the [gun makers], to my knowledge, investigate, screen or supervise the wholesale distributors and retail outlets to ensure that their products are distributed responsibly." *City Weighs Suit Against Gun Makers*, *Baltimore Sun*, November 13, 1998. Chicago alleges that defendants know or should know that this practice causes thousands of firearms to be illegally possessed and used in Chicago, resulting in increased crime, injury, and death.

In addition, the Chicago complaint alleges that manufacturers intentionally design and advertise their products to appeal to those who would illegally use their weapons, including criminals and gang members. Allegations include the claim that gun manufacturers intentionally make their guns unreasonably attractive to criminals by advertising that their guns are, *inter alia*, concealable and fingerprint resistant. Complaint at 59. The city claims that defendants know or should know that they market their guns to be unreasonably attractive for criminal uses.

Chicago also maintains that this conduct constitutes a public nuisance. In order to properly plead a nuisance claim in Illinois, the city must show that 1) defendants created the nuisance, 2) an existing public right has been violated, and 3) damages were incurred as a result. *City of Bloomington v. Westinghouse*, 891 F.2d 611, 614 (7th Cir. 1989). First, the city claims that defendants' practices oversupply the black market with their guns, creating a public nuisance.

Next, the complaint alleges the defendants violated the public right of Chicago residents to be free from "conduct that creates an unreasonable jeopardy to the public's health, welfare, and safety, and to be free from conduct that creates a disturbance and reasonable apprehension of danger to person and property." Complaint at 67.

The complaint alleges that defendants' conduct violates the city's gun control ordinances, which were specifically enacted to protect the "public's health, welfare, and safety." Through their unreasonable practices, defendants' conduct violates this public right. Finally, the complaint alleges that defendants' unreasonable conduct "creates a disturbance and reasonable apprehension of danger" among the residents of Chicago.

The suit was filed November 12, 1998, in Cook County Circuit Court.

CINCINNATI

City of Cincinnati v. Beretta U.S.A. Corp., No. A99-02369
(*Ohio Ct. C.P. Hamilton County filed April 28, 1999*).

The City of Cincinnati has filed a lawsuit against sixteen firearms manufacturers and three industry trade associations, alleging products liability, negligence, unfair and deceptive advertising practices, public nuisance, fraud, negligent misrepresentation and unjust enrichment.

In a complaint filed on April 28, 1999, in the Court of Common Pleas, Hamilton County, Ohio, the City of Cincinnati sued certain firearm manufactures, including, *inter alia*, Beretta U.S.A. Corp.; Colt's Manufacturing Co., Inc.; Lorcin Engineering Co., Inc.; Smith & Wesson Corp.; and Sturm, Ruger & Co., Inc. Also named as defendants are the industry trade associations of American Shooting Sports Coalition, Inc.; National Shooting Sports Foundation, Inc.; and Sporting Arms and Ammunition Manufacturers Institute, Inc.

In the complaint, the plaintiff alleges that the defendants have failed to implement available technology that would make guns safer, deceived citizens by promoting the fallacy of better home protection with the purchase of a gun and engaged in conduct which sustains an illegal gun market. (Compl. at 4-5.) In addition, the plaintiff alleges that the defendants have engaged in the practice of designing, manufacturing and selling unsafe firearms. (Compl. at 10-18.) The plaintiff also claims that the defendants gave false or misleading statements in their advertisements, (Compl. at 18-19), and were negligent in the marketing and distribution of their products, (Compl. at 20-28).

As a result of the defendants' alleged reckless conduct, the plaintiff claims that it has suffered harm and incurred financial damages and seeks compensatory damages, punitive damages and

injunctive relief. The lawsuit seeks to enjoin all defendants from distributing handguns without safety devices and from using unfair or deceptive advertising and sales practices. (Compl. at 41.)

Finally, the plaintiff seeks to make the gun manufacturers create and implement standards for handgun distribution in an effort to reduce the illegal market, provide adequate warnings about risk of ownership and proper storage and fund programs about gun owner responsibility with the goal of reducing handgun violence. (Compl. at 41.)

In the first and second counts of the complaint, the plaintiff alleges strict products liability, claiming that the products were defective in design in that, at the time they left the defendant manufacturers' control, the guns were unreasonably dangerous. (Compl. at 28.) The plaintiff also alleges that manufacturers failed to give adequate warnings or instructions. (Compl. at 30.)

The plaintiff alleges in the third and fourth counts that the defendants are liable for negligence. According to the plaintiff, the defendants had a duty to use reasonable care in the design, manufacture, advertisement and distribution of their products in order to ensure that the products were safe for their intended, foreseeable use. (Compl. at 31.) The defendants allegedly failed to use reasonable care even though they knew or should have known of the harm caused by their products. (Compl. at 31.) Plaintiffs also contend that defendants were negligent in failing to use reasonable care to provide an adequate warning to consumers of the risks associated with firearms. (Compl. at 32.)

In the fifth count of the complaint, the plaintiff alleges that defendant manufacturers are using unfair and deceptive advertising practices in violation of Ohio Revised Code Sections 1345.02 and 1345.03. (Compl. at 32-34.) The plaintiff claims that the defendants use their advertising to promote the fallacy that gun ownership increases home safety and protection despite the fact that they knew or should have known, as a result of available studies and statistics, that guns in the home actually contribute to higher rates of homicide, suicide and accidental death. (Compl. at 19, 33.)

The plaintiff alleges in the sixth count that the defendants' actions constitute a public nuisance. The plaintiff claims that its residents have a right to be free from conduct that creates an unreasonable jeopardy to their health, welfare and safety and that the conduct of the defendants interferes with this right. (Compl. at 34.) As a result of the defendants' conduct, Cincinnati residents continue to be killed and injured by firearms and continue to live in fear for their safety. (Compl. at 35.)

In the seventh count, the plaintiff alleges that the defendants have engaged in fraud and fraudulent concealment, either in concert or individually. (Compl. at 37-38.) The plaintiff claims that the defendants have made false representations about their products and omitted material facts about the safety of their products, such as the risks associated with firearms, with the intent to deceive consumers. (Compl. at 37.) The residents of Cincinnati justifiably relied on these assertions and allegedly purchased the defendants' products based on those misrepresentations. (Compl. at 37-38.)

In the eighth count of the complaint, the plaintiff alleges that the defendants' actions constitute negligent misrepresentation. (Compl. at 38-39.) The plaintiff claims that the defendants made misrepresentations and omissions about the safety of their products and, moreover, have over-promoted the utility of handguns for self-defense and home protection purposes, while disregarding the risk of accidents, homicides and suicides associated with handgun ownership. (Compl. at 19.) The plaintiff asserts that these misrepresentations were made without a reasonable basis and that the defendants negligently concealed this from consumers. (Compl. at 38-39.)

In the ninth and final count of the complaint, the plaintiff alleges that the defendant manufacturers are liable for unjust enrichment and restitution, claiming that the manufacturers have reaped enormous profits from handgun sales in and around Cincinnati at the city's expense. The plaintiff claims it has suffered an increase in its expenditures for medical care, police investigations, emergency personnel, human services, courts and prisons as a result of the sale of defendants' products. (Compl. at 39-40.)

The firm of Waite, Schneider, Bayless & Chesley Co., L.P.A., along with the Cincinnati City Solicitor's Office and The Center to Prevent Handgun Violence, is representing the City of Cincinnati in this lawsuit.

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CLEVELAND

City of Cleveland v. Hi-Point Firearms, No. CV-99-381897
(Ohio Ct. C.P. filed April 8, 1999).

The City of Cleveland, Ohio, has filed a lawsuit against seventeen handgun manufacturers and three firearms trade associations alleging violations of the Ohio Products Liability Act, as well as negligence, unjust enrichment and public nuisance.

Cleveland Mayor Michael White, who filed the lawsuit on behalf of the city on April 8, 1999, seeks to recover damages for the expenses incurred by the city as a result of gun violence, including police, emergency, medical, court and jail costs. Manufacturers named as defendants in the lawsuit include, *inter alia*, Hi-Point Firearms; Smith & Wesson Corp.; Sturm, Ruger & Co.; Lorcin Engineering Co., Inc.; Glock, Inc.; Colt's Manufacturing Co.; Bryco Arms; and Davis Industries.

The complaint states that fifty-one young lives have ended within the past five years as a result of handgun violence in the city and that these deaths are a direct consequence of the handgun manufacturers' refusal to incorporate feasible, available safety devices into their products, which would prevent guns from being fired by unauthorized users. (Comp. at 11.) According to the complaint, the design of defendants' guns, which does not make users aware that a round of ammunition is housed in the firing chamber and enables all people, including children, to fire the weapons upon gaining possession, results in thousands of unintentional shooting deaths and non-fatal injuries every year, thousands of adolescent suicides and thousands of homicides by unauthorized users. (Compl. at 13-14.)

In the first two counts of the complaint, the plaintiff alleges that the defendant manufacturers are liable under common law negligence and under Ohio Products Liability Act R.C. 2307.75 for the unreasonably dangerous and defective design of their products. (Compl. at 18-21.) Plaintiff alleges that the defendants' handguns are unreasonably dangerous and defective in design because they fail to incorporate feasible safety features that would prevent the harm caused by the use of guns in the city, even though the safety features would not compromise the utility of the guns. (Compl. at 18-19.) The plaintiff alleges that the harm caused by the use of the defendants' handguns would have been prevented or reduced if the defendants had employed alternative designs which incorporated safety devices that (1) prevented weapons from being fired by unauthorized users, including children; (2) alerted users that a round is in the chamber; and (3) prevented weapons from being fired when the magazine is removed from them. (Compl. at 20.)

In the third count, the plaintiff alleges that the guns manufactured by the defendants are unreasonably dangerous under Ohio Products Liability Act R.C. 2307.76 because they do not include adequate warnings or instructions about the risk of guns. (Compl. at 21-22.) Plaintiffs allege that the defendants failed to provide adequate warnings or instructions to customers concerning the proper storage of weapons, the risks associated with minors' access to guns, the possibility of a round being hidden in the chamber of the gun and the possibility of the gun firing when the ammunition magazine is removed. (Compl. at 21-22.)

In the fourth count of the complaint, the plaintiff alleges that the defendants are liable for unjust enrichment. (Compl. at 22-23.) While the defendant manufacturers have reaped substantial profits from the sale of guns in the City of Cleveland, the City has been forced to pay for the costs associated with the use of those guns. (Compl. at 22.) Therefore, the defendant manufacturers have allegedly been unjustly enriched at the expense of the City from the sale of their handguns. (Compl. at 22-23.)

The plaintiff alleges in count five that the defendants are subject to nuisance abatement under Cleveland City Code 203.01 because their products, which contain inadequate measures and warnings, cause significant harm and death to the people of Cleveland, thereby endangering their lives and health. (Compl. at 23.)

In count six, the plaintiff alleges that the defendants are liable for public nuisance because their ongoing conduct of designing, distributing and selling guns without available safety devices causes a significant and unreasonable interference with the public's health, peace, comfort and convenience. (Compl. at 24.)

Finally, in count seven, the plaintiff alleges that the defendant trade associations are negligent because they have acted in concert with, tacitly agreed with and aided and abetted the defendant manufacturers to (1) avoid developing and implementing safety features that would prevent guns from being fired by unauthorized users and (2) inadequately warn users of the risks of guns. (Compl. at 25.)

Upon filing the lawsuit, Mayor White announced, "For years, Cleveland's taxpayers have been bearing the enormous social costs of gun-related violence.... It is time this multi-billion dollar industry pays for its irresponsible and reckless business practices that are killing our citizens, including innocent children." *City of Cleveland Files Suit Against Gun Industry* (Office of Mayor Michael R. White, Cleveland, Ohio) April 8, 1999, at 1. The City of Cleveland Law Department and the firm of Climaco, Pecka, Wilcox, Lefkowitz & Garofoli Co. are representing the City of Cleveland in this lawsuit.

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DETROIT & WAYNE COUNTY

Archer v. Arms Technology, Inc., No. 99912658-NZ (Mich. Cir. Ct. Wayne County filed April 26, 1999)

&
McNamara v. Arms Technology, Inc., No. 99912662-NZ (Mich. Cir. Ct. Wayne County filed April 26, 1999).

The City of Detroit and Wayne County, Michigan, have filed two separate but similar lawsuits against certain members of the firearms industry, alleging public nuisance, negligence, alternative liability, concert of action and exemplary damages.

The lawsuits, filed on April 26, 1999, by the Mayor of Detroit, Dennis Archer, and Wayne County Executive Edward McNamara, allege that the practices of the manufacturers, distributors and dealers of guns create a public nuisance affecting the health and safety of its citizens and that the defendants have been negligent in allowing their firearms to come into possession of minors, criminals and other irresponsible people. Each plaintiff seeks compensatory and exemplary damages in the amount of \$400 million. The City of Detroit is also seeking injunctive relief. Manufacturers named as defendants in both lawsuits include, *inter alia*, Beretta U.S.A.; Bryco Arms, Inc.; Glock, Inc.; Hi-Point Firearms; Smith & Wesson Corp.; and Sturm, Ruger & Co.

In their suits, both plaintiffs claim that the lax distribution practices of the defendant manufacturers and dealers directly and indirectly supply firearms to juveniles, criminals and other prohibited persons. They allege that the defendants knew or should have known of the methods of illegal diversion and could have prevented or controlled the diversions into the illegal market but chose not to do so. (Archer Compl. at 20; McNamara Compl. at 22.) These methods of illegal diversion include straw purchasing, multiple sales, sales by kitchen table dealers, theft from retail dealers who failed to provide adequate security of their premises and obliteration of the serial numbers to prevent tracing of the firearm by law enforcement. (Archer Compl. at 21- 22; McNamara Compl. at 23-24.)

An undercover investigation conducted by the Wayne County Sheriff's Office during the months of March and April, 1999, confirms these negligent distribution practices. During the course of this investigation, police officers discovered that gun dealers were participating in the illegal practices of straw purchasing and multiple sales of firearms. (Archer Compl. at 21; McNamara Compl. at 30.)

The plaintiffs in both lawsuits allege that the defendants' conduct, practices and negligence have allowed for the creation of an illegitimate, secondary market for guns. Plaintiffs also claim that defendants plan their manufacturing strategies and distribute their products without self-regulation in order to allow the firearms to be purchased by unauthorized persons. The plaintiffs claim that the gun industry has knowledge of these illegal transactions and relies on them to provide millions of dollars in profit. (Archer Compl. at 26; McNamara Compl. at 34.)

In the first count of their complaints, both plaintiffs allege that the defendants are liable for public nuisance because their ongoing conduct of directly and indirectly supplying firearms to the illegitimate, secondary firearms market results in deaths and injuries to the citizens of Detroit and Wayne County, thereby causing a significant and unreasonable interference with the public health, safety, peace, comfort and convenience. Plaintiffs claim that the defendants knew or should have known the conduct to be of a continuous nature which produces significant and permanent negative effects on the public, such as citizens being killed or living in fear. The presence of the illegal firearms proximately results in significant costs to Detroit and Wayne County. (Archer Compl. at 36-37; McNamara Compl. at 44-45.)

In the second count of their complaints, both plaintiffs allege that the defendants' conduct was negligent. The plaintiffs assert the defendants had a duty to the citizens of Detroit and Wayne County not to create an unreasonable risk of foreseeable harm. The defendants' conduct

constitutes a breach of the duty owed to the citizens and has thereby proximately caused substantial and foreseeable harm to the City of Detroit and Wayne County. Plaintiffs seek compensatory damages for costs incurred and exemplary damages to compensate for the malicious, willful and wanton conduct of the gun industry. (Archer Compl. at 38; McNamara Compl. at 46.)

The plaintiffs also allege that defendants are liable on the counts of alternative liability, (Archer Compl. at 38-39; McNamara Compl. at 46); concert of action, (Archer Compl. at 39; McNamara Compl. at 47); and exemplary damages, (Archer Compl. at 39; McNamara Compl. at 47).

The firm Charfoos & Christensen, P.C., along with the City of Detroit Law Department is representing the City of Detroit in the lawsuit. Wayne County is being represented by Thurswell, Chayet & Weiner, P.C.; Thomas, Garvey, Garvey & Sciotti, P.L.L.C.; Corporation Counsel and The Center to Prevent Handgun Violence.

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MIAMI-DADE COUNTY

Miami-Dade County v. Arms Technology, Inc., No. 99-01941-CA-06
(Fla. Cir. Ct. filed Jan. 27, 1999).

Miami-Dade County, Florida, has filed a products liability and negligence claim against 26 handgun manufacturers and 3 firearm-industry trade associations to recover damages for the manufacture, sale and distribution of guns that fail to incorporate safety features that would prevent (1) guns from being used by children, criminals and other unauthorized users; (2) alert users that a round is in the chamber; and (3) prevent firearms from being fired when the magazine is removed from them.

In its lawsuit, Miami-Dade County argues that the inclusion of such safety devices would reduce or prevent many unintentional shootings by children, adolescent suicides and homicides by unauthorized users of guns. Manufacturers named in the suit as defendants include, *inter alia*, Smith & Wesson Corp.; Glock, Inc.; Sturm, Ruger & Company, Inc.; Beretta U.S.A. Corp.; and Colt's Manufacturing Company, Inc.

Specifically, the complaint alleges that the gun manufacturers are liable for the negligent and defective design of their firearms and ammunition because they failed to design their products to be reasonably safe for those in the vicinity of its reasonably foreseeable use by failing to include alternative designs and/or safety features. (Compl. at 20.) The complaint also alleges that the gun manufacturers failed to adequately warn or instruct users as to the risks of guns and that the manufacturers actively promoted and advertised their guns in a manner which did not alert customers and dealers to the risks of guns. (Compl. at 21.) Further, Miami-Dade County alleges that the defendant trade associations have tacitly agreed with, colluded with and cooperated with the gun manufacturers to fail to develop and implement safety features and to inadequately warn users of the risks of guns. (Compl. at 22.)

Mayor Alex Penelas filed this lawsuit on behalf of Miami-Dade County on January 27, 1999, after the Board of County Commissioners authorized him to file suit by a vote of 12-1. Mayor Penelas filed the suit to compel gun manufacturers to design safer, childproof guns and to recoup the damages incurred from gun violence. See News Release, (Office of the Mayor, Miami-Dade County, Fla.), Jan. 27, 1999, at 1. Mayor Penelas announced that "[e]very gun death or injury in our community is not only tragic, but also comes with a bill paid largely by local taxpayers. It's time to send the bill to the gun industry that clearly favors profits over public safety. And it's also time to make gun manufacturers design safer guns so that kids don't continue getting hurt." *Id.*

After Miami-Dade filed this lawsuit, Rep. George Albright, R-Ocala, sponsored a bill to ban any local government from filing lawsuits against gun manufacturers. The bill would make it a crime punishable by up to five years in jail and a \$5,000 fine for any local government official or employee to file a lawsuit against gun manufacturers. The bill also provides for a retroactive provision which would quash the suit filed by Miami-Dade County.

The Legal Action Project of The Center to Prevent Handgun Violence, along with the Miami-Dade County Attorney's Office, is representing Miami-Dade County in the suit.

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NORTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. 303753
(*Sup. Ct. San Francisco filed May 25, 1999*).

Municipalities in Northern California have filed suit against members of the firearms industry alleging public nuisance and unfair and deceptive business practices. The Cities of San Francisco, Sacramento, Berkeley and San Mateo and Alameda Counties have joined together to file suit in the San Francisco County Superior Court. A parallel lawsuit has been filed by the Southern California cities of Los Angeles, Compton and West Hollywood in Los Angeles County Superior Court.

The complaint was filed on May 26, 1999, in San Francisco court. Upon announcing the Northern California suit, Louise Renne, City Attorney of San Francisco, stated, "Our purpose is to compel gunmakers to share responsibility for protecting public health from the unsafe use of handguns and assault weapons. In their unwillingness to police themselves, and their false and deceptive advertising, they have created a domestic arms race that has left all issues of safety and legality aside." *San Francisco Sues Gun Makers: City Attorney Says Gun Industry Fuels "Domestic Arms Race,"* (City Att'ys Office, San Francisco, Cal.) May 25, 1999, at 1. The City Attorneys of San Francisco, Berkeley and Sacramento, the San Mateo County Counsel, The Center to Prevent Handgun Violence, and the firms of Milberg, Weiss, Bershad, Hynes & Lerach and Lieff, Cabraser, Heimann & Bernstein, LLP will represent the plaintiffs in this lawsuit.

According to the complaint, the defendants design, market, distribute and sell handguns in a manner which facilitates their use in criminal acts, fails to incorporate reasonable safety devices, deceives the public about the dangers of possessing a gun and evades federal, state and local laws. Manufacturers named as defendants in the Northern California lawsuit include, *inter alia*, Arcadia Machine & Tool, Inc.; Bryco Arms, Inc.; Beretta U.S.A. Corp.; Colt's Manufacturing Co.; Glock, Inc.; Navegar, Inc.; and Smith & Wesson Corp.

In the complaint, the plaintiff-municipalities claim that the marketing and distribution policies of the defendants have created and maintained a secondary, illegitimate firearms market where minors, criminals and other unauthorized users obtain firearms manufactured, distributed and sold by the defendants. Specifically, the defendants have allegedly facilitated and supplied a secondary, illegitimate firearms market by over-saturating the legitimate firearms market, over-saturating weak gun control jurisdictions, distributing firearms without exercising adequate controls or precautions over their distributors or dealers, facilitating multiple sales and straw purchases, selling guns to "kitchen table" dealers and designing, manufacturing and selling firearms that do not incorporate a design or feature preventing unauthorized use. (Compl. at 14-18.)

The plaintiffs also claim that the defendants have designed their products, which stress lethality and concealability, to appeal to criminals and have manufactured, distributed and sold firearms in a manner calculated to evade federal, state and local gun control legislation. For example, certain defendants continue to market and sell firearms substantially similar to those firearms banned by the United States 1968 Gun Control Act and the California Roberti-Roos Assault Weapons Control Act of 1989. (Compl. at 20.)

Additionally, the plaintiffs state that the firearms designed, manufactured and sold by the defendants are defective because they fail to incorporate feasible, available safety features, such as a "chamber load indicator" and a "magazine-disconnect safety," and fail to provide adequate warnings as to the risks of guns, including proper storage and use of firearms. (Compl. at 22-23.) As a result, thousands of preventable, unintentional shootings, often involving adolescents, occur every year. The plaintiffs also charge that the defendants have failed to compete with one another to develop firearms with personalized safety technology, which would prevent access to firearms by unauthorized users and thereby prevent thousands of shootings by adolescents and criminals. (Compl. at 26.)

The plaintiffs further assert that the defendants have made unfair, false and deceptive statements concerning the safety of possessing firearms within the home. The defendants have advertised and promoted, in order to increase their sales and profits, that ownership of guns increases home safety and security while knowing studies have demonstrated that home ownership of guns increases the risks of homicides, suicides and unintentional shootings. (Compl. at 26-27.) In addition, defendants have allegedly failed to include in their advertisements and promotions any warnings about the risks of possessing firearms within the home.

In count one of the complaint, plaintiffs allege that the defendants are liable for public nuisance. Plaintiffs charge that the defendants' ongoing conduct of creating and supplying an illegitimate, secondary firearms market results in the deaths and injuries of California residents and creates an unreasonable interference with the public's health, safety, peace and comfort, thereby causing a public nuisance.

In the second count, the plaintiffs claim that the defendants have violated California Business and Professions Code §§ 17500 *et seq.* by making false and misleading statements and advertisements concerning the safety of firearms within the home. The defendants have advertised and promoted that ownership of guns increases home safety and security while failing to disclose the risks of having firearms within the home. (Compl. at 31.) Defendants' advertising and promotions, then, allegedly deceive the public about the dangers of possessing a firearm.

Plaintiffs allege in count three that the defendants have violated California Business and Professions Code §§ 17200 *et seq.* because they have engaged in unlawful, unfair and fraudulent business practices in the manufacture, marketing and sale of their products. (Compl. at 32.) Defendants' business practices are unlawful and fraudulent because they violate California law, encourage gun sales to unauthorized users, fail to adequately supervise or regulate the distributors or dealers who sell their firearms to the public, fail to incorporate feasible, safety features in the design of the weapons and increase the demand for firearms by illegal users. (Compl. at 32-35.)

The plaintiffs seek to obtain civil penalties and restitution and to enjoin the defendants, handgun manufacturers and distributors and their industry trade associations, from continuing their unfair and unlawful business practices.

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NEW ORLEANS

City of New Orleans v. Smith & Wesson Corp., No. 98-18578
(Civ. D. Ct. Parish of Orleans filed Oct. 30, 1998)

The City of New Orleans has filed a product liability claim against members of the firearms industry, alleging that their products are unreasonably dangerous because they do not incorporate available safety technology that would prevent a gun from being fired by an unauthorized user.

Specifically, the city filed a lawsuit against a group of gun manufacturers, pawnshops, and firearms-trade associations, alleging that the defendants should be held responsible for manufacturing, distributing, promoting, marketing, selling, and/or instructing in the use of firearms which are sold without the means to prevent them from being fired by unauthorized users and without a number of other safety devices and warnings. New Orleans argued that the gun industry's collective failure to incorporate such technology and implement such measures constitutes inherently and unreasonably dangerous activity because it has been reasonably foreseeable to the gun industry that without such devices and warnings, the defendants' guns would end up being used in tragic, preventable shootings by unauthorized users - particularly adolescents.

New Orleans is currently one of the most violent cities in America, with nearly 150 people shot to death this year alone. World: America's New Orleans Takes on Gun Lobby, BBC, November 1, 1998. New Orleans Mayor Marc Morial filed the suit on behalf of the city, announcing "[t]hat today is a day that the victims of handgun violence and the citizens who live with violence on the streets of this city will know that somebody has decided to do something about it." New Orleans Initiates Suit Against Gunmakers, Washington Post, October 31, 1998. The complaint names as defendants some of the gun industry's most prominent manufacturers, including *inter alia*, Smith & Wesson Corp.; Sturm Ruger & Co.; Beretta U.S.A.; Colt's Manufacturing Co.; Glock, Inc.; Lorcin Engineering Co.; Bryco Arms; Jennings Firearms, Inc.; Phoenix Arms; Davis Industries, Inc.; and Navegar, Inc.

Morial hopes that cities across the nation will follow New Orleans' lead in the crusade against gun violence. The mayor asserts that the gun industry should be held liable for the enormous expenses that cities nationwide are forced to incur annually on medical bills, emergency services, police protection, lost tax revenue, and other costs associated with gun violence. *Id.* The ultimate goal is to involve gun manufacturers in the same sort of litigation that has "cost the tobacco industry billions of dollars and forced tobacco companies into battle in courtrooms across the nation." *Id.* These lawsuits have already brought tens of billions of dollars in settlements from tobacco

manufacturers and instigated talks that could lead to billions more. A team of lawyers who were active in the tobacco litigation, including Wendell Gauthier, a New Orleans-based lawyer who litigated a landmark class action case against the tobacco industry, will represent the city. New Orleans Files Handgun Suit, Associated Press, October 31, 1998.

The complaint first alleges that gun manufacturers should be held responsible for the shooting deaths and injuries in New Orleans because they have not used available technology to make guns safer. This technology includes personalized gun locks and different systems to block unauthorized users. Bob Delfay, director of defendant Sporting Arms and Ammunition Manufacturers Institute, stated that "for a suit to seek to collect damages from an industry for not incorporating an unproven, virtually nonexistent technology seems backwards." *Id.* However, Dennis Henigan, Division Director of Legal Action for the Center to Prevent Handgun Violence, alleges that this technology could have been perfected a long time ago, but the industry focuses its research on "greater lethality, not safety." New Orleans Initiates Suit Against Gunmakers, Washington Post, October 31, 1998.

The complaint also alleges that the gun industry has not included adequate safety warnings with its guns. The complaint details seven separate incidents of children shooting other children in New Orleans - three of which were fatal to the shooting victims-and asserts that "these tragedies, and others like them, demonstrate that the citizens of the city of New Orleans are under a continuing threat of injury and death, particularly to children, from defendants' unreasonably dangerous products." Richard Feldman of defendant American Shooting Sports Council asserts that the Council has "done a tremendous job of making our products as safe as possible." New Orleans Aims Lawsuit at Gunmakers, CNN, October 30, 1998. Henigan disagrees, however. He believes the gun industry has not done enough and remarks that "if we can childproof medicine bottles, why can't we childproof guns?" *Id.*

Another issue specifically noted in the New Orleans complaint is the frequent lack of a chamber load indicator in semiautomatic guns. The city specifically claims that it was foreseeable to the defendants that someone using a semiautomatic gun without a chamber load indicator would mistakenly believe that the gun would not fire if the ammunition magazine were removed and would not understand that a round of ammunition might remain in the firing chamber of the gun. *Id.*

The City of New Orleans filed this complaint in Louisiana State Court on October 30, 1998.

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NEWARK

Sharpe v. Arcadia Machine & Tool, Inc., No. ESX-L-6059-99
(Sup. Ct. Essex County filed June 9, 1999).

Mayor James Sharpe and the city of Newark, New Jersey, have filed suit against gun manufacturers, trade associations and gun distributors, claiming that the defendants' negligent design, marketing and distribution of their guns caused the city financial damages.

On June 9, 1999, Mayor Sharpe filed this suit on behalf of the city of Newark and its citizens in the Essex County Superior Court of New Jersey. The plaintiffs' eight-count lawsuit names twenty-eight gun manufacturers, two trade associations and two distributors as defendants, including, *inter alia*, Beretta U.S.A.; Bryco Arms Co.; Colt's Manufacturing Co.; Full Metal Jacket, Inc.; Glock, Inc.; Navegar, Inc.; Phoenix Arms; Smith & Wesson Corp; Sturm, Ruger & Company, Inc.; and National Shooting Sports Foundation, Inc. (NSSF). Plaintiffs seek compensatory damages for the costs of injuries, emergency and law enforcement services, health care, lost productivity, lost tax revenues and decreased property values sustained by the city as a result of defendants' alleged conduct. In addition, the plaintiffs seek punitive damages, alleging that the defendants willfully and wantonly disregarded Newark's citizens' safety, and injunctive relief to prevent the defendants from continuing the negligent design, marketing, distribution and promotion of their products. (Compl. at 30-31.) The plaintiffs are being represented by the Newark Corporation Counsel and the firm of Brown & Brown in this lawsuit.

In count one of the complaint, the plaintiffs allege that the named manufacturers are liable for the defective and negligent design of their products. The plaintiffs claim that defendants' products are unsafe, that alternative designs existed which would have reduced Plaintiffs' injuries, that the

defendants should have foreseen that Plaintiffs' damages would outweigh the burden of implementing these designs and that failure to implement these designs proximately caused Plaintiffs' injuries. (Compl. at 21.) Consequently, the defendants' failure to implement these designs constitutes negligent design.

The plaintiffs also allege defective and negligent design in count two but specifically address the manufacturers' failure to include certain safety devices in the design of their products. The plaintiffs claim alternative designs existed which would (1) prevent guns from being fired by unauthorized users; (2) alert users that a round was in the chamber; and (3) prevent weapons from firing once the magazine had been removed. (Compl. at 22.) Plaintiffs claim that the defendants should have foreseen the injuries and financial damages which would befall the city as a result of their alleged conduct and that the defendants should therefore have taken measures to reduce the plaintiffs' injuries and financial damages. (Compl. at 23.)

In count three, Plaintiffs allege that the defendants negligently failed to provide adequate warnings about their products' hidden dangers and adequate instructions to ensure safe use of guns. (Compl. at 23.) Furthermore, the plaintiffs claim that the defendants promoted gun ownership as a means of increasing household safety despite the known risks associated with guns. (Compl. at 24.) Plaintiffs claim this negligent advertising and promotion caused them to suffer the financial damages described above.

In count four, the plaintiffs claim the defendants negligently marketed and distributed their guns through their failure to supervise, regulate and control the promotion and sales of their products, (Compl. at 25), and that the defendants were aware that these failures resulted in the introduction of their guns into the illegal market and the subsequent use of their guns in violence and crime in Newark, (Compl. at 25). Thus, the defendants' knowing and negligent marketing and distribution practices contributed to gun-related injuries and deaths among Newark's citizens.

Plaintiffs allege in count five that the defendant trade associations aided and abetted the defendant manufacturers in failing to develop safety devices, including those which would prevent firing by unauthorized users, and failing to issue adequate warnings about gun risks. (Compl. at 26.) This negligent conduct by the defendant trade associations allegedly increased the plaintiffs' injuries.

In count six, the defendants are accused of negligent design, marketing and sale of firearms, conduct which has created an ongoing public nuisance that threatens the health, safety and welfare of Newark's citizens. (Compl. at 27.) The plaintiffs claim the defendants were aware that their negligent conduct permitted trafficking of their products from areas where guns are easily accessible, such as the South, to locations where gun regulations are more stringent, such as Newark. (Compl. at 27.) Furthermore, the manufacturers were allegedly aware that their conduct facilitated acquisition of firearms by illegal owners, thereby increasing crime, injury, death and fear in Newark. This continuing public nuisance places financial burdens on the city for which compensation is sought in this lawsuit.

In count seven, the plaintiffs allege that the defendants were unjustly enriched by the sales of handguns in and around the city of Newark at the city's expense. (Compl. at 29.) The plaintiffs claim the city was forced to bear the financial burden of increased emergency services, law enforcement personnel, lost productivity, lost tax revenues and decreased property values while the defendants avoided financial responsibility and reaped profits instead. (Compl. at 29-30.)

Finally, in count eight of the lawsuit, the plaintiffs seek punitive damages in light of the defendants' alleged willful and wanton disregard for the lives of those Newark citizens harmed by their negligent conduct. (Compl. at 30.) This blatant disregard allegedly increased the rates of injuries and death in Newark, consequences which the plaintiffs believe the defendants could and should have ameliorated. (Compl. at 30-31.)

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SOUTHERN CALIFORNIA

People v. Arcadia Machine & Tool, Inc., No. BC210894
(Sup. Ct. Los Angeles filed May 25, 1999).

The Southern California cities of Los Angeles, Compton and West Hollywood have joined together to file suit in Los Angeles County Superior Court against members of the firearms industry, alleging public nuisance and unfair and deceptive business practices.

This lawsuit is the counterpart to the suit filed in San Francisco County Superior Court by the

Cities of San Francisco, Sacramento, Berkeley and San Mateo and Alameda Counties. The complaint was filed on May 26, 1999. Los Angeles City Attorney Jim Hahn announced the Southern California lawsuit, stating "This lawsuit is about assuring that the gun industry can no longer continue doing business as usual. They can no longer engage in a business which results in the tragically easy access and use of guns by young people." *Hahn Files Lawsuit Accusing Gun Industry of Unfair Business Practices and Public Nuisance as Part of Nation's First Statewide, Multi-City Effort Against Gun Industry Misconduct Relating to Gun Violence and Safety*, (City Att'y's Office, Los Angeles, Cal.), May 25, 1999, at 2. The City Attorneys of Compton, West Hollywood and Los Angeles will represent the plaintiffs in this lawsuit.

In the first four counts of their complaint, the plaintiffs allege that the defendants are in violation of California Business and Professions Code Sections §§ 17200 *et seq.* for Unlawful, Unfair or Fraudulent Business Practices. According to the plaintiffs, the first violation by defendants is supplying firearms to an illegitimate, illegal, secondary market. (Compl. at 34.) The plaintiffs allege that the defendants encourage sales to unauthorized users by marketing their products to appeal to minors and criminals and by producing more products than could reasonably be sold to a legitimate market. The plaintiffs claim that the defendants fail to train or screen dealers who distribute their products and continue to make sales to dealers who supply the secondary market. (Compl. at 35-36.)

In the second count of the complaint, the plaintiffs allege that the defendants fail to provide adequate warnings and fail to incorporate technologically feasible safety features in firearms, all of which would prevent intentional and accidental shootings. According to the plaintiffs, the defendants have discouraged the implementation of devices, such as personalized gun technology, which would prevent unauthorized users from gaining access to handguns. (Compl. at 38.) The plaintiffs claim that defendants fail to give adequate warnings and instructions on the storage of their products. The plaintiffs also allege that the defendants over-promote the self defense and home protection benefits of guns while disregarding the fact that guns actually increase the risk of death and injury. (Compl. at 38-39.)

The plaintiffs, in the third and fourth counts of the complaint, allege that the defendants have unlawfully created a public nuisance as defined by Penal Code Section 370 and Civil Code Sections 3479 and 3480 and have unlawfully created a private nuisance as defined by Civil Code Sections 3479 and 3481. (Compl. at 39-40.)

In the fifth and final count, the plaintiffs allege that the defendants' conduct creates a public nuisance. (Compl. at 40.) They claim that the conduct by the defendants is an unreasonable interference with the common rights enjoyed by the public. This interferes with the public's health, safety, peace, comfort and convenience. According to the plaintiffs, the defendants' conduct is continuous and produces a long lasting negative effect on the rights of the public. (Compl. at 41.) The plaintiffs allege that the ongoing conduct by the defendants creates a nuisance because the firearms that they directly or indirectly supply to the secondary market will remain in the possession of unauthorized users for years. As a result of this continued illegal possession of handguns, the residents of Los Angeles, Compton and West Hollywood will continue to be killed, injured and live in fear for their health, safety and welfare. (Compl. at 41).

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ST. LOUIS

City of St. Louis v. Cernicek, No. CV-992-01209
(Cir. Ct. St. Louis. 22nd. Jud. Dt. filed April 30, 1999).

The City of St. Louis, Missouri, has filed suit against members of the gun industry to recover damages resulting from the industry's alleged negligent design, marketing, distribution and sale of guns, as well as its failure to prevent the transfer of guns to the illegal market.

On April 30, 1999, the lawsuit was filed in the Circuit Court of St. Louis, twenty-second Judicial District, by Mayor Clarence Harmon on behalf of the city. The mayor commented, "The gun makers are aware that their products are used frequently in crimes and accidental killings, yet they refuse to build in safety features that would drastically reduce gun violence... They have demonstrated an utter lack of concern about how their products are distributed." *City of St. Louis Files Suit against Gun Industry* (State Att'y's Office, St. Louis, Mo.), April 30, 1999, at 1. The Mayor stressed that the lawsuit was intended to make guns safer and the industry more accountable, not to limit the rights of law-abiding citizens. *See id.* St. Louis is being represented by the Office of the City Counselor in this lawsuit.

The city's five-count lawsuit names thirty manufacturers, dealers, distributors, sellers, agents and trade associations as defendants. Named defendants include, *inter alia*, Smith & Wesson Corp.; Sturm, Ruger & Co.; Colt's Manufacturing Co.; Beretta U.S.A. Corp.; Navegar, Inc. d/b/a Intratec Firearms; Taurus International Marketing, Inc.; Bryco Arms; Davis Industries; and Sporting Arms & Ammunition Manufacturers' Institute, Inc. The City of St. Louis seeks damages for costs it sustained as a result of gun violence, such as police services, health care, lost tax revenues due to lost productivity, pension benefits and loss of population. In addition, the city seeks punitive damages for the industry's conscious disregard of the damages its practices were inflicting on the city and its unjust enrichment at the city's expense.

In count one of the complaint, the City alleges that the defendants are liable for creating an on-going public nuisance because they fail to prevent the transfer of their products to illegal markets and thereby contribute to increases in city crime. Specifically, the City alleges that the defendants manufacture and sell guns lacking sufficient warnings and inadequately monitor the distribution practices of the distributors and retailers who sell their unsafe guns to the public. (Compl. at 21.) The resultant increases in crime, damage, injuries and deaths significantly and unreasonably interfered with the public's health, safety, welfare and right to be free from disturbance and apprehension of danger. (Compl. at 22.)

In count two, the City claims that the defendants are subject to nuisance abatement under the City of St. Louis Code because their unsafe guns endanger the health, safety and welfare of St. Louis citizens. The City claims that the defendants are aware their manufacturing, distribution and sale of these guns constitutes a public nuisance but have failed to take any remedial actions. (Compl. at 25.) In addition to damages, the city seeks court-mandated abatement for the defendants' conduct.

In count three, the City alleges civil conspiracy among the defendants with respect to the manufacture, distribution and sale of their products. The City claims the defendants, acting in concert, failed to develop and implement means to prevent guns from being fired by unauthorized users, discouraged the development of such means, failed to develop and implement safety features, failed to implement means of preventing guns from reaching illegal markets and being used for criminal purposes, failed to issue adequate warnings regarding gun risks and storage and failed to inspect, train and monitor distributors and retailers to prevent illegal sales. (Compl. at 27.) Allegedly, this ongoing conspiracy is intended to further the profits and unjust enrichment of the defendants while avoiding liability for the costs of gun violence borne by the City. (Compl. at 28.)

The City alleges in count four that the defendant manufacturers and trade organizations negligently designed, manufactured, assembled and promoted their products. The City alleges that the manufacturers and trade organizations failed to develop and implement available safety designs, including smart technology, manual safety devices, childproof devices and user-recognition devices. (Compl. at 30.) The City claims these omissions amount to negligent design because the defendants knew or should have known that the benefits of preventing gun injuries would outweigh the burdens of including safety devices in their products. (Compl. at 30.) The City also claims that the defendants' guns lacked suitable warnings and instructions concerning proper use and storage, access by minors, rounds remaining in the chamber and the ability of the gun to fire after magazine detachment. (Compl. at 31.) Furthermore, the defendants are accused of negligently marketing their guns because they inadequately train and monitor dealers, distributors and retailers. (Compl. at 31.)

Finally, the City asserts that the defendants promoted their guns in a manner suggesting they were safe and would provide safety in the home instead of alerting purchasers to the potential and documented risks of gun ownership. (Compl. at 31.) In total, these negligent acts resulted in monetary damages to the city in the form of services, health care and lost productivity.

In count five of the lawsuit, the City alleges that the defendants were unjustly enriched through sales of their guns at the expense of the City of St. Louis. The City claims the defendants reaped "substantial and unconscionable profits" from the negligent, conspiratorial and purposeful conduct described above. (Compl. at 33.) To correct this injustice, the City of St. Louis asks the court for compensation in the amount equal to the defendants' profits from the last five years. (Compl. at 35.)

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