

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



LOUISE H. RENNE
City Attorney

*Pruce/Ton -
This is from a
law school friend
of mine.
E.*

OWEN J. CLEMENTS
Chief of Special Litigation

DIRECT DIAL: (415) 554-3944
E-MAIL: OWEN_Clements@ci.sf.ca.us

June 11, 1999

Elena Kagan
Domestic Policy Council
Executive Offices of the President
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: California Local Government Suits Against the Gun Industry

Dear Elena:

We're back. As you may have heard, San Francisco, joined by the counties of Alameda and San Mateo and the cities of Berkeley and Sacramento, and Los Angeles, joined by the cities of Compton and West Hollywood, filed two suits against the gun industry on May 25, 1999. The suits allege that the gun industry has engaged in unlawful, unfair and deceptive business practices and has created a public nuisance. We feel that these claims are very promising under California law. I have enclosed a copy of the San Francisco complaint for your information.

On June 3, San Francisco City Attorney Louise Renne and I meet with John Coale, Ken Carter and Hugh Rodham to discuss the municipal gun litigation. They mentioned that you and others in the Administration were involved on the legislative side of these issues. I therefore thought I would take this opportunity to write and offer whatever assistance we can provide. Please let us know if there are particular members of the California House delegation that you think San Francisco and its co-plaintiffs should be targeting on these issues.

During our meeting with Mr. Coale, we discussed recent press accounts concerning the list of 17 proposals that had been prepared for the purposes of negotiations with representatives of the gun industry. We expressed our concern that this list was too narrowly focused on product design issues and did not contain enough specific proposals relating to the industry's marketing and distribution practices. We provided a broader list with some suggested proposals to Mr. Coale. I have enclosed a copy of this list for your information.

We look forward to working with the Administration on these issues. Please let me know if we can provide any further information or assistance.

Very truly yours,

LOUISE H. RENNE
City Attorney

Owen

Owen J. Clements
Chief of Special Litigation

Enclosures



LOUISE H. RENNE
City Attorney

D. CAMERON BAKER
Deputy City Attorney

DIRECT DIAL: (415) 554-3960

**MEMORANDUM
PRIVILEGED & CONFIDENTIAL**

DETERMINED TO BE AN ADMINISTRATIVE

TO: John Coale
Ken Carter

MARKING INITIALS: ELC **DATE:** 06/13/17

FROM: Owen Clements
Cameron Baker
Ingrid Evans

DATE: June 2, 1999

RE: Key Points re Industry Reformation

We have had the opportunity to review the list of proposals you previously provided us. That list focuses on the problems of product design and safety, containing a number of proposals designed to ameliorate those problems. This focus is appropriate in light of the claims asserted by the City of New Orleans in its case against the gun industry. However, we note that other cities, including the City and County of San Francisco and other California public entities, have focused on other types of claims, such as negligent distribution and marketing of firearms. Accordingly, we have drafted a new list of proposals regarding possible industry reformation to include proposals relating to negligent distribution and marketing of firearms and other types of claims.

For ease, we have organized the list into general categories of proposals. Underlined proposals are proposals taken from your prior list. **Bold** proposals are proposals that are derived from your list but modified.

The list is not intended to be exclusive of all voluntary proposals within the field of firearm violence prevention, but has been limited to those proposals applicable to the defendants in the public entity lawsuits. Thus, for example, there are no direct proposals relating to ammunition such as contained in your list regarding the purchase of all "cop-killing" ammunition or proposals related to high caliber weapons such as 50 caliber weapons. The exclusion of certain proposals relating to these other issues should not be taken as an indication that such proposals should not be discussed as part of any settlement negotiations. Additionally, we have included some proposals concerning related problems that are framed in terms of legislative action. We would request that the industry support firearm legislation that will codify safe industry practices and help to protect the public.

Memorandum
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RE: Key Points re Industry Reformation

MARKING INITIALS: RLP DATE: 06/13/17

FIREARMS PROPOSAL LIST

Product safety and design issues

- Incorporation of safety features to prevent accidental discharge/criminal misuse of firearm by unauthorized users, including children. Examples include the Saf-T-Lok and personalized technology and standardized level of trigger resistance that is high enough to make it difficult for children to discharge the firearm;
- Incorporation of other available safety features to avoid accidental discharges of semiautomatic weapons, such as magazine disconnect safeties (prevent firing of gun when magazine is removed) and chamber-loaded indicators;
- Produce weapons with serial numbers that are impervious to defacing and with materials that do not enhance the "finger print" resistant qualities of the firearm;
- Produce weapons that pass a standardized "drop" test, meet the barrel length and other standards set under the 1968 Gun Control Act for imported firearms, and pass a standardized "jam" test (such as the protocol set out in California Senate Bill 15);
- Spend 1% of gross revenues on R&D to develop and promote personalized technology;
- Redesign all gun clips to accept only magazines having ten (10) or less bullets with the exception of those firearms produced for law enforcement; and
- Agree to support industry regulation by Consumer Product Safety Commission or other appropriate governmental agency.

Marketing and distribution issues

- Adoption of an industry code of conduct incorporating improved distribution practices, including
 1. elimination of sales to kitchen dealers and gun show dealers;
 2. mandatory training for distributors and dealers concerning how to recognize and prevent straw purchases, including suspicious multiple sales;
 3. strictly limiting indirect sales -- such as telemarketing, mail offers and internet sales -- except where accompanied by regular in-person inspections of sales facilities; and
 4. limitation of sales to one gun per person per month;
- monitoring of dealers by manufacturers and distributors, in order to check compliance with federal, state and local laws through inspections, auditing and reviewing firearms sales records, periodic inventory checks, and use of electronic inventory tracking;

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DATE: June 2, 1999
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-
- adopting measures to ensure adequate security to prevent thefts at all levels of the distribution chain;
 - reviewing suspicious claims made by distributors and dealers that firearms have been stolen;
 - requiring all manufacturers, distributors and dealers to maintain minimum levels of liability insurance based on the volume of firearms sold by the entity in question; and
 - suspending or terminating distributors and dealers who engage in improper practices.

Restrictions on advertisements and promotions

- **prohibiting advertisements that suggest or promote possible criminal use of the firearms (e.g., selling "concealability" or fingerprint resistance);**
- prohibiting advertisements or claims that suggest having a firearm in the home increases personal safety or home security;
- banning product placement in television programs and movies; and
- **prohibiting advertisements that are designed to appeal to criminals or minors.**

Improvements to the current ATF tracing system

- agreement to open their sales records to local and state law enforcement officials;
- agreement to fund and support a computerized federal gun registration program to track gun ownership;
- agreement to test fire all handguns using the IBIS system ("gun fingerprinting");
- agreement to fund and support enhanced crime investigation efforts, including more ATF agents, specialized gun show and gun trafficking law enforcement units; and

We would request that the firearm industry support pending legislation that is related to the above-referenced voluntary actions taken by the firearm industry. To the extent that there is additional legislation that would also benefit the public and that is not related to the reformation topics set forth above, we would request that the industry support such further beneficial legislation. The following are examples of additional legislation that the firearm industry should support in order to ensure greater public safety:

Pending U.S. Legislative Items (U.S. Senate Juvenile Crime Bill, S. 254 amendments)

- closing the gun show loophole;
- requiring sale of child safety lock with every handgun sold;
- banning juvenile possession of assault weapons and high capacity ammunition clips;

Memorandum
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DATE: June 2, 1999
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RE: Key Points re Industry Reformation

DETERMINED TO BE AN ADMINISTRATIVE

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-
- prohibiting importation of high capacity ammunition clips;
 - reintroducing the 3-day Brady waiting period;
 - increasing criminal penalty for transferring guns to juveniles;
 - imposing a criminal penalty for allowing children access to firearms where they later injure themselves or others;
 - increasing the number of jurisdictions participating in ATF Youth Interdiction program;
 - regulating sales of firearms over the internet; and
 - prohibit the sale by any person, FFL or not, of handguns, large capacity ammunition clips and assault weapons to any person under the age of 21.
 - agreement to support imposition of a stricter definition of "engaged in the business of dealing firearms," 18 U.S.C. § 921(a)(21), to preclude traffickers from raising the defense that they are selling from their "personal collections" or as part of a "hobby."

Pending California Legislative Items

- adoption of the junk gun ban (S.B. 15);
- stringent background checks for all firearm dealers' employees (A.B. 32);
- one gun a month legislation (A.B. 202);
- repeal of Civil Code section 1714.4 (S.B. 1212);
- repeal of state preemption of local gun permitting and registration (A.B. 17);
- adoption of limitation that any city or county registration of gun dealers be limited to dealers operating from areas not zoned as residential (A.B. 988); and
- legislation to raise the legal age of gun possession to 21.

1 LOUISE H. RENNE, State Bar #36508
San Francisco City Attorney
2 PATRICK J. MAHONEY, State Bar #46264
Chief Trial Attorney
3 OWEN J. CLEMENTS, State Bar #141805
Chief of Special Litigation
4 D. CAMERON BAKER, State Bar #154432
INGRID M. EVANS, State Bar #179094
5 Deputy City Attorneys
1390 Market Street, 6th Floor
6 San Francisco, California 94102-5408
Telephone: (415) 554-3800
7 Facsimile: (415) 554-3837

8 PATRICK J. COUGHLIN, State Bar #111070
MICHAEL J. DOWD, State Bar #121355
9 MILBERG WEISS BERSHAD HYNES &
LERACH
10 600 West Broadway, Suite 1800
San Diego, CA 92101
11 RICHARD M. HEIMANN, State Bar #063607
12 ROBERT J. NELSON, State Bar #132797
LIEFF, CABRASER, HEIMANN &
13 BERNSTEIN, LLP
275 Battery Street, 30th Floor
14 San Francisco, California 94111-3999

15 Of Counsel: DAVID KAIRYS, Esq.
16 FULL ADDRESSES AND ADDITIONAL
17 COUNSEL LISTED AFTER SIGNATURE PAGE

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 CITY AND COUNTY OF SAN FRANCISCO

20 THE PEOPLE OF THE STATE OF CALIFORNIA, by
and through San Francisco City Attorney Louise H.
21 Renne, Berkeley City Attorney Manuela Albuquerque,
Sacramento City Attorney Samuel L. Jackson, and San
22 Mateo County Counsel Thomas F. Casey, III; JOE
SERNA, JR., Mayor of Sacramento, the CITY OF
23 BERKELEY, and the COUNTY OF ALAMEDA, on
behalf of the general public,

24 Plaintiffs,

25 v.

26 ARCADIA MACHINE & TOOL, INC., BRYCO
27 ARMS, INC., DAVIS INDUSTRIES, INC., EXCEL
INDUSTRIES, INC., LORCIN ENGINEERING CO.,
INC., CHINA NORTH INDUSTRIES, PHOENIX
28 ARMS, SUNDANCE INDUSTRIES, INC., BERETTA

9:00 A.M.
OCT 29 1999
STATUS CONFERENCE DATE
ENDORSED
FILED
San Francisco County Superior Court
MAY 25 1999
ALAN CAHLSON, Clerk
BY: JUN P. PANELO
Deputy Clerk

SAMUEL L. JACKSON, State Bar #79081
Sacramento City Attorney
Prosecuting on Behalf of the City of
Sacramento and JOE SERNA, JR.

MANUELA ALBUQUERQUE, S.B. #67464
Berkeley City Attorney

THOMAS F. CASEY, III, State Bar #47562
San Mateo County Counsel

RICHARD E. WINNIE, State Bar #68048
Alameda County Counsel

DENNIS A. HENIGAN
JONATHAN E. LOWY
BRIAN J. SIEBEL
Center to Prevent Handgun Violence

Case No. 303753

COMPLAINT FOR
MAINTAINING A
PUBLIC NUISANCE AND
FOR UNFAIR, UNLAWFUL
AND DECEPTIVE TRADE
PRACTICES IN
VIOLATION OF BUSINESS
AND PROFESSIONS CODE
§§ 17200 AND 17500

1 U.S.A. CORP., PIETRO BERETTA Sp. A.,
2 BROWNING ARMS CO., CARL WALTHER GmbH,
3 CHARTER ARMS, INC., COLT'S
4 MANUFACTURING CO., INC., FORJAS TAURUS,
5 S.A., TAURUS INTERNATIONAL
6 MANUFACTURING, INC., GLOCK, INC., GLOCK
7 GmbH, H&R 1871 INC., HECKLER & KOCH, INC.,
8 KEL-TEC CNC INDUSTRIES, INC., MKS SUPPLY
9 INC., NAVEGAR, INC., NORTH AMERICAN ARMS,
10 INC., SIGARMS, INC., SMITH AND WESSON
11 CORP., S.W. DANIELS, INC., STURM RUGER &
12 COMPANY, INC., AMERICAN SHOOTING SPORTS
13 COUNCIL, INC., NATIONAL SHOOTING SPORTS
14 FOUNDATION, INC., SPORTING ARMS AND
15 AMMUNITION MANUFACTURERS' INSTITUTE,
16 INC., B.L. JENNINGS, INC., ELLETT BROTHERS
17 INC., INTERNATIONAL ARMAMENT CORP., RSR
18 WHOLESALE GUNS, INC., SOUTHERN OHIO GUN
19 DISTRIBUTORS, TRADERS SPORTS, INC.,
20 and DOES 1-200,

21 Defendants.

22 The People of the State of California allege as follows:

23 **NATURE OF THE ACTION**

24 1. This action is brought on behalf of the People of the State of California against
25 major manufacturers and distributors of handguns, and their trade associations. These
26 Defendants knowingly and recklessly market, distribute, promote, design and sell handguns –
27 a dangerous product that is the primary tool used to commit violent crime -- in a manner that
28 facilitates the use of handguns in crime, that fails to incorporate reasonable safety features, that
deceives the public about the dangers of possessing a firearm, and that circumvents federal, state
and local laws. Defendants' conduct constitutes a pattern of unlawful, unfair and deceptive
business acts and practices, and has created a public nuisance. Defendants have unjustifiably
enriched themselves through these practices, and have shifted the burden of the true costs of
defendants' products to the victims of gun violence and to the taxpayers. The resulting levels of
shooting deaths and injuries in California and the entire nation exceed those in almost every
other area of the world, impose enormous economic costs, and unreasonably interfere with the
safety, health, well-being and quality of life of the People of the State of California.

1 2. As a result of the unlawful, unfair and/or deceptive business practices of
2 Defendants, thousands of California residents have died, suffered serious bodily injury, or been
3 exposed to increased criminal activity involving handguns. In 1997 alone, there were 1,835
4 homicides committed with a firearm in California. In addition, firearms caused over 25,000
5 other serious injuries in California that year. The vast majority of these deaths and injuries are
6 attributable to handguns. Considered in the aggregate, these statistics demonstrate the magnitude
7 of the problem caused by handguns. Moreover, behind each statistic lies a personal tragedy.
8 The details of just a few of these tragedies demonstrate the terrible toll that Defendants' practices
9 have inflicted on the victims of handgun violence and their families:

10 • On July 1, 1993, Gian Luigi Ferri, armed with two TEC-DC9 9-mm assault
11 weapons manufactured by defendant Navegar and a pistol manufactured by defendant
12 Norinco, conducted a murderous attack on the San Francisco law firm of Pettit & Martin
13 and other occupants of 101 California Street. After California enacted a law that
14 expressly banned Navegar's TEC-9 model, Navegar continued to manufacture the
15 identical model under the name "TEC-DC9." Navegar later claimed that the model
16 labeled "TEC-DC9" was not covered by California's assault weapons ban. Ferri, a
17 California resident, had illegally purchased the TEC-DC9 assault weapons in Nevada.
18 Ferri's shooting spree killed eight, wounded six, and forever changed the lives of
19 countless others, especially those who had lost a spouse and the young children who lost
20 a parent.

21 • On June 23, 1996, a teenage couple was gunned down while sitting on the grass
22 of Precita Park in San Francisco. The perpetrator of this random shooting was later
23 determined to be incompetent to stand trial, yet he had three handguns in his possession
24 at the time of the murders.

25 • In June of 1997, a 23-year-old man with an extensive criminal history used a
26 9-mm semi-automatic pistol manufactured by defendant Browning to kill his mother, his
27 ex-girlfriend and her four-month-old daughter in his mother's San Francisco home.
28

1 • In December 1998, an unknown robber shot a 29-year-old San Francisco janitor,
2 as the victim walked home from the grocery store with his family's Christmas turkey.
3 As a result of the shooting, the victim is now paralyzed and unable to support his four
4 children, two of whom are under the age of four.

5 • On February 9, 1999, a veteran Sacramento Police Officer was gunned down after
6 making a routine traffic stop. The suspect, who was wanted for a parole violation, had
7 previously been convicted of drug and weapons charges and was legally prohibited from
8 possessing a firearm. The suspect was nevertheless able to obtain a 9-mm semiautomatic
9 pistol, manufactured by defendant Glock, which he used to murder the Officer.

10 • Two recent incidents in Sacramento demonstrate the ease with which youths can
11 gain unauthorized possession of firearms, and the tragic consequences that often result.
12 On February 21, 1999, a group of youths affiliated with a gang committed two separate
13 drive-by shootings, killing one man and wounding two teenagers. The victims were
14 apparently shot simply because they were in the wrong place at the wrong time, wearing
15 the wrong colors. The suspects had obtained their weapons, a 9-mm semiautomatic pistol
16 and a .38 caliber handgun, from one of the youth's home. In the second incident, a
17 woman was critically wounded while standing in the front hallway of her home on March
18 17, 1999. The victim was helping her two young grandchildren put on their coats, when
19 nine rounds of semiautomatic fire ripped through her front door. The suspects were on
20 parole from the California Youth Authority at the time of the shooting, and were
21 prohibited from possessing firearms.

22 • On October 23, 1998, a San Francisco teenager was accidentally shot by his best
23 friend, an eighteen-year-old male, with a Jennings .25 caliber pistol. The two boys were
24 sitting in a car when the victim pulled out a gun to show it to his friend. The eighteen-
25 year-old thought that the pistol was a toy gun. When the eighteen-year-old grabbed the
26 gun, he accidentally hit the trigger. The gun fired and the bullet struck the victim in the
27 right side of his chest, seriously injuring him.
28

1 3. In order to reduce the endless succession of handgun-related tragedies, Plaintiffs
2 bring this action to abate the public nuisance created by Defendants; to enjoin Defendants'
3 unlawful, unfair and/or deceptive business practices; to obtain restitution and disgorgement of
4 Defendants' wrongfully-obtained monies; and to impose civil penalties.

5 **THE PARTIES**

6 4. This action is brought on behalf of the People of the State of California by
7 San Francisco City Attorney Louise H. Renne, Berkeley City Attorney Manuela Albuquerque,
8 Sacramento City Attorney Samuel L. Jackson, and San Mateo County Counsel Thomas F. Casey,
9 HI, pursuant to California Code of Civil Procedure section 731, California Business and
10 Professions Code section 17204, and/or California Business and Professions Code section 17535.
11 The San Mateo District Attorney's Office has authorized the San Mateo County Counsel's Office
12 to prosecute this action on behalf of the People, pursuant to California Business and Professions
13 Code section 17204.

14 5. Joining the People as plaintiffs in this action are Sacramento Mayor Joe Serna, Jr.,
15 the City of Berkeley, and the County of Alameda, all of whom are suing on behalf of the general
16 public pursuant to California Business and Professions Code sections 17204.

17 6. Defendants, and each of them, are sued individually as a primary violator and/or
18 as an aider and abettor. In acting to aid and abet the commission of the unlawful, unfair and
19 deceptive business practices complained of herein, each defendant acted with the awareness of
20 the wrongfulness of such practices and nonetheless rendered substantial assistance or
21 encouragement to the accomplishment of the wrongful practices and was aware of the overall
22 contribution to the common course of wrongful conduct alleged herein.

23 7. The following Defendants design and/or manufacture firearms that have been
24 wrongfully marketed, distributed, and/or sold in California (hereinafter referred to as the
25 "Defendant Manufacturers"):

26 i. Defendant Arcadia Machine & Tool Inc. ("AMT") is a corporation
27 organized and existing under the laws of the State of California with its principal place of
28 business in California.

1 ii. Defendant Bryco Arms, Inc. ("Bryco") is a corporation organized and
2 existing under the laws of the State of Nevada with its principal place of business in
3 California.

4 iii. Defendant Davis Industries, Inc. ("Davis") is a corporation organized and
5 existing under the laws of the State of California with its principal place of business in
6 California.

7 iv. Defendant Excel Industries Inc., (AKA "Accu-tek") is a corporation
8 organized and existing under the laws of the State of California with its principal place of
9 business in California.

10 v. Defendant Lorcin Engineering Co., Inc. ("Lorcin") is a corporation
11 organized and existing under the laws of the State of California with its principal place of
12 business in California.

13 vi. Defendant China North Industries (AKA "Norinco") is a corporation
14 organized and existing under the laws of the State of California with its principal place of
15 business in California.

16 vii. Defendant Phoenix Arms ("Phoenix") is a corporation organized and
17 existing under the laws of the State of California with its principal place of business in
18 California.

19 viii. Defendant Sundance Industries, Inc. ("Sundance") is a corporation
20 organized and existing under the laws of the State of California with its principal place of
21 business in California.

22 ix. Defendant Beretta U.S.A. Corp. ("Beretta U.S.A.") is a corporation
23 organized and existing under the laws of the State of Maryland with its principal place of
24 business in Maryland. Beretta U.S.A. is qualified to do business in California. Beretta
25 U.S.A. imports and distributes firearms manufactured by defendant Pietro Beretta Sp. A.

26 x. Defendant Pietro Beretta Sp. A. ("Pietro Beretta") is a corporation
27 organized and existing under the laws of Italy with its principal place of business in Italy.
28

1 xi. Defendant Browning Arms Co. ("Browning") is a corporation organized
2 and existing under the laws of the State of Utah with its principal place of business in
3 Utah.

4 xii. Defendant Carl Walther GmbH ("Carl Walther") is a corporation
5 organized and existing under the laws of the Federal Republic of Germany with its
6 principal place of business in the Federal Republic of Germany.

7 xiii. Defendant Charter Arms, Inc. ("Charter Arms") is a corporation organized
8 and existing under the laws of the State of Connecticut, with its principal place of
9 business in New Jersey.

10 xiv. Defendant Colt's Manufacturing Company, Inc. ("Colt") is a corporation
11 organized and existing under the laws of the State of Delaware with its principal place of
12 business in Connecticut.

13 xv. Defendant Forjas Taurus, S.A. ("Forjas Taurus") is a corporation
14 organized and existing under the laws of Brazil with its principal place of business in
15 Brazil.

16 xvi. Defendant Taurus International Manufacturing, Inc. ("Taurus") is a
17 corporation organized and existing under the laws of the State of Florida with its
18 principal place of business in Florida. Taurus manufactures firearms in Florida and
19 imports firearms manufactured by defendant Forjas Taurus.

20 xvii. Defendant Glock, Inc. ("Glock") is a corporation organized and existing
21 under the laws of the State of Georgia with its principal place of business in Georgia, and
22 is qualified to do business in California. Glock Inc. imports and distributes firearms
23 manufactured by defendant Glock GmbH.

24 xviii. Defendant Glock GmbH ("Glock GmbH") is a corporation organized and
25 existing under the laws of Austria with its principal place of business in Austria.

26 xix. Defendant H&R 1871, Inc. ("H&R") is a corporation organized and
27 existing under the laws of the State of Massachusetts with its principal place of business
28 in Massachusetts.

xx. Defendant Heckler & Koch, Inc. ("Heckler & Koch") is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Virginia. Heckler & Koch is the United States subsidiary of Heckler & Koch, GmbH, a corporation organized in the Federal Republic of Germany...

xxi. 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.

xxii. 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.

xxiii. Defendant Navegar, Inc. d/b/a Intratec U.S.A., Inc. ("Navegar") is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Florida.

xxiv. Defendant North American Arms, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business in Utah.

xxv. Defendant Sigarms, Inc. ("Sigarms") is a corporation organized in the State of New Hampshire, with its principal place of business in New Hampshire.

xxvi. 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, and is qualified to do business in California.

xxvii. Defendant S.W. Daniels, Inc. (AKA Cobray Firearms, Inc.) is a corporation organized and existing under the laws of Georgia with its principal place of business in Georgia.

xxviii. 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.

8. At all times relevant herein, DOES 1-100, inclusive, were business entities, the status of which are currently unknown. DOES 1-100 designed and/or manufactured firearms that

1 are or were distributed, marketed, and/or sold within the jurisdictional limits of California
2 (hereinafter referred to as among the "Defendant Manufacturers").

3 9. The following Defendants are industry trade associations (hereinafter referred to
4 as the "Defendant Trade Associations") that are composed of firearm manufacturers, distributors,
5 and sellers, including some or all of the Defendant Manufacturers:

6 i. Defendant American Shooting Sports Council, Inc. ("ASSC") is a tax
7 exempt business league under section 501(c)(6) of the Internal Revenue Code organized
8 and existing under the laws of the State of Georgia with its principal office in Georgia.

9 ii. Defendant National Shooting Sports Foundation, Inc. ("NSSF") is a tax
10 exempt business league under section 501(c)(6) of the Internal Revenue Code organized
11 and existing under the laws of the State of Connecticut with its principal office in
12 Connecticut.

13 iii. Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc.
14 ("SAAMI") is a tax exempt business league under section 501(c)(6) of the Internal
15 Revenue Code organized and existing under the laws of the State of Connecticut with its
16 principal office in Connecticut.

17 10. At all times relevant herein, DOES 101-125, inclusive, were business entities, the
18 status of which are currently unknown. DOES 101-125 are industry trade associations
19 (hereinafter referred to as among the "Defendant Trade Associations"), which are composed of
20 firearm manufacturers, distributors, and/or sellers, including some or all of the Defendant
21 Manufacturers.

22 11. The following Defendants, and each of them, import, distribute and/or market
23 firearms that are or were found within the jurisdictional limits of California, and/or make retail
24 sales of firearms in California (hereinafter referred to as the "Defendant Distributors"):

25 i. Defendant B.L. Jennings, Inc. is a corporation organized and existing
26 under the laws of the State of Nevada with its principal place of business in Nevada.

27 B.L. Jennings, Inc. distributes guns made by Defendant Bryco in California.
28

1 ii. Defendant Ellett Brothers, Inc. is a corporation organized and existing
2 under the laws of the State of South Carolina with its principal place of business in South
3 Carolina. Ellett Brothers telemarkets firearms nationwide, including in California.

4 iii. Defendant International Armament Corp. d/b/a Interarms Industries, Inc.
5 ("Interarms") is a corporation organized and existing under the laws of the State of
6 Delaware with its principal place of business in Virginia. Interarms imports and/or
7 distributes firearms made by several different manufacturers, including defendant Carl
8 Walther GmbH. Interarms distributes its products to at least 46 California dealers.

9 iv. Defendant RSR Wholesale Guns, Inc. is a corporation organized and
10 existing under the laws of the State of New York with its principal place of business in
11 New York. Based on information and belief, RSR Wholesale Guns, Inc. distributes
12 firearms in California, including guns manufactured by defendant Taurus International
13 Manufacturing, Inc.

14 v. Defendant Southern Ohio Gun Distributors is a corporation organized and
15 existing under the laws of the State of Ohio with its principal place of business in Ohio.
16 Based on information and belief, Southern Ohio Gun Distributors distributes firearms in
17 California.

18 vi. Defendant Traders Sports, Inc. ("Traders") is a corporation organized and
19 existing under the laws of the State of California with its principal place of business in
20 San Leandro, California. Traders distributes firearms in California and is one of the
21 largest retailers of firearms in Northern California.

22 12. At all times relevant herein, DOES 125-200, inclusive, were business entities, the
23 status of which are currently unknown. DOES 125-200 distribute, market and/or sell firearms
24 that are or were found within California (hereinafter referred to as among the "Defendant
25 Distributors").

26 13. Plaintiff is ignorant of the true names and capacities of Defendants referred to as
27 DOES 1-200. Plaintiff alleges that each of the fictitiously named Defendants is responsible in
28 some manner for the violations herein alleged. Plaintiff will seek leave to amend this complaint

1 to allege such names and capacities as soon as they are ascertained. All of the above-named
2 Defendants, DOES 1-200, and the agents and/or employees of those Defendants, were
3 responsible in some manner for the obligations, liabilities and violations herein mentioned,
4 which were legally caused by the aforementioned Defendants and DOES 1-200.

5 JURISDICTION AND VENUE

6 14. Defendants, and each of them, are subject to the jurisdiction of the Courts of the
7 State of California by virtue of their business dealings and transactions in California, by causing
8 an injurious effect in California through their acts or omissions, and/or by their violation of
9 California Business and Professions Code Sections §17200 and §17500.

10 15. Venue is proper in this court because the violations and the resulting injuries out
11 of which the causes of action arise occurred in part within the City and County of San Francisco.

12 GENERAL ALLEGATIONS

13 I. THE NUMBER AND SEVERITY OF FIREARM-RELATED CRIMES ARE A 14 NATIONAL PROBLEM

15 16. The widespread availability and misuse of firearms by minors, convicted
16 criminals, and other unauthorized users is one of the most serious problems facing this nation. In
17 1996, the most recent year for which final statistics are available, more than 34,000 people were
18 killed with firearms. Of these, more than 14,300 were homicides and about 18,100 were
19 suicides, with more than 1,100 deaths from unintentional shootings. In addition, based on 1992
20 data, approximately 99,000 individuals are treated annually in hospital emergency rooms for
21 non-fatal firearm injuries, with about one-fifth of these for accidental shootings. Handguns
22 cause most of these injuries and deaths. By comparison, in other industrialized nations, no more
23 than a few hundred people are killed each year by handguns.

24 17. Statewide statistics for California reveal similar patterns of firearm violence. In
25 1997 alone, there were 1,835 homicides committed with a firearm, generally a handgun. In
26 1997, firearms were the predominant means of committing homicide, constituting 72.3% of total
27 homicides. Handguns alone represented over 64% of the total homicides and 89% of firearm
28 homicides. The figures for California in each year during the five-year period 1992 through

1 1997 are similar: For each year, firearms were used in over 70% of the total homicides and
2 handguns were used in over 62% of the total homicides. In addition, firearms are a leading cause
3 of serious injuries. In 1997, there were over 25,000 incidents in California in which a victim
4 suffered serious injuries from a firearm.

5 18. These deaths and injuries are devastating for the individuals involved, for their
6 families and communities, and for the State of California. Moreover, the pervasive threat of gun
7 violence affects the tenor and quality of everyday life, even for those who are not direct victims.

8 19. A substantial percentage of the firearms used to inflict harm and injury on
9 California residents are obtained through an illegitimate secondary market, that caters to buyers
10 who include convicted criminals, minors, gang members and others precluded from lawfully
11 purchasing Defendants' firearms (hereinafter, the "secondary market"). This secondary market is
12 created and promoted by the conduct of Defendants. The existence of the secondary market, and
13 the fact that the secondary market is fed by Defendants' acts and practices, is a matter of common
14 knowledge to Defendants, as is demonstrated by the following sworn statement of Robert Haas,
15 the former Senior Vice-President of Marketing and Sales for Defendant Smith & Wesson:

16 The company [Smith & Wesson] and the industry as a whole are fully
17 aware of the extent of the criminal misuse of handguns. The company and
18 the industry are also aware that the black market in handguns is not simply
19 the result of stolen guns but is due to the seepage of guns into the illicit
20 market from multiple thousands of unsupervised federal handgun
21 licensees. In spite of their knowledge, however, the industry's position
22 has consistently been to take no independent action to insure responsible
23 distribution practices, to maintain that the present minimal federal
24 regulation of federal handgun licensees is adequate and to call for greater
25 criminal enforcement of those who commit crimes with guns as the
26 solution to the firearm crime problem. . . . I am familiar with the
27 distribution and marketing practices of the [sic] all of the principal U.S.
28 handgun manufacturers and wholesale distributors and none of them, to
my knowledge, take additional steps, beyond determining the possession
of a federal handgun license, to investigate, screen or supervise the
wholesale distributors and retail outlets that sell their products to insure
that their products are distributed responsibly.

25 20. National surveys demonstrate that minors and convicted criminals have easy
26 access to firearms through the secondary market. For example, a recent survey showed that
27 approximately 29% of 10th grade boys and 23% of 7th grade boys have at one time carried a
28 concealed handgun. Another survey showed that 70% of all prisoners felt that they could easily

1 obtain a firearm upon their release. Similarly, a recent study of 27 major urban centers by the
2 federal Bureau of Alcohol, Tobacco and Firearms ("ATF"), which analyzed more than 75,000
3 firearm trace requests, reported that more than 11% of firearms picked up in crime in major
4 urban centers throughout the United States were possessed by juveniles under age 18. The same
5 ATF study indicated that another 15% of crime guns were seized from persons 18-20 years old,
6 more than from any other three-year age group, adult or minor.

7 21. Despite these statistics, Defendants have not taken reasonable steps to keep
8 handguns out of the hands of minors. To the contrary, Defendants market their products in an
9 effort to appeal to minors. For example, one of the gun industry's leading trade associations,
10 Defendant National Shooting Sports Foundation Inc. (NSSF), announced in 1992 a "new focus
11 on women and youngsters." NSSF started a "Youth Education Program" in a search for new
12 customers and expansion of the gun market. The September/October 1992 issue of NSSF's
13 magazine S.H.O.T. Business carried a column by a noted celebrity in the industry, Grits
14 Gresham, in which he said:

15 There's a way to help insure that new faces and pocketbooks will continue
16 to patronize your business: Use the schools [I]t's time to make your
 pitch for young minds, as well as for the adult ones.

17 22. ATF has also reported that more than 45% of the crime weapons that it traces
18 were illegally possessed by convicted criminals, and that more than 80% of the guns picked up in
19 crime are handguns. Large percentages of these handguns were used in assaults, robberies,
20 homicides, and other violent crimes. ATF tracing data also indicates that as many as 43% of
21 firearms traced to crime in urban centers across America had been bought from retail dealers less
22 than three years earlier, which is a strong indication that the firearm has been directly diverted
23 into the secondary market.

24 **II. DEFENDANTS' CONDUCT HAS CREATED AN ILLEGITIMATE SECONDARY**
25 **MARKET OF HANDGUNS TO UNAUTHORIZED USERS**

26 23. Defendants' marketing and distribution policies and practices facilitate, promote
27 and yield high volume sales, widespread availability and easy access to firearms, without any
28 meaningful attention to or concern for the foreseeable consequences.

1 24. Defendants know and have known for years that a substantial percentage of the
2 firearms they manufacture, distribute, market and sell are purchased by unauthorized persons,
3 including minors and convicted criminals. Many of the guns illegally sold in this secondary
4 market are subsequently used in the commission of crime. Defendants knew or should have
5 known that their conduct would facilitate and/or encourage their firearms to fall into the
6 secondary market and to be used by unauthorized persons. Defendants' business practices that
7 create and promote the secondary market include but are not limited to the following:

8 **A. Oversaturation of the Legitimate Market**

9 25. Defendants produce, market and distribute substantially more handguns than they
10 reasonably expect to sell to legal purchasers. There are about 65 million handguns in the United
11 States, and about 2.5 million more are added each year. This sales volume is well in excess of
12 the sales volume that can be supported by the legitimate market. A substantial percentage of
13 these sales is diverted to the secondary market. By their actions, defendants thus knowingly
14 participate in and facilitate the secondary market for handguns.

15 **B. Oversaturation of Weak Gun Control Jurisdictions**

16 26. Firearms move from jurisdictions with relatively weak gun control laws to
17 jurisdictions with stronger gun control laws. Defendants are aware of and profit from this illegal
18 trafficking movement, yet do nothing to control or monitor sales in weak gun control
19 jurisdictions to curb illegal trafficking of guns from those jurisdictions into more heavily
20 regulated jurisdictions. To the contrary, Defendants eagerly sell as many guns as are necessary
21 to feed the secondary market in weak gun control jurisdictions. As an example of this problem,
22 Arizona and Nevada both border California and have weaker gun control laws than this State.
23 According to ATF statistics, approximately 30% of the firearms traced in Southern California
24 were originally sold at retail locations outside of California, principally Nevada and Arizona.
25 Although this migration of firearms across state lines contravenes federal law as well as reduces
26 the efficacy of California and local law, Defendants continue to facilitate and encourage this
27 migration by oversupplying those jurisdictions with weak gun control laws.

1 **C. Distributing Handguns Without Exercising Adequate Control**

2 27. Defendants' unrestrained distribution practices maximize their sales without any
3 checks or precautions, and without placing effective controls on their distributors or dealers,
4 which include disreputable gun shops, pawnshops, gun shows, and telemarketers. Although
5 Defendants' distribution practices increase sales volumes and profits, they minimize contacts
6 between defendants and their distributors and/or dealers, and prevent any meaningful monitoring
7 of compliance with federal, state and local laws.

8 28. Defendants do not monitor or supervise their distributors or dealers, except in
9 ways that are aimed at maximizing profits. Some defendants have distribution agreements that
10 provide for the right of termination, and occasionally they have terminated or warned distributors
11 or dealers. However, engaging in a dangerous sales practice -- such as one that would make
12 guns easily available for potential criminal use -- has not been the basis for termination and is not
13 prohibited by the terms of defendants' distributorship agreements. The reasons contemplated for
14 termination are generally limited to the following: not maintaining minimum prices, advertising
15 the price that the distributor pays to the manufacturer, or selling into the wrong market (some
16 distributors are forbidden to sell to law enforcement or to make foreign sales). There is no
17 mention of termination for selling to or facilitating the secondary market.

18 29. Defendants distribute their firearms without requiring that their dealers be trained
19 or instructed: (a) to detect inappropriate purchasers; (b) to educate purchasers about the safe and
20 proper use and storage of handguns, or to require any training or instruction of the purchasers; or
21 (c) to inquire or investigate the purchasers' level of knowledge or skill or purposes for buying
22 handguns. Defendant Manufacturers do not provide their distributors and dealers with any
23 feedback, require their distributors to monitor or supervise their dealers, or train their distributors
24 and dealers regarding the dangers and practices alleged herein.

25 30. Defendants purposely avoid any connection to or vertical integration with the
26 distributors and dealers that sell their products. They offer high volume monetary incentives and
27 generally refuse to accept returns, and they contractually attempt to shift all liability and
28 responsibility for the harm done by their products to their distributors or dealers.

1 31. Defendants do not use available computerized inventory and sales tracking
2 systems to limit and screen customers. Such systems are commonly and inexpensively used
3 throughout American industry, particularly by companies that produce dangerous or harmful
4 products.

5 32. Other manufacturers of dangerous or harmful products, including manufacturers
6 of chemicals and paints, place restrictions and limits on the distribution, distributors, and dealers
7 of their products to avoid known detrimental consequences. In sharp contrast, defendants have
8 completely failed and refused to adopt any such limits or to engage in even minimal monitoring
9 or supervision of their distributors and dealers.

10 **D. Facilitating Straw Purchases and Multiple Sales**

11 33. Defendants do not limit, or require or encourage their distributors and dealers to
12 limit, the number, purpose or frequency of handgun purchases, nor do they monitor or supervise
13 their distributors or dealers to encourage practices or policies that limit access to handguns for
14 criminal purposes. As a direct, foreseeable and known result of defendants' conduct, a large
15 number of handguns are regularly diverted into the secondary market through "straw purchases."

16 34. A "straw purchase" occurs where the purchaser of the firearm as reflected in the
17 governmental application forms is a "dummy" purchaser for someone else, most often a person
18 who is not qualified to purchase the firearm under the applicable federal, state and local laws.
19 In some situations, the real purchaser will be present during the sale of the firearm. He or she
20 may select the firearm, handle it and even provide the cash for the purchase. In other situations,
21 for example in a straw purchase for a gang, the straw purchaser will purchase a number of
22 firearms within a short period of time. In this situation, a straw purchaser may engage in
23 repeated multiple firearm purchases.

24 35. Straw purchases account for a substantial percentage of firearms diverted into the
25 secondary market. According to a recent study, more than one-half of the firearms subject to
26 firearm trafficking investigations were initially acquired as part of a straw purchase. Another
27 study, this one involving firearms seized by law enforcement officials in Southern California,
28

1 revealed that more than 80% of the guns retrieved by law enforcement were in the possession of
2 a person other than the original purchaser.

3 36. Similarly, the level of multiple sales is quite large. One recent law enforcement
4 study of Southern California analyzed 5,743 instances of multiple sales over a nine-month period
5 involving the purchase of 13,181 firearms. A significant percentage of these transactions
6 involved the purchase of three or more guns at a time. The report concluded that "[m]ultiple
7 purchases seem relatively common in California, where there has been no set limit to the number
8 of guns that a private person can purchase." More recent data indicates that as many as 22% of
9 all guns purchased in California in 1998 were part of multiple sales.

10 37. Although straw purchases often occur under circumstances that indicate or should
11 indicate that a straw purchase is being made, Defendants take no steps to prevent these straw
12 purchases from occurring or to limit the number of straw purchases that occur. For example,
13 Defendants offer no training or guidance to enable the store clerk to recognize when a straw
14 purchase is occurring. Similarly, Defendants undertake no remedial actions to prevent a known
15 straw purchaser from continuing to make purchases. Defendant Manufacturers also fail to
16 adequately supervise and monitor both their distributors and dealers with respect to straw
17 purchases. Additionally, they do not investigate their distributors and dealers or review their
18 records to determine whether straw purchases are occurring or the extent to which they are.
19 Finally, Defendant Manufacturers fail to impose any sanctions, including possible termination of
20 the relationship, upon their distributors or dealers upon learning that a straw purchase or a series
21 of straw purchases has occurred.

22 **E. Allowing Sales to "Kitchen Table" Dealers**

23 38. "Kitchen table" dealers are firearm dealers who do not sell firearms from an
24 established retail store but rather sell firearms in informal settings, including but not limited to a
25 house, car, flea market, gun show, or even on the street. Many of these kitchen table dealers
26 operate illegally, in violation of state and local licensing and zoning laws. Many of these dealers
27 also engage in other corrupt practices, including but not limited to selling firearms without
28 completing the appropriate and necessary background checks on the purchaser, failing to report

1 sales, failing to keep records of sales, falsifying records of sales, obliterating serial numbers on
2 firearms, and/or falsely claiming that sold guns were stolen.

3 39. Defendants know or should know about the practices of kitchen table dealers set
4 forth herein. Defendants have nevertheless sold thousands of guns to kitchen table dealers,
5 without taking appropriate steps to reduce improper resale by such dealers. Such steps include
6 but are not limited to supervising and monitoring such dealers, tracking crime gun trace requests
7 relating to such dealers, reviewing dealer records for inaccuracies and falsified information,
8 requiring distributors to resell guns only to dealers with a permanent store location, and requiring
9 all dealers to maintain a permanent store location.

10 **F. Designing Weapons Without Features to Discourage Unauthorized Use**

11 40. Firearms trafficking depends upon the ability of unauthorized users to fire
12 weapons obtained from traffickers. Use of designs and features that preclude this ability, such as
13 designs and features that prevent unauthorized use or facilitate tracking of firearms, would
14 discourage trafficking and reduce the flow of weapons to the illegal market. Notwithstanding the
15 availability and feasibility of such designs and features, Defendants have continued to
16 manufacture, distribute and sell firearms that do not include a design or feature preventing
17 unauthorized use.

18 41. Thousands of handguns diverted to crime have had their serial numbers
19 obliterated to prevent tracing of the firearm by law enforcement. Such guns are more useful to
20 criminals who seek to eliminate the tracks of their crime. Defendants are aware of this problem,
21 and the ease with which numbers are obliterated, but have taken no initiative to make their serial
22 numbers tamper-proof. A recent ATF study of 27 major urban centers found, on average, that
23 more than 11% of the guns traced to crime had obliterated serial numbers.

24
25 **III. DEFENDANTS HAVE DESIGNED THEIR GUNS TO APPEAL TO CRIMINALS
26 AND HAVE INCREASED PRODUCTION TO MEET ILLEGAL DEMAND**

27 42. Over the last 20 years, Defendants have changed certain design features and the
28 production output of handguns. Previously, most handguns produced were revolvers, with six

1 bullets stored in a rotating cylinder that could not be reloaded quickly. Now most handguns are
2 semi-automatic pistols with bullets stored in magazines. These pistols fire at a faster rate, and
3 their magazines typically can be detached and replaced very quickly, allowing for sustained
4 firing against multiple targets.

5 43. Many of the pistols produced by Defendants (and many of the recent revolvers)
6 are increasingly smaller, easier to conceal, more powerful, and rapid-firing. Hence, these
7 weapons are ever more lethal. Many are also considerably cheaper than in the past.

8 44. The production of cheap handguns was especially prevalent among Defendants
9 Lorcin, Bryco, Davis, and Phoenix. This group of California manufacturers is owned by
10 members of an extended family, and has been dubbed by a well-known researcher as the "Ring
11 of Fire." The older, established companies, like Defendants Smith & Wesson, Sturm, Ruger &
12 Co., and Colt, have followed the lead of the "Ring of Fire" companies, producing similar
13 handguns (while also making more expensive models).

14 45. Defendants have increased the production of particular handguns that are popular
15 for use by criminals. For example, over the past decade, defendants increased their production of
16 9-millimeter handguns although their own market research showed that the market for
17 9-millimeters among law-abiding purchasers was already saturated. Nine-millimeter handguns
18 are popular in the illicit drug trade and, according to most national studies, are among the
19 firearms used most frequently in crime. A recent study in one state concluded that 9 millimeter
20 handguns are the weapons of choice for criminals, accounting for almost a third of all homicides.

21 46. Defendants know or should know that they manufacture and market weapons, the
22 design of which stresses concealability, lethality, or other design features, which make these
23 weapons unreasonably attractive to criminals. Defendants' emphasis on concealability is
24 particularly problematic in California, because state law bans possession of a concealed weapon
25 without a concealed carry permit. Very few such permits have been issued.

1 **IV. DEFENDANTS' CONDUCT IS CALCULATED TO AVOID THE**
2 **RESTRICTIONS OF LOCAL, STATE AND FEDERAL LAWS**

3 47. Federal, state and local firearm laws have been enacted in an effort to curb the
4 abuses of gun violence and to protect the general public's health and safety. Despite the fact that
5 governments have enacted laws to lessen the incidences of gun violence, Defendants have
6 manufactured, designed, distributed, marketed and sold firearms in ways that undermine and
7 frustrate the public policies embodied in federal, state and local law. The conduct and practices
8 of Defendants as set forth herein have permitted and/or are calculated to allow Defendants to
9 avoid the restrictions and/or prohibitions set forth in local, state and federal laws and regulations
10 including, but not limited to: Title 18, United States Code Sections 921 – 930 *et seq.* (Chapter
11 44 – Firearms); California Penal Code Sections 12020-12040 *et seq.* (Chap. 1, Article 2 –
12 Unlawful Carrying and Possession of Weapons); 12050 - 12054 *et seq.* (Chap. 1, Article 3-
13 Licenses to Carry Pistols and Revolvers); 12070 - 12085 *et seq.* (Chap. 1, Article 4 – Licenses to
14 Sell Firearms); 12200 –12250 *et seq.* (Chap. 2 - Machine Guns); 12270 -12290 *et seq.* (Roberti-
15 Roos Assault Weapons Control Act of 1989); 12100 *et seq.* (Chap.1, Article 7 – Juveniles - Sale
16 or Transfer of Concealable Firearm to Minor); 12500 -12520 *et seq.* (Chap. 5, Articles 1 and 2 -
17 Unlawful Possession of Firearm Silencers/Misc.); 12800 - 12809 *et seq.* (Chap. 6, Article 8 -
18 Basic Firearms Safety Instruction and Certificate); Alameda County Code section 9.12.010-090
19 (Regulating the Sale of Firearms); San Francisco Police Code sections 610, 613, 614, and 615 *et*
20 *seq.* (same); Sacramento City Code sections 28.05.501 (same) and San Mateo County Ordinance
21 Code, Chapter 3.52 *et seq.* (same).

22 48. For example, the California Roberti-Roos Assault Weapons Control Act of 1989,
23 California Penal Code sections 12275 –12290, and the United States 1968 Gun Control Act,
24 18 U.S.C. § 925 *et seq.*, ban the importation, manufacture and sale of "assault weapons." As the
25 California legislature found and declared, this ban is based on the conclusion that such assault
26 weapons "are particularly dangerous in the hands of criminals and serve no necessary hunting or
27 sporting purpose for honest citizens." The ban enacted by the California legislature explicitly
28 applies to both listed weapons and "any other models which are only variations of those weapons
with minor differences, regardless of manufacturer."

1 49. Despite this statute, certain Defendants have marketed and sold in California
2 firearms substantially similar to or identical to the firearms banned by the statutes. In fact,
3 certain Defendants have made only minor modifications to the banned assault weapons or
4 renamed the assault weapons enumerated in the above-referenced statutes in order to avoid these
5 laws.

6 50. For example, after the California legislature banned the TEC-9 firearm, defendant
7 Navegar continued to distribute and sell the identical firearm in California under the name "TEC-
8 DC9." Navegar later distributed and sold a firearm under the name "TEC-DC9" that was the
9 same design as the banned TEC-9, with only cosmetic modifications. Navegar's TEC-DC9 is a
10 semiautomatic assault weapon that can accept a 32-round detachable magazine, and can be
11 modified to be fully automatic. It has attachments that facilitate spraying bullets from the hip.
12 The TEC-DC9 also has a coating that provides, according to the manufacturer's brochure,
13 "excellent resistance to fingerprints." These features serve no legitimate sporting, hunting or
14 self-defense purpose and are designed to appeal to criminals.

15 51. At all relevant times, defendant Navegar has been on notice of the lethal
16 consequences of its practices. Navegar's assault weapons have frequently been used in multiple
17 homicides, including the 101 California Street massacre and the recent high school shootings in
18 Littleton, Colorado. Defendant Navegar's marketing and sales director has been quoted as
19 saying, "I'm kind of flattered [by condemnations of the TEC-9]. It just has that advertising
20 tingle to it. Hey, it's talked about, it's read about, the media write about it. That generates more
21 sales for me. It might sound cold and cruel, but I'm sales oriented." Larry Rohter, Pistol Packs
22 Glamour and Reputation as a Menace, New York Times, March 10, 1992, at A1.

23 52. Despite the ban in Penal Code section 12020.5 against the advertisement of
24 certain firearms, including but not limited to assault weapons, certain Defendants have advertised
25 and continue to advertise such firearms to consumers within the State of California.

26 53. Additionally, numerous local ordinances prohibit the sale of "junk guns" or
27 "Saturday Night Specials," including but not limited to San Francisco Police Code sections 610,
28 613, 614, 615, *et seq.*, Alameda County Code section 9.12.110, and Sacramento City Code

1 section 48.02.103. The "Saturday Night Special" ("SNS") ordinances enacted in jurisdictions
2 throughout California were designed to protect the public from poorly made, easily concealable
3 guns. These firearms have been and continue to be used frequently in the commission of crimes.
4 Defendants have continued to manufacture and/or distribute guns covered by SNS ordinances
5 without taking reasonable steps to prevent sales of such guns within jurisdictions banning such
6 sales. Examples of firearms falling within local SNS bans include but are not limited to: Bryco
7 Models 28 and 48; Davis Model P-380, Rimfire Derringers, D-Series and Long-Bore; Navegar
8 Models Intratec Protec-22, Protec-25 and Category 9; Jennings Models J-22 and J-25; Lorcin
9 Models L-22, L-25, LT-25, L-32, L-9MM and L-380; and Phoenix Models Raven 25, HP-22,
10 and HP-25.

11 **V. DEFENDANTS HAVE FAILED TO INCORPORATE FEASIBLE AND**
12 **EXISTING SAFETY TECHNOLOGY INTO THE DESIGN AND DISTRIBUTION**
13 **OF FIREARMS**

14 **A. Adequate Warning and Safety Features Would Prevent Many Unintentional**
15 **Shootings**

16 54. Defendants, and each of them, have designed, manufactured, made or sold
17 firearms that are defective because the firearms lack basic safety features and contain inadequate
18 warnings that result in unintentional shootings. Defendants continue to distribute their firearms
19 without adequate warnings and instructions that inform the users of the risks of guns, including
20 proper storage and use of the weapons, even though it is known or should be known by
21 Defendants that approximately half of California residents who keep a firearm at home store
22 their guns in an unsafe manner. Despite this knowledge, Defendants market and promote their
23 firearms in a manner that ignores or understates the risks that such firearms pose to their owners
24 and to other members of the household. Defendants also over-promote the purported self-
25 defense and home protection benefits of their guns, in a manner that undercuts any warnings or
26 instructions regarding safe storage of guns, and which results not only in irresponsible people
27 possessing guns, but also in the irresponsible storage and handling of guns.

28 55. Defendants also manufacture, distribute and sell firearms that are defective and/or
unreasonably dangerous in that their design lacks safety features or contains inadequate safety

1 features. For example, it was and continues to be reasonably foreseeable and known by
2 Defendants that users of semi-automatic handguns would not understand or appreciate that an
3 undetectable round of ammunition may be housed in the firing chamber of a semi-automatic gun
4 even though the ammunition magazine had been removed or emptied. Consequently, it was and
5 continues to be reasonably foreseeable that this hazardous design would result in preventable,
6 unintentional shootings. This hazardous design could be easily corrected through the use of a
7 "magazine-disconnect safety" that would prevent the gun from firing with the magazine
8 removed. These tragic, foreseeable shootings could also be prevented by use of an effective
9 "chamber loaded indicator" that would warn a user when a bullet was in the firing chamber.
10 Defendant Manufacturers have failed to incorporate such devices into their firearms.

11 56. The unsafe design of Defendants' guns results in 1,400-1,500 unintentional
12 shooting deaths and over 18,000 non-fatal injuries from unintentional shootings every year. The
13 General Accounting Office estimates that each year, 23% of the unintentional shooting deaths
14 occur because the user of the gun was not aware that a round of ammunition had been loaded
15 into the gun's firing chamber. This results in as many as 320 to 345 deaths nationwide each
16 year. For each of these deaths, there are countless other unintentional shooting injuries that are
17 not fatal.

18 57. Unintentional shootings with Defendants' unsafe firearms often involve
19 adolescents. Adolescents are foreseeably attracted to guns and typically do not understand all of
20 the risks associated with handling a firearm. According to the General Accounting Office,
21 approximately 35% of all unintentional shooting deaths involve users of guns who were between
22 the ages of 13 and 16. Many such shootings have occurred in the State of California.

23 58. Defendants have failed to take reasonable steps to guard against such foreseeable
24 unintentional shootings, such as designing their firearms to include basic safety features and/or
25 giving adequate warnings that would prevent or reduce such unintentional shootings.
26 Defendants were aware of, and/or had available to them, devices, features, warnings, and other
27 measures, which would prevent and/or decrease the dangers of their products. Defendants failed
28 to remedy the deficiencies in their guns, warnings, instructions, promotions and/or

1 advertisements of the firearms. Defendants further failed to adequately warn customers of these
2 dangers, failed to inform distributors, dealers and/or buyers of available devices and measures
3 that could prevent or decrease these dangers, failed to incorporate safety devices and features
4 into their guns and/or discouraged the development and implementation of safety devices and
5 features into their guns. Defendant Trade Associations failed to adopt adequate guidelines or
6 standards relating to the development and inclusion of such features in firearms. Defendants
7 knew or should have known that, as a consequence of their actions, California residents have
8 been and will continue to be killed or seriously injured.

9 **B. Personalized Safety Technology Would Prevent Access to Firearms by**
10 **Unauthorized Users**

11 59. The unsafe and defective design of Defendants' firearms results in thousands of
12 shootings each year by persons who are not authorized to possess a firearm by the firearm's
13 owner. Such shootings often occur when an adolescent or a criminal improperly obtains
14 possession of a firearm.

15 60. Adolescent homicides and suicides are usually committed with firearms that the
16 adolescent has taken from his or her home. In the United States, the rate at which youths aged
17 10-19 have committed suicide with a firearm has long averaged about once every six hours.
18 In California, millions of minors live in homes where firearms are present. Studies have
19 indicated that the odds that potentially suicidal minors will kill themselves double when a gun is
20 kept in the home. Firearms are used in 65% of male teen suicides and 47% of female teen
21 suicides. Among 15-19 year-olds, firearm-related suicides have been estimated to account for
22 81% of the increase in the overall rate of suicide from 1980-1992. A large number of such
23 firearm-related teen suicides occur each year in California.

24 61. At all pertinent times, it was reasonably foreseeable that Defendants' guns would
25 fall into the hands of unauthorized users. There are guns in approximately one-half of the homes
26 in this country. One survey reports that 30% of gun-owners who have minors in the home keep
27 their guns loaded. Another survey reports that 36% of gun owners with minors in the home keep
28 their guns unlocked. The Federal Centers for Disease Control and Prevention estimates that

1 1.2 million elementary-aged, latchkey children have access to guns in their homes. Moreover,
2 nearly 60% of juveniles between the ages of 10 and 19 have responded in surveys that they can
3 acquire a gun should they want one.

4 62. At all pertinent times, Defendants have also been aware, or should have been
5 aware, that when unauthorized users gained access to Defendants' guns, tragic and preventable
6 shootings would result. Many teen suicides and shootings by minors and other unauthorized
7 users could be prevented had Defendants cared to implement safer gun designs, including
8 personalized gun technology that would prevent an unauthorized user from being able to fire the
9 gun. The Defendants further knew that by failing to make and sell firearms with the means to
10 prevent their firing by unauthorized users, it was reasonably foreseeable that guns stolen from
11 private residences, gun stores and other locations could be employed by unauthorized users in
12 violent criminal acts.

13 63. A study by the Johns Hopkins University School of Hygiene and Public Health's
14 Center for Gun Policy and Research concluded that "[p]ersonalized handguns can eliminate
15 many deaths and injuries by preventing the unauthorized firing of the firearm . . . [and] can be
16 especially effective in preventing teenage [deaths], unintentional deaths and injuries of children,
17 and shootings of police officers."

18 64. Defendants' unreasonably dangerous and/or defective products have repeatedly
19 victimized California residents. At the time the Defendants manufactured, distributed, marketed,
20 designed, promoted and/or sold their firearms, Defendants knew or should have known of the
21 unreasonable dangers of their guns, including those described herein. Defendants were also
22 aware of, and/or had available to them, personalized safety features, warnings, and other
23 measures, which would prevent and/or decrease the dangers of their products. Defendant
24 Manufacturers nevertheless failed to remedy the deficiencies in their guns. Defendant
25 Manufacturers further failed to incorporate personalized safety features into their guns and/or
26 discouraged the development and implementation of personalized safety features. Defendant
27 Trade Associations similarly failed to adopt adequate guidelines or standards relating to the
28 development and inclusion of such personalized safety features in firearms. Defendants knew or

1 should have known that, as a consequence of their actions, California residents would be killed
2 or seriously injured.

3 **C. Defendants Have Failed to Compete to Develop Firearms with Personalized**
4 **Safety Technology**

5 65. A gun with personalized safety features sufficient to prevent or significantly
6 reduce the risk of unauthorized use would have obvious appeal to a large segment of the
7 legitimate handgun market. Despite this market appeal, Defendant Manufacturers have failed to
8 compete with each other to develop and market firearms with such safety features.

9 66. Defendant Trade Associations have likewise discouraged the development of such
10 safety features. For example, Defendant SAAMI holds itself out to the public as having been,
11 since 1926, "the principle organization in the United States actively engaging in the development
12 and promulgation of product standards for firearms and ammunition." Although SAAMI has
13 promulgated numerous product standards for the firearms industry, it has failed to develop any
14 standards relating to personalized safety devices.

15 67. Instead of encouraging the firearms industry to develop safer products and
16 distribution practices, defendant Trade Associations have in the past sought to discipline industry
17 members who attempted to address safety issues. For example, when Defendant Smith &
18 Wesson was faced in 1976 with a public outcry that might have resulted in a ban of most
19 handguns in Massachusetts, Smith & Wesson announced that, as an alternative, it would support
20 screening and registration of handgun owners. For this breach of industry policy, Smith &
21 Wesson faced censure or ouster from SAAMI. To avoid possible action by SAAMI, Smith &
22 Wesson for a time withdrew from SAAMI, then conformed its proposals and positions to
23 industry policies.

24 **VI. DEFENDANTS' UNFAIR, FALSE, DECEPTIVE AND/OR MISLEADING**
25 **STATEMENTS**

26 68. For years, and continuing to date, Defendants have knowingly, purposefully and
27 intentionally misled, deceived and confused members of the general public in California
28 regarding the safety of firearms and the need for firearms within the home. To increase sales and
profits, Defendants have falsely and deceptively claimed through advertising and promotion of

1 their firearms that the ownership and possession of firearms in the home increases one's security.
2 For example, handgun manufacturers have promoted firearms with slogans such as
3 "homeowner's insurance," "tip the odds in your favor," and "your safest choice for personal
4 protection." Research demonstrates that, to the contrary, possession of firearms actually
5 increases the risk and incidence of homicide, suicide and intentional and unintentional injuries to
6 gun owners and their families and friends. Defendants' over-promotional efforts have negated
7 and undercut any warnings they have provided regarding the risks of guns in the home.

8 69. Defendants have made these false and deceptive statements even though they
9 knew and/or should have known that studies and statistics demonstrate that the presence of
10 firearms in the home increase the risk of harm to firearm owners and their families, as set forth in
11 the following statistics:

12 a. One out of three handguns is kept loaded and unlocked in the home;

13 b. Studies that control for the relevant variables have demonstrated that the
14 homicide of a household member is almost three times more likely in homes with guns
15 than in homes without them, suicide is five times more likely; and for homes with
16 teenagers, suicide is ten times more likely;

17 c. Studies have also shown that a gun in the home is at least 22 times more
18 likely to kill or injure a household member than it is to kill or injure an intruder in self
19 defense;

20 d. A firearm is used for protection in fewer than two percent of home
21 invasion crimes; and

22 e. For every time a gun in the home was used for self-defense or a legally
23 justifiable shooting, there were four unintentional shootings, seven criminal assaults or
24 homicides, and eleven attempted or completed suicides.

25 70. Defendants' advertising and promotion deceptively conveys the message that
26 possession of a firearm and that the enhanced lethality of particular features and handguns will
27 increase the personal safety of the owner and owner's household. Defendants fail to include any
28 information or warning about the relative risk of keeping a firearm in the home. By failing to

1 disclose such risks, the advertisements and promotions fail to correct a material
2 misrepresentation in the minds of many consumers. Defendants' advertising and promotion is
3 therefore likely to deceive members of the general public.

4 71. The U.S. Commission on the Causes and Prevention of Violence in a 1968 article
5 entitled "Handguns and Violence in American Life," noted an increasing number of firearm
6 deaths and injuries and concluded:

7 [Americans] may seriously overrate the effectiveness of guns in protection
8 of their homes. In our urbanized society the gun is rarely an effective
9 means of protecting the home against either the burglar or the robber
10 [A gun in the home] provides a measure of comfort to a great many
11 Americans, but, for the homeowner, this comfort is largely an illusion
12 bought at the high price of increased accidents, homicides, and more
13 widespread illegal use of guns When the number of handguns
14 increases, gun violence increases. (Pages xiii, 139.)

15 72. In California, a substantial number of deaths and injuries have occurred each year
16 because firearms were purchased for home protection but were thereafter used in unintentional
17 shootings, teen suicides, domestic disputes and other acts of violence as set forth herein.
18 Defendants chose to disregard these well-known statistics and data in an effort to promote their
19 firearms as security or "insurance" for the home, and to increase their sales and profits.

20 73. Moreover, although Defendants state publicly that they seek to preclude minors
21 and criminals from possessing firearms, they in fact are engaging in practices that facilitate the
22 illegal possession of firearms by minors and criminals through the secondary market.
23 Defendants then utilize the threat posed by the criminal misuse of firearms -- a threat that their
24 own practices have helped to create -- to market and sell more firearms to the "home protection"
25 market.

26 **VII. DEFENDANTS HAVE PROFITED FROM THEIR UNFAIR, UNLAWFUL OR**
27 **FRAUDULENT BUSINESS PRACTICES AT THE EXPENSE OF CALIFORNIA**
28 **AND ITS RESIDENTS**

74. Defendants' practices have contributed to the overall success and profit for the
\$2-\$3 billion firearm industry. Defendants, and each of them, knew or should have known that
the thousands of firearms distributed through the illegitimate secondary market cause substantial
injury and harm to California residents. Defendants' actions and omissions set forth herein

1 unreasonably facilitate violations of federal, state and local laws, negate and undermine the
2 public policies established by those laws, contribute to physical harm, fear and inconvenience to
3 California residents, and are injurious to the public health, well-being and safety of California
4 residents. Defendants' conduct has directly and indirectly injured and harmed California
5 residents in the form of loss of life, injury, increased criminal activity involving firearms, law
6 enforcement costs, medical costs and emergency response costs. Defendants' conduct has
7 allowed Defendants to profit from their unfair, unlawful and/or fraudulent business practices
8 thereby contributing to Defendants' overall financial success and vitality at the expense of
9 California and its residents.

10 **FIRST CAUSE OF ACTION**

11 **PUBLIC NUISANCE**

12 **(AGAINST ALL DEFENDANTS AND DOES 1-200)**

13 75. Plaintiffs incorporate by reference paragraphs 1 through 74 as though fully set
14 forth herein.

15 76. The People of the State of California have a common right to be free from conduct
16 that creates an unreasonable jeopardy to the public health, welfare and safety and to be free from
17 conduct that creates a disturbance and reasonable apprehension of danger to person and property.

18 77. Defendants' ongoing conduct relating to their creation and supply of a crime market
19 for firearms has created and maintained a public nuisance throughout Northern California, as
20 thousands of firearms that Defendants directly or indirectly supply to the illegitimate firearms
21 market are thereafter used and possessed in connection with criminal activity in Northern
22 California. As a result of the continued use of many of these firearms after they enter the State,
23 California residents have been and will continue to be killed and injured by these firearms and
24 California residents will continue to fear for their health, safety and welfare and will be subjected to
25 conduct that creates a disturbance and reasonable apprehension of danger to their person and
26 property.

27 78. Defendants' conduct, as set forth above, constitutes a public nuisance in the City and
28 County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and

1 Sacramento, because it is an unreasonable interference with common rights enjoyed by the general
2 public.

3 79. Defendants' conduct, as set forth above, is an unreasonable interference with
4 common rights enjoyed by the People of the State of California and by the general public in the City
5 and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley
6 and Sacramento, because it significantly interferes with the public's health, safety, peace, comfort
7 and convenience.

8 80. Defendants' conduct, as set forth above, is an unreasonable interference with
9 common rights enjoyed by the People of the State of California and by the general public in the City
10 and County of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley
11 and Sacramento, because Defendants knew or should have known that conduct to be of a
12 continuous and long-lasting nature that produces a permanent and long-lasting significant negative
13 effect on the rights of the public.

14 81. Defendants' ongoing conduct produces an ongoing nuisance, as thousands of
15 handguns that Defendants directly or indirectly supply to the crime market, which are thereafter
16 illegally used and possessed in California and in the City and County of San Francisco, the Counties
17 of Alameda and San Mateo, and the Cities of Berkeley and Sacramento, will remain in the hands of
18 persons who will continue to use and possess them illegally for many years. As a result of the
19 continued use and possession of many of these handguns, residents of the City and County of
20 San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and Sacramento
21 will continue to be killed and injured by these handguns and the public will continue to fear for its
22 health, safety and welfare and will be subjected to conduct that creates a disturbance and reasonable
23 apprehension of danger to person and property. The People of the State of California, acting
24 through the prosecuting Cities and Counties, have a clearly ascertainable right to abate conduct that
25 perpetuates this nuisance.

26 82. The presence of illegitimately possessed and used handguns in the City and County
27 of San Francisco, the Counties of Alameda and San Mateo, and the Cities of Berkeley and
28 Sacramento, proximately results in significant costs to the public in order to enforce the law, arm the

1 police force and treat the victims of handgun crime. Stemming the flow of handguns into the
2 illegitimate firearms market will help to abate the nuisance, will save lives, prevent injuries and will
3 make California a safer place to live.

4 Wherefore, Plaintiffs pray for relief and judgment against the Defendants jointly and
5 severally, as is set forth below.

6 **SECOND CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS**
8 **CODE SECTION 17500 FOR UNFAIR, DECEPTIVE, UNTRUE OR**
9 **MISLEADING STATEMENTS AND ADVERTISING**

10 **(AGAINST ALL DEFENDANTS AND DOES 1-200)**

11 83. Plaintiffs incorporate by reference paragraphs 1 through 82 as though fully set
12 forth herein.

13 84. Defendants, acting individually and/or in concert, have made unfair, deceptive,
14 untrue or misleading statements and advertisements in connection with the marketing and sale of
15 firearms in violation of California Business and Professions Code §§ 17500 *et seq.* Defendants'
16 unfair, deceptive, untrue or misleading statements include, but are not limited to, engaging in a
17 campaign of deception and misrepresentation concerning the dangers of their firearms by
18 disseminating advertisements and other statements which falsely state or imply that ownership of
19 guns will increase home safety and security. Defendants knew or by the exercise of reasonable
20 care should have known that home ownership of guns increases the risk of homicides, suicides
21 and accidental injury or death in the home and that their advertisements and/or statements were
22 untrue and/or misleading. Defendants failed to disclose the true nature of the risks associated
23 with home ownership of guns or to correct their advertisements and/or statements despite their
24 knowledge that they were misleading or wrong.

25 85. Defendants' unfair and/or deceptive acts or practices in issuing false or
26 misleading statements and/or advertisements are and have been likely to deceive to members of
27 the general public in California.

28 Wherefore, Plaintiffs pray for relief and judgment against the Defendants jointly and
severally, as is set forth below.

THIRD CAUSE OF ACTION

**VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
CODE SECTIONS 17200 ET SEQ. FOR UNLAWFUL,
UNFAIR OR FRAUDULENT BUSINESS PRACTICES**

**(BROUGHT ON BEHALF OF THE PEOPLE BY LOUISE H. RENNE
AND THOMAS F. CASEY, III, AND ON BEHALF OF THE GENERAL PUBLIC
BY JOE SERNA, JR., THE CITY OF BERKELEY AND THE COUNTY OF
ALAMEDA AGAINST ALL DEFENDANTS AND DOES 1-200)**

86. Plaintiffs incorporate by reference paragraphs 1 through 85 as though fully set forth herein.

87. Defendants, acting individually and/or in concert, have engaged in unlawful, unfair and/or fraudulent business practices in connection with the manufacture, marketing or sale of firearms in violation of Business and Professions Code Section 17200 *et seq.*, including, but not limited to, the following:

a. Defendants have engaged in an unlawful business practice by creating a public nuisance in violation of California Code of Civil Procedure section 731 and California Civil Code section 3480.

b. Defendants have engaged in unlawful business practices by violating California Business and Professions Code section 17500 *et seq.* and Civil Code section 1700(a)(5), as is set forth in Count I;

c. Certain Defendants have engaged in unlawful business practices by violating or aiding and abetting the violation of the California Roberti-Roos Assault Weapon Control Act of 1989, California Penal Code sections 12275-12290;

d. Certain Defendants have engaged in unlawful business practices by violating or aiding and abetting the violation of California Penal Code section 12020.5, which bans any advertising in California of certain unlawful weapons, including assault weapons;

e. Defendants, and each of them, have distributed, promoted, advertised, sold and marketed firearms using practices that encourage sales to unauthorized users, including minors and convicted criminals;

1 f. Defendant Manufacturers and Distributors, and each of them, sell their
2 firearms without adequately screening, supervising, monitoring or regulating their
3 employees, distributors and dealers;

4 g. Defendant Manufacturers and Distributors, and each of them, sell their
5 firearms without adequately training, instructing, advising or setting standards for
6 distributors and/or dealers of firearms, regarding how to legally and responsibly sell
7 firearms;

8 h. Defendant Manufacturers and Distributors, and each of them, have
9 continued to make sales to distributors and/or dealers, even though they knew or should
10 have known that such distributors and/or dealers had distributed firearms to illegal
11 purchasers and/or the illegitimate secondary market;

12 i. Defendants, and each of them, knew or should have known that their
13 distribution practices were unreasonably unsafe but despite this knowledge defendants
14 have failed to change their practices or to adopt procedures to curb the flow of firearms to
15 the illegitimate secondary market;

16 j. Defendants, and each of them, knew or should have known that by
17 distributing firearms without adequate self-supervision and regulation that they were
18 creating, maintaining, or supplying the illegitimate secondary market in firearms;

19 k. Defendants, and each of them, have failed to conduct research, or review
20 existing research, which would allow them to monitor and control the distribution of
21 firearms and help to prevent the creation of an illegitimate secondary market;

22 l. Defendants, and each of them, have caused, permitted, and allowed their
23 hazardous firearms to be promoted, marketed, distributed, and disseminated to
24 unauthorized persons, including convicted criminals and minors, and have failed or
25 refused to take reasonable steps to ensure that their firearms were not acquired by
26 unauthorized persons;

27 m. Defendant Manufacturers and Distributors, and each of them, have
28 adopted distribution policies that allow and encourage distributors and dealers to make

1 sales to likely straw purchasers, including sales involving large numbers of firearms in a
2 single transaction;

3 n. Certain Defendant Manufacturers and Distributors have adopted
4 distribution policies that allow sales to dealers who do not maintain a retail place of
5 business for the resale of the firearms;

6 o. Defendant Manufacturers and Distributors, and each of them, have
7 distributed firearms to dealers without requiring their dealers to demonstrate compliance
8 with federal, state and local tax, zoning or licensing laws;

9 p. Defendant Manufacturers and Distributors, and each of them, have
10 distributed firearms to dealers without requiring dealers to maintain accurate records of
11 sales;

12 q. Defendant Manufacturers and Distributors, and each of them, have
13 distributed firearms to dealers without requiring dealers to ensure that purchasers'
14 identification, documentation and/or address is accurate;

15 r. Defendants, and each of them, do not monitor tracing data from the
16 Bureau of Alcohol, Tobacco and Firearms, in order to discover and prevent trafficking;

17 s. Defendant Manufacturers, and each of them, have designed and sold
18 firearms without incorporating feasible safety features and personalized gun technology
19 which would prevent unintentional shootings and/or unauthorized and/or unintended
20 users from gaining access to the firearms, have discouraged the development and
21 implementation of such features and devices, and have not competed with each other by
22 introducing firearms utilizing such technology;

23 t. Defendant Manufacturers, and each of them, have designed and sold
24 firearms without incorporating feasible technology that would prevent persons from
25 unlawfully obliterating the serial numbers required by law to be placed on those guns;

26 u. Defendants, and each of them, sell their firearms without providing
27 adequate warnings and/or instructions regarding the storage or use of their firearms;
28

v. Defendants, and each of them, have over-promoted the purported self-defense and home-protection benefits of their guns in a manner that negates or undercuts any warnings or instructions regarding the safe storage and use of guns;

w. Defendants, and each of them, have manufactured, modified, re-named, marketed, distributed, and sold their firearms in manners that violate or are calculated to evade local, state and federal laws; and

x. Defendants, and each of them, have designed, manufactured and/or marketed their firearms in a manner that increases the demand for firearms by persons who use or possess them illegally.

88. Defendants' acts, conduct and practices in the design, marketing, distribution and/or sales of firearms have been and are unfair, unlawful and/or deceptive acts in violation of public policy and California Business and Professions Code § 17200 *et seq.*

Wherefore, Plaintiffs pray for relief and judgment against the Defendants jointly and severally, as follows:

PRAYER FOR RELIEF

1. On the First Cause of Action for public nuisance, for preliminary and permanent injunctive relief, requiring Defendants and their respective successors, agents, servants, officers, directors, employees and all person acting in concert with them to cease and desist from engaging in practices that create a public nuisance;

2. On the Second and Third Causes of Action, for injunctive and declaratory relief pursuant to Business and Professions Code §§ 17203 and 17535:

1 a. Declaring that Defendants have engaged in unlawful, unfair, and deceptive
2 business acts and practices in violation of Business and Professions Code Section §§17200 et
3 seq., and §§17500 et seq., and

4 b. Enjoining Defendants and their respective successors, agents, servants,
5 officers, directors, employees and all person acting in concert with them from engaging in
6 conduct in violation of Business and Professions Code §§17200 et seq., and §§17500 et seq.;

7 3. For pre-judgment and post-judgment interest as provided by law;

8 4. For civil penalties pursuant to Business and Professions Code §§ 17206, 17206.1,
9 17207, 17535.5 and 17536;

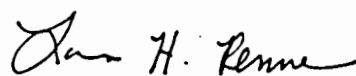
10 5. For restitution and/or disgorgement of wrongfully obtained monies pursuant to
11 Business and Professions Code §§ 17203 and 17535;

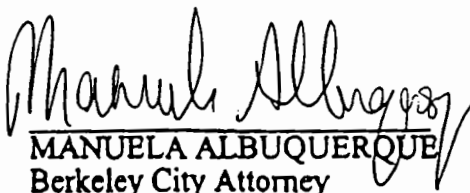
12 6. For costs of suit as provided by law;

13 7. For attorneys' fees as provided by law; and

14 8. For such further relief as the Court deems equitable and just.

15 Dated: May 25, 1999

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18 
19 LOUISE H. RENNE
San Francisco City Attorney

20
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22 
MANUELA ALBUQUERQUE
Berkeley City Attorney

23 
SAMUEL E. JACKSON
Sacramento City Attorney

24
25 THOMAS F. CASEY, III
San Mateo County Counsel

26 Attorneys for the
27 PEOPLE OF THE STATE OF CALIFORNIA
28

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11 Business and Professions Code §§ 17203 and 17535;

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18

19 LOUISE H. RENNE
San Francisco City Attorney

MANUELA ALBUQUERQUE
Berkeley City Attorney

22
23 SAMUEL L. JACKSON
Sacramento City Attorney

THOMAS F. CASEY, III
San Mateo County Counsel

24
25 Attorneys for the
26 PEOPLE OF THE STATE
27 OF CALIFORNIA
28


RICHARD E. WINNIE
Alameda County Counsel

COMPLETE LIST OF COUNSEL / FULL ADDRESSES

LOUISE H. RENNE, State Bar #36508
San Francisco City Attorney

PATRICK J. MAHONEY, State Bar #46264
Chief Trial Attorney

OWEN J. CLEMENTS, State Bar #141805
Chief of Special Litigation

D. CAMERON BAKER, State Bar #154432

INGRID M. EVANS, State Bar #179094

Deputy City Attorneys

Fox Plaza

1390 Market Street, 6th Floor

San Francisco, California 94102-5408

Telephone: (415) 554-3800

Facsimile: (415) 554-3837

PATRICK J. COUGHLIN, State Bar #111070

MICHAEL J. DOWD, State Bar #135628

MILBERG WEISS BERSHAD HYNES &

LERACH, LLP

600 West Broadway, Suite 1800

San Diego, CA 92101

Telephone: (619) 231-1058

Facsimile: (619) 231 7423

RICHARD M. HEIMANN, State Bar #063607

ROBERT J. NELSON, State Bar #132797

LIEFF, CABRASER, HEIMANN &

BERNSTEIN, LLP

Embarcadero Center West

San Francisco, California 94111-3999

Telephone: (415) 956-1000

Facsimile: (415) 956-1008

ALAN M. CAPLAN, State Bar #49315

PHILIP NEUMARK, State Bar #45008

BUSHNELL, CAPLAN & FIELDING, LLP

221 Pine Street, Suite 600

San Francisco, CA 94104-2715

Telephone: (415) 217-3000

Facsimile: (415) 217-3820

McCUE & McCUE

600 West Broadway, Suite 930

San Diego, CA 92101

Telephone: (619) 338-8136

COHEN MILSTEIN HAUSFELD &

TOLL, P.L.L.C.

999 Third Street, Suite 3600

Seattle, WA 98104

SAMUEL L. JACKSON, State Bar #79081

Sacramento City Attorney

GLORIA ZARCO, State Bar #199702

Deputy City Attorney

980 9th St., 10th Floor

Sacramento, California 95814

Telephone: (916) 264-5346

Facsimile: (916) 264-7455

Prosecuting on Behalf of the

City of Sacramento and JOE SERNA, Jr.

MANUELA ALBUQUERQUE, State Bar #67464

Berkeley City Attorney

MATTHEW J. OREBIC, State Bar #124491

Deputy City Attorney

1947 Center St., 1st Floor

Berkeley, California 94704

THOMAS F. CASEY, III, State Bar #47562

San Mateo County Counsel

BRENDA B. CARLSON, State Bar # 121355

Deputy County Counsel

Office of the County Counsel

400 County Center

Redwood City, CA 94063

Telephone: (650) 363-4760

Facsimile: (650) 363-4034

RICHARD E. WINNIE, State Bar #68048

Alameda County Counsel

KRISTEN J. THORSNESS, State Bar #142181

Deputy County Counsel

Office of Alameda County Counsel

1221 Oak Street, Room 463

Oakland, CA 94612-4296

Telephone: (510) 272-6700

Facsimile: (510) 272-5020

DENNIS A. HENIGAN

JONATHAN E. LOWY

BRIAN J. SIEBEL

Center to Prevent Handgun Violence

1225 Eye Street, N.W., Suite 1100

Washington, D.C. 20005

Telephone: (202) 898-0059

Facsimile: (202) 408-1851

Of Counsel:

DAVID KAIRYS, Esq.

1719 North Broad Street

Philadelphia, PA 19122

Telephone: (215) 204-8959

Guns Are Fired, and a Mother Crusades

By RANDY KENNEDY

FREDDIE HAMILTON has plenty of searing images in her brain from the night in 1993 when her 17-year-old son, Njuzi Ray, was shot in a dispute on the street: the panicked drive to the hospital, the impossibly bright fluorescent hallway where they told her he was dead and said they would have to clean his body before she could see it.

But for some reason, she says, there is an image of another 17-year-old she cannot forget either, this one from a newspaper, of a girl that Ms. Hamilton did not even know and never would. Gunfire had broken out near the girl's home in East New York, Brooklyn, and as she straddled a fence to pull her toddler to safety, a single bullet struck her in the head. The newspaper picture showed the girl's dead body dangling over the fence.

Ms. Hamilton, 55, sitting yesterday in the office of the foster care agency she runs in Bedford-Stuyvesant, closed her eyes for several seconds. "I can still see it," she says. "My son had not been gone long, and it was just this feeling when I saw that of: this whole world is going crazy."

At least in Bedford-Stuyvesant, where Ms. Hamilton lives, and in many other poor minority neighborhoods in the early 1990's, it was a reasonable conclusion. Crack cocaine had turned blocks into battlefields. Her son's murder was only one of 744 in Brooklyn that year. Illegal guns were everywhere.

Last week, after almost five years of waiting, Ms. Hamilton listened as a Federal jury in Brooklyn delivered what she and many others across the country who had lost loved ones to gunfire saw as a huge dose of sanity.

In a lawsuit started by Ms. Hamilton and a woman from Staten Island whose husband was shot to death, the jury found for the first time that gun manufacturers are liable for shootings with illegally obtained handguns because their marketing practices contributed to illegal gun trafficking.

The ruling was watched closely across the country by other families of shooting victims, who hope to hold gun makers liable for deaths and injuries, much as in recent suits that have held the tobacco industry responsible for harm from smoking.

Ms. Hamilton, a high-school dropout from a poor family, was married and had her first of six children at 16, before struggling to earn a college degree and then helping to found the successful agency she now runs.

Yesterday, as employees swirled around her and she attacked stacks of papers that had piled up during the monthlong trial, she seemed com-



Philip Greenberg for The New York Times

Freddie Hamilton, who sued gun makers after her son was fatally shot.

pletely, almost preternaturally, in control of everything in her orbit. And so it was not hard to imagine the months after her son's death, which she described as a period of smoldering anger, followed by an unshakable conviction that gun makers should assume some responsibility for his death, followed by almost nobody taking her seriously.

"People were willing to listen to me," she recalled, "basically out of sympathy."

BUT she kept right on talking. "For a while there, you're just totally out of your mind, but early on I remember thinking: 'How could this be? How could so many people have guns? So many young kids?' I mean, we're supposed to have gun laws, right?"

She knocked on the doors of more than 15 lawyers, some of whom did not stop at telling her that dozens of suits like the one she wanted to file had been unsuccessful. "One lawyer," she said, "felt he needed to warn me that I could get in trouble for filing a frivolous suit." Ms. Hamilton kept right on knocking on doors.

"Basically, she is the kind of person who doesn't have to rely on others to tell her that's she's doing the right thing," said Katina Johnstone, whose husband, David, an editor with Macmillan, was shot to death by a youth in San Francisco in 1992 while walking back to his hotel. (They started the Federal suit together, but a judge separated Ms. Johnstone's case recently because the crime took place in California.)

Ms. Hamilton and Ms. Johnstone

began to run into each other at anti-gun rallies, and found their way to the same lawyer, Elisa Barnes, who agreed to take on the case.

In her office, where she keeps a huge picture of her son and a gold-painted bust of Malcolm X on her desk, Ms. Hamilton says that with the verdict, she is mostly asked questions like: "Does this finally bring closure? Does it feel like a vindication?"

But she said it felt like neither. "It does not bring him back," she said.

In the end, although 15 manufacturers were found to be negligent, she received no damages, which she said never mattered to her anyway. In fact, when one of the manufacturers settled, she and other plaintiffs agreed to plow that money back into pursuing the case. (Lawyers for the manufacturers have described the verdict as a victory because there was no finding of damages for six of the seven shootings that were involved in the suit.)

Ms. Hamilton said she also "tried really hard from the beginning with this case to remove the personal from it." But it always seeps back in, and it is hard not to see her as simply a mother trying to protect her son — even after his death.

She remembered a story yesterday: "He said, 'Ma, I want to go to a New Year's Eve party.' I said: 'You can't. It's going to be dangerous out there. You go to church with me, and when you turn 18, you can go to a New Year's Eve party.'"

"Well," she said calmly, "he didn't turn 18."

Record Type: Record

To: Jose Cerda III/OPD/EOP

cc:

Subject: NY Gun Lawsuit

The NY case: Hamilton v. Accu-Tek. The plaintiffs are the families of 6 homicide victims and a severely wounded teenager from the NY/Brooklyn area who were shot with illegally obtained handguns. The plaintiffs named over 30 gun manufacturers and distributors as defendants.

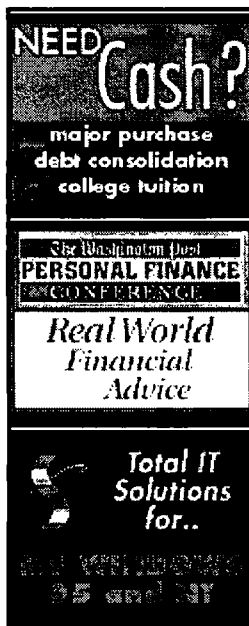
Main argument by plaintiffs: The plaintiffs sought to hold the gun industry collectively liable for the deaths and injuries on a novel theory of negligent distribution. They argued that gun manufacturers oversupply the market in states with weak gun laws (primarily the South) -- and these the guns are illegally trafficked up the "iron pipeline" to New York. Even though the plaintiffs cannot prove which manufacturers' guns were used in any of the specific incidents, they contend that the defendants marketed and distributed handguns so negligently that they fostered the illegal gun trafficking which ultimately resulted in the shootings. [NOTE: Plaintiffs used ATF crime gun tracing data to help prove their case.]

Defendants' response: The manufacturers denied that they acted negligently and insist that they cannot control illegal gun trafficking and criminal misuse of guns. They asserted that they have cooperated in every reasonable way against illegal trafficking.

Jury decision: AP reports that after a two-day deadlock, the jury found several of the manufacturers liable in three of the seven shootings due to negligent marketing practices. Other defendants were cleared. The jurors awarded damages only to the severely wounded teen in the amount of \$560,000.



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N.Y. Jury Finds Gun Makers Liable

By Tom Hays

The Associated Press

Thursday, February 11, 1999; 6:52 p.m. EST

NEW YORK (AP) -- A federal jury found several gun makers liable Thursday in three of seven New York City-area shootings because of negligent marketing practices. Other manufacturers were cleared.

Damages were awarded only in the case of the sole survivor of the seven shootings, Steven Fox, 19, who was seriously wounded. The jurors ordered that he be paid \$560,000.

Fox and the relatives of six homicide victims sued the gun industry in federal court in 1995. Like some of the lawsuits brought against Big Tobacco, this one accused the gun industry of negligently marketing a legal product.

During the monthlong trial, they argued handgun makers oversupply gun-friendly markets, mainly in the South, aware that the excess guns flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

The plaintiffs' lawyers accused the 25 defendants of dumping handguns onto the black market like "toxic waste," making no effort to identify and discipline dishonest distributors. In a deposition read to the jury, Robert Morris, head of Taurus International Manufacturing, Inc., conceded the company had "never cut off anybody, cut them off for sloppy distribution practices."

Lawyers for Taurus, Smith & Wesson Corp., Colt's Manufacturing Co., Sturm, Ruger and Co. and other defendants insisted their responsibility ends once they sell to licensed distributors. They said the job of policing traffickers should be left to the Bureau of Alcohol, Tobacco and Firearms, which has never required gun makers to track their products to the street.

Industry attorney James Dorr told the jury it was unfair to "hold the manufactures of a lawful, legitimately sold product responsible for acts of outlaws who are totally outside their control. ... The case is simply wrong."

The gun makers also asserted that in most of the shootings the plaintiffs never presented evidence conclusively linking the weapons

used to harm their relatives to specific defendants. The plaintiffs countered that the "chain of title" is irrelevant, instead accusing the entire industry of creating a widespread risk with negligent marketing -- a concept known as collective liability.

"This huge pool (of handguns) is like toxic waste," the plaintiffs' lead attorney, Elisa Barnes, said in closing arguments.

Relatives for the victims testified, and attorneys presented statistics on weapons sales, the average age of guns used in crimes, and other aspects of the gun trade.

A key plaintiff witness, former Smith & Wesson Corp. executive Robert Hass, was too ill to appear but testified by deposition that gun makers took a see-no-evil approach to criminal use of their deadly products. And an economist testified that 90 percent of the handguns used in crimes in New York City in recent years came from southern states.

Testifying for the firearms industry, Chicago-based economics consultant Gustavo "Chip" Bamberger said plaintiffs' arguments about oversupply of guns relied on insufficient data and flawed statistics.

The verdict came despite apparent disagreement in the jury room.

In recent days, jurors had sent U.S. District Court Judge Jack Weinstein several notes saying it was deadlocked over whether negligent marketing by the defendants was a factor in seven shootings in the New York City area in 1993-94 -- a claim that was considered a test case for similar anti-gun suits filed by large cities.

One note said that 10 jurors had "decided to work together to reach a verdict," but the 11th "refused because he or she feels the verdict 'will open the floodgate of lawsuits across the country.'"

Legal experts have said that it could set a precedent for cities trying to recoup the costs of battling gun violence.

Chicago, New Orleans, Bridgeport, Conn. and Miami-Dade County are suing the industry. Pro-gun groups have responded by lobbying state legislatures to pass laws prohibiting such suits.

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Tobacco companies spend billions of dollars

N.Y. Jury Finds Gun Makers Liable

By Tom Hays

The Associated Press

Thursday, February 11, 1999; 7:44 p.m. EST

NEW YORK (AP) -- A federal jury Thursday found several gun makers responsible in three area shootings for letting guns fall into the hands of criminals. Other manufacturers were cleared.

The only damages awarded were \$560,000 to the sole survivor of the shootings, who was seriously wounded.

Steven Fox, 19, and the relatives of six homicide victims sued the gun industry in federal court in 1995. The class-action lawsuit sought unspecified damages from an industry that generates sales of \$2 billion to \$3 billion a year.

Like some of the lawsuits brought against Big Tobacco, this one accused the gun industry of negligently marketing a legal product. The case also was closely watched by several cities trying to recover the costs of gun violence.

During the monthlong trial, the plaintiffs argued handgun makers oversupply gun-friendly markets, mainly in the South, aware that the excess guns flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

The plaintiffs' lawyers accused the 25 defendants of dumping handguns onto the black market like "toxic waste," making no effort to identify and discipline dishonest distributors.

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To Rejuvenate Gun Sales, Critics Say, Industry Started Making More Powerful Pistols

By FOX BUTTERFIELD

As cities prepare to sue the gun industry for not taking steps to keep their products out of criminals' hands, critics of the industry are building an argument that gun makers began making more powerful handguns to make up for stagnant sales and that these guns quickly became popular among criminals.

While the marketing innovation increased the gun makers' profits, the critics contend, it also helped account for the rise in homicides in the 1980's and the greater seriousness of gunshot wounds in recent years.

The latest and most detailed addition to the argument is made by Tom Diaz, a former Congressional expert on handgun control, in his book, "Making A Killing: The Business of Guns In America," published last month by the New Press. Over the last decade, gun makers have found that what would sell best are higher-caliber, more rapid-fire pistols that can be easily concealed, Mr. Diaz writes, and that by designing such pistols they have gotten gun lovers addicted to more powerful weapons.

"The gun industry has deliberately enhanced its profits by increasing the lethality — the killing power — of its products," writes Mr. Diaz, now a senior policy analyst at the Violence Policy Center in Washington, a research and advocacy group.

This argument may become part of the case against gun makers, as a growing number of cities contend in lawsuits that the manufacturers concentrated on making their handguns more deadly rather than incorporating new safety devices. Some of the cities say the gun makers have data showing that their products were being sold in ways that increased their chances of ending up in the hands of criminals.

An example of this kind of accusation was made in a lawsuit brought in Brooklyn on behalf of victims in seven shootings against 25 gun manufacturers. In a jury verdict returned on Thursday in Federal District Court, 15 of the arms makers were found negligent and 9 were held liable for damages. The gun manufacturers were accused in the suit of oversupplying stores in Southern states that have lax gun laws, knowing that some of the guns would be bought by people in New York City who would resell them to criminals and juveniles.

Five cities have already sued the

More serious gunshot wounds are tied to higher-caliber, more rapid-fire pistols.

gun makers: New Orleans, Chicago, Miami, Atlanta and Bridgeport, Conn. Cities planning to file such suits soon include Boston, Philadelphia, San Francisco, Los Angeles and Gary, Ind.

Mr. Diaz has built on the work of Dr. Garren Wintemute, an emergency room physician and director of the Violence Prevention Research Program at the University of California at Davis, who reported that the new generation of semiautomatic handguns introduced in the 1980's led to an increase in the number of wounds in gunshot victims and made people shot by handguns more likely to die.

Richard Feldman, the executive

director of the American Shooting Sports Council, a trade association, said that Mr. Diaz was drawing a faulty conclusion from a normal business practice. "Just like the fashion industry, the firearms industry likes to encourage new products to get people to buy its products," Mr. Feldman said.

The gun manufacturers should not have to worry that their guns are becoming more deadly or be more likely to cause worse wounds, Mr. Feldman said. "I don't think that enters into our calculations," he said. "If the gun has more stopping power, it is a more effective weapon."

In addition, Mr. Feldman said, "We design weapons, not for the bad guys, but for the good guys." If criminals happen to get their hands on a gun, it is not the manufacturer's fault, he said. "The problem is, you can't design a product and insure who is going to get it," Mr. Feldman said. "If we could design a gun for the bad guy, they would all shoot backward."

The increase in pistols that are more deadly began with a shift in design from revolvers, which generally hold six rounds, to faster-firing semiautomatic pistols with larger magazines capable of holding 10 or more rounds of ammunition, Mr. Diaz argues. The next step was the introduction of higher-caliber ammunition, moving from the older and smaller .22- or .38-caliber pistols to the larger 9-millimeter or .40-caliber handguns.

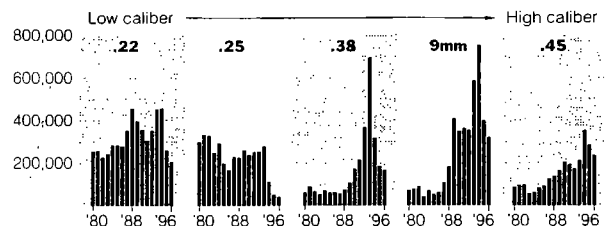
More recently, the gun industry introduced yet another change, producing very small, lightweight pistols known as "pocket rockets," which are easily concealed, but still have more firepower than older handguns.

Steve Sanetti, a lawyer for Sturm, Ruger & Company, the largest man-

KEEPING TRACK

More Powerful Guns

In the last 10 years, production of low-caliber weapons decreased, while production of more powerful weapons rose sharply. Here are the number of pistols produced each year, arranged in order of caliber.



Source: National Association of Federally Licensed Firearms Dealers

The New York Times

ufacturer of all types of guns, said that his company's largest-selling handgun continued to be revolvers and that it did not manufacture the new small-size handgun.

In his book, Mr. Diaz says that the gun industry was led to its strategy of innovation because demand for its traditional products — rifles, shotguns and revolvers — had slowed as the number of Americans who hunt began to decline and the end of the military draft reduced familiarity with guns. In 1996, there were 14 million hunters in America, down from 20.6 million in 1975, according to the United States Fish and Wildlife Service. Surveys by the agency have shown that hunters tend to be white males in rural areas, a shrinking proportion of the population. From 1989 to 1996, the overall sales of rifles, shotguns and handguns declined to 3.8 million from 4.3 million.

While there was no "smoking gun"

memorandum that proved gun manufacturers intended to increase sales by making their handguns more deadly, Mr. Diaz says, those statistics were behind the gun makers' strategy of innovation.

"The industry might have chosen to develop safer firearms," Mr. Diaz contends in the book, like guns with child-resistant safety locks, "but gun-industry executives deliberately chose to take exactly the opposite direction." The new handguns have proved "more suitable for use in crime," he writes.

Whatever the case, new research has found that more than 90 percent of the increase in homicides from 1985 to 1993 involved crimes with handguns, said James Alan Fox, dean of the college of criminal justice at Northeastern University.

In those same years, Mr. Diaz said, the number of pistols made by United States gun manufacturers in-

creased by 92 percent and deaths by handguns jumped 48 percent.

Dr. Wintemute said that although there were no national figures available, statistics from hospitals in Chicago, Washington and Philadelphia in the 1980's showed a sharp rise in the number of patients admitted for the treatment of gunshot wounds who had more than one bullet wound. In addition, from 1986 to 1992, the proportion of handgun homicides in those cities involving semiautomatic pistols rather than revolvers jumped to nearly 50 percent from about 10 percent, he said.

As another indication of the trend, Dr. Wintemute said, although there has been an overall decrease in shootings since 1993, "there has been an increase in the percentage of people who get shot who die as a result."

As criminals were able to purchase the new class of semiautomatic pistols with larger magazines, police forces also began switching from revolvers to pistols for protection, Mr. Diaz said, and then the gun makers introduced higher-caliber bullets, which he says led criminals and the police to go to more potent ammunition.

As for the decline in hunters, Bill Davis, a wildlife biologist from the Massachusetts Division of Fisheries and Wildlife, offers other reasons. Suburban development has encroached on hunting areas, he said; while computers, video games and organized team sports now provide other forms of recreation for young people. In addition, in many areas of the country, guns have become unfashionable.

"Guns are becoming politically incorrect, with all guns being unfairly lumped together with guns used in sensational crimes," Mr. Davis said.

Hamilton v. Accu-Tek

(Prepared by: Charles Simon, 514-3465)

In *Hamilton v. Accu-Tek*, eight plaintiffs (on behalf of seven individuals who were killed or wounded by illegally-obtained guns) filed a wrongful death action against numerous gun manufacturers and gun distributors. Although Judge Weinstein significantly limited the plaintiffs' possible theories of liability¹, he did leave them with a negligent marketing and distribution claim against the gun manufacturers, based on the contention that the gun manufacturers deliberately saturated the market for guns and helped to create an underground market for the weapons.² (These claims are based on a collective theory of liability, in the same manner as prior cases associated with asbestos, Agent Orange, the dalkon shield, and DES.)

With respect to all seven of the shooting victims, the jury concluded that 15 of 25 gun manufacturers named as defendants in the suit had marketed or distributed handguns negligently (that is, failed to "exercise 'reasonable care' in marketing and distributing [their] product, to the extent [they had] control, so as to take precautions against creating foreseeable risks of injury").

Of the 15 manufacturers found negligent, nine were found by the jury to have proximately caused (that is, to have been a "substantial factor in bringing about") one or more of three of the shootings. (With respect to the other four shootings, the jury did not find that any of the 15 negligent manufacturers had proximately caused the shooting.)

In what appeared to be a compromise verdict, the jury found that monetary damages had been sustained by the plaintiffs in only one of the three shootings where proximate causation was established. Damages were calculated at \$4,000,000 for the one shooting victim and his mother. However, the actual liability (that is, the actual amount to be paid to the plaintiffs) of the three negligent gun manufacturers who were found to have caused the related injuries was only approximately \$500,000. This discrepancy arises because actual liability was measured according to the relevant defendants' national market shares for the handgun or class of handguns used in the shooting.³

It is unclear whether the verdict will survive appellate review, because the Second Circuit recently rejected a similar cause of action brought against ammunition manufacturers.

¹In 1996, the court dismissed plaintiffs' product liability claims. The court also found that the plaintiffs could not bring a claim for selling a dangerous instrumentality. In addition, Judge Weinstein dismissed plaintiffs' ultrahazardous or abnormally dangerous activity theories.

²The market share collective liability theory relieved the plaintiffs from having to prove that a specific gun manufacturer made and distributed the particular weapon that caused the particular injury in question.

³The total percentage of liability assessed against the three relevant defendants was only 13% (\$500,000 is about 13% of the \$4,000,000 total damage calculation), because the jury apparently found that some manufacturers with relevant market share were not defendants at all.

Open Season

How a Jury Placed The Firearms Industry On the Legal Defensive

Squabbling and Hagglings,
Panel Managed to Form
Consensus on Negligence

A Nurse's Clandestine Note

By VANESSA O'CONNELL
And PAUL M. BARRETT

Staff Reporters of THE WALL STREET JOURNAL

BROOKLYN, N.Y. — In a handgun-liability trial that ended here last week, plaintiffs' lawyers elicited testimony from a parade of experts in economics, marketing and ballistics to argue that handgun manufacturers should do more to ensure that weapons don't wind up in criminal hands. Lawyers for a group of 25 gun makers answered with a procession of expert witnesses to argue the opposite.

The jurors ignored almost all of it.

Instead, the nine women and two men on the federal-court jury devised their own quirky system to determine that 15 of the companies distributed handguns negligently and that three of them should pay damages to one plaintiff, a 19-year-old boy with a bullet lodged in his brain. The six other plaintiffs, relatives of people killed by handguns, received no damages. The jurors' decision marks the first time that the firearms industry has been held legally responsible for the criminal use of guns.

Sniping and Nausea

This was no slam-dunk verdict. Confused by much of what they heard in the courtroom, the jurors struggled for six days to reach consensus. "There was a lot of nit-picking and a lot of going at each other," says juror Sharlene England. Several jurors complained that the tension caused them physical pain. Carmen Rivera got so upset that she threw up. Charles Beatty, a driving instructor, went to the men's room to pray for guidance.

But ultimately, the jurors' commitment to their own formula for determining liability produced unanimity in favor of the plaintiffs — even though eight of the 11 panel members favored the gun makers. The decision is expected to inject new energy into a growing list of lawsuits filed by cities seeking reimbursement for hundreds of millions of dollars in public costs related to gun violence.

Interviews with five of the jurors and with lawyers from both sides who debriefed some of those jurors, as well as others, after their verdict last Thursday reveal an unsettling lesson for the gun industry: If some jurors who are disposed to favor gun makers are willing to compromise on even a little bit of liability, jury-room bargaining in this nascent litigation war can favor the antigun side. That creates a powerful incentive for more cities and individual plaintiffs to take a crack at the industry, hoping to hit a strongly pro-victim jury eager to award big damages. Defense lawyers in the Brooklyn case say they plan to appeal the verdict because, among other things, it is based on improper "horse-trading" by jurors.

An Ominous Irony

The irony that most of the jurors in Brooklyn considered themselves unsympathetic to the plaintiffs' main witnesses and legal arguments only makes the message to the industry more ominous. The prospect of years of costly lawsuits could prompt gun makers to consider following the example of the cigarette makers that have agreed to pay \$246 billion over 25 years to settle suits by state attorneys general.

The 11 jurors in Brooklyn — a 12th had been dismissed by the judge for chronic lateness — settled into the dingy, windowless jury room Feb. 4, after listening to evidence for four weeks. They took a preliminary anonymous vote by placing slips of paper in a Maxwell House coffee can. The result: five for the defendants, three for the plaintiffs, three undecided.

It soon became clear, though, that the vote was 8-3 to reject the core of the plaintiffs' case. Lead plaintiffs' attorney Elisa Barnes had contended that scrutiny of federal gun statistics revealed that manufacturers saturate Southern states that have lax gun regulations, causing thousands of weapons to flow to criminals. To prove her point, her experts spoke of "regression analysis" and "standard deviations."

But two jurors, Donna Romano, a 26-year-old statistician with the Publishers' Clearinghouse sweepstakes firm, and a 28-year-old accountant with an oil company, dismissed this testimony, telling their fellow jurors that numbers can be twisted to make almost any point. As a result, the rest of the jurors "didn't really discuss the statistics for either side. We didn't buy into it," says Ms. England, 34, a teacher's assistant.

Safety in Suffolk

The jurors similarly agreed to toss out days of testimony by each side's ballistics experts, who were called to talk about the types of guns used in each of the seven shootings. The plaintiffs' witness, a retired New York City police officer, hadn't been thorough enough, they thought. The objection to the companies' expert, George Krivosta, was that he was an employee of Suffolk County, N.Y. An assertive 29-year-old nurse who lives in the same Long Island county told her fellow jurors that Mr. Krivosta couldn't know what he was talking about because there wasn't much crime in Suffolk County. In fact, Mr.

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How a Jury Placed Gun Makers on the Legal Defensive

Continued From First Page

Krivosta, a nationally known ballistics specialist, testified for the U.S. government in the Oklahoma City bombing case. But in Brooklyn, he got no respect.

The nurse, whose first name is Denise but whose last name couldn't be determined (the court kept official jury records secret), soon emerged as the most forceful personality on the jury. Her mantra: Gun companies have some general responsibility for the millions of weapons they produce. She pointed to two retired officials of the federal Bureau of Alcohol, Tobacco and Firearms who had testified that illicit sales at gun shows and by dealers who operate out of garages or car trunks are major channels for arming criminals.

Denise "just wouldn't stop talking" about gun shows, recalls Ms. Rivera, a 49-year-old postal clerk who had drifted to the pro-gun side from the undecided camp. Having rejected much of what the lawyers and experts had told them, the jurors decided to explore Denise's newfound passion by examining for themselves some of the primary materials from the trial, including the manufacturers' contracts with their wholesalers and their product catalogs. The judge had the documents sent into the jury room.

The documents, which Denise felt would show that gun makers had been lax in monitoring the distribution of their firearms, only fueled friction. Ed Remek, 49, a gun owner, said he didn't see how the companies could be blamed for street crime and couldn't imagine awarding any damages. Denise attacked his intransigence. "There was a lot of arguing, yelling and finger-pointing," says Ms. England. There also were muttered jokes about borrowing the marshal's gun to settle matters.

After nearly four days of this, some jurors were exhausted and disgusted. Last Tuesday afternoon, they sent a joint note to the judge: "We are all very upset. We are starting to fight. We cannot reach a decision. We are emotionally drained and some of us feel physically ill!! Please, please give us more direction!!"

But Judge Jack Weinstein had no intention of allowing a hung jury. He called the jurors into the courtroom and told them, "Everybody has invested, including yourselves, too much in this case to allow you to throw up your hands prematurely." He sent them home early at 3 p.m. Five of the pro-defense jurors walked a few blocks to a bar, where they sipped drinks and talked about how much Denise was annoying them, according to Ms. Rivera.

But even though eight of the 11 jurors still opposed finding liability, it became clear that Denise was making progress. At least several of the pro-defense jurors, including Ms. Romano, Ms. Rivera and Ms. England, were willing to "buy into" the idea that manufacturers might have been negligent with the understanding that there wouldn't be any money awarded. As these pro-defense jurors understood it, any verdict that lacked a price tag would be merely symbolic.

Others saw it differently. Mr. Beatty, for example, spoke only of his determination that all of the plaintiffs should get some money, regardless of the legal theory agreed upon. As he began calculating what he thought would be fair amounts, other jurors constructed a unique technique for determining liability.

Agreeing that at a minimum companies should discourage sales at gun shows and by dealers who don't have stores, they put each company into one of three groups. Those whose contracts with wholesalers included these restrictions from 1989 to 1994, such as Smith & Wesson Corp., a unit of Britain's Tompkins PLC, and Sturm, Ruger & Co., were found not negligent. Those whose contracts lacked the restrictions, such as Colt's Manufacturing Co. and the Beretta U.S.A. Corp. unit of Italy's Beretta SpA, were found negligent on that basis alone.

The jurors wrestled over what to do with some manufacturers that didn't have written agreements at all. In the end, the jurors let these companies off the hook. Some now concede that that didn't make a lot of sense.

The method by which 15 companies were found negligent may have been simplistic, but "it was the only thing we could come up with," says one pro-defense juror who asked not to be identified.

The 42-page verdict form designed by Judge Weinstein directed the jurors to decide whether any negligent companies had directly caused the seven shootings. For that task, the jurors turned to the pile of product catalogs.

In most of the shootings, the general make of gun—for example, .38 caliber or nine millimeter—had been determined, so the jurors looked through the catalogs to see which of the 15 negligent companies produced the corresponding gun types. The jurors ignored evidence that showed how many of each type of gun each company had actually made, as well as break-

downs of which companies manufactured the guns most frequently associated with crime.

As the catalog search narrowed the group of liable companies to nine, feuding intensified, with some jurors announcing that they wouldn't continue down this path. During one chaotic exchange, Mr. Remek, the gun owner, fumed that he wouldn't assess damages because doing so would encourage frivolous litigation, according to another juror who heard his comment.

This prompted Denise to seek a judicial scolding for Mr. Remek. Last Thursday morning, without telling any of her colleagues, she handed the marshal another note for the judge. Ten jurors had "decided

to work together to reach a verdict," she wrote. But "one juror refused because he or she feels the verdict 'will open the floodgate of lawsuits across the country.' Could the judge address the importance of focusing on only the evidence in these seven cases?"

Most of the rest of the jury was outraged; the group had agreed to send only notes that all had agreed to. Still, Denise's clandestine move worked. Judge Weinstein brought the jurors into the courtroom and admonished them to consider only the evidence in the case before them. Neither Denise nor Mr. Remek could be reached for comment.

When deliberations resumed, the jurors turned to police reports and other informa-

tion about the individual shootings. Jurors favoring the gun makers argued that several plaintiffs had put themselves in harm's way and didn't deserve damages. But Mr. Beatty singled out Steven Fox, the young man who survived after being shot in the head by a friend, as someone who should be compensated because he still had most of his life in front of him. Mr. Beatty said Mr. Fox deserved at least \$8 million.

"It's not your money" that would go to the plaintiffs, Mr. Beatty repeatedly told his colleagues, several jurors say.

Weary and eager to reach a conclusion, the pro-industry jurors, including Mr. Remek, dropped their opposition to any damages and agreed to compromise. A round of bidding took the Fox award down to \$4 million. The survivors of the six fatalities would get nothing.

According to their catalogs, only three

companies—Beretta, American Arms Inc. and the Taurus International Manufacturing Inc. unit of Brazil's Forjas Taurus SA—made the type of .25 caliber handgun used in the Fox shooting. The three companies had a total of about 13% of the handgun market; the jury awarded Mr. Fox that percentage of \$4 million—about \$520,000.

"When you go on jury duty, everybody has got to compromise a little," says Mr. Beatty.

Several of the jurors who favored the gun makers admit to ambivalence over the result, saying in interviews that they never thought it would be viewed as a blow to the gun industry. "Really the plaintiffs lost because they had the burden of proof, and in the end, there wasn't enough there," says Ms. Rivera. "I didn't grasp that we had found so many negligent until I read it in the papers the next day."



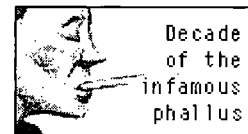
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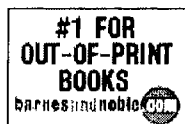


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Bull's-eye

THE BROOKLYN LAWSUIT THAT ROCKED THE GUN INDUSTRY CHANGES THE ARGUMENT FROM GUN CONTROL TO CORPORATE RESPONSIBILITY.

BY BRUCE SHAPIRO | It is hard to imagine anything further from the legal-political soap opera that has gripped Washington than Judge Jack Weinstein's courtroom in Brooklyn last week. Standing at the bar of justice: not a president and members of Congress, but a bereaved mother from Fort Greene and six other families whose children or spouses fell to gunfire. Opposite, the makers of the guns. Arguing the survivors' case: not a White House lawyer or independent counsel or well-heeled legal foundation, but an overworked solo practitioner who five years ago took a case that seemed unwinnable. At issue: not who touched what body part when, but the precise measure of a handgun manufacturer's responsibility for the weapon's use.

The outcome: the deepest shake-up for the American weapons industry since Colt and Smith & Wesson invented the mass consumer market in guns in the 19th century.

I first heard about this case, *Hamilton vs. Accu-tek*, in 1993. I was interested in crime victims-turned-social activists, and was interviewing Carolyn McCarthy, whose husband, Dennis, had been killed and whose son Kevin

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Winky

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The writer who outed
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had been left partially paralyzed by Long Island Railroad gunman Colin Ferguson. McCarthy was running for Congress from Mineola, Long Island s -- the gun-control candidate, as she was portrayed by friends and enemies alike.

But "gun control," I found, didn't quite capture where McCarthy's thinking was headed. Although she had testified in favor of a law banning ownership of assault weapons in New York, she was more preoccupied with an issue conventional "gun control" wouldn't touch: corporate accountability. "The question was, could this have been prevented?" she said to me. "I thought a lot about the people who made and sold those weapons without any sense of where they would end up." Before running for Congress, McCarthy had brought a lawsuit against the manufacturers of Ferguson's assault weapons. She won her election, but her suit was tossed out before trial.

McCarthy mentioned another survivor she'd heard of, who had filed her own lawsuit. The woman turned out to be Freddie Hamilton from Fort Greene, a Brooklyn neighborhood far removed from the suburban complacency of Mineola. Hamilton's teenage son, Njuzi Ray, had been killed by accident in a Brooklyn drive-by shooting the same year as Ferguson's rampage on the commuter train. And like McCarthy, Freddie Hamilton's life had been transformed by the experience. The young man accused of shooting her son was acquitted, but Hamilton said she didn't care: "I just want to prevent it from happening to someone else." Hamilton was the head of a foster care agency, and she thought she understood what might have led a teenager little older than her own child to pick up a weapon: "We're talking about power. The young man who killed my son didn't have any power. He had a gun. That gave him the power."

Hamilton -- part of a too-little appreciated

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movement of crime victim-activists who have turned not into vengeance-seeking right-wingers but crusaders for constructive social change -- formed a Brooklyn protest network called Parents United to Rally for Gun Elimination. And together with a Staten Island woman named Katina Johnstone, whose husband had been shot in 1991, she filed suit against 43 gun manufacturers and distributors -- charging that the industry as a whole was responsible for negligently distributing a dangerous product. Eventually, Hamilton and Johnstone would be joined by five other families of people who'd been killed or wounded in New York.

Up until the Hamilton case, every lawsuit brought by a victim or survivor against a gun company had met the same fate as McCarthy's suit in Brooklyn: They never even got to trial. Gun violence was seen by courts as the responsibility of the actual perpetrators. And because the whole issue seemed like a no-winner, high-powered law firms were not exactly lining up to take such suits.

The attorney who agreed to take Hamilton's and Johnstone's case seemed like an unlikely prospect to challenge an entire industry: Elisa Barnes, partner in a two-person (and eventually one-person) firm in lower Manhattan. But a few years earlier, Barnes had helped women win a suit against makers of the fertility drug DES, which had been based on companies' negligent distribution of the product. And from that experience, she brought to the Hamilton case a theory untested in handgun litigation. Past lawsuits, she reasoned, often hinged on the idea that guns were dangerously designed. What if you bypassed the design and focused instead on distribution: on how those guns ended up on New York's streets? Since legitimate adult gun-owners around the country were experiencing no shortage of weapons, the vast number of guns in the hands of New York teens and gangbangers

and adult criminals meant that someone, somewhere, was producing firearms far in excess of what the legitimate commercial market could support. In other words, gun companies knew they were selling weapons destined for the criminal marketplace, like the weapon that killed Njuzi Ray. And that, she argued, ought to be punished.

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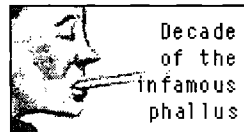


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Still, Barnes' theory might have gone nowhere but for two extraordinary breaks. The first: a whistle-blower -- a former Smith & Wesson vice president named Robert Haas. Haas heard about Barnes' suit and sought her out. He provided an affidavit declaring that his former employer and the entire gun industry knew about "the seepage of guns into the illegal market" from thousands of licensed but otherwise unsupervised dealers. (In fact, of 235,000 federally licensed firearms dealers in the country, only 30,000 are sporting goods shops or other storefront retailers. The remaining 205,000 sell their guns out of their kitchens or car trunks.)

Barnes' second break came when she maneuvered her case into the courtroom of federal Judge Jack Weinstein. It probably helped Barnes' case that Weinstein is generally known as an outspoken iconoclast on the temperamentally conservative federal bench, taking on a variety of sacred cows such as drug sentencing. Even more important, however, he was widely regarded as an innovator in mass-injury cases. Indeed, it was Judge Weinstein in those DES cases who first established the idea that on rare occasions, an entire industry might be liable for a negligently distributed product. If every company is involved, then every company is responsible -- each according to his market share.

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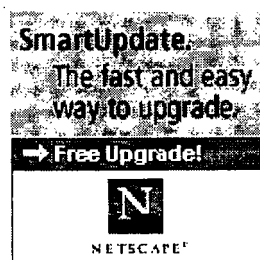
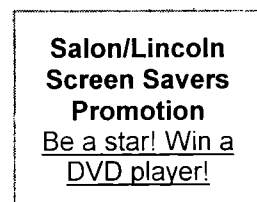
Barnes' two-pronged strategy worked. In May 1996, Weinstein took the unprecedented step of letting the Hamilton case go to trial. It is "possible," he wrote, that "a substantial cause of the killings" is "a large-scale underground market" created through the gun companies' negligence.

It was that "large-scale underground market" that Barnes and the gun companies spent the last month debating before that Brooklyn jury. Barnes showed that 90 percent of handguns used in New York crimes are legally purchased out of state -- half of them in Florida, Virginia, North Carolina, South Carolina and Georgia. What's more, because the case was permitted to go to trial she was able to subpoena gun company records and found that through warranty registrations, the industry knows it is selling guns in these states far in excess of local demand. Instead, she argued, guns are going to "straw buyers" who transport them to the streets of Brooklyn and other restrictive cities and states. The gun companies didn't dispute her figures, only her interpretation. Barnes also showed that gun companies fail to meet minimal standards for inventory control or tracking.

Barnes' "oversupply" theory worked. Last Thursday, the jury found 15 of the nation's largest gun companies negligent in marketing and distribution. Although the verdict was complex -- 42 pages -- and damages awarded by the jury were small -- apparently to mollify one juror who worried about unleashing a flood of tobacco-like cases -- there was no question about the message to firearms corporations: "I don't think they felt they needed to care, and this verdict will have them rethinking that," Hamilton told the press.

The Hamilton verdict comes, of course, within weeks of Chicago, Miami, New Orleans and Bridgeport, Conn., filing their own liability suits, with Atlanta in the wings. Suddenly, an industry

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that seemed invulnerable thanks to the strength of the gun-owner lobby is running scared. So convinced are industry leaders of their vulnerability to future suits that their only strategy seems to be to block such suits from ever being filed: In Georgia and Louisiana, the National Rifle Association has convinced friendly state legislators to propose laws of dubious constitutionality preventing Atlanta and New Orleans from pursuing their claims.

The obvious comparison of handgun suits to the recent tobacco cases has to a certain extent obscured the real political significance of these cases. For one thing, they mark the end of "gun control" as it has been traditionally known. Gun laws aimed mainly at gun buyers proved over many years to be a profoundly difficult strategy: It always looked like the heavy hand of government restricting individual consumers, making easy the NRA's Second Amendment defense. And the lobbying power of the NRA itself made state legislatures -- especially in rural regions -- and Congress poor arenas for much gun regulation.

These lawsuits, on the other hand, are not about gun control. They are about corporate accountability. The Hamilton verdict says nothing about the Second Amendment. Rather, it calls upon gun makers to assert the same responsibility as the makers of hazardous products ranging from dynamite to scuba gear; to match supply to legitimate demand; to track inventory; to monitor the sales practices of dealers. Until now, gun companies have been the hidden villains of the gun market, secret beneficiaries of the nation's crime rate. The Hamilton case, and the lawsuits sure to follow in its wake, offer an opportunity to re-conceive the debate over guns and crime violence into a wide-ranging attack on corporate predators.

SALON | Feb. 16, 1999

Bruce Shapiro covers legal issues for the Nation and

Hamilton v. Accu-Tek Decision
February 11, 1999

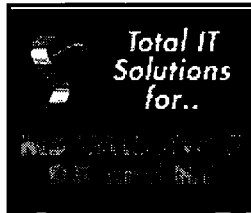
Q: What is your response to the decision by a federal jury last night finding several of the nation's largest gun manufacturers negligent and awarding damages -- for the first time -- to a shooting victim? Do you support the decision? And do you support the lawsuits being filed by New Orleans, Chicago, Atlanta and other cities?

A: The Justice Department is currently reviewing last night's decision, which found some of the nation's gun manufacturers negligent for market and distributing firearms in a manner that allows criminals easy access to guns. We won't be in a position to comment on the case until they've completed their review.

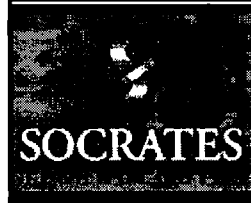
However, the President is watching closely all of the pending lawsuits against the gun industry. He is especially concerned about allegations -- such as in the Chicago lawsuit -- that some gun dealers are selling guns illegally, helping purchasers evade firearms laws, and even selling guns to persons who say they intend to break the law. These are serious charges which, if proven true, would demonstrate that some parts of the gun industry are helping to promote an illegal market in firearms. Such disrespect for the law endangers our citizens and will not be tolerated. So, if in any of these cases, the evidence demonstrates that federal firearms laws have been violated, we will, of course, vigorously enforce the law.

In the meantime, the Administration will continue to work closely with state and local law enforcement to trace crime guns back to their source, to prevent illegal gun sales -- especially to criminals and juveniles -- and to pass even tougher gun laws.

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N.Y. Jury Finds Gun Makers Liable

By Tom Hays

The Associated Press

Thursday, February 11, 1999; 7:44 p.m. EST

NEW YORK (AP) -- A federal jury Thursday found several gun makers responsible in three area shootings for letting guns fall into the hands of criminals. Other manufacturers were cleared.

The only damages awarded were \$560,000 to the sole survivor of the shootings, who was seriously wounded.

Steven Fox, 19, and the relatives of six homicide victims sued the gun industry in federal court in 1995. The class-action lawsuit sought unspecified damages from an industry that generates sales of \$2 billion to \$3 billion a year.

Like some of the lawsuits brought against Big Tobacco, this one accused the gun industry of negligently marketing a legal product. The case also was closely watched by several cities trying to recover the costs of gun violence.

During the monthlong trial, the plaintiffs argued handgun makers oversupply gun-friendly markets, mainly in the South, aware that the excess guns flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

The plaintiffs' lawyers accused the 25 defendants of dumping handguns onto the black market like "toxic waste," making no effort to identify and discipline dishonest distributors.

Lawyers for the defendants insisted their responsibility ends once they sell to licensed distributors. They said the job of policing traffickers should be left to the Bureau of Alcohol, Tobacco and Firearms, which has never required gun makers to track their products to the street.

Industry attorney James Dorr told the jury it was unfair to "hold the manufactures of a lawful, legitimately sold product responsible for acts of outlaws who are totally outside their control. ... The case is simply wrong."

The gun makers also asserted that in most of the shootings the plaintiffs never presented evidence conclusively linking the weapons

used to harm their relatives to specific defendants. The plaintiffs countered that the "chain of title" is irrelevant, instead accusing the entire industry of creating a widespread risk with negligent marketing -- a concept known as collective liability.

"This huge pool (of handguns) is like toxic waste," the plaintiffs' attorney, Elisa Barnes, said in closing arguments.

Relatives for the victims testified, and attorneys presented statistics on weapons sales, the average age of guns used in crimes, and other aspects of the gun trade.

A key plaintiff witness, former Smith & Wesson Corp. executive Robert Hass, was too ill to appear but testified by deposition that gun makers took a see-no-evil approach to criminal use of their deadly products. And an economist testified that 90 percent of the handguns used in crimes in New York City in recent years came from southern states.

Testifying for the firearms industry, Chicago-based economics consultant Gustavo "Chip" Bamberger said plaintiffs' arguments about oversupply of guns relied on insufficient data and flawed statistics.

The verdict came despite apparent disagreement in the jury room. In recent days, jurors had sent U.S. District Court Judge Jack Weinstein several notes saying it was deadlocked.

One note said that 10 jurors had "decided to work together to reach a verdict," but the 11th "refused because he or she feels the verdict 'will open the floodgate of lawsuits across the country.'"

Legal experts have said that it could set a precedent for cities trying to recoup the costs of battling gun violence.

Chicago, New Orleans, Bridgeport, Conn. and Miami-Dade County are suing the industry. Pro-gun groups have responded by lobbying state legislatures to pass laws prohibiting such suits.

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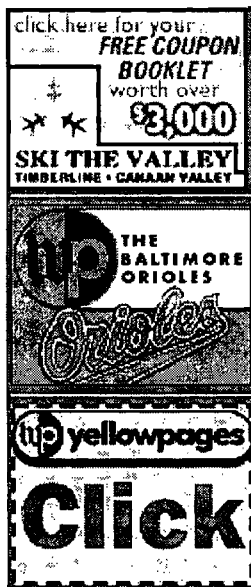
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Associated Press Writer

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The only damages awarded were \$560,000 to the sole survivor of the shootings, who was seriously wounded, and his mother.

Steven Fox, 19, and the relatives of six homicide victims sued the gun industry in federal court in 1995. Fox was shot in the head by a bullet accidentally discharged by a friend, who had bought the gun on the street. The bullet remains lodged in his head.

The class-action lawsuit sought unspecified damages from an industry that generates sales of \$2 billion to \$3 billion a year.

Like some of the lawsuits brought against Big Tobacco, this one accused the gun industry of negligently marketing a legal product. The case also was closely watched by several cities trying to recover the costs of gun violence.

The jury found 15 of the 25 gun makers that were sued -- including Beretta USA Corp., Colt's Manufacturing Co. and Jennings Firearms, Inc. -- distribute their product negligently. Smith & Wesson Corp. and Sturm, Ruger and Co. were among those cleared.

Afterward, both sides claimed victory.

"I thank God, we absolutely won," said lead plaintiff Freddie Hamilton, whose son, Njuzi, was slain in 1993. She predicted the verdict would bring a "new phase" of litigation against the firearms industry.

Plaintiff attorney Elisa Barnes said: "It was an incredible victory. ... All of the hard work has been worth it."

Industry lawyer James Dorr called the result "a defense verdict in all respects," and John Renzulli, whose clients include Glock, Inc., said "it completely makes no sense."

During the monthlong trial, the plaintiffs argued handgun makers oversupply gun-friendly markets, mainly in the South, aware that the excess guns flow into criminal hands via illegal markets in New York and other states with stricter anti-gun laws.

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Last month, the judge dismissed charges against 15 handgun wholesale distributors, leaving only manufacturers as defendants.

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LAW

Jury in Suit That Blames Gun Makers For Shootings Doesn't Reach Verdict Yet

By VANESSA O'CONNELL

Staff Reporter of THE WALL STREET JOURNAL

A federal jury in Brooklyn, N.Y., ended its first day of deliberations without reaching a verdict in a trailblazing case that seeks to hold 25 gun makers liable for seven shootings with illegal handguns.

The case, brought on behalf of the families of the gunshot victims, helped to inspire a wave of lawsuits by cities that seek to hold the gun industry responsible for gun violence. Gun executives in Atlanta this week for their biggest annual trade show monitored developments in the case closely, and worried that a plaintiffs' verdict would encourage more cities to file lawsuits.

So far, five cities — New Orleans, Chicago, Miami, Atlanta and Bridgeport, Conn. — have filed lawsuits, imitating the strategy of states that sued the tobacco industry and forced cigarette makers to settle for \$240 billion over 25 years. The cities are seeking to recover hundreds of millions of dollars in public spending related to gun violence.

During the five-week trial in Brooklyn, plaintiffs' lawyer Elisa Barnes attempted to prove the innovative theory that gun makers negligently "oversupply" markets with lax regulation, resulting in a flow of guns into criminal hands in tough-regulation states such as New York.

Yesterday afternoon, she was encouraged after the 11 jurors asked to review the contracts between the gun makers and wholesalers. Ms. Barnes had argued that the gun makers' contracts were evidence of their negligence, because virtually all of the agreements failed to ban sales of guns at gun shows, and to very small dealers with looser standards than the big retail operations.

Earlier, the two men and nine women on the jury had asked to review the testimony of Steve Higgins, a former director of the federal Bureau of Alcohol, Tobacco and Firearms. Mr. Higgins had told jurors that gun fairs, which travel around the country, are one of the primary channels for guns flowing into the underground market. "The problem with gun shows is that there's a lot of unregulated activity," Mr. Higgins testified.

The gun makers argued that criminals — not manufacturers — are responsible for the shootings. Standing before a large notepad scrawled with the message, "these cases are simply wrong," industry

lawyer James Dorr said in closing arguments on Wednesday that gun makers shouldn't be blamed for the misuse of guns any more than car makers should be blamed for drunk-driving accidents.

Before handing the case over to the jury yesterday, U.S. District Judge Jack Weinstein asked the jurors not to be swayed by sympathy for the families of the seven victims, but rather to examine the evidence to determine whether the gun makers failed to exercise "reasonable care" in marketing and distributing guns. He then provided the panel with a 42-page verdict form, and asked them to consider whether the allegedly negligent marketing practices of any of the 25 gun makers led to each shooting.

One problem brought to light by George Krivosta, a forensic scientist in the crime laboratory for Suffolk County, N.Y., and a witness for the defendants, is that spent bullets and casings could be used to identify the particular make and model of guns used in several of the shootings. Gun makers argue that the group as a whole shouldn't be held liable in cases where scientists can link some of the crimes to a specific gun maker or to a certain gun model. Judge Weinstein agreed and instructed the jurors to put any blame in such cases only on the maker of the type of weapon used.

Launched in 1995 by Ms. Barnes, a sole practitioner, the Brooklyn case was the first to attack the industry as a whole, rather than taking the more traditional — and generally unsuccessful — approach of going after the maker of a particular gun used in a specific killing.

Meanwhile, the National Rifle Association plans to push for legislation in 15 states to bar municipalities from suing to recoup the public cost of gun-related violence, said the NRA's chief lobbyist.

The group lobbied heavily for such a bill in Georgia, which has already passed the state House and is expected to win Senate approval. Atlanta filed its suit yesterday to get into state court before any new law went into effect. But Atlanta Mayor Bill Campbell held out the possibility that he might drop the suit if gun makers agree to make their products safer with "smart technology" or mechanical locks.

—Paul M. Barrett
contributed to this article.

Gun Lobby Begins Concerted Attacks On Cities' Lawsuits

By DAVID FIRESTONE

ATLANTA, Feb. 8 — Gun manufacturers and their supporters began a long and expensive counterattack today on the growing number of lawsuits that cities are filing against the gun industry by successfully pushing the Georgia Senate to pass the first bill in the nation designed to block such suits.

The measure, which has rapidly moved through the Legislature, was passed by the House last month, and Gov. Roy Barnes, who was endorsed by the National Rifle Association in his recent campaign, is expected to sign the bill this week.

The bill contains language that could scuttle the lawsuit Atlanta filed against the gun industry in state court last Thursday. Atlanta, one of five cities in the nation to file such a suit, has vowed to fight the legislation on constitutional grounds.

Pro-gun lobbyists, who say the cities' lawsuits are an indirect form of gun control, were delighted at the strong show of support, saying the Georgia effort was the beginning of a campaign against city gun lawsuits that gun makers and the N.R.A. intend to fight in dozens of state capit-

Continued on Page A13

SportsTuesday, usually found in section C, appears today on pages A26-29.

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THE NEW YORK TIMES NATIONAL TUESDAY, FEBRUARY 9,

Gun Industry Begins Concerted Attack on Cities' Lawsuits

Continued From Page A1

tals. With their conservative traditions and easy access for lobbyists, statehouses have traditionally been an industry stronghold. Nearly 40 states, including Georgia, have laws prohibiting cities from enacting any form of gun control.

"This is the beginning of a long, arduous process that we wish we didn't have to engage in, but we are going to devote a lot of time and resources to it," said James Baker, director of the N.R.A.'s lobbying arm, the Institute for Legislative Action. "In the next year, I think we can probably get 25 or 30 more states to do the same thing."

The next stop, Mr. Baker said, is Louisiana, where the organization plans to have a bill filed the first day the state Legislature opens in March.

New Orleans was the first city to file suit against the gun industry, seeking millions of dollars to reimburse local treasuries for the cost of the police and hospital services required because of gun violence. Miami, Chicago, and Bridgeport, Conn., have filed similar suits, and other cities are preparing or contemplating such litigation, modeled after successful efforts against the tobacco industry.

Atlanta's suit, brought against 14 manufacturers and three trade groups, accuses the companies of failing to install safety devices or provide adequate warnings of the dangers of guns. It seeks an unspecified amount of damages to compensate the city for the cost of mopping up after gun violence.

Mayor Bill Campbell, who has championed the suit, vowed today to fight the industry's bill on constitutional grounds.

Having watched the tobacco industry first fight and then eventually

the Shot Show, was entertaining 30,000 visitors at the Georgia World Congress Center here. The industry pulled next year's show out of New Orleans because of that city's suit.

Mr. Baker, the N.R.A. lobbyist, said he knew there were many states, including Illinois, where the lobby would not be nearly as successful. But by undermining lawsuits in friendly states like Georgia and Louisiana, he said, the industry will be able to narrow the playing field and concentrate on the 20 or so states posing the greatest threat.

"They're trying to prove that the

firearms industry is responsible for the criminal misuse of firearms," he said. "It's ludicrous, totally outside the realm of existing product liability law. They're trying to do with the court system what they've been unable to do with state legislatures."

Anti-gun lobbyists say the N.R.A. is likely to be successful in several states, but predicted that enough city lawsuits would go forward to keep the industry busy in court. Some cities that have filed suit are being guided by a group of the same private lawyers who brought the original suit against the tobacco compa-

nies, and the lawyers say they are ready for the N.R.A.

"We'll be working with cities to fight these bills on constitutional grounds," said Daniel Abel, a partner in the New Orleans firm of Gauthier, Downing, LaBarre, Beiser & Dean, which helped originate the original tobacco litigation and drafted New Orleans's suit against the gun industry. "These bills violate the right to self-determination of a city, many of which have home-rule charters. You'll be seeing a lot of constitutional scholars come out and address this issue."

Signs of a national battle on a constitutional issue.

settle liability lawsuits around the country, the far-less-prosperous gun industry has vowed not to let the same thing happen to its members. But without many friends in the White House or in city halls, the firearms lobby is concentrating on statehouses like the one here, relying on phone banks and state organizers to put pressure on legislators who have used N.R.A. endorsements as badges of anti-crime toughness. With about 90,000 active members in the state, the N.R.A. contributes heavily to Georgia politicians.

"This goes back to when I was driving in my car back in December and I heard something on the radio about the Chicago suit," said State Representative Curtis S. Jenkins, a Democrat from rural Forsythe, who introduced the bill. "It crossed my mind that Atlanta might look at this, and I had a talk with the N.R.A., which has been a great help with this bill. They had all kinds of suggestions as we were drafting it."

Mr. Jenkins and other legislative leaders said they believed the suits were a back-door form of gun control, restricting access to guns by putting makers out of business.

"Georgia is a strong Second-Amendment state," said Senator Eric Johnson, the Republican minority leader from Savannah. "People here see any attempt to sue gun manufacturers as an attempt to restrict the citizen's right to keep and bear arms."

The Legislature passed the bills with strong bipartisan majorities — 44 to 11 in the Senate and 146 to 25 in the House. Mr. Barnes, a Democrat, has not commented on the bill, but legislative leaders said they had been assured by his office that he would sign it.

Many lawmakers were annoyed that Atlanta filed its suit while the gun industry's largest trade show,

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N.Y. Jury Finds Gunmakers Negligent in Shootings

By ROBERTO SURO
Washington Post Staff Writer

BROOKLYN, N.Y., Feb. 11—A federal jury today found several of the nation's largest firearms manufacturers negligent for marketing and distribution practices that allowed guns to fall in the hands of criminals who committed seven shootings in the New York area.

Although the jury awarded only limited damages, its decision marks the first time that gun manu-

facturers have been held legally at fault for not taking reasonable steps to prevent criminals from obtaining their products. Some legal analysts said the decision could set a precedent in the escalating movement to hold the firearms industry responsible for gun violence.

The month-long trial was closely watched because it is the first to employ some of the same legal theories that have been successfully applied to the tobacco industry

in lawsuits producing multimillion-dollar judgments. The Brooklyn gun case, *Hamilton v. Accu-Tek*, went to trial just as a growing number of cities across the country are filing suits against the gun industry patterned on the tobacco suits and using some of the same arguments put forth in this trial.

But the jury's mixed verdict—awarding damages to only one of seven plaintiffs—produced a mixed message on the gun industry's vulnerability to future legal

action.

"They split the baby," said David Yassky, a professor at the Brooklyn Law School. "The jurors found that the industry was negli-

See GUNS, A12, Col. 5



THE WASHINGTON POST

Jury Finds Gunmakers Negligent

GUNS, From A1

gent in the way it sells and distributes guns, but they could not find a clear, strong link between that negligence and specific crimes."

Attorneys for the families of the shooting victims who brought the case argued that gun manufacturers knowingly allow their products to flow into an underground arms market where they are purchased by criminals. As a result, they claimed, the industry should be held liable just as producers of toxic wastes are held liable when those substances flow into rivers or streams and cause environmental harm.

Lawyers for the 25 gun manufacturers who were the final defendants in the case argued that they are no more responsible for the harm caused by criminals than the manufacturer of an automobile that causes deaths or injuries when a drunken driver is at the wheel.

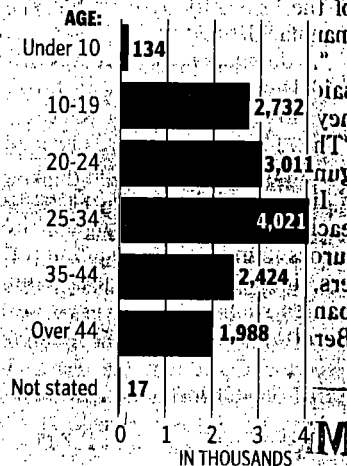
Although she was awarded no damages in the case, Diane Zaretsky, one of the plaintiffs said: "I am very proud to have been part of this case because it is the beginning of a momentum that I hope will continue. It is a cornerstone that all future cases can look to."

The verdict will have little monetary impact on the gun industry because the jurors award-

Shooting Deaths

Homicides accounted for 42% of all gun deaths in 1996.

Homicides, 1996



Total: 14,327

SOURCES: Handgun Control Inc., Knight Ridder

THE WASHINGTON POST

ed only \$560,000 to one plaintiff, Steven Fox, the only one of the seven victims who survived a shooting.

The complexity of the verdict, which took more than 45 minutes to read, may not result in the clear message that gun control advocates hoped would emerge from the trial. But attorneys on both sides of the case seized different parts of the jury's findings as a measure of victory.

"This is a defense verdict, because the jurors could not reach an agreement to cross the threshold of liability," said James Dorr, one

See GUNS, A13, Col. 1

PHOTOCOPY
PRESERVATION

Verdict in Shootings Lawsuit May Aid Legal Attacks on Gunmakers

GUNS, From A12

of the lead attorneys for the gun manufacturers.

"A defense verdict, forget it," said Denise Dunleavy, an attorney for the shooting victims. "They found half of the American gun industry negligent."

In separate verdicts related to each of the seven plaintiffs, the jurors found that 15 manufacturers, including well-known companies such as Colt, Glock and Beretta, were negligent in their

marketing and distribution practices. To reach that finding, the jurors had to conclude that the companies failed to take reasonable steps that might have prevented their products from causing injury. Smith & Wesson, Browning and several other major companies were found not to have been negligent.

In the next stage of judgment, the jurors had to decide whether that negligence could be directly tied to a specific shooting so that the manufacturers could be held

liable for the suffering, loss of work and other damages suffered by victims and relatives. The jurors only made that link in three of the shootings, and they only took the final step of concluding that manufacturers were liable and should pay monetary damages in the sole case of the Fox shooting.

In a landmark ruling last May, Senior Judge Jack B. Weinstein allowed the plaintiffs to proceed with a theory of "collective liability" in which the industry as a

whole can be held at fault without linking a specific harm to an individual company. That same theory has been used in cases brought against asbestos manufacturers and other potentially harmful products but never against the gun industry.

"In the underground market, a gun is a gun is a gun," said Elisa Barnes, the lead attorney for the shooting victims, during closing arguments. No guns were recovered in any of the shootings, and Barnes argued that the entire

firearms industry shares responsibility in each of the crimes because "each of the defendants participated in the underground market."

The jury only appears to have accepted the part of the theory that ascribes negligence to gun companies for not doing more to prevent illegal sales of handguns, but the jurors failed to find broad liability.

The verdict came after six days of deliberations during which the jurors repeatedly com-

plained that they were deadlocked and were sent back to work each time by the judge.

But as soon as the jury finally reached its verdict and left the Brooklyn courtroom tonight, attorneys for the gun companies took the first steps toward challenging the verdict, announcing that they would ask the judge to reject the jury's conclusion as a tortured compromise that they were forced to reach when Weinstein refused to accept their deadlock.

PHOTOCOPY
PRESERVATION

2/12

9 Gun Makers Called Liable For Shootings

By JOSEPH P. FRIED

For the first time, a jury has found that gun manufacturers are liable for shootings with illegally obtained handguns because of their negligent marketing and distribution practices.

In a lawsuit filed in Federal District Court in Brooklyn, which legal experts called a test case for a wave of suits that have recently been filed against the gun industry, the jury found yesterday that 15 of 25 firearms makers named in the suit had been negligent. The suit was brought on behalf of victims in seven shootings. Of those 15 found negligent, 9 were liable in one or more of three of the shootings — two of them fatal — in the New York City region in recent years.

The jury found that those nine manufacturers were collectively liable for the shootings — even though it was not proved what brand of gun had been used in any of the cases — because their marketing and distribution practices fostered illegal gun trafficking from states with weak gun laws to those with strict regulations, like New York.

The jurors found liability where it had determined that the companies' practices had been a "proximate cause" of the shootings.

In what appeared to be a compromise verdict, the jury awarded no damages to relatives of the two homicide victims in the three shootings where it found liability. It found only that the surviving victim was enti-

9 Gun Makers Are Liable for Shootings, Federal Jury Finds

Continued From Page A1

tled to \$3.95 million in damages — though, given the intricacies of the case, he would collect only about \$500,000 under the verdict.

The jury also found that in four other homicide cases that were part of the lawsuit, none of the 15 companies found to be negligent overall were also shown to have had a proximate cause in the killings and therefore none of those 15 were held liable in those slayings. It was not clear last night exactly what factors the jury used to determine proximate cause.

The verdict was hailed as a victory by both sides.

Lawyers for the plaintiffs, and the plaintiffs themselves, said it was a major victory for the growing effort across the country to hold the gun industry liable for bloodshed with illegally obtained firearms, much as lawsuits have sought to hold the tobacco industry liable for deaths and illnesses caused by smoking.

"We held 15 of the 25 liable for negligence," the chief lawyer for the plaintiffs, Elisa Barnes, said after the verdict, which took a half hour to read and required a 42-page form to deal with all the issues in the suit.

But lawyers for the gun manufac-

turers held that the overall verdict was a victory for the companies because there was no finding of damages for six of the seven shootings that were involved in the suit.

As for the finding that the plaintiffs said was a major part of their victory — that 15 of the 25 companies involved in the verdict had marketed and distributed their products negligently — one of the industry lawyers, James P. Dorr, said that that finding involved "issues that are more appropriately submitted to legislatures."

Another lawyer for the companies, John Renzulli, insisted that "there's no rhyme or reason to this jury's verdict — it makes no sense." Other lawyers on the industry side held that the verdict was the result of compromises by a jury that had clearly agonized over the case during a week of deliberations that, their own notes to the judge said, had been stormy at times and had led to several threatened deadlocks.

Lawyers for the gun companies said they would ask Judge Weinstein to throw out the verdict on the ground that it was the result of inappropriate compromises within the jury. Lawyers for the plaintiffs said they would ask the judge to assess damages in the two homicide cases where the jury had found that negli-

gent marketing and distribution by some of the companies had been a proximate cause of the killings but had refused to assess damages.

There were nine companies that were found to have negligent practices and were also found liable in one or more of three shootings in the case: American Arms, Arcadia Machine & Tool, Beretta U.S.A., Bryco Arms, Colt's Manufacturing, Glock, Phoenix Arms, Sigarms and Taurus International Manufacturing.

Six other companies were found negligent but not liable for any of the shootings: Calico Light Weapons Systems, Freedom Arms, International Armament (doing business as Interarms Industries), Jennings Firearms, K.B.I. Inc. and Sundance Industries.

The plaintiffs were relatives of six people killed with illegally obtained handguns in New York City and Yonkers and a Queens teen-ager who survived a seventh shooting with a bullet still lodged in his brain. It was the teen-ager, Steven Fox, who was awarded damages.

The judge had ruled at the start of the monthlong trial, without giving a reason, that the jurors' identities would be kept from the parties in the case and the public. The move had not been requested by either side.

Most of the jurors left the court in

cars with Federal marshals, but one of the jurors who walked out the front door, a man from Long Island, said the deliberations had been "very difficult."

"Some didn't like guns and some did," he said of the jury. "That's why it took so long."

The outcome of the trial is expected to be assessed not only by the firearms industry and gun control advocates but by lawyers for Chicago and other cities that have recently filed, or plan to file, suits making similar arguments against the gun industry, much as states have sued cigarette makers.

Still other suits, filed by cities like New Orleans and Miami, are based on a different argument: that the gun makers have failed to include sufficient safety devices in their products. All the cities' suits are intended to recoup law-enforcement and hospital costs stemming from gun violence.

In only one of the shootings was a gun recovered. But Ms. Barnes, told the jury that this "simply doesn't matter." She and her trial colleagues — Denise Dunleavy, Michael S. Feldberg and Marc E. Elovitz — asserted that the gun makers made no attempts to keep their products from falling into criminal hands.

Continued on Page A25

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2/12/99

Gun Makers Are Set Back In Jury Verdict

By VANESSA O'CONNELL
And PAUL M. BARRETT

Staff Reporters of THE WALL STREET JOURNAL

NEW YORK — In a symbolic breakthrough for antigun activists, a federal-court jury for the first time found that a group of handgun manufacturers marketed firearms negligently and were directly responsible for three shootings that led to deaths and severe injury.

The jury, ruling in a civil lawsuit filed against the industry by families of seven gunshot victims, said only one victim of a nonfatal shooting suffered damages of about \$4 million. The jury then reduced the amount of damages he would receive to about \$520,000, based on the combined market share of the three manufacturers specifically linked to that incident.

Both sides claimed victory after the trailblazing monthlong trial, but both agreed that yesterday's verdict will add force to the mounting wave of suits filed by cities seeking reimbursement for hundreds of millions of dollars in public costs related to gun violence.

"This is an important precedent against the gun companies," said David Yassky, a professor at Brooklyn Law School. "Three gun companies were forced to pay damages because they negligently sold guns, and that's never happened before. It will encourage more suits."

The Brooklyn jurors found that some of the manufacturers failed to adequately supervise how their wholesalers distribute guns to retail outlets, allowing guns to fall into criminal hands.

The three companies against which damages were imposed are American Arms Inc., the Beretta U.S.A. Corp. unit of Italy's Beretta SpA, and Taurus International Manufacturing Inc.

After the dramatic reading last night of the complex verdict, which took more than 45 minutes, industry lawyers immediately asked the presiding judge, Jack Weinstein, to throw out the verdict, which he said he would consider doing. The defense lawyers vowed to appeal if he declines to do so.

Trying to put a positive spin on the outcome, James Dorr, one of the lead defense attorneys, pointed to the modest damage award and said, "This was clearly a defense verdict." But standing nearby, several of his colleagues conceded that their adversaries had gained critical ground in what is expected to be a prolonged legal battle.

"The plaintiffs had a major victory," declared plaintiffs' counsel Denise Dunleavy. She pointed out that the jury concluded that 15 out of the 25 manufacturers

Please Turn to Page A6, Column 3

Gun Makers Set Back As Jury Hands Them Only Partial Victory

Continued From Page A2

that were sued had distributed and marketed their product negligently, even though most of those companies weren't actually tagged with damage awards. The negligent-distribution allegation is already part of two city lawsuits—filed by Chicago and Bridgeport, Conn.—and it is expected to be the basis of others as well.

The jury, which deliberated for parts of six days and at several points sent emotional notes to the judge saying they were deadlocked, ultimately followed an un-

pected path to consensus.

According to lawyers from both sides who were allowed to meet with some of the 11 jurors after the verdict, most, if not all, of the jurors rejected the plaintiffs' main argument: that sophisticated economic analysis of federal gun statistics showed that manufacturers "oversupply" Southern states having lax gun regulations, causing the excess firearms to move by means of illegal traffickers to Northern states like New York, where the shootings occurred.

But rather than rule across-the-board for the defendants, the jury simplified the plaintiffs' case and decided to hold some companies responsible for several of the shootings, said juror Charles Beatty.

The jurors zeroed in on the gun makers' contracts with wholesale distributors, scrutinizing the agreements for restrictions that the plaintiffs' lawyers had argued during trial might prevent guns from

winding up in the hands of criminals. The companies whose contracts included those restrictions—such as banning sales of guns at largely unregulated gun shows or to dealers who don't maintain stores—weren't found to have been negligent. Two of the largest and best-known handgun makers, Smith & Wesson Corp., a unit of Britain's Tompkins PLC, and Sturm, Ruger & Co., fell into this category.

Smith & Wesson, for instance, escaped liability because "it doesn't sell guns at gun shows, like the others," Mr. Beatty, a 63-year-old retired driver's education teacher from Long Island, said in an interview. He added that he felt the jury should have awarded more in damages, but that others on the panel had disagreed and they eventually compromised.

Industry lawyers sought solace in the fact that they had held the plaintiffs to a partial victory on what they considered

hostile turf. Lead plaintiffs' lawyer Elisa Barnes scored an early tactical victory in 1995 by using procedural means to steer her lawsuit to Judge Weinstein, who is known for his willingness to entertain innovative mass injury theories against businesses. Judge Weinstein forged new law in 1996 when he allowed the suit to move forward on the theory that the industry as a whole could be attacked on the then-novel negligent distribution theory.

Six of the 11 jurors live in the boroughs of Brooklyn and Queens, removed from more suburban and rural areas in which hunting and gun collecting are more common. Only two jurors said they currently own guns.

The industry contended that it sells a legal commodity and shouldn't be held liable any more than the maker of an automobile involved in a drunken-driving accident

Wall Street Journal

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2/12/99



BILL CAMPBELL
MAYOR

CAREN L. SOLOMON
INTERGOVERNMENTAL AFFAIRS MANAGER

OFFICE OF THE MAYOR
SUITE 5800
55 TRINITY AVENUE, S.W.
ATLANTA, GEORGIA 30335

TEL (404) 330-6742
FAX (404) 658-6406

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Here's our most current press kit
on the Gun issue. I'll keep
you updated!

call me if you need
anything else!!

Caren



The New York Times

February 9, 1999

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Georgia Legislature Would Forbid Cities to Sue Gun Makers

By DAVID FIRESTONE

</NYT_BYLINE

ATLANTA -- Gun manufacturers and their supporters began a long and expensive counterattack on Monday on the growing number of lawsuits that cities are filing against the gun industry by successfully pushing the Georgia Senate to pass the first bill in the nation intended to block such suits.

The measure, which has moved rapidly through the Legislature, was passed by the House last month, and Georgia's governor, Roy Barnes, who was endorsed by the National Rifle Association in his recent campaign, is expected to sign the bill this week.

Although Atlanta joined four other cities in filing suit against the gun industry in state court last Thursday, the bill contains language that would explicitly quash all pending gun litigation by Georgia cities, as well as any in the future. The city has vowed to fight the measure on constitutional grounds.

Pro-gun lobbyists were delighted at the strong show of support, saying the Georgia effort marks the beginning of a campaign against city gun lawsuits that gun makers and the NRA intend to fight in dozens of state capitals. With their conservative traditions and easy access for lobbyists, statehouses have traditionally been the stronghold of the industry, with nearly 40 states, including Georgia, already having laws that prohibit their cities from enacting any form of gun control.

"This is the beginning of a long, arduous process that we wish we didn't have to engage in, but we are going to devote a lot of time and resources to it," said James Baker, director of the NRA's lobbying arm, the Institute for Legislative Action. "In the next year, I think we can probably get 25 or 30 more states to do the same thing."

The next stop, he said, is Louisiana, where the organization plans to have a bill filed the first day the state Legislature opens in March.

New Orleans was the first of several cities to file lawsuits against the gun industry, seeking millions of dollars to reimburse local treasuries for the cost of the police and hospital services required because of gun violence. Other cities that filed such suits include Miami, Chicago and Bridgeport, Conn., and many others are preparing or contemplating such litigation, modeled after similar successful efforts against the tobacco industry.

Atlanta's suit, brought against 14 manufacturers and three trade groups, accuses the companies of failing to install safety devices or provide adequate warnings of the dangers of guns. It seeks unspecified damages to compensate the city for the cost of mopping up after gun violence. Mayor Bill Campbell, who has championed the suit in defiance of the Legislature, vowed on Monday to fight the industry's bill on constitutional grounds.

Having watched the tobacco industry first fight and then eventually settle liability lawsuits around the country, the far-less-prosperous gun industry has vowed not to let the same thing happen to its members. But without many friends in the White House or in city halls, the firearms lobby is concentrating on statehouses like the one here, targeting legislators who have used NRA endorsements as badges of anti-crime toughness. With about 90,000 active members in the state, the NRA contributes heavily to Georgia politicians.

"This goes back to when I was driving in my car back in December, and I heard something on the radio about the Chicago suit," said state Rep. Curtis Jenkins, a Democrat from rural Forsythe, who introduced the bill. "It crossed my mind that Atlanta might look at this, and I had a talk with the NRA, which has been a great help with this bill. They had all kinds of suggestions as we were drafting it."

Jenkins and other legislative leaders said lawmakers voted for the bill because they believe the lawsuits are a backdoor form of gun control, trying to restrict access to guns by putting gun manufacturers out of business.

"Georgia is a strong Second Amendment state," said Sen. Eric Johnson, the Republican minority leader from Savannah. "People here see any attempt to sue gun manufacturers as an attempt to restrict the citizen's right to keep and bear arms." Both houses passed the bills with strong bipartisan majorities, the Senate voting 44-11, the House 146-25. Barnes has not commented publicly on the bill, but legislative leaders said they have been assured by his office that he will sign it.

Many lawmakers were particularly annoyed that Atlanta filed its suit while the gun industry's largest trade show, known as the Shot Show, was

entertaining 30,000 visitors at the Georgia World Congress Center here. The industry has pulled next year's show out of New Orleans because of that city's suit.

Baker, the NRA lobbyist, said he knew there are many states, including Illinois, where the lobby will not be nearly as successful. But by undermining lawsuits in friendly states like Georgia and Louisiana, he said, the industry will be able to narrow the playing field and concentrate on the 20 or so states posing the greatest threat.

"They're trying to prove that the firearms industry is responsible for the criminal misuse of firearms," he said. "It's ludicrous -- totally outside the realm of existing product liability law. They're trying to do with the court system what they've been unable to do with state legislatures."

Anti-gun lobbyists say the NRA will probably be successful in several state capitals but predicted that enough city lawsuits would go forward unimpeded to keep the industry busy in court. Many of the cities that have filed suit are being guided by a group of the same private lawyers who brought the original suit against the tobacco companies, and the lawyers say they are ready for the NRA.

"We'll be working with cities to fight these bills on constitutional grounds," said Daniel Abel, a partner in the New Orleans firm of Gauthier, Downing, LaBarre, Beiser & Dean, which helped originate the tobacco litigation and drafted New Orleans' suit against the gun industry. "These bills violate the right to self-determination of a city, many of which have home-rule charters. You'll be seeing a lot of constitutional scholars come out and address this issue."

**ANNOUNCEMENT OF CITY OF ATLANTA FILING A LAWSUIT
AGAINST GUN MANUFACTURERS**
Remarks by Mayor Bill Campbell
Thursday, 2/4/99

“Boy, 9, shoots himself in hand with a pistol” is the headline of a story in today’s paper. It is the story of a tragic accidental shooting of little Quinton Wise who tragically was shot in the hand, leg, and thigh when a 357 Magnum went off as he and his friend returned it beneath the mattress at a friend’s house. I just left the hospital bed of little Quinton who had nine hours of surgery. He now will have to undergo months of therapy to regain the use of his hand.

Quentin is one of thousands of children who are injured or killed each year by accidental or unauthorized use of a gun. As the proud father of two children, I say to you today, that the shooting and maiming of our children must end.

Today I address you, not merely as Mayor, but as a father. We have a responsibility to all of our children to incorporate reasonable safety devices into products that are inherently dangerous. We do so already with prescription drugs, insecticides and cars. It is time to do so with guns. And it is so easy to do. Seat belts/air bags save millions of lives. Childproofing medicine bottles and the latching of old refrigerators saves lives. Why not guns?

Today we embark upon a mission to make our city safer. Today we take a bold step forward to save our children. 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. This may be one of the most significant acts I take as Mayor. For what can be more important than protecting the lives of our precious children. Who could be against our acting responsibly in their defense?

Each year in Atlanta children gain access to guns and do harm to themselves and those around them. This unauthorized tragic use of guns is a matter we can no longer tolerate.

Tom Diaz in his book, *Making a Killing* outlines how tragic this issue is for our children. He writes:

“Children and Young adults are the most likely to be victims of unintentional shootings. In the last ten years, more than 2,300 American children fourteen years of age and younger died from unintentional shootings.”

Just a few hours ago, we filed a lawsuit in the Fulton County state court against 17 companies aimed at addressing this problem. Many of these companies consistently and recklessly manufacture firearms that are negligently designed under Georgia law. The guns manufactured (1) lack safety features, (2) carry inadequate warnings, and (3) they can be fired by unauthorized users.

Children and guns are a lethal combination. According to the Center for Disease Control and Prevention (National Center for Health Statistics, 1998) everyday 13 young people aged 19 and under are killed in gun homicides, suicides and unintentional shootings. From 1984 to 1994, the firearm homicide death rate for 15 - 19 year olds increased 222 percent, while non-firearm homicides death rate decreased 12.8 percent. In 1996, 2866 children and teenagers were murdered with guns, 1,309 committed suicide with guns, and 468 died in unintentional shootings. A total of 4,643 young people were killed by firearms that year.

Here in the City of Atlanta, however, I am issuing a directive today that all primary duty weapons carried by our police officers have a safety device installed at all times when our police are off duty. This will go a long way toward preventing the accidental death of children and others.

I am also asking today that the gun manufacturers join me in my objective of saving our children. I am inviting gun manufacturers to meet with me and talk about ways they might voluntarily agree to make their products safer. If they are willing to negotiate, in good faith, acceptable provisions that will ensure that their products are made safer, with smart technology or mechanical locks, then I will consider dropping the lawsuit.

Let me make this clear. This lawsuit is not about our City budget. It is not about our crime rate. It is about our children who deserve to be protected.

The U.S. leads the industrialized world in firearm-related deaths among children. For children under 15 in 26 industrialized countries 86% of the deaths occur in the US. We owe our children more. My action today is one I undertake for the safety and security of their future, and our city. It is the right thing to do. And the right time to do it.

ECONOMIC COSTS OF GUN VIOLENCE

The estimated cost of firearm injuries in pain, suffering and lost quality of life was \$75 billion in 1992

Textbook of Penetrating Injury, 1995

The estimated cost of direct health care expenditures for firearm-related injuries in the United States in 1995 was \$4 billion.

Kizer KW, Journal of the American Medical Association, 1995

The average per-person cost of firearm fatalities is the highest of any injury-related death, at \$373,000 per death.

Centers for Disease Control, 1990

Firearms are the second leading cause of fatal injuries in the United States, taking an estimated 39,720 lives in 1994 alone. If the firearm-injury death trend recorded from 1988-1991 continues, firearms will surpass cars as the number one cause of injury-related death in the U.S. by the year 2003.

National Center for Health Statistics, 1994

It cost more than \$14,000 to treat each child wounded by gunfire - enough to pay for a full year at a private college.

National Association of Children's Hospitals and Related Institutions, 1993

Two hundred and fifty people hospitalized for firearm injuries at the University of California Davis Medical Center in Sacramento (January 1, 1984 - June 30, 1985) resulted in hospital costs of \$3,745,496 of which 80 percent was borne directly or indirectly by public funds. Three-fourths of the charges resulted from handgun injuries

Wintemute GJ, The Journal of Trauma, 1992

Updated 4/96

Q&A

The City of Atlanta vs. The Gun Industry

Q: What is the nature of this lawsuit?

A: The City of Atlanta has filed a lawsuit which addresses the absence of safety devices and manufacturers' failure to incorporate safety designs to prevent their use by children and other unauthorized users. The City maintains that changing the design of the guns to incorporate safety mechanisms would prevent thousands of accidental or unintentional shootings by children and adults, as well as adolescent suicides. The objective is to reform the gun industry.

Q: Is it possible to manufacture guns with built-in safety designs?

A: Yes. Patents for safety mechanisms that prevent use by unauthorized users have been granted to at least 30 individuals and groups since 1976. Such safety designs can be as simple as a combination lock or as elaborate as a radio transmitter or computer chip. The SAF-T-LOK, for example, is a basic push-button combination lock incorporated into the grip of a handgun. If the three or four-digit code is not properly entered, the gun will not fire. The SAF-T-LOK would add an estimated \$50 to the price of a gun. Another company in New Hampshire manufactures a safety system known as the Magna-Trigger. This device keeps the firing mechanism of the handgun locked unless the shooter is wearing a specialized magnetic ring that disengages the locking device when the ring touches the grip of the handgun. Fulton Arms, a Houston, Texas company has invented a handgun known as the SSR-6. A safety mechanism keeps the gun from firing unless the shooter is wearing a magnetically encoded chip in a ring. When the ring touches the pistol grip, an electrical circuit is completed and disengages the safety mechanism, allowing the gun to be fired. Colt's Manufacturing Co., Inc. has also unveiled a prototype "personalized" gun for law enforcement use that uses radio frequency technology.

Q: What is the legal basis of this lawsuit?

A: Under Georgia's product liability statute (O.C.G.A. § 51-1-11), a manufacturer can be held liable for damage caused by a product that is unreasonably dangerous in design. In this lawsuit, the City is alleging that guns that fail to incorporate safety systems that prevent their use by children and other unauthorized users are unreasonably dangerous in design. Just as car manufacturers have been held liable for failing to install seat belts and air bags, gun makers should be liable for failing to install feasible safety systems to prevent serious injuries and deaths.

Q: How has the City of Atlanta been damaged by the gun industry?

A: Gun violence and gun-related deaths and injuries have a profound impact on the quality of life in Atlanta and other urban areas. But there also is a significant economic cost of gun-related injuries, incurred through an increase in demand for law enforcement, medical emergency service and 911 services. The American College of Physicians estimates that, in the aggregate, firearms injuries cost the nation more than \$4 billion annually, with \$19 billion in additional indirect costs, such as lost potential earnings. Much of these costs are borne by the taxpayer through government payment of medical expenses, emergency services, police protection, courts, prisons, etc. Cities like Atlanta bear a substantial share of those costs. Gun violence makes it necessary for the City of Atlanta to expend significant sums on additional police protection as well as emergency services. Gun injuries and deaths, through their impact on the productivity of the citizenry, also cause the City to lose significant tax revenues.

Q: Is this lawsuit similar to suits brought by cities and states against the tobacco industry?

A: The tobacco litigation focused on the recovery of money damages for the harm inflicted. Although the City would also hope to recoup the cost specifically associated with the absence of safety devices on guns, the City's lawsuit seeks to primarily reform the gun industry. The goal is to draw the gun manufacturers' attention to the availability of safety devices and to effect a change in behavior of the manufacturers.

Q: What kinds of shootings could be prevented if the gun industry were to incorporate safety systems to prevent their use by children and other unauthorized users?

A: Safety systems would prevent thousands of tragic unintentional shootings of children and teenagers, who find loaded guns all too accessible. A May 1997 study sponsored by the National Institute of Justice showed that 34% of handgun owners keep their handguns loaded and unlocked. The Centers for Disease Control and Prevention (CDC) estimate that nearly 1.2 million latchkey children have access to loaded and unlocked firearms. It is no surprise, therefore, that children and teenagers cause over 8,700 unintentional shootings each year in which at least 600 people die. If guns were designed to prevent their use by children and teenagers, many of these shootings would be prevented. Safety systems would also prevent many adolescent suicides. A youth aged 10-19 commits suicide with a gun every six hours in this country. If guns had safety systems, moments of suicidal depression would less often result in fatal tragedies. Designing guns with safety mechanisms would reduce criminal violence by preventing violent juveniles from using guns they find in their home. Finally, safety systems also would deter gun theft from homes and gun shops, an important way guns are diverted into the illegal market. Gun trafficking would be far more difficult if stolen guns were inoperable because the criminal lacked the proper combination or other mechanism to unlock the gun and allow it to function.

CENTER TO PREVENT HANDGUN VIOLENCE

CITY LAWSUITS AGAINST THE GUN INDUSTRY:
A Roadmap For Reforming Another Deadly Industry

Brian J. Siebel

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1225 Eye Street, NW, Suite 1100, Washington, DC 20005 • (202) 289-7319 • FAX (202) 408-1851

10951 W. Pico Blvd., Suite 100, Los Angeles, CA 90064 • (310) 475-6714 • FAX (310) 475-3147

11 South LaSalle, Suite 2302, Chicago, IL 60603 • (312) 920-0504 • FAX (312) 726-7448

I. INTRODUCTION: GUNS CAN BECOME THE NEXT TOBACCO*

On October 30, 1998, New Orleans became the first city in the nation to file suit against the gun industry.¹ Two weeks later, Chicago followed with a second lawsuit against the industry.² Each lawsuit focuses on distinct conduct by the gun industry that causes gun violence within the city. The New Orleans suit assails the industry's failure to incorporate feasible safety systems into guns that would prevent widespread firearm misuse by unauthorized users. Chicago attacks the industry's role in the problem of gun trafficking. Both lawsuits seek to reform a secretive industry that has too long been able to get away with reckless and irresponsible behavior in the design and marketing of its lethal products. The lawsuits are almost certain to set off a wave of litigation by cities and counties nationwide that will increase the pressure on the industry to reform.³

* The author is an attorney with the Legal Action Project of the Center to Prevent Handgun Violence in Washington, D.C. The Legal Action Project is co-counsel to the City of New Orleans, which filed the first city lawsuit against the gun industry. J.D., *summa cum laude*, American University Washington College of Law, 1991; B.A., Western Washington University, 1982. The author would like to thank Dennis Henigan, Jonathan Lowy, Douglas Weil, Mark Polston, and Andrew Kessler for their ideas and assistance in preparing this article.

¹ *Morial v. Smith & Wesson, et al* (New Orleans Parish Court case #98-18578). Defendants include Smith & Wesson Corp., Sturm Ruger & Co., Beretta U.S.A., Colt's Manufacturing Co., Glock, Inc., Taurus 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., and Sporting Arms and Ammunition Manufacturers' Institute, Inc. The case is based on Louisiana products liability and negligence law. Copies of the complaint are available from the Center to Prevent Handgun Violence.

² *Chicago v. Beretta U.S.A. Corp., et al* (Circuit Court of Cook County, Illinois.) Defendants include Pietro Beretta, Sp. A., Browning Arms Co., Davis Industries, Inc., Beretta U.S.A., Colt's Manufacturing Co., Glock, Inc., Glock GMBH, Hi-Point Firearms, H & R 1871 Inc., International Armament Corp., Carl Walther GMBH, Bryco Arms, Lorcin Engineering Co., Inc., Kel-Tec CNC Industries, Inc., Phoenix Arms, Raven Arms, Inc., Smith & Wesson Corp., Sturm Ruger & Co., Sundance Industries, Inc., Taurus International Manufacturing, Inc., Forjas Taurus, S.A., Jennings Firearms, Inc., Faber Brothers, Inc., Riley's, Inc., Ashland Shooting Supplies, Inc., Universal Firearms, Ltd., B & H Sports, Ltd., Bob's Sports Hdq., Inc., Breit & Johnson Sporting Goods, Inc., Chicago Ridge Gun Shop & Range, Inc., John Riggio, Jr., Elizabeth Riggio, Jim Riggio, Gun World, Inc., Midwest Sporting Goods Co., The Sportsman's Center/ Illinois Gun Works, Ltd., Shore Galleries, Inc., The Sports Authority, Inc., and Donald R. Beltrame. The suit is based on public nuisance law. Copies of the complaint are available on the internet, at WWW.VPC.ORG.

³ See Roberto Suro, *Cities Plan Legal Assault on Makers of Handguns*, WASH. POST, Dec. 23, 1998 at A1 (following the New Orleans and Chicago suits, Boston, San Francisco, Bridgeport and Dade County, Fla. had announced they were assembling legal teams to develop complaints); Gary Fields, *Cities Plan to go After Gun Industry in Court*, USA TODAY, Dec. 15, 1998 (issue of suing the gun industry high on the agenda at the Winter 1999 meeting of the U.S. Conference of Mayors); Fox Butterfield, *New Orleans Seeks Millions in Gun Suit*, N.Y. TIMES, Nov. 4, 1998 (Los Angeles, Philadelphia, San Francisco and Dade County, Fla. are all exploring the possibility of suits against the gun industry.)

thereby reduce the risk of gun violence; and 3) recover some of the public costs of gun violence. Certainly the public -- even a majority of gun owners -- believes these reforms should be made.⁶

This article is designed to provide a roadmap for cities or counties considering lawsuits against the gun industry. Section II discusses the costs of gun violence borne by communities. Section III discusses the New Orleans model, which alleges that the gun industry's failure to "personalize" guns by installing feasible, low-cost, locking systems on weapons that too often fall into the hands of youths and other unauthorized users, with tragic results, exposes the industry to liability under basic product liability and negligence law. Section IV explains the Chicago model, which charges the industry with recklessly marketing its guns on the outskirts of the city in a manner designed to feed the illegal gun market, thereby fueling crime in the city and creating a public nuisance. Section V analyzes additional legal theories that can be pursued against the gun industry. Each of the last three sections identifies the problems litigation can address, the gun industry's failure to respond, and the legal theories in support.

II. THE PUBLIC COSTS OF GUN VIOLENCE

Gun violence is a huge problem in America today. In 1996, the most recent year for which statistics are available, more than 34,000 people were killed with firearms, making firearms second only to motor vehicles as the most frequent cause of injury death in the United States.⁷ Of these, more than 14,300 were homicides and about 18,100 were suicides, with more than 1,100 deaths from unintentional shootings.⁸ In addition, based on 1992 data, approximately 99,000 individuals are treated annually in hospital emergency rooms for *non-fatal* firearm injuries, with about 20,000 of these victimized by unintentional shootings.⁹ Most of these injuries and deaths are caused by handguns.¹⁰

Of course, firearm injuries and deaths impact the victims of gun violence and their families the hardest. But gun violence also creates significant problems and costs for public entities responsible for protecting public welfare and keeping society safe. Cities, counties, and states have been stuck with a bill for billions of dollars in costs each year directly resulting from gun

⁶ See Stephen P. Teret, et al. *Support for New Policies to Regulate Firearms*, 339 NEW ENG. J. MED. 813 (Sept. 1998) (among gun owners polled, 80% favored childproofing, and 59% favored a law requiring personalization).

⁷ See Centers for Disease Control and Prevention, 43 MORB. MORTAL. WKLY. REP. 37 (1994) (estimating that firearms will, by the year 2003, surpass automobiles as the leading cause of injury death in the United States).

⁸ The intent of the shooter was unknown in the remaining 400 deaths. *National Center for Health Statistics, unpublished data from the Vital Statistics System* (1998) (available on the internet at WONDER.CDC.GOV).

⁹ See Joseph L. Annest, *National Estimates of Nonfatal Firearm-Related Injuries: Beyond the Tip of the Iceberg*, 273 JAMA 1749, 1751 (1995).

¹⁰ See David Kairys, *Legal Claims of Cities Against the Manufacturers of Handguns*, 71 TEMP. L. REV. 1, 2 & n.2 (1998) (in 1995, out of 35,957 firearm-related deaths in the United States, it is estimated that 25,000 of these deaths were attributable to handguns).

Of course, the public costs itemized above have not been borne by the \$2-billion-a-year gun industry,¹⁶ which is nevertheless responsible for a significant amount of gun violence because of the way it makes and markets its lethal products.

III. THE NEW ORLEANS MODEL – PROMOTING SAFER GUN DESIGNS

To understand the New Orleans lawsuit, it is helpful to first understand the problem it addresses, and the gun industry's refusal to do anything to lessen that problem.

A. Unsafe Gun Designs Cause Countless Shootings

Guns, especially handguns, are killing and injuring children and teenagers at an alarming rate. The most recent data indicates that one child is killed, and at least thirteen more are injured, in unintentional shootings each day.¹⁷ The tragic stories fill newspapers across the country,¹⁸ while public health reports recount the deadly toll.¹⁹ Most often these shootings are committed by

Susan Headden, *Guns, Money & Medicine*, U.S. News & World Rep., July 1, 1996, at 31 (itemizing the public costs of several gunshot victims); Jay Weaver, *County Targets Handgun Industry: Shooting Spur Lawsuit Proposal*, SOUTH FLORIDA SUN-SENTINEL, Dec. 27, 1998, at 1B (noting public hospital tab of \$768,000 for drive-by shooting victim).

¹⁵ See Headden, *supra* note 14 at 31-34; Vasser, *supra* note 12.

¹⁶ Estimates on the value of the industry vary, with \$2 billion per year in the middle of the range. Compare Fox Butterfield, *Results in Tobacco Litigation Spur Cities to File Gun Suits*, N.Y. TIMES, Dec. 24, 1998 (reporting 1997 sales of handguns, rifles, shotguns, and ammunition at \$1.4 billion in 1997), with Jay Weaver, *supra* note 14, at 1B (estimating \$2.5 billion in annual sales).

¹⁷ See National Center for Health Statistics, unpublished data from the Vital Statistics System (1998) (376 children aged 19 and under were killed in 1996 in unintentional shootings); Nancy Sinauer, *Unintentional, Nonfatal Firearm-Related Injuries: A Preventable Public Health Burden*, 275 JAMA 1740 (1996) (for each death from an unintentional shooting, there are about 13 non-fatal shootings).

¹⁸ In October 1998, the Center to Prevent Handgun Violence published a report analyzing 137 reports of gun violence culled from newspaper reports and news websites across the country. The incidents resulted in 80 deaths and 84 non-fatal injuries. *A School Year in the U.S.A.*, Center to Prevent Handgun Violence (Oct. 1998). A similar report by the Violence Policy Center used a national clipping service to track unintentional shootings from October 1995 through June 1996, where both the shooter and victim were under 18 years old. Suicides and self-inflicted wounds were excluded. Clippings reporting on 97 shooting deaths and 125 shooting injuries are compiled and explained on a state-by-state basis in their report: *Kids Shooting Kids*, Violence Policy Center (March 1997). See also *Child's Play: A Study of 266 Unintentional Handgun Shootings of Children*, Center to Prevent Handgun Violence (1988).

¹⁹ Public health reports analyzing unintentional shooting deaths are numerous. See, e.g. Annest, *supra* note 9 (discussing national data); Sinauer, *supra* note 17 (discussing national data); Garen J. Wintemute, et al, *When Children Shoot Children: 88 Unintentional Deaths in California*, 257 JAMA 3107 (1987) (examining California shootings from 1977-1983 where victim and shooter were children); Garen J. Wintemute, et al, *Unintentional Firearm Deaths in California*, 29 J. TRAUMA (1989) (investigating all California unintentional shooting deaths from 1977-1983); *Unintentional Firearm-Related Fatalities Among Children, Teenagers -- United States, 1982-*

these shootings could have been prevented by the incorporation of two simple safety devices into firearms.²⁴

Teen suicides with firearms -- which claimed the life of a child every six to seven hours in 1996²⁵ -- are another serious problem. From 1970 to 1990, suicide rates among 10- to 19-year-olds nearly doubled.²⁶ The higher rate has been attributed not to an increase in attempts, but to an increase in the lethality of the means used.²⁷ In 1991, guns were used in about 65% of male teen suicides and 47% of female teen suicides,²⁸ and suicide attempts with firearms are almost always fatal, whereas suicide attempts by other means for the most part rarely are.²⁹

B. Changing Gun Design Can Save Lives

One way to dramatically reduce this tragic toll of unintentional shootings and teen suicides is to design handguns in the same way that we design other products -- e.g., automobiles -- to be inaccessible to youths. We build locking systems into them.³⁰ For the last two decades, gun manufacturers have had the ability to design guns to be self-locking, utilizing various types of key or combination devices that prevent the gun from being fired when locked.³¹ Such feasible self-

²⁴ *Id.* at 4.

²⁵ See National Center for Health Statistics, unpublished data (1998) (1,309 suicide victims age 19 and under in 1996).

²⁶ See James T. Dixon, *On Lemon Squeezers and Locking Devices: Consumer Product Safety and Firearms, A Modest Proposal*, 47 CASE W. RES. L. REV. 979, 990 & n.84 (1997). (In the 10-14 year old age group, suicides increased from 0.6 to 1.5 per 100,000 between 1970 and 1990. Among 15-19 year olds, the rate increased from 5.9 per 100,000 in 1970, to 11.1 in 1990.)

²⁷ See *Suicide Among Children, Adolescents, and Young Adults -- United States, 1980-1992*, 274 JAMA 451 (1995) (noting that the CDC has identified restricting access to methods of suicide as a strategy for reducing suicide among young people).

²⁸ National Center for Health Statistics (1991) (cited in Center to Prevent Handgun Violence Fact Sheet, July 9, 1998).

²⁹ See Murray L. Katcher, *Firearm Injuries Among Children and Adolescents*, 93 WISC. MED. J. 511, 512 (1994) (reporting that when firearm is chosen suicide method, 91% of attempts end in death); CDC (1995) (study of Oregon from 1988-1993 found 78.2% of suicide attempts with firearms were fatal, while only 0.4% of suicide attempts by drug overdose were); Annest, *supra* note 9, at 1751.

³⁰ See Richard J. Bonnie, et al, *Reducing the Burden of Injury: Advancing Prevention and Treatment*, Institute of Medicine 133 (1999) (concluding that "personalization of guns would be expected to have major benefits in reducing firearm injuries"); Mark D. Polston & Douglas S. Weil, *Unsafe by Design: Using Tort Actions to Reduce Firearm-Related Injuries*, 8:1 STAN. L. & POL'Y REV. 13, 15-16 (1997) (explaining how changes in gun design can save lives); David Hemenway & Douglas Weil, *Phasers on Stun: The Case for Less Lethal Weapons*, 9 J. POL'Y ANAL. & MGMT 94, 94 (1990) (arguing for safer guns).

³¹ See, e.g., Asra Q. Nomani, *Massacres Spark Interest in Kid-Proof Gun Locks*, WALL ST. JOURNAL, July 16, 1998, at B1. See also *infra* § III(C) (discussing available safety designs).

at the U.S. Capitol,⁴⁰ were committed with stolen guns wielded by unauthorized users. Thus, personalized guns can prevent both unintentional and intentional shootings. Indeed, a recent informal study by the Center to Prevent Handgun Violence which looked at both intentional and unintentional shootings found that *more than half* of them could have been prevented if personalized gun technology were used.⁴¹

Changing gun design is not the only thing that should or must be done to decrease firearm fatalities and injuries. Also critical is the role of parents in properly securing firearms kept in the home, and the role of training and education.⁴² Yet many injury-control experts say that changing the design of a product is generally the most effective way to reduce injury.⁴³ For example, automobile fatalities have fallen so dramatically over the last twenty-five years not because of changes in driving behavior, but because cars are now designed to be crash-resistant with seat belts, airbags, and other safety improvements, and roadway safety has been improved.⁴⁴ Improving product design also applies in more situations, because while training applies only to the individual who has been trained, a safer design can save the life of anyone who comes into contact with the product, whether trained or not.

C. “Personalized” Gun Technology Is Available And Feasible, But The Gun Industry Has Refused To Incorporate It Into Gun Designs

Firearm safeties to prevent accidental shootings of children are not new. As early as 1884, Smith & Wesson sold a handgun which utilized a type of grip safety nicknamed a “lemon squeezer,” that could not be fired by children eight years old or younger.⁴⁵ In 1910, magazine-

⁴⁰ See Francis X. Clines, *Gunman Invades Capitol, Killing 2 Guards: Assailant and a Tourist Hurt in Shootout*, N.Y. TIMES, July 25, 1998, at A1.

⁴¹ See *A School Year in the U.S.A.*, *supra* note 18, at 2 (concluding that more than half of 137 incidents of intentional and unintentional shootings would have been prevented had the gun used been personalized).

⁴² See Polston & Weil, *supra* note 30, at 16 (explaining the importance of firearm storage in reducing injuries). In addition to advocating safe storage practices, the Center to Prevent Handgun Violence also has for years promoted a comprehensive K-12 school-based curriculum called Straight Talk About Risks (STAR) to reduce firearms violence among youths, and fostered various programs with health professionals to help educate the public.

⁴³ See Polston & Weil, *supra* note 30, at nn.28-29; *Playing it Safe*, TRIAL 20, (Oct. 1998) (Interview with Ann Brown, Chair of the Consumer Product Safety Commission, on how regulation yields safer products for children).

⁴⁴ See Bonnie, et al, *Reducing the Burden of Injury*, *supra* note 30, at 115-24 (noting that fatalities per 100 million miles has dropped from 4.43 in 1972 to 1.76 in 1996; had 1972 rate applied in 1996, there would have been 110,000 fatalities instead of 43,399. Between 1966 and 1990, 243,000 lives were saved as a result of federal highway, traffic, and motor vehicle safety programs.)

⁴⁵ The purpose behind the device was very similar to the purpose behind child-proof caps on bottles holding dangerous substances from medicine to toxic household chemicals. Smith & Wesson sold 500,000 of the firearms before discontinuing the design in 1940. See Krista D. Robinson, et al, *Personalized Guns: Reducing Gun Deaths Through Design Changes*, JOHNS HOPKINS CENTER FOR GUN POL’Y AND RES. 5 & nn. 43-45 (Sept. 1996). See also

instantaneously by the person knowing the combination, even in the dark.⁵⁰ Several police departments have been so impressed, they are now incorporating this product into department handguns.⁵¹ This kind of device can also be designed to lock itself so that, like airbags in cars, it can save a life even if the owner forgets to engage it.⁵² Other personalized guns require the user to wear a special magnetic ring to activate the weapon.⁵³ Still other designs incorporate key locks or other mechanisms.⁵⁴

⁵⁰ See Bob Lesmeister, *Safety In Numbers*, AMER. FIREARMS INDUS., Aug. 1996, at 18. This review went on and on about the favorable features of Saf-T-Lok.

Saf-T-Lok is a device that fits onto a revolver or pistol without having to modify the gun or permanently alter it. Once installed, the device allows the gun's owner to lock it up completely making it impossible to fire. Also, once it is installed, the patented interlock system prevents the lock from being removed without damaging the gun itself. So, if anyone should steal the firearm, it will do them no good because they can't remove the lock to make it serviceable.

To install the Saf-T-Lok just takes a few minutes. If you can change a set of grips, you can install the Saf-T-Lok. . . . Once on, your customer can set the lock to any combination he or she prefers. To set the combination all one has to do is ratchet the three buttons in any sequence of preference.

The Saf-T-Lok doesn't work on batteries so your customers are saving money by not having to buy replacements and there are no keys to worry about, so that if the gun is needed in an emergency situation, it can be unlocked in the fraction of a second. There won't be any tragedies for the want of a key. The three button system is very easy to operate and you don't have to see the lock to work it. Anyone can unlock a Saf-T-Lok in total darkness.

Id. at 18, 37. The reviewer also notes that Saf-T-Loks was still working like new after 36,500 test cycles, and is made better than any gun it is designed to fit. Moreover, the designers have yet to come across a handgun that the Saf-T-Lok cannot be adapted to without altering the gun. *Id.* at 37.

⁵¹ See Joe Matthews, *Boston to Require Child-Proof Locks on its Police Department Handguns*, BALT. SUN, Dec. 16, 1998 (Boston Police will attach child-proof combination locks to the service weapons of all 2,247 police officers).

⁵² The Intraloc™ Gun Design, which includes a grip safety that automatically re-locks the gun, ensures that the gun is always locked at rest. Passive systems like airbags have obvious benefits over active systems like seatbelts that require a person to engage them before they are effective. The Intraloc device can still be unlocked in a couple of seconds by the authorized user if the gun is needed, but otherwise remains in locked mode. See U.S. Patent # 4,763,431 (Aug. 16, 1988).

⁵³ See Mike Izumi, *Magna-Trigger: The 'Magic Ring' Revolver Safety*, HANDGUNS, April 1996 at 38 (The Magna-Trigger module is made of aluminum, with strategically placed magnets in the module body. The magnets prevent the trigger from being pulled and hammer from being cocked. A magnetic ring worn by the user cancels the magnetic field, allowing for use); Robinson, *et al*, *supra* note 45, at 6.

⁵⁴ See Crila May Hayes, *Taurus "Lock" Gun -- An Unusual Approach to the Trigger Lock Debate*, WOMEN & GUNS, March-April 1998, at 44 (the Taurus locking system is a small, round lock built into the lower curve of the hammer that is locked by a hollow key; when locked, the hammer cannot move more than 1/4 inch). Another safety design is made by Saf-T-Hammer, Inc. The product is a removable hammer, which when removed, renders

crack in the industry's stonewalling came in October 1997, when most major handgun manufacturers agreed with President Clinton to begin voluntarily offering child safety locks for sale with new handguns by the end of last year. Although this was the first time the industry acknowledged there was something it could do to help save lives, it was motivated not by the safety of citizens, but to stave off more restrictive legislation being considered by Congress and to help the industry in future litigation.⁶² Meanwhile, the industry continues to offer up hundreds of new, more lethal, firearm designs.⁶³

Any other responsible industry, when faced with overwhelming data of injuries and deaths caused by its products, would not only change product design on items yet to be sold but would *recall* and retrofit products already in consumers' hands. Yet for decades gun manufacturers have done little or nothing to make their weapons safer to prevent foreseeable tragedies.⁶⁴ Because guns are the only consumer product exempt from federal safety regulations under the Consumer Product Safety Act,⁶⁵ there has not been enough pressure placed on the industry to innovate for safety. Public entity lawsuits have the ability to change that dynamic.

NAT'L L. J., Dec. 7, 1998 (citing Richard Feldman of American Sports Shooting Council ("ASSC") as saying that the technology for designing personalized guns is not yet sufficiently developed); Paul M. Barrett, *Other Cities May Follow New Orleans in Antigun Suit, But Fight Will Be Hard*, WALL ST. J., Nov. 2, 1998 (citing Bob Ricker, ASSC attorney, as claiming that technology has not been developed).

⁶² See Mike France, *Can Gunmakers Disarm Their Attackers?* BUS. WEEK, Nov. 10, 1997 at 94 (quoting Richard Feldman of ASSC as saying that a major reason [gun] companies agreed to child safety locks is "because it puts the manufacturers in a better position in front of a jury We could never take the kind of hit that tobacco could take and survive"); Leslie Wayne, *Gun Makers Learn From Tobacco Fight*, N.Y. TIMES, Dec. 18, 1997 (voluntary agreement to sell gun locks was "smart politics in the face of what would have happened. In just a few years, Congress would have required it.").

⁶³ There are scores of magazines published by the industry, each of which tout the newest models. See, e.g., *Shooting Times*, *Handgunning*, *Handguns*, *Gun World*, *Guns & Ammo*, and *American Firearms Industry*. Given the importance to the industry of the market for carrying concealed handguns, much of the recent innovation has been designed to make higher-caliber weapons into smaller and smaller models.

⁶⁴ Of course, the fact that the gun industry has universally failed to install personalized gun technology should be no bar to recovery. As the famous case of the *T.J. Hooper* held:

[I]n most cases reasonable prudence is in fact common prudence; but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices There are precautions so imperative that even their universal disregard will not excuse their omission.

The T.J. Hooper, 60 F.2d 737, 740 (2d Cir. 1932) (J. Learned Hand).

⁶⁵ The Consumer Product Safety Act ("CPSA") was passed by Congress in 1972 in response to findings by the National Commission on Product Safety that industry self-regulation was inadequate and consumers were being exposed to too many product dangers. See Dixon, *supra* note 26, at 999-1003 (discussing purpose and workings of CPSA). At the time the CPSA was passed, however, firearms were exempted from the Act's protections. See 15 U.S.C. § 2052(a)(1)(E).

E. Legal Issues

The *Morial* claims against the gun manufacturers are brought under Louisiana's product liability statute, while claims against three industry trade associations and six local firearms distributors are brought in negligence.⁷⁰ The primary legal theory in *Morial* is based on the provable fact that the industry markets defective products which unnecessarily cause injuries to New Orleans citizens.⁷¹ This theory is viable in nearly every state.

[V]irtually every jurisdiction recognizes that a product may be defective if its design presents an inherent risk of serious injury *and* existing technology can be used to produce a safer design without undue costs or interference in the performance of the product. In many jurisdictions, it is irrelevant whether the safer alternative design has been incorporated into a product currently on the market. Manufacturers have a responsibility to pursue available technology to make their products safer or face liability.⁷²

⁷⁰ See La. Rev. Stat. § 2800.51 *et seq.*, the "Louisiana Products Liability Act." Under the statute, which establishes the exclusive theory of liability for manufacturers for damage caused by their products, *id.* § 2800.52, negligence could not be alleged against the manufacturers, nor could local sellers be charged under products liability. See *id.* § 2800.53 *et seq.* In other jurisdictions, industry liability for its decision to not incorporate feasible safeties should be explored under other legal theories, including public nuisance, antitrust, civil conspiracy, violation of consumer protection standards, and even civil RICO. See Kelder & Daynard, *supra* note 4, at 80-82 (discussing alternate theories alleged by public entities in tobacco lawsuits).

⁷¹ Under Louisiana's statute, a product manufacturer is liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use. La. Rev. Stat. § 2800.54(A). A product is "unreasonably dangerous" in design if, at the time the product was made, (1) there existed an alternative design that was capable of preventing the claimant's damage and (2) the likelihood that the product's design would cause the damage and the gravity of the damage outweighed the burden on the manufacturer of adopting an alternative design, and the adverse effect, if any, of the alternative design on the utility of the product. § 2800.56.

⁷² See Polston & Weil, *supra* note 30, at 19 & nn. 62-64 (reviewing state products liability laws). See also Copetas, *supra* note 21, at 177-84 (discussing risk-utility test and applying it to handgun design); Dixon, *supra* note 26 at 996-99 (analyzing liability for gun manufacturers for design defects).

This theory is also supported by the new Third Restatement of Torts, which requires proof of an alternative design that *could* have been adopted at the time of sale. See Restatement (Third) of Torts § 2, comment d ("This Section states that a design is defective if the product could have been made safer by the adoption of a reasonable alternative design" that could have been "practically adopted" at the time of sale). See also Polston & Weil, *supra* note 30, at n.64 (discussing applicability of Third Restatement drafts); Copetas, *supra* note 21, at nn.53-54 (same). Louisiana requires that the alternative design be available at the time the product is made. La. Rev. Stat. § 2800.56.

Still other jurisdictions hold that because firearms pose open and obvious dangers, recovery is barred.⁷⁹

The decisions restricting recovery, however, are not soundly reasoned. Product misuse in gun defect cases is most often committed by juveniles who cannot appreciate the dangers posed by firearms. Moreover, such misuse is both completely foreseeable, as it happens thousands of times each year, and is entirely preventable by the incorporation of feasible alternative designs.⁸⁰ Application of the consumer expectations test does not account for the fact that the people injured by firearms are usually not the purchasers, and will not be protected unless the risk to them is considered.⁸¹ Finally, the fact that a danger may be open and obvious should not shield a manufacturer that can prevent the danger by incorporating a feasible safety device.⁸²

IV. THE CHICAGO MODEL – ATTACKING GUN TRAFFICKING AND INDUSTRY MARKETING PRACTICES

The Chicago lawsuit attacks a very different problem caused by the gun industry -- loose marketing practices that move firearms from the legal marketplace into criminals hands. To understand the problems with that marketing system, some background is required.

A. Negligent Firearms Marketing Fuels Crime

The legal firearms market is made up of two levels: the *primary* market, which comprises all transactions that involve the licensed gun industry; and the *secondary* market, where unlicensed persons act as both buyer and seller.⁸³ In the primary market, gun manufacturers sell their guns for the most part to wholesale distributors, who in turn resell the firearms to storefront dealerships, who sell the guns to the public.⁸⁴ The three layers of sellers -- manufacturers,

⁷⁹ See Copetas, *supra* note 21, at 184-85 (discussing cases).

⁸⁰ See Polston & Weil, *supra* note 30, at 20 (criticizing misuse doctrine); Copetas, *supra* note 21, at 185-86 (same).

⁸¹ See Copetas, *supra* note 21, at 176 (criticizing consumer expectations test as failing to provide incentive to make safer products).

⁸² See Polston & Weil, *supra* note 30, at 20 (criticizing open and obvious doctrine); Copetas, *supra* note 21, at 184-85 (same).

⁸³ See generally *Kids, Guns, and Public Policy*, 59 DUKE J. LAW & CONTEMP. PROBS. (1996) (Philip J. Cook, special editor); Mark D. Polston, *Civil Liability for High Risk Gun Sales: An Approach to Combat Gun Trafficking*, 19 SETON HALL LEGIS. J. 821, 824-28 (1995) (discussing federal law regulating the firearms market); Julius Wachtel, *Sources of Crime Guns in Los Angeles, California*, 21 POLICING: AN INT'L J. OF POLICE STRATEGIES & MNGMNT. 220, 221 (1998) (outlining firearms markets).

⁸⁴ Guns that are imported go through a similar distribution system. See 18 U.S.C. § 923; 27 C.F.R. Parts 47, 178-79. Many foreign manufacturers, such as Beretta and Glock, have domestic distribution companies that bear the manufacturer's name.

criminal investigation, 39% of them were sold in the primary market within the previous three years,⁹¹ which is a strong indicator that the guns were trafficked for illegal use.⁹²

There are a number of reasons why firearms sold legally end up being easily diverted to crime. First, there is no federal limit on the number of guns that can be bought in a single sale. Multiple sales must be recorded by the dealer, and the forms forwarded to ATF and local law enforcement, but these reporting requirements do not preclude the sale.⁹³ Second, there is no federal regulation of secondary sales, including no paperwork or background check requirements. Finally, because owners do not have to register firearms, and there is no central database of transactions, law enforcement's ability to crack down on illegal gun trafficking is constrained.⁹⁴ Certain states have attempted to tighten control on these markets to prevent guns from being diverted to crime. For example, as will be discussed below, Virginia passed a law limiting sales to one handgun per month per buyer, while other states have imposed limited controls on secondary sales.⁹⁵ Unfortunately, these laws are not uniform and so can be circumvented by traffickers making purchases in states with weak gun laws and then transporting the guns to states with stronger laws.⁹⁶

Cities Report] ("Eight out of ten crime guns traced are handguns. . . . In all sites, handguns are the largest category of firearms recovered by enforcement agencies.").

⁹¹ See Allen & Portes, *supra* note 89, at 6, Ex. 2 (noting that much higher percentages were found in New York, which has relatively strict gun control laws). See also Wachtel, *supra* note 83, at 229 (noting that "[p]istols seemed especially prone to quick turn-around: a third were seized within one year and more than half within two years.").

⁹² 17 *Cities Report*, *supra* note 90, at 8; Wachtel, *supra* note 83, at 229. ATF "estimates that guns bought in the last three years comprise 22-43% of the guns recovered from juveniles, 30-54% of the guns recovered from youths aged 18-24, and 25-46% of the guns recovered from adults. *Id.*

⁹³ The U.S. Bureau of Alcohol, Tobacco and Firearms ("ATF") defines a multiple sale as the sale by a licensed gun dealer of two or more handguns to an unlicensed person within a five day period. 27 C.F.R. § 178.126a. When making such sales, dealers are required to fill out and forward to ATF a Form 3310.4 which lists the guns sold.

⁹⁴ See David Montgomery, *Weapon Study Details Arming of D.C. Youth*, WASH. POST, July 20, 1997, at B1 (noting inability of ATF to trace more than 37% of 37,589 firearms recovered at crime scenes); Tom Jackman, *Gun Dealer's Legacy: Pain*, K.C. STAR, Oct. 5, 1996, at A1 (explaining the difficulty authorities have tracking and getting convictions for illegal gun sales); Tori Marlan, *Dealing Death*, CHICAGO READER, June 6, 1997, at 1, 20-21 (explaining difficulty in tracking illegal sales); Wachtel, *supra* note 83, at 235-36 (noting difficulty of tracking down all multiple sales).

⁹⁵ See Va. Code Ann. § 18.2-308.2:2(Q) (Michie 1993) (one-gun-a-month law); Cal. Penal Code § 12072(d) (requiring every gun transfer to go through a federal firearms licensee or law enforcement agency, with the same background check, waiting period, and paperwork required for new sales).

⁹⁶ Under federal law, persons without federal firearms licenses can only purchase handguns in their state of residence. 18 U.S.C. § 922(b). This limitation is intended, in part, to give effect to state laws that regulate firearms transactions more strictly than federal law. It is often circumvented, however, by interstate trafficking of firearms from states with weak gun laws to states with strong gun laws. See Allen & Portes, *supra* note 89, at 7-11 (analyzing how handguns are smuggled from weak law states to strong law states); Fox Butterfield, *Report Links*

as other guns to be picked up in crime in a state other than where they were bought, indicating their important role in interstate trafficking.¹⁰⁰ All evidence suggests that the volume of multiple sales transactions is quite high.¹⁰¹

Corrupt firearms dealers have posed another problem. Until recently, in addition to storefront firearms dealers, there were also thousands of persons, known as “kitchen-table dealers,” who obtained federal firearms licenses and sold guns out of their homes. At one point, there were more firearms dealers in America -- over 240,000 -- than gas stations. Needless to say, these dealers posed extraordinary law enforcement problems and were the source of thousands of guns entering the illegal market.¹⁰² Passage of the Brady Law in 1993 changed that by raising the fee for federal firearms licensees from \$10/year to \$200 for a three-year license, and requiring applicants to certify that they would comply with state and local licensing and zoning requirements.¹⁰³ The result has been a reduction of over well over 50% in the number of federal firearms licensees (“FFLs”), and a phasing out of kitchen-table dealers.¹⁰⁴ Nevertheless,

at 10A (reporting on New Yorkers with Florida identification who bought 132 handguns in Florida, half of which were intercepted on I-95 on their way to the northeast); *U.S. v. Bryan*, 1997 U.S. App. Lexis 2340 (2d Cir. 1997) (explaining methods of convicted trafficker).

¹⁰⁰ See Testimony of Sarah Brady, Chair, Handgun Control, Inc. before Senate Judiciary Committee (Sept. 2, 1998) (explaining Center to Prevent Handgun Violence study of 1173 multiple sales guns traced to crime).

¹⁰¹ In 1991 and 1992, before Virginia enacted its one-gun-a-month law, there were 6,835 cases in which one person bought two or more handguns from the same Virginia dealer in less than a week. See Pierre Thomas, *Wilder Bill Would Disrupt Thousands of Gun Sales*, WASH. POST, Jan. 19, 1993, at A1. In another report, the ATF field division in Southern California documented over 5,700 instances of multiple sales involving 13,181 handguns. Almost 18% of these multiple sales involved individual purchases of three or more guns. Bureau of ATF, *Sources of Crime Guns in Southern California* 21-22 (1995). More recent data from Philadelphia indicates that in 1996 and part of 1997, purchasers of more than one handgun accounted for almost half of the total of handguns sold in that city, buyers of three or more handguns made up 30% of total sales, and buyers of five or more handguns -- only 3% of the buyers -- bought 17% of the weapons, for an average of 8.8 guns each. See Kairys, *supra* note 10, at 8 & n.22.

¹⁰² See Polston, *supra* note 83, at 826-27, 835-39 (discussing problems with kitchen-table dealers); Wachtel, *supra* note 83, at 222, 230-34 (reviewing 28 gun diversion cases in Los Angeles area between 1992 and 1995 involving 19,145 guns; corrupt FFLs bought 13,128 of these guns from wholesale distributors, or about 68%); Bob Port, *Sometimes the Dealer Is a Criminal*, St. Petersburg Times, June 28, 1993, at 7 (major report detailing stories of convicted felons who have been allowed to retain and/or renew their FFLs); Pierre Thomas, *Hit-or-Miss Control of Firearm Sales*, WASH. POST, Nov. 29, 1992, at A1 (reporting that a dozen Detroit FFLs have been charged with supplying 2,000 guns to criminals in the city); *House Hearing*, *supra* note 99, at 3-4 (statements of Rep. Schumer) (detailing stories of “Dirty Dozen” of corrupt FFLs who trafficked more than 12,000 guns); *id.* at 64 (statements of Sen. Simon) (“At least 600 federally licensed dealers have been arrested on criminal charges in the last five years.”).

¹⁰³ See 18 U.S.C. §§ 923(a), (d); *A Progress Report*, *supra* note 88, at 2-3 (explaining changes).

¹⁰⁴ See *A Progress Report*, *supra* note 88, at 2-10.

*illegally trafficked firearms in a community, and the number of violent crimes will also go down.*¹¹⁰

Gun trafficking can be addressed in several ways. One of the most effective methods to reduce the flow of guns into the criminal market is to limit sales of handguns to one per month per buyer. Without multiple sales, the value of straw purchasing as a means to obtain crime guns is dramatically reduced, because if a straw purchaser can only legally obtain one handgun a month, a gun trafficker would need to recruit hundreds of straw purchasers to acquire the number of guns a single straw buyer could buy today. The effectiveness of this limit has been proven in Virginia, which passed its one-gun-a-month law in July 1993. Prior to that time, Virginia was the leading source state for crime guns traced by law enforcement in the northeast. After the law took effect, however, Virginia's position as a source of crime guns trafficked into other states dropped dramatically.¹¹¹ Background checks have also proven effective in reducing gun trafficking.¹¹²

The gun industry could itself institute controls to reduce firearms trafficking by limiting multiple sales, weeding out corrupt dealers, securing firearms from theft, and stopping dealership sales at gun shows. Other industries selling products where the danger of misuse is high, such as chemical products and SCUBA diving equipment, have instituted marketing controls, including franchising retail sales outlets, restricting retail sales through distribution contracts, and requiring safe sales practices at the retail level.¹¹³ Specific controls the gun industry could implement could include: requiring dealers to maintain a retail place of business and carry full liability coverage; monitoring ATF data to identify dealers who sell weapons that are repeatedly the subject of crime gun traces; requiring dealers to limit sales to individuals to one handgun per month; training dealers on how to minimize the risk of transfers to illegitimate purchasers; and requiring dealers to secure their firearms from theft.¹¹⁴

¹¹⁰ *Memo from the Chief, CGAB Shots 2* (Jan. 1998) (emphasis in original).

¹¹¹ See Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759 (1996). For example, Virginia's share of crime guns ending up in New York dropped 66% after the law took effect. With other northeast states, the effect was similar. *Id.* at 1760. See also Polston, *supra* note 83, at 830-33 (discussing data). Maryland's one-gun-a-month has also been effective. See Testimony of Sarah Brady, *supra* note 100 (Baltimore police recovered one-third fewer handguns the year after Maryland's one-gun-a-month law took effect).

¹¹² See Douglas S. Weil, *Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking* (Center to Prevent Handgun Violence 1997). The study compared the percentage of guns traced to crime recovered in seven recipient states that had originated in four source states for the periods before, and after, the Brady Law took effect. The impact was dramatic. After passage of Brady, the four source states provided a lower percentage of crime weapons to every one of the seven recipient states, with most showing declines well above 50%. *Id.* at 4-10.

¹¹³ See Expert Report of David Stewart (May 1, 1998) (filed in *Hamilton v. Accu-Tek*, E.D.N.Y. #95-CV-0049 (JBW)).

¹¹⁴ See *Young v. Bryco*, Complaint at 15-17 (Circuit Court of Cook County, Ill. #98L6684); *Chicago v. Beretta U.S.A. Corp.*, *supra* note 2, Complaint at 56-59.

lived in Chicago, where it has been illegal to own handguns since 1982. Only one of the agents carried a firearm owner identification ("FOID") card, which is required under Illinois law to purchase a firearm in the state.¹¹⁹ The agent who did *not* have an FOID card, and therefore whom the dealer knew was a disqualified buyer, nevertheless did the talking, placed the cash on the counter, and walked out with the gun. The agents openly bragged about needing the guns to "settle a score," to resell the firearms to drug gangs, and to use in other criminal enterprises. Despite these brazen indications of criminal intent, in each case the suburban dealers sold the firearms. In many cases, the dealers even counseled the agents in how best to arrange a purchase to avoid federal paperwork which might trigger an investigation.¹²⁰ Chicago's investigation also identified numerous cases where Chicagoans, including a police officer, had been killed by firearms trafficked from these same gun dealerships.¹²¹

Based on this investigation, on November 12, 1998, Chicago filed its lawsuit against the twelve dealers, and the distributors and manufacturers who supplied them with guns. The suit seeks \$433 million in damages to the city caused by crime guns in Chicago. Damages are based on the city's calculation of the direct costs the city incurred -- for medical, police, fire, and court services -- because of this crisis. The suit alleges that the gun industry created a public nuisance by facilitating trafficking of large numbers of firearms into Chicago that would foreseeably lead to crime. In his remarks announcing the suit, Mayor Daley analogized the gun industry to polluters, who have long been held liable for dumping waste into rivers and injuring people downstream.

Chicago's lawsuit is similar to two other lawsuits that have been filed on behalf of specific crime victims, *Hamilton v. Accutec* (E.D.N.Y.), and *Young v. Bryco*, (Cook County, Ill. Circuit Ct.). The *Hamilton* case has been brought on behalf of the families of more than a dozen New York victims of handgun violence. It alleges that the gun industry is collectively liable to crime victims because it has consciously oversupplied the market, knowing that a large percentage of guns it sells through legal channels will end up being diverted to the criminal market and being criminally misused. The suit survived a motion to dismiss,¹²² and is now in trial.¹²³ In *Young v. Bryco*, the families of several gun violence victims recently sued the gun companies whose guns were used by juvenile gang members to kill their loved ones. The suit alleges that the manufacturers created a public nuisance by distributing their guns in such a way that it would

¹¹⁹ See *Chicago v. Beretta U.S.A. Corp.*, Complaint at 11-12 (listing municipal gun laws violated by dealers).

¹²⁰ See *id.* at 21-50 (detailing negligent conduct of dealers in making sales).

¹²¹ See *id.* at 14-18. Many of the firearms traced to crime were originally purchased as part of multiple sales.

¹²² *Hamilton v. Accu-Tek*, 932 F. Supp. 1307 (E.D.N.Y. 1996).

¹²³ See Paul M. Barrett, *Aiming High: A Lawyer Goes After Gun Manufacturers; Has She Got a Shot?*, WALL ST. J., Sept. 17, 1998, at A1; Paul M. Barrett, *Pivotal Trial Pits Gun Victims Against Industry*, WALL ST. J., Jan. 4, 1999, at A13; Joseph P. Fried, *Gun Marketing Is Issue in Trial Against Makers*, N.Y. TIMES, Jan. 6, 1999, at A1..

to person and property.”¹²⁹ A public nuisance claim can be based either on a violation of an ordinance designed to protect the public from a threat to its safety or health, or other unreasonable conduct, including negligence.¹³⁰ If a public nuisance is found, Illinois law allows the city to enjoin industry conduct, and obtain damages.¹³¹ Other courts apply similar standards.¹³²

Chicago’s strongest case is against the suburban gun dealers who sold guns to Chicago residents and persons without FOID cards in blatant disregard of Illinois law and Chicago’s handgun ban. Operation Gunsmoke also established that dealers are more than willing to sell firearms to persons who are brazen about their criminal intentions. Numerous courts have held that it is negligence to entrust a firearm to a person whom the seller knows or should know is likely to pose a danger to himself or others.¹³³ Courts have specifically found negligence for

¹²⁹ *Village of Des Plaines v. Poyer*, 123 Ill. 348 (1888). More recently, the Illinois Supreme Court has defined 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 Servs., Inc.*, 86 Ill. 2d 1, 21 (1981).

¹³⁰ *See Chicago Nat’l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 365-66 (1985); *Gilmore v. Stanmar, Inc.*, 633 N.E.2d 985, 993 (Ill. Ct. App. 1994). Under Restatement (Second) of Torts § 821B, comment e, a defendant can be held liable “for a public nuisance if his interference with a public right was intentional or was unintentional and otherwise actionable under the principles of controlling liability for negligent or reckless conduct or for abnormally dangerous activities.” If the interference was intentional, it must also have been unreasonable. *Id.* The Restatement sets forth three circumstances under which the conduct can be deemed unreasonable: (1) whether the conduct involves a significant interference with the public health, safety, or peace; (2) whether the conduct is proscribed by statute, ordinance, or regulation; or (3) whether the conduct is of a continuing nature or has produced a permanent effect, and, as the actor knows or should know, has a significant effect on a public right. *Id.*

¹³¹ *See Village of Wilsonville*, 86 Ill. 2d at 22; *Mergenthaler Linotype Co. v. Leonard Storch Enter., Inc.*, 66 Ill. App. 3d 789, 792 (1978) (permitting Illinois court to enjoin activities in New York causing injury in Illinois).

¹³² *See, e.g., New York v. Fermenta ASC Corp.*, 630 N.Y.S.2d 884 (N.Y. Sup. Ct. 1995) (public nuisance consists of conduct or omissions which cause damage to the public in the exercise of rights common to all in a manner which injures the health, safety, or comfort of a considerable number of persons); *Parker v. City of Fort Worth*, 281 S.W.2d 721 (Tex. Civ. App. 1955) (nuisance need not affect whole community; it is public if injury or annoyance affect some neighborhood or the part of the public that comes in contact).

Not every court, however, is friendly to a public nuisance cause of action. *See, e.g., Quinnett v. Newman*, 568 A.2d 786 (Conn. 1990) (holding that commercial vendor’s sale of alcohol to a drunk who then drove and wrecked his car was not a public nuisance, nor was it common-law negligence; the creator of the public nuisance was the drunk driver, and his excessive intake of alcohol was the proximate cause of the injury to the crash victim); *Bellflower v. Pennise*, 548 F. 2d 776 (8th Cir. 1977) (finding public nuisance action would not lie against landowner who had no notice that vacant lot was used as gathering place for young people to ride motorbikes and store gasoline, which ignited and injured plaintiff). Moreover, in some states, if the suit is not based on injury to the state’s property, only injunctive relief is available, not damages. *See, e.g., Van de Kamp v. American Art Enter., Inc.*, 656 P.2d 1170, 1172 (Cal. 1983). *But see Town of East Troy v. Soo Line R.R. Co.*, 653 F.2d 1123, 1126-27 (7th Cir. 1980) (permitting town to recover costs needed to abate public nuisance).

¹³³ *See, e.g., Kitchen v. K-Mart*, 697 So.2d 1200 (Fla. 1997) (finding K-Mart negligent for selling rifle to intoxicated buyer who immediately used the weapon to shoot and seriously injure his ex-girlfriend, despite the fact that the sale violated no law); *Bernethy v. Walt Failers, Inc.*, 653 P.2d 280 (Wash. 1982) (same); *Jacoves v. United*

IV. ADDITIONAL APPROACHES

A. Assault Weapons And Gun Kits

Lawsuits can also be brought against gun manufacturers for negligent conduct in the making and marketing of weapons of mass destruction. The Center's Legal Action Project has brought two such suits: *In re 101 California Street* (California Court of Appeal, First Appellate Dist.), and *Halberstam v. S.W. Daniel* (E.D.N.Y. 1998).

The *101 California Street* case was brought after a July 1993 assault on San Francisco law offices by a mentally deranged man armed with two TEC-9 assault pistols and hundreds of rounds of ammunition, which enabled him to kill eight people and injure six others in a matter of minutes. The Center's lawsuit alleged that because the TEC-9 is designed for mass destruction and has no legitimate self defense or sporting purpose, it was negligent for the TEC-9's maker to sell the assault pistols to the general public, because it was foreseeable the guns would enable a criminal to carry out such a mass assault. Considerable evidence obtained through discovery helped prove this allegation, and showed how consciously the company had targeted the criminal market.¹³⁶ The case was also bolstered by the fact that it was brought in California, where the first assault weapons statute in the nation was passed in 1989, banning, among other guns, the TEC-9s used in the shooting.¹³⁷ Nevertheless, after ruling at the demurrer stage that plaintiffs were not presenting "just another gun case," the trial court judge reversed his position after discovery was complete and dismissed the case on summary judgment.¹³⁸ The case is now on appeal.¹³⁹

¹³⁶ Navegar, the Florida company that made TEC-9s, advertised them as "tough as your toughest customer," and having "an excellent resistance to fingerprints," in addition to being "paramilitary" with "firepower above and beyond." The guns were adapted from submachineguns, and two company executives were convicted of selling conversion kits to make TEC-9s fully automatic. After a newspaper study showed that assault weapons were disproportionately associated with crime, and the TEC-9 was the assault weapon most preferred by criminals, Navegar's marketing executives raved: "I'm kind of flattered. It just has that advertising tingle to it. Hey, it's talked about, it's read about, the media write about it. That generates more sales for me. It might sound cold and cruel, but I'm sales oriented." The company president also admitted: "I know some of the guns going out of here end up killing people, but I'm not responsible for that." See www.cphv.org (reprinting statements obtained in discovery).

¹³⁷ See Cal. Penal Code § 12275 et seq. (banning assault weapons after finding that their proliferation and use "poses a threat to the health, safety, and security of all citizens of the state").

¹³⁸ See *In re 101 California Street*, unpublished Opinion and Order Re Motion for Summary Judgment (Cal. Sup. Ct., May 6, 1997, No. 959-316) (finding that Navegar had no duty to the injured plaintiffs). The court appeared to be influenced by a case that had been handed down between the demurrer and summary judgment. *Casillas v. Auto Ordinance*, 1996 WL 276830 (N.D. Cal. 1996) (rejecting claim against manufacturer of Thompson semi-automatic assault pistol not among guns banned in California). In other jurisdictions, this type of suit may be even more difficult. See, e.g., *Addison v. Williams*, 546 So.2d 220 (La. App. 1989) (applying Louisiana civil code to dismiss claim that manufacturer and distributor of assault rifles presents an unreasonable risk of harm amounting to negligence).

¹³⁹ Appellants have argued on appeal that the trial court's holding that Navegar owed no duty to plaintiffs was erroneous under California law, which applies the multifactor test of *Rowland v. Christian*, 69 Cal. 2d 108,

twenty-two times more likely to be involved in a fatal or nonfatal unintentional shooting (four to one), criminal assault or homicide (seven to one), or suicide attempt (eleven to one), than to be used to injure or kill in self-defense.¹⁴⁵ Despite this data, the gun industry has circulated numerous advertisements, often depicting mothers and young children, urging homeowners to purchase handguns for home protection.¹⁴⁶

On February 14, 1996, the Center to Prevent Handgun Violence, joined by numerous public health organizations, and 75 noted public health researchers, filed a petition with the Federal Trade Commission challenging the industry's advertising as unfair and deceptive.¹⁴⁷

Kellermann, *Comment: Gunsmoke—Changing Public Attitudes Toward Smoking and Firearms*, 87 AM. J. PUB. HEALTH 910 (1997); Arthur L. Kellermann, *Protection or Peril? An Analysis of Firearm-Related Deaths in the Home*, 314 N. ENGL. J. MED. 1557 (1986); Peter Cummings, et al, *The Association Between the Purchase of a Handgun and Homicide or Suicide*, 87 AM. J. PUB. HEALTH 974 (1997); James E. Bailey, et al, *Risk Factors for Violent Death of Women in the Home*, 157 ARCH. INTERN. MED. 777 (1997); *Editorial: Gun Availability and Violent Death*, 87 AM. J. PUB. HEALTH 899 (1997); Peter Cummings, et al, *Does Owning a Firearm Increase or Decrease the Risk of Death?*, 280 JAMA 471 (1998); Arthur L. Kellermann, et al, *Weapon Involvement in Home Invasion Crimes*, 273 JAMA 1759 (1995); Douglas S. Weil & David Hemenway, *Loaded Guns in the Home*, 267 JAMA 3033 (1992).

¹⁴⁵ See Kellermann, *Injuries and Deaths*, *supra* note 144, at 263.

¹⁴⁶ See *FTC Petition*, *infra* note 147 (attaching advertisements). See also Kairys, *supra* note 10, at 17-18 (reprinting ads).

¹⁴⁷ See *Petition of the Center to Prevent Handgun Violence, American Academy of Pediatrics, American Public Health Association, American Association of Suicidology, American Academy of Child and Adolescent Psychiatry, and the National Association of Children's Hospitals and Related Institutions before the Federal Trade Commission* [hereinafter *FTC Petition*], Feb. 14, 1996 (available at www.cphv.org).

The FTC Act, 15 U.S.C. § 41 et seq., empowers the FTC “to prevent persons, partnerships, [and] corporations . . . from using . . . unfair or deceptive acts or practices in or affecting commerce.” FTC Act § 45(a)(2). Under FTC standards, a practice is “unfair” if it may cause unjustified consumer injury. A consumer injury is unjustified if it (1) is substantial; (2) is not outweighed by any benefits it bestows upon consumers or competitors; and (3) could not reasonably have been avoided by the consumer. 15 U.S.C. § 45(3)(n); Commission Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction, 104 F.T.C. 1072 (1983) [hereinafter *Unfairness Statement*]. An advertising practice that results in severe injury to even a small number of people, may be deemed unfair. *International Harvester Co.*, 104 F.T.C. 949, 1064 (1984). If the practice is likely to result in serious bodily injury, it is “especially likely” that a cost-benefit analysis will support a finding of unfairness. *Id.* at 1065 n.57. Finally, even if a consumer could avoid injury by choosing other products, a practice will be deemed unfair if it “unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking,” which can include withholding or failing to include information that may be critical to informed comparison and consumer choice. *Unfairness Statement*, 104 F.T.C. at 1074. Clearly, the industry's ads satisfy these criteria. First, based on the studies cited above, they are likely to cause substantial injury by encouraging home gun ownership. Second, given the magnitude of the harm to consumers, the benefit of eliminating them outweighs the costs of stopping them. Third, because the manufacturers' failure to include anything about the risks posed by guns in the home interferes with informed consumer choice, the reasonable consumer cannot avoid the injury imposed by the ads. Fourth, this problem is compounded by the improper storage of guns depicted in many ads, where guns are left loaded on nightstands. Public policy also supports liability in states with child access prevention laws.

Children & Guns: A Lethal Combination

Every day in America, 14 young people ages 19 and under are killed in gun homicides, suicides and unintentional shootings. Many more are wounded. The scourge of gun violence frequently attacks the most helpless members of our society -- our children. Consider these facts...

In 1995, 3,280 children and teenagers were murdered with guns, 1,450 committed suicide with guns, and 440 died in unintentional shootings. A total of 5,285 of our young people were killed by firearms.

National Center for Health Statistics, 1997

In 1994, about 70 percent of the murder victims aged 15 to 17 years old were killed with a handgun.

Bureau of Justice Statistics, 1996

During 1994, almost *one-half* of all the murders of those under age 18 involved handguns. Ten years earlier, handguns were involved in *one-quarter* of such offenses.

Bureau of Justice Statistics, 1996

Two in 25 high school students, that is 7.9 percent, reported having carried a gun in the last 30 days.

Centers for Disease Control, 1995

Gun violence plagues our youth...it is the epidemic of the 1990's...

Gunshot wounds are the *second leading cause of death* for all people aged 10-34.

National Center for Health Statistics, 1993

Firearm homicide is the leading cause of death for black men aged 15-34.

National Center for Health Statistics, 1993

According to a February 1997 report by the Centers for Disease Control, the rate of firearm deaths among children 0 to 14 years old is nearly twelve times higher in the US than in 25 other industrialized countries combined.

Centers for Disease Control, 1997

For every child killed by a gun, four are wounded.

Annest JL, Journal of the American Medical Association, 1995

From 1979 to 1989, the firearm homicide death rate for 15- 19 year olds increased 61 percent while the non-firearm homicide death rate decreased 29 percent.

US Department of Justice, 1995

"The firearm injury epidemic, due largely to handgun injuries, is *ten times larger* than the polio epidemic of the first half of this century."

Christoffel K, *Children's Environments*, 1995

Updated 3/98

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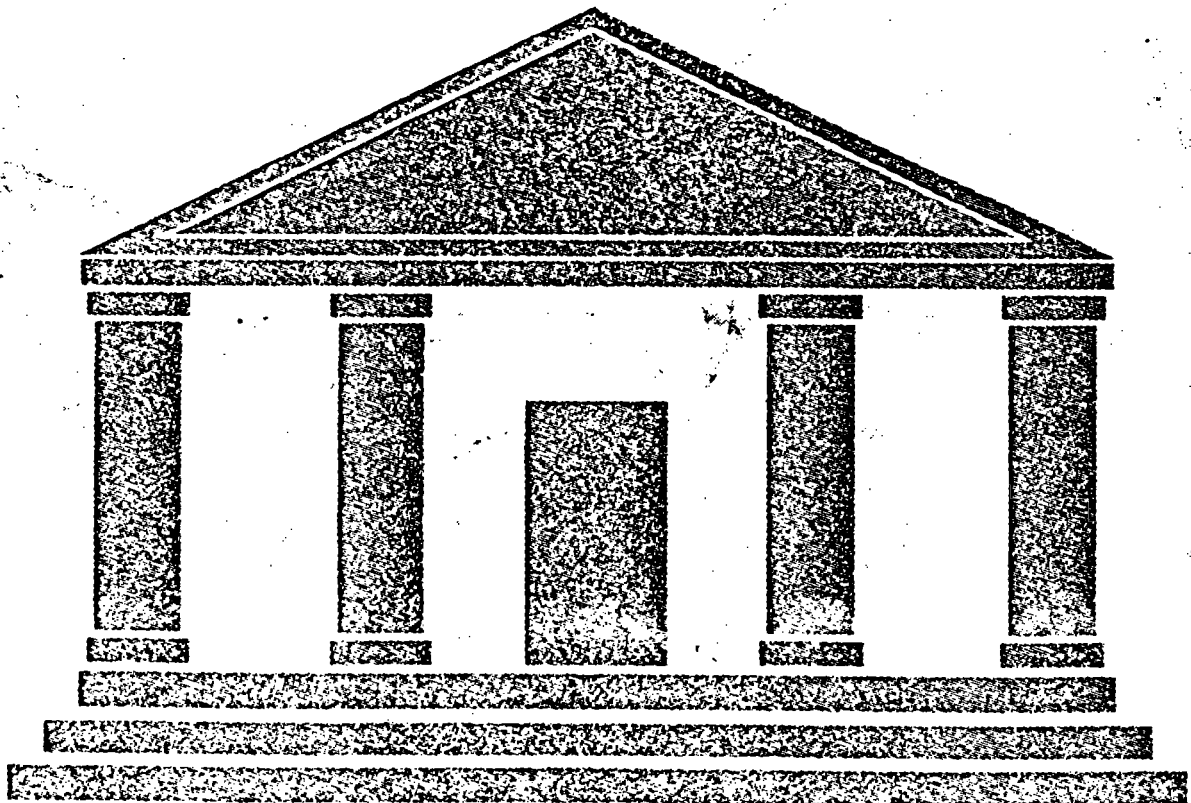
R E V I E W

WINTER 1997

SIN UNDER SIEGE: THE LEGAL ATTACK ON FIREARMS, TOBACCO & GAMBLING

Unsafe by Design: Using Tort Actions
to Reduce Firearm-Related Injuries

Mark D. Polston and Douglas S. Weil



Unsafe By Design: Using Tort Actions To Reduce Firearm-Related Injuries

by

Mark D. Polston and Douglas S. Weil

In April 1995, Griffin and Lynn Dix filed a wrongful death action in Alameda County, California against Beretta U.S.A. Corp., a company that designs and manufactures firearms.¹ The Dixes filed suit after their son, Kenzo, was shot and killed by a fourteen-year-old friend with the friend's father's 9mm Beretta semi-automatic handgun. According to the complaint, the friend took the gun from a camera bag that was sitting by his father's bed, removed its loaded ammunition magazine, and replaced it with an empty one.

Unaware that a single round of ammunition remained in the firing chamber of the gun, the friend aimed the gun at Kenzo and pulled the trigger. Within minutes, Kenzo bled to death on the floor of his friend's bedroom.

In addition to Beretta, the Dixes sued the parents of the youth who shot Kenzo, alleging that they were negligent for storing the gun in a manner that permitted their son to have easy access to it. Under California law, improper storage of a firearm (defined as leaving a gun loaded and easily accessible to a child under the age of fourteen) which results in injury is punishable as a criminal offense.² The gun owners in this case were not criminally liable because their son was fourteen at the

*[B]oth the gun owner
and the manufacturer
have the ability to
prevent injury, and the
imposition of civil
liability would create a
financial incentive
to do so.*

time of the shooting. Nonetheless, the parents of the shooter paid the Dixes \$100,000 to settle the civil lawsuit.

The Dixes allege that the gun that killed their son was defectively designed. They contend that it presented an unacceptable risk of grave danger because foreseeable misusers, such as inquisitive children, would not understand that a bullet might remain in the gun's firing chamber even after the ammunition magazine had been removed. They further claim that gun manufacturers have long had

the ability to make handguns safer by designing them so they can be fired only by an authorized user—in effect, “personalizing” them to the intended user.

Kenzo Dix was one of approximately 1400 people in 1994 who died as a result of an unintentional shooting.³ His death illustrates three characteristics commonly associated with unintentional shootings: (1) Gun owners often leave their weapons loaded and readily accessible to unauthorized users; (2) untrained users cannot always tell whether a gun is loaded; and (3) most handgun designs permit firing by anyone, including children as young as three years old.⁴

This article explores the potential for using the two common law tort claims asserted by the Dixes as a vehicle for reducing the number of firearm injuries and deaths that result from child access to poorly designed

Mark Polston, J.D., is an attorney with the Legal Action Project at the Center to Prevent Handgun Violence. Douglas Weil, Sc.D., is the Director of Research for the Center.

personalized to its owner could not be fired by anyone else, there would be little incentive to steal a weapon.

Personalizing guns would drastically reduce other injuries. Recent increases in the teenage suicide rate have been attributed in part to increased access to firearms. According to the National Center for Health Statistics, firearms took the lives of 5571 children age nineteen or younger in 1993.³⁷ One in four of these deaths were suicides.³⁸ Even if some of these suicide victims were given access to a firearm by a parent, the reduction in suicides generated by personalizing guns still would be substantial.

B. CHANGING BEHAVIOR

There is probably no design solution that would affect the stock of firearms already in private hands. Consequently, if unintentional firearm injuries are to be decreased significantly, the solution also must involve changing owners' behavior.

Apart from human error and procrastination, the decision to store a gun loaded and unlocked is most probably the result of a gun owner's perception of the risks and benefits of keeping a readily available, loaded firearm in the home. There are three principal ways to change the behavior of people who improperly store their guns: (1) Educate gun owners about the risks of unsafe storage; (2) enact laws (such as CAP laws) that make gun owners criminally responsible for unsafe storage; and (3) hold gun owners civilly liable for unintentional shootings resulting from unsafe storage.

An educational campaign should focus on changing people's perceptions of the risks and benefits of their behavior. Media coverage of criminal and civil lawsuits brought against negligent gun owners would also highlight the potential risks of improper storage.

However, neither education nor imposition of criminal liability will eliminate improper storage of firearms or unintentional shootings. CAP laws are underenforced, in part owing to public reservations about prosecuting gun owners, particularly when the victim is the gun owner's child.³⁹ Because the law must be enforced consistently to affect behavior significantly, we should give serious consideration to holding gun owners civilly liable.

Civil lawsuits have significant advantages over CAP law prosecutions. First, CAP laws have limited application due their precise language. For example, many CAP laws apply only if the shooter is under a specified age. The standard for civil liability is more flexible and asks whether the gun owner acted unreasonably under the circumstances. Second, the decision to bring a civil suit does not lie within the discretion of the prosecutor but is vested in a party with a

stronger motive to hold the gun owner responsible. Third, successful owner liability claims will encourage insurance carriers to get involved in efforts to change gun owner behavior, either by charging higher rates to individuals who keep guns in the home but cannot demonstrate that they store their weapons safely, or by educating gun owners about the risks associated with private gun ownership. Such liability would also provide incentives for gun owners to change their behavior by increasing the cost of unsafe storage.

III. TORT LIABILITY AS A MEANS OF REDUCING INJURY

While there are several justifications for imposing a duty upon private parties to pay for the injuries of others, injury prevention is often used to measure the efficacy of tort liability.⁴⁰ Civil liability can prevent injury by elevating the expected cost of the injury above the cost of avoiding the injury, and creating an incentive to prevent the injury.⁴¹

In the case of unintentional firearm-related injuries, as many as four parties potentially could be held responsible for the shooting: the victim, the shooter, the gun owner, and the gun manufacturer. Generally, it is not possible for the victim to avoid injuries. Unless the victim is also the shooter, he or she had no control over the gun. Furthermore, when the victim is the shooter, he or she is often a child.⁴² In these instances, the shooter has a diminished capacity for understanding the dangers of handling a firearm and does not have the ability to avoid the injury. However, both the gun owner and the manufacturer have the ability to prevent the injury, and the imposition of civil liability would create a financial incentive to do so.

A. TORT LIABILITY FOR THE GUN OWNER

The financial cost to the gun owner of storing a firearm so that it is inaccessible to unauthorized users is minimal. Simple systems, such as trigger locks or even locking the gun in a closet, are inexpensive. More sophisticated systems, such as after-market gun safes, are priced at only a fraction of the expected value of a wrongful death or personal injury claim. Tort liability would give the gun owner a clear financial incentive to store his or her firearm safely and, therefore, could be expected to reduce unintentional shootings.

Critics may charge that tort liability will have little effect on safety because it is difficult to encourage gun owners to keep their firearms unloaded and locked. In fact, they would argue, gun owners already face what should be a sufficient incentive—the fear of losing a child. Liability, this criticism concludes, would be superfluous.

This argument presumes that those gun owners who do not store their guns safely have made an accurate assessment of the risk that their firearms will be used in an unintentional shooting. In fact, this scenario is not likely to be the case. While a loaded and unlocked firearm certainly presents an unacceptable risk to family members, an unintentional shooting is still a relatively unlikely event, and, as a general matter, it is difficult for individuals to assess low probability risks. In a similar vein, people should be motivated to refrain from drinking and driving simply out of concern for their own safety or the safety of their passengers, but people are often too confident and fail to accurately assess the dangers of drunk driving.

Liability can help compensate for this problem. It presents an additional cost for unsafe storage which may motivate an owner to take proper precautions, even though he or she perceives the risk of a shooting to be low. Similarly, stiff criminal penalties for drunk driving discourage irresponsible behavior by drastically raising the costs of failing to assess the risk. One can only guess at the number of lives saved because someone who wrongly thought he or she was sober enough to drive took a taxi for fear of criminal punishment.

Liability can encourage gun owners to reassess this risk for yet another reason. A common law doctrine of gun owner liability would provide judicial confirmation that unintentional shootings are a foreseeable result of unsafe gun storage. The weight of this authority may encourage owners who have given little thought to this possibility to reconsider the consequences of their behavior.

Liability would motivate those gun owners who continue to store guns unsafely even though they have accurately assessed the risk of a shooting. Because they consider the actual probability to be worth the risk, the only way to change their behavior is to raise the potential losses they would incur in the case of a shooting. Tort liability, as well as criminal prosecution under CAP laws, does exactly that. Moreover, there is more than a theoretical reason to believe that raising the stakes of unsafe storage will work. Research shows that gun owners with children in the home—the gun owners who have more to lose—are more likely to store their weapons unloaded and locked than other gun owners.⁴³

Finally, perhaps the strongest argument in favor of gun owner liability goes beyond financial incentives. Lawsuits can educate gun owners about the risks of unsafe storage in unique ways that may be more effective than publicizing the statistical link between unsafe storage and unintentional shootings. Each lawsuit has an identifiable victim, often a child, who communicates the tragedy of unintentional shootings in a way that

statistical correlations cannot. Gun owners with children will not only feel sympathy for the victim but they will also identify with the gun owner defendant who, like themselves, must have believed that the loaded and unlocked firearm would not be used in an unintentional shooting. Moreover, even if the gun owner dismissed the possibility of a lawsuit as remote, seeing a similarly-situated gun owner held responsible may make the owner understand that a lawsuit is a concrete reality.

B. TORT LIABILITY FOR GUN MANUFACTURERS

Gun manufacturers also have the opportunity to minimize the risk that a gun will be used in an unintentional shooting. They could prevent many such shootings by designing guns that can only be fired by an authorized user, virtually eliminating the chance that unauthorized children and adolescents could use the firearm to shoot others. Technology which would personalize a gun to the authorized owner is available. In 1994, Sandia Laboratories of New Mexico received a grant from the National Institute of Justice to review fourteen developing technologies to determine if any could be used to develop a workable personalized gun for law enforcement officers.⁴⁴ Radio frequency tags, the highest-rated technology, could be used to design a gun that would fire only if the user were wearing a tag emitting a radio frequency recognized by a tag implanted in the firearm.

This technology is both readily available and inexpensive. It is widely used in shoplifting detection systems in department stores, inventory control systems in large businesses, and automated toll booths. One leading gun manufacturer, Colt's Manufacturing Company, has recently announced that it has designed a prototype using this technology and intends to produce the weapon for law enforcement use.⁴⁵

Personalizing guns would be inexpensive compared to the costs of liability that non-personalized guns can impose on a gun manufacturer. Damages in wrongful death and personal injury cases can be very high, as can the costs of litigation. Therefore, given the large number of unintentional shootings by children and the potential lawsuits they would spawn, holding gun manufacturers liable for these shootings would provide an incentive for manufacturers to prevent these injuries.

Holding gun manufacturers liable for damages may produce other, less obvious, incentives to create safer designs. Each lawsuit would emphasize the association between gun design and unintentional shootings as well as the industry's knowledge of this association. It would publicize the technology currently available to minimize the risk of unintentional shootings and the industry's unwillingness to use that technology despite its capacity

to do so. This increased awareness could, in turn, stimulate consumer concern about gun safety and focus government attention on the safety of current gun designs. Manufacturers would, therefore, have an incentive to change that design to win back consumer confidence and to forestall more extensive governmental action forcing manufacturers to make safer guns.

Many still debate whether the tort system is an effective means for achieving safety innovations such as personalized guns. At least one researcher, discussing innovation in the motor vehicle industry, has concluded that the "indirect effect of liability on consumer demand—operating through adverse publicity about a product's safety and a manufacturer's reputation—is often the most significant contribution of liability to safety."⁴⁶ Others, however, argue that: (1) the financial incentive generated by civil liability is too weak to encourage manufacturers in some industries (e.g., the automotive industry) to innovate,⁴⁷ and (2) the risk of large jury awards associated with putting a new product on the market actually discourages manufacturers (e.g., pharmaceutical companies) from developing products with potential public health benefits.⁴⁸

Such criticisms, however, are not easily directed at the firearms industry. First, the industry has shown little willingness to innovate for public safety, and, in fact, it aims to develop products that are less safe, less functional for legitimate use, and more lethal. The industry has not only failed to personalize guns (or even to incorporate a child-proof safety), it has marketed military-style, semi-automatic assault weapons and pistols that accept high-capacity ammunition magazines (all banned recently by Congress), as well as easily-concealable 9mm handguns and handguns with no external safeties (banned from importation into the United States).⁴⁹ From the perspective of public health, it would be difficult to make the design of guns less safe, and liability would only encourage gun manufactures to design safer products.

Second, unlike industries dominated by a small number of large companies, the firearms industry includes many small companies whose viability could be threatened by large damage awards. Thus, liability for failing to produce personalized guns should create a strong incentive for these companies to make safety innovations.

Moreover, criticism of the tort system based solely on the belief that it cannot create a financial incentive large enough to sway manufacturers is unconvincing because it ignores the indirect costs to the industry of civil liability. As discussed above, each suit has the potential to focus public attention upon the risks associated with ownership of non-personalized guns and the industry's failure to redesign guns to reduce these

risks.⁵⁰ These forces, in turn, could cause a decline in customers and good will and could lead to government regulation, thereby increasing costs to the industry far beyond those associated with periodic lawsuits.

C. BENEFITS OF THE DUAL APPROACH

Tort liability against gun owners and gun manufacturers creates a simple economic incentive to design and store firearms safely in order to avoid the potentially high costs of personal injury and wrongful death lawsuits. This incentive will, in turn, lead to a reduction in firearm-related injuries. Owner liability lawsuits decrease the tendency of gun owners to underestimate the risks of unintentional shootings by raising the stakes of unsafe storage. Manufacturer liability lawsuits will result in gun designs which minimize the chance that the gun will be used in an unintentional shooting. Moreover, the case for manufacturer liability becomes more compelling when costs outside the immediate lawsuit are considered. Manufacturer lawsuits will focus public attention on the role that firearm design plays in unintentional shootings. This focus will likely initiate or accelerate consumer demand and government regulation, which will give the gun industry additional incentive to redesign guns.

IV. THE BLUEPRINT FOR GUN OWNER AND GUN MANUFACTURER LIABILITY LAWSUITS

A. GUN OWNER LIABILITY

While J. Warren Cassidy was the Executive Vice-President of the National Rifle Association (NRA), he described most gun owners as "safe, sane and courteous in their use of guns."⁵¹ Research has shown, however, that a significant proportion of gun owners disregard even the NRA's advice that guns be stored unloaded and "not accessible to untrained or unauthorized persons."⁵² As discussed above, this behavior is strongly associated with unintentional firearm-related injuries.

An optimal rule of civil liability would encourage gun owners to lock up their firearms and store them unloaded and apart from ammunition. Courts can create this incentive by shifting the costs of unintentional shootings to gun owners when the firearm used was not safely stored. In the parlance of tort law, courts could impose a duty on gun owners to store their firearms unloaded and locked. In fact, courts in several jurisdictions already recognize such a duty.⁵³ Failure to store a gun to prevent child access would be regarded as a negligent breach of this duty, and any shooting by a child would be considered a foreseeable consequence of

unsafe storage. The victims of the shooting could recover damages from the gun owner.

Imposing this obligation on gun owners fits squarely with the traditional tort principle that an actor can be liable for the negligence of a third party if the actor should have anticipated that his or her conduct would contribute to the third party's negligence.⁵⁴ Section 308 of the Restatement (Second) of Torts endorses a general duty for anyone who controls a dangerous instrument (such as a firearm) to refrain from entrusting it to any person the controller has reason to know is likely to use it to harm himself or others.⁵⁵ Known as negligent entrustment, this doctrine finds its "most frequent application where the third person is a member of a class which is notoriously likely to misuse the thing which the actor permits him to use."⁵⁶ Children are generally incapable of prudently handling firearms. Accordingly, the Restatement's authors cite as an example a case in which a loaded firearm is left accessible to a child.⁵⁷ Several courts have relied upon § 308 in finding that gun owners breach a duty of care by leaving their firearms accessible to children and others who are likely to do harm with them.⁵⁸

Owner liability lawsuits will have the maximum impact on the unintentional shooting injury rate when gun owners perceive that there is a significant risk that their unsafe storage practices will lead to a lawsuit. Gun owners, therefore, first must be made aware that they are under a legal obligation to store firearms safely and that any breach of this duty can result in a monetary judgment against them. Therefore, just as CAP laws must be enforced to have an impact, a critical mass of owner liability lawsuits must be brought in order to publicize the consequences of unsafe gun storage practices.

Two potential untoward effects of gun owner liability might be suggested. First, one might claim that liability will chill responsible gun-owning behavior by discouraging ownership of guns by individuals who would store them safely. This effect is not likely; even if it were, it does not require gun owner immunity from liability. Under the gun owner liability rule proposed above, liability attaches only when the gun owner stored the gun unsafely. Any gun owner who has safely stored a firearm used in a shooting would not be liable and therefore has no incentive to avoid gun ownership altogether. Any belief that ownership must be avoided to escape liability would be the product of confusion on the gun owner's part. Thus, it would be more appropriate to develop methods to resolve such confusion rather than to eradicate the owner liability rule.

Similarly, others might argue that owner liability suits will result in less safety because they avoid the wrong risk. While a gun should be kept away from

children, a person must have the flexibility to store a gun as he or she sees fit in order to be protected from crime. As one NRA spokesperson said, "[w]e believe very strongly that people must store and care for firearms safely, but we feel people must decide what method of storage is best for them."⁵⁹ As a general matter, however, this principle misstates where the true risks to personal safety lie. A gun which is stored unlocked, loaded and accessible to children increases rather than diminishes the risk of a serious injury to the gun owner and his or her family and friends. A firearm in the home is forty-three times more likely to injure a member of the household (whether a homicide, suicide, or unintentional shooting) than to injure an intruder.⁶⁰

B. GUN MANUFACTURER LIABILITY

Empirical research reveals that almost one-third of unintentional shootings occur when a child discovers and fires a loaded gun or when someone discharges a gun believing it was not loaded.⁶¹ Product liability law supports a claim that guns which are not personalized are defective in design and that gun manufacturers are strictly liable for their use in unintentional shootings. While the specifics of the doctrine vary, virtually every jurisdiction recognizes that a product may be defective if its design presents an inherent risk of serious injury and existing technology can be used to produce a safer design without undue costs or interference in the performance of the product.⁶² In many jurisdictions, it is irrelevant whether the safer alternative design has been incorporated into a product currently on the market.⁶³ Manufacturers have a responsibility to pursue available technology to make their products safer or face liability.⁶⁴

Some jurisdictions are particularly favorable forums for such claims. In California, for example, a product design is defective if it presents "excessive preventable danger" to the consumer—that is, if "the risk of danger inherent in the challenged design outweighs the benefits of such design."⁶⁵ In balancing the risks and benefits of a design, several factors are considered, including the severity of injury associated with the design, the likelihood that injury will occur, the mechanical feasibility of a safer alternative design, the financial costs of this new design, and the adverse consequences to the product and consumer raised by the new design.⁶⁶ No one factor is conclusive, and the weight given each depends upon the consequences brought into play by the other factors. One California court summed up the state's product liability doctrine in the following way:

[A]ny product so designed that it causes injury when used or misused in a foreseeable fashion is defective if the design feature which caused

the injury created a danger which was readily preventable through the employment of existing technology at a cost consonant with the economical use of the product.⁶⁷

On balance, these factors suggest that a gun capable of being fired by unauthorized users represents excessive preventable danger. The severity and frequency of injury from this design is incontestable: Children, adolescents, and other unauthorized individuals use non-personalized guns to kill and injure thousands of people each year. The technology used to make a variety of affordable personalized gun designs has been available for quite some time. For example, one personalized gun has been made by installing a push-button combination lock in the grip of a handgun. This design prevents anyone who does not know the combination from firing the gun.⁶⁸ The cost is as affordable as any other locking system, and, because virtually no time is required to activate the handgun, the design does not inhibit the performance of the firearm.⁶⁹ An authorized user can fire the handgun in a matter of seconds.

In addition, the Smart Gun Technology Report, authored by Sandia Laboratory of New Mexico, concludes that more sophisticated (but still affordable) technology to personalize guns is also widely available. As mentioned above, Sandia concluded that, in terms of cost and reliability, the most promising design involves tags in the handgun and on the shooter that recognize each others' radio-frequency.⁷⁰ This same technology has been used in shoplifting detection scanners in department stores for over a decade.

Product liability law in California requires gun manufacturers to take the initiative in making firearms safer. Other jurisdictions, however, adhere to rules which may limit a gun manufacturer's liability. For example, some jurisdictions provide that a manufacturer is liable only for injuries caused when the product is used as intended, not for injuries which result from misuse by unintended users. This doctrine could shield manufacturers from the costs associated with an unintentional injury in which a child was the shooter.⁷¹ In other jurisdictions, "defective product" is narrowly defined as a product which does not meet the safety expectations of the ordinary consumer.⁷² This definition might be fatal to a personalized gun claim because no one currently expects guns to be protected from unauthorized use.

Other courts excuse manufacturers from liability if the victim or a third party contributed to the injury in some way. The "open and obvious danger" rule, for example, absolves manufacturers for injuries arising from obvious dangers in their products.⁷³ At least one court

has absolved a gun manufacturer from liability for an unintentional shooting on the theory that the risks of firearms are known to an expected user.⁷⁴ Where unintentional shootings are, in part, caused by a gun owner's failure to store a firearm safely, a court could turn to comparative fault principles to limit a gun manufacturer's liability.⁷⁵

If society's goal is to reduce the rate of unintentional shooting injuries, these limitations on manufacturer liability make no sense. They place all of the responsibility to avoid the injury on parties with no opportunity to do so (e.g., victims and unintentional shooters) and on less regulable parties (e.g., gun owners). While placing responsibility on the gun owner is appropriate, any doctrine which shields the manufacturer eliminates the incentive to prevent future injury by the party in the best position to do so. If that party can eliminate the danger, a rule of liability should require it regardless of whether the danger is obvious to others.

Thus, the ruling in a recent case in New Jersey is more likely to promote a reduction in firearm-related injuries. In *Hurst v. Glock, Inc.*,⁷⁶ an appellate court held that, even though guns present "obvious" dangers, a gun that was used in an unintentional shooting could be a defective product because it did not have a device that prevents discharge when the ammunition magazine is removed (causing the inexperienced shooter to believe the gun was unloaded). Central to the court's reasoning was the fact that the manufacturer had the opportunity to eliminate the danger, because the safety device could have been added without diminishing the gun's usefulness.

Gun manufacturers are aware that unintended misusers like children will gain access to their products, in part because some gun owners store their guns unsafely despite the obvious danger. Applying doctrines which preclude gun manufacturer liability claims not only disregards this fact but also abandons the most effective long-term approach to ending unintentional shooting injuries: changing the design of the product that causes the injuries.⁷⁷

V. CONCLUSION

Forty-one percent of all homes in the United States contain a firearm, and many of these homes have children in them.⁷⁸ There is no doubt that, in many of these homes, the firearms are stored loaded and unlocked. Meanwhile, each of these firearms, as currently designed, can be fired by virtually anyone who gains access to them—whether a three-year-old child or an unauthorized adolescent. As a result, children frequently use firearms to shoot and injure themselves and others.

Common law tort principles can help to reduce the number of firearm injuries and deaths caused by children who have access to poorly designed and improperly stored handguns. Imposing tort liability on gun owners who fail to store safely and manufacturers who refuse to redesign guns will impose additional costs and an incentive to prevent these injuries in the future. Not only is it appropriate to send manufacturers and owners this signal, it is necessary if we are to see a lasting reduction in unintentional shooting injuries. Both parties must face this incentive, as liability against gun manufacturers alone would do little to prevent unintentional shootings by guns already in circulation. As for guns that have not yet been manufactured, the most effective way to ensure that they will not be used in unintentional shootings is to redesign them so they cannot be fired by unauthorized shooters.

Finally, gun manufacturer liability will have additional benefits beyond preventing shootings by unauthorized child shooters. If manufacturers design firearms that cannot be fired by unauthorized shooters, that change will reduce the number of unintentional shootings by adult shooters and the number of suicides committed with firearms. It will also discourage the theft of firearms, a major source of guns used in crime.

NOTES

¹ Griffin and Lynn Dix are represented by the Legal Action Project of the Center to Prevent Handgun Violence.

² CAL. PENAL CODE §12035 (West 1991).

³ See Gopal Singh et al., *Advance Report of Final Mortality Statistics, 1994*, 45 MONTHLY VITAL STAT. REP. 1, 55 (1996) (report issued by Division of Vital Statistics based on data from the National Center for Health Statistics).

⁴ See Sara M. Naureckas et al., *Children's and Women's Ability to Fire Handguns*, 149 ARCHIVES PEDIATRICS & ADOLESCENT MED. 1318, 1319 (1995).

⁵ See *Guns for Sale in U.S.*, A.T.F. FACTS, (Bureau of Alcohol, Tobacco & Firearms, U.S. Dep't of Treasury), Nov. 1994, at A3.

⁶ See Robert J. Blendon et al., *The American Public and the Gun Control Debate*, 275 JAMA 1719, 1719 tbl. 1 (1996).

⁷ See Singh et al., *supra* note 3, at 55.

⁸ See Joseph L. Annett et al., *National Estimates of Nonfatal Firearm-Related Injuries: Beyond the Tip of the Iceberg*, 273 JAMA 1749, 1751 (1995).

⁹ See *id.*

¹⁰ See *id.*

¹¹ See Marilyn Heins et al., *Gunshot Wounds in Children*, 64 AM. J. PUB. HEALTH 326, 330 (1974); Gary J. Ordog et al., *Gunshot Wounds in Children Under 10 Years of Age: A New Epidemic*, 142 AM. J. DISEASES OF CHILDREN 618, 621 (1988); Garen Wintemute et al., *When Children Shoot Children: 88 Unintended Deaths in California*, 257 JAMA 3107, 3109 (1987).

¹² SPORTING ARMS & AMMUNITION MFR.'S ASS'N, FIREARMS SAFETY DEPENDS ON YOU (1987).

¹³ AMERICAN ACADEMY OF PEDIATRICS & THE AM. PSYCHOLOGICAL ASS'N, RAISING CHILDREN TO RESIST VIOLENCE: WHAT YOU CAN DO (1995).

¹⁴ See Douglas Weil & David Hemenway, *Loaded Guns in the Home: Analysis of a National Random Survey of Gun Owners*, 267 JAMA 3033, 3035 (1992).

¹⁵ See *id.* at 3036.

¹⁶ See David Hemenway et al., *Firearm Training and Storage*, 273 JAMA 46, 47 (1995).

¹⁷ See Yvonne D. Senturia et al., *Gun Storage Patterns in US Homes with Children*, 150 ARCHIVES PEDIATRICS & ADOLESCENT MED. 265, 265 (1996).

¹⁸ Arthur L. Kellermann & Donald T. Reay, *Protection or Peril? An Analysis of Firearm-Related Deaths in the Home*, 314 NEW ENG. J. MED. 1557, 1557 (1986).

¹⁹ *Id.* at 1559 (citation omitted).

²⁰ See Weil & Hemenway, *supra* note 14, at 3035.

²¹ See Arthur Kellermann et al., *Weapon Involvement in Home Invasion Crimes*, 273 JAMA 1759, 1761 (1995).

²² See Kellermann & Reay, *supra* note 18, at 1557.

²³ Petition of the Center to Prevent Handgun Violence, American Academy of Pediatrics, American Public Health Association, American Association of Suicidology, American Academy of Child & Adolescent Psychiatry, and National Association of Children's Hospitals & Related Institutions, to the Federal Trade Commission at 4, Feb. 14, 1996.

²⁴ See GENERAL ACCOUNTING OFFICE, ACCIDENTAL SHOOTINGS: MANY DEATHS AND INJURIES CAUSED BY FIREARMS COULD BE PREVENTED, GAO/PEMD-91-9, at 2 (1991).

²⁵ See *id.* at 2-3.

²⁶ See GENERAL ACCOUNTING OFFICE, *supra* note 24, at 24. Research based on data collected from a sample population is subject to error because results may differ from that which would be obtained if the whole population were included in the study. According to the GAO study, while the best estimate of unintentional deaths that would have been avoided by a safer design is 458, the margin of error is plus or minus 89. See *id.*

²⁷ This figure is derived by applying the GAO estimate of avoidable incidents (31%) to the CDC estimate of non-fatal, unintentional, firearm-related injuries (20,000), taking into account the sampling error associated with the GAO estimate.

²⁸ See generally J.D. GRAHAM, PREVENTING AUTOMOBILE INJURY: NEW FINDINGS FROM EVALUATION RESEARCH (1988).

²⁹ See *id.* at 264.

³⁰ Douglas Hemenway & David Weil, *Phasers on Stun: The Case for Less Lethal Weapons*, 9 J. POL'Y ANALYSIS & MGMT. 94, 94 (1990).

³¹ With this risk in mind, the U.S. Department of Health and Human Services has established a goal of a 20% reduction in the "proportion of people who possess weapons that are inappropriately stored and therefore dangerously available." U.S. PUB. HEALTH SERV., HEALTHY PEOPLE 2000: NATIONAL HEALTH PROMOTION AND DISEASE PREVENTION OBJECTIVES, Objective 7.11 (1991).

³² CAL. PENAL CODE § 12035 (West 1991); CONN. GEN. STAT. ANN. § 29-371 (West 1990); DEL. CODE ANN. tit. 11, § 1456 (1994); FLA. STAT. ch. 784.05 & 790.174 (1989); HAW. REV. STAT. § 134-10.5 (1992); IOWA CODE ANN. § 724.22 (West 1978); MD. ANN. CODE art. 27, § 36K (1992); MINN. STAT. ANN. § 609.666 (West 1992); NEV. REV. STAT. ANN. § 41.472 (Michie 1995); N.J. REV. STAT. § 2C:58-15 (1991); N.C. GEN. STAT. § 14-315.1 (1993); R.I. GEN. LAWS § 11-47-60.1 (1995); TEX. PENAL CODE ANN. § 46.13 (West 1995); VA. CODE ANN. § 18.2-56.2 (Michie 1992); WIS. STAT. ANN. § 948.55 (West 1991).

³³ 15 U.S.C. § 2052(a)(1)(E) (1994) (defining consumer product to exclude all firearms).

³⁴ MARIANNE W. ZAWITZ, BUREAU OF JUSTICE STATISTICS, DEPT. OF JUSTICE, GUNS USED IN CRIME, NCJ-148201, at 3 (1995).

³⁵ See *id.*

³⁶ See *id.*; ALLEN BECK ET AL., BUREAU OF JUSTICE STATISTICS, DEPT. OF JUSTICE, SURVEY OF STATE PRISON INMATES, 1991, NCJ-136949 (1993).

³⁷ See Children's Defense Fund, *Gun Violence: Toll on U.S. Children Keeps Mounting*, 17 CHILDREN'S DEF. FUND REP. 5 (1996) (utilizing data acquired from the National Center for Health Statistics).

³⁸ See *id.* at 6.

³⁹ See *Don't Punish Parents for Kids' Gun Tragedies*, USA TODAY, June 5, 1992, at A10.

⁴⁰ See generally George L. Priest, *Products Liability and the Accident Rate*, in LIABILITY: PERSPECTIVES AND POLICY 184 (Robert Litan & Clifford Winston eds., 1988).

⁴¹ See *id.* at 196.

⁴² See GENERAL ACCOUNTING OFFICE, *supra* note 24, at 20.

⁴³ See Weil & Hemenway, *supra* note 14, at 3035.

⁴⁴ See J. Taylor Buckley, "Smart Guns": A Safe Alternative?, USA TODAY, Sept. 18, 1996, at 5B.

⁴⁵ See *id.*

⁴⁶ John D. Graham, *Product Liability and Motor Vehicle Safety*, in THE LIABILITY MAZE: THE IMPACT OF LIABILITY LAW ON SAFETY AND INNOVATION 120, 181-182 (Peter W. Huber & Robert E. Litan eds., 1991).

⁴⁷ See *id.* at 125-26.

⁴⁸ See Louis Lasagna, *The Chilling Effect of Product Liability on New Drug Development*, in THE LIABILITY MAZE: THE IMPACT OF LIABILITY LAW ON SAFETY AND INNOVATION 334, 334-59 (Peter W. Huber & Robert E. Litan eds., 1991).

⁴⁹ In fact, lawsuits should be brought to discourage the development and sale of firearms that are so lethal that they have no legitimate uses (even for self-defense). Such weapons are particularly attractive to criminals. This argument has been presented in support of negligence lawsuits against military-style assault weapon manufacturers. Recently, for example, a California trial judge ruled that the families of the victims in the 101 California Street massacre could sue the company that made the automatic weapons used by the murderer. See Harriet Chang, *Massacre Victims Can Sue Gun Company; Landmark Ruling Could Set Precedent*, SAN DIEGO UNION-TRIBUNE, Apr. 11, 1995 at A3; Karyn Hunt, *Weapons Maker Can Be Sued in '93 Massacre, Judge Rules*, L.A. DAILY NEWS, Apr. 11, 1995, at N5.

⁵⁰ See Graham, *supra* note 46, at 184.

⁵¹ J. Warren Cassidy, *The Case For Firearms . . . The N.R.A.'s Executive Vice President Says Guns Will Keep American Free*, TIME, Jan. 29, 1990, at 16.

⁵² NATIONAL RIFLE ASS'N, HOME FIREARM SAFETY COURSE: COURSE OUTLINE AND LESSON PLANS (1st ed. 1990).

⁵³ See *Reida v. Lund*, 18 Cal. App. 3d 698 (1971) (imposing liability even though rifle locked away, since son was aware of location of key); *Seabrook v. Taylor*, 199 So. 2d 315 (Fla. 1967) (finding defendant negligent for keeping a loaded .22 caliber pistol, which was used by 14 year old child in an intentional shooting, in the closet of bedroom); *Jacobs v. Tyson*, 407 S.E.2d 62 (Ga. Ct. App. 1991); *Wroth v. McKinney*, 373 P.2d 216 (Kan. 1962); *Spivey v. Sheeler*, 514 S.W.2d 667 (Ky.

1974) (finding liability since loaded guns kept in glass-front case with key left on top); *Cathey v. Bernard*, 467 So. 2d 9 (La. Ct. App. 1985) (holding owner liable for loaded pistol kept on high shelf in closet); *Taylor v. Webster*, 231 N.E.2d 870 (Ohio 1967); *Thomas v. Inman*, 578 P.2d 399 (Or. 1978) (holding owner liable for loaded shotgun kept under bed); *Kuhns v. Brugger*, 135 A.2d 395 (Pa. 1957) (holding grandfather liable for injuries inflicted by grandchild with a loaded gun found in an unlocked dresser drawer); *Stanley v. Joslin*, 757 S.W.2d 328 (Tenn. Ct. App. 1987) (finding owner negligent since rifles stored unlocked and near ammunition).

⁵⁴ See W. PAGE KEETON, ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 44 (5th ed. 1984); 5 SPEISER, KRAUSE, & GANS, *THE AMERICAN LAW OF TORTS* § 18:38 (1988).

⁵⁵ RESTATEMENT (SECOND) OF TORTS § 308 (1966) ("It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.").

⁵⁶ *Id.* at cmt. (b).

⁵⁷ See *id.*

⁵⁸ See, e.g., *Butcher v. Cordova*, 728 P.2d 388, 390 (Colo. Ct. App. 1986); *Foster v. Arthur*, 519 So.2d 1092, 1094 (Fla. Dist. Ct. App. 1988); *Wroth v. McKinney*, 373 P.2d 216, 219 (Kan. 1962); *Stoelting v. Hauck*, 159 A.2d 385, 389 (N.J. 1960); *Kuhns v. Brugger*, 135 A.2d 395, 404-05 (Pa. 1957); *Mendola v. Sambol*, 71 A.2d 827, 828-29 (Pa. Super. Ct. 1950); see also *Splawnik v. DiCaprio*, 540 N.Y.S.2d 615, 617 (N.Y. App. Div. 1989) (citing RESTATEMENT (SECOND) OF TORTS § 390 (1966)).

⁵⁹ Tom Beyerlein, *Death of Teen Stirs Gun Debate: Bereaved Parents Favor Access Law*, DAYTON DAILY NEWS, Apr. 8, 1995, at 1B.

⁶⁰ See *Kellerman & Reay*, *supra* note 18, at 1559.

⁶¹ See GENERAL ACCOUNTING OFFICE, *supra* note 24, at 2.

⁶² See, e.g., *Norton v. Snapper Power Equip. Div. of Fuqua*, 806 F.2d 1545 (11th Cir. 1987), *aff'd without op.*, 862 F.2d 878 (1988) (applying Florida law); *Davis v. Fox River Tractor Co.*, 518 F.2d 481 (10th Cir. 1975) (applying Oklahoma law); *Rhoads v. Service. Mach. Co.*, 329 F. Supp. 367 (E.D. Ark. 1971) (applying Arkansas law); *Dorsey v. Yoder Co.*, 331 F. Supp. 753 (E.D. Pa. 1971), *aff'd without op.*, 474 F.2d 1339 (1973) (applying Pennsylvania law); *Titus v. Bethlehem Steel Corp.*, 91 Cal. App. 3d 372, 381 (1979) ("A product may be found defective if it does not include a safety device necessary for its reasonable safety."); *Buccery v. General Motors Corp.*, 60 Cal. App. 3d 533 (1976); *Banks v. ICI Americas, Inc.*, 450 S.E.2d 671, 674-75 (Ga. 1994), *remanded*, 460 S.E.2d 797, *rev'd*, 469 S.E.2d 171 (1996); *Uloth v. City Tank Corp.*, 384 N.E.2d 1188 (Mass. 1978); *Rix v. General Motors Corp.*, 723

P.2d 195 (Mont. 1986); *O'Brien v. Muskin Corp.*, 463 A.2d 298, 305 (N.J. 1983); *DiFrancesco v. Excam, Inc.*, 642 A.2d 529 (Pa. Super. Ct. 1994); see also KEETON ET AL., *supra* note 54, at § 69.

⁶³ See, e.g., *Elliott v. Brunswick Corp.*, 903 F.2d 1505, 1508 (11th Cir. 1990) (applying Alabama law); *Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757, 803-804 (1981); *Titus*, 91 Cal. App. 3d 372 (custom and usage not a defense to a cause of action based on strict liability); *Banks*, 450 S.E.2d at 675 ("manufacturer's proof of compliance with industry-wide practices, state of the art, or federal regulations does not eliminate conclusively its liability"); *Rix*, 723 P.2d at 202; *O'Brien v. Muskin Corp.*, 463 A.2d 298, 305 (N.J. 1983). But see *Allen v. Minnstar*, 8 F.3d 1470 (10th Cir. 1993) (under Utah law, plaintiff had burden to show an alternative, safer boat propeller was available in the market).

⁶⁴ Since the American Law Institute's adoption of RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY (Tentative Draft No. 2, 1994), there has been a rebirth of interest in the definition of design defect. The new Restatement proposes that a design defect exists "when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design . . . and the omission of the alternative design renders the product not reasonably safe." § 2. This definition, which is supposedly a restatement of existing law, eliminates strict liability for products which cannot be made safer—that is, for which there is no reasonable alternative design.

The new Restatement's definition does not alter our conclusion that, under existing law, a firearm which can be fired by an unauthorized user is defective in design. We contend, in fact, that a feasible alternative design does exist—the personalized gun.

⁶⁵ *Barker v. Lull*, 573 P.2d 443, 454 (Cal. 1978).

⁶⁶ See *id.* at 455.

⁶⁷ *Buccery v. General Motors Corp.*, 60 Cal. App. 3d 533, 547 (1976).

⁶⁸ Telephone Interview with Frank Brooks, inventor of the push-button combination lock (1995).

⁶⁹ *Id.*

⁷⁰ See *Buckley*, *supra* note 44.

⁷¹ See *Griffs v. BIC Corp.*, 981 F.2d 1429, 1433 (3rd Cir. 1992).

⁷² See, e.g., *Kirkland v. General Motors Corp.*, 521 P.2d 1353, 1362-63 (Okla. 1974) (holding that a product must "be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics") (citing RESTATEMENT (SECOND) OF TORTS §

402A cmt. g).

⁷³ See, e.g., *Kirk v. Haines Corp.*, 16 F.3d 705, 710-711 (6th Cir. 1994) (cigarette lighter which was not child-proof was not defective under Michigan law because danger of fire was obvious); *Elliott v. Brunswick Corp.*, 903 F.2d 1505, 1507 (11th Cir. 1990) (unguarded boat propeller not defective under Alabama law because danger of rotating blades is apparent).

⁷⁴ See *Raines v. Colt Indust.*, 757 F. Supp. 819, 825 (E.D. Mich. 1991).

⁷⁵ See generally KEETON ET AL., *supra* note 54, at § 102 (discussing application of comparative fault principles to strict product liability claims).

⁷⁶ 684 A.2d 970 (N.J. Super. Ct. App. Div. 1996).

⁷⁷ Several courts have rejected these doctrines because they remove any incentive to avoid the injury from the party in the best position to do so, the product manufacturer. See, e.g., *Luque v. McLean*, 8 Cal. 3d 136, 145 (1972) (the open and obvious danger doctrine would "immunize from strict liability manufacturers who callously ignore patent dangers in their products").

⁷⁸ See *Blendon et al.*, *supra* note 6, at 1719 tbl. 1.

The Atlanta Constitu

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WEATHER

Mostly cloudy.
High 61, low 46.
CB

What's hot in the
'90s? The Earth

LIVING, B1



Smokey Robinson's
'miracle' achievement

LIVING, B3



Mark Bradley:
Vikings can be beat

SPORTS, D1

Editorials

Gun suits worth a shot

When Mayor Bill Campbell announced last week that Atlanta would join a growing list of cities suing gun manufacturers, he likened the effort to lawsuits against the tobacco industry. The comparison is apt in several ways.

For example, legal experts give the gun litigation about as much chance of succeeding as they initially gave the suits against cigarette makers, which means no chance at all. However, as in the tobacco suits, winning may not be a matter of prevailing in courtrooms. Thanks to the threat of suits, the tobacco industry agreed to a national settlement calling for unprecedented financial accountability and control of its marketing practices. A similar outcome is possible in firearm litigation.

A suit filed on behalf of gun victims in New York, for example, is trying to breach the wall that gun manufacturers erect between themselves and criminals. The plaintiffs have introduced evidence that, because of New York's strict gun-control laws, the vast majority of weapons used in crimes in that city are purchased elsewhere and shipped to New York for resale.

The suit charges that gun makers distribute their products in states with lax laws, such as Georgia, knowing full well that the guns will wind up flooding the streets of cities trying to

Critics didn't give suits against the tobacco industry much of a chance at first either, but the cases have several points in common.

control gun sales and violence.

Other cities are suing to hold guns to the same safety standards to which other products are held. Congress unwisely gave guns a pass by exempting firearms — and tobacco, too, by the way — from the jurisdiction of the Consumer Product Safety Commission. Every other manufacturer has that watchdog agency making sure its product is as safe as possible.

Other manufacturers are also vulnerable to legal action if they do not take proper care to ensure that their products do not harm consumers. Fast-food outlets can be successfully sued for making coffee too hot. Automakers can be sued for making cars with gas tanks that tend to explode in collisions. Surely gun makers can be held accountable as well.

For example, the gun industry could incorporate trigger locks that would make handguns all but child-proof. Technology is also available to create "smart guns" that can be fired by their owners only. However, the industry has resisted such steps. National political leaders, either cowed by the gun lobby's supposed political strength or bought off by its campaign contributions, lack the will to act. The suits filed by Atlanta and other cities represent a round-about path toward forcing responsible behavior from the gun makers. But sometimes a round-about path is the quickest one available.

FILE COPY

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

99 FEB -4 PM 12:20

CLERK
FULTON COUNTY, GEORGIA

THE CITY OF ATLANTA,

Plaintiff,

v.

SMITH & WESSON CORP., STURM,
RUGER & COMPANY, INC., BERETTA
U.S.A., COLT'S MANUFACTURING
CO., GLOCK, INC., TAURUS
INTERNATIONAL MARKETING, INC.,
SIGARMS, INC., BRYCO ARMS,
B.L. JENNINGS, INC., PHOENIX ARMS,
DAVIS INDUSTRIES, NAVEGAR, INC.
(D/B/A "INTRATEC"), FULL METAL
JACKET, INC., ARMS TECHNOLOGY,
INCORPORATED, AMERICAN
SHOOTING SPORTS COUNCIL, INC.,
NATIONAL SHOOTING SPORTS
FOUNDATION, INC. and SPORTING ARMS
AND AMMUNITION MANUFACTURERS
INSTITUTE, INC.,

Defendants.

CIVIL ACTION

FILE NO.: 99VS0149217J

(Judge: Gino Brogdon)

COMPLAINT

The City of Atlanta hereby files this Complaint as follows:

1.

The City of Atlanta ("Plaintiff") is a municipal corporation, constituted under the Constitution of the State of Georgia and operating under its Home Rule Charter, and has the authority and obligation to initiate legal actions.

2.

Defendant Smith & Wesson Corp. is a corporation organized and existing under the laws of the State of Massachusetts with a registered agent for service of process in Georgia and may be served with process through its registered agent for service of process, C.T. Corporation System, at 1201 Peachtree St. N.E., Atlanta, Fulton County, Georgia 30361. ✓

3.

Defendant Sturm, Ruger & Company, Inc. is a corporation organized and existing under the laws of the State of Delaware and may be served with process by second original through its registered agent for service of process, .

4.

Defendant Berretta U.S.A. is a corporation organized and existing under the laws of the State of Maryland and may be served with process by second original through its registered agent for service of process, Lillian Marie Catterton, 17601 Beretta Drive, Accokeek, Maryland 20607.

5.

Defendant Colt's Manufacturing Co. is a corporation organized and existing under the laws of the State of Connecticut and may be served with process by second original through its registered agent for service of process, CT Corporation System, One Commercial Plaza, Hartford, Connecticut 06103.

6.

Defendant Glock, Inc. is a corporation organized and existing under the laws of the State of Georgia and may be served with process by second original through its ✓

registered agent for service of process, Paul F. Jannuzzo, 6000 Highlands Pkwy., Smyrna, Cobb County, Georgia 30082.

7.

Defendant Taurus International Manufacturing, Inc. is a corporation organized and existing under the laws of the State of Florida and may be served with process by second original through its registered agent for service of process, Corpolite Corp., 1 S.E. 3rd Avenue, Miami, Florida 33131.

8.

Defendant Sigarms, Inc. is a corporation organized and existing under the laws of the State of New Hampshire and may be served with process by second original through its registered agent for service of process at Corporate Park, Exeter, New Hampshire 03833.

9.

Defendant Bryco Arms is a corporation organized and existing under the laws of the State of Nevada and may be served with process by second original through its registered agent for service of process, Laughlin Associates, Inc., 2533 N. Carson Street, Carson City, Nevada 89706.

10.

Defendant B.L. Jennings, Inc. is a corporation organized and existing under the laws of the State of Nevada and may be served with process by second original through its registered agent for service of process, Bruce Jennings, 1285 Hiddenwoods Drive, Zephyr Cove, Nevada 89448.

11.

Defendant Phoenix Arms is a corporation organized and existing under the laws of the State of Arizona and may be served with process by second original through its registered agent for service of process, Dave Brazeau, 1420 So. Archibald Avenue, Ontario, California 91761.

12.

Defendant Davis Industries is a corporation organized and existing under the laws of the State of California and may be served with process by second original through its registered agent for service of process, Jim Davis, 15150 Sierra Bonita Lane, Chino, California 91710.

13.

Defendant Navegar, Inc. (d/b/a Intratec) is a corporation organized and existing under the laws of the State of Florida and may be served with process by second original through its registered agent for service of process, Miami Corporate System, Inc., 5200 Blue Lagoon Drive, Suites 700 and 300, Miami, Florida 33128.

14.

Defendant Full Metal Jacket, Inc. is a corporation organized and existing under the laws of the State of Tennessee and may be served with process by second original through its registered agent for service of process, Wayne E. Daniels, 333 Tennessee Avenue, P.O. Box 759, Cooperhill, Tennessee 37317.

15.

Defendant Arms Technology Incorporated is a corporation organized and existing under the laws of the State of Utah and may be served with process by second original

through its registered agent for service of process, Bruce R. Farber, 2401 Directors Row, Salt Lake City, Utah 84104.

16.

Defendant American Shooting Sports Council, Inc. 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 Florida with a registered agent for the service of process in Georgia and may be served with process by second original through its registered agent for service of process, Richard Feldman, 1845 The Exchange, Suite 150, Atlanta, Cobb County, Georgia 30339.

17.

Defendant National Shooting Sports Foundation, Inc. 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 and may be served with process by second original through its registered agent for service of process, Richard Rose, 10 Stanford Forum, Stanford, Connecticut 06904.

18.

Defendant Sporting Arms and Ammunition Manufacturers' Institute, Inc. 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 and may be served with process by second original through its registered agent for service of process, Richard Rose, 10 Stanford Forum, Stanford, Connecticut 06904.

19.

Smith & Wesson Corp., Sturm, Ruger & Company, Inc., Beretta U.S.A., Colt's

Manufacturing Co., Glock, Inc., Taurus International Marketing, Inc., Sigarms, Inc., Bryco Arms, B.L. Jennings, Inc., Phoenix Arms, Davis Industries, Navegar, Inc. (d/b/a "Intratec"), Full Metal Jacket, Inc. and Arms Technology, Incorporated shall herein be referred to as "Defendant Manufacturers." American Shooting Sports Council, Inc., National Shooting Sports Foundation, Inc. and Sporting Arms and Ammunition Manufacturers Institute, Inc. shall herein be referred to as "Defendant Trade Associations." The Defendant Manufacturers and Defendant Trade Associations are referred to collectively as "Defendants."

VENUE AND JURISDICTION

20.

Defendant Glock, Inc. is subject to the jurisdiction of this Court pursuant to Ga. CONST. Art. 6, § 3, ¶ 1 and O.C.G.A. § 15-7-4 and is subject to the venue of this Court pursuant to Ga. CONST. Art. 6, § 2, ¶ 4 and O.C.G.A. § 14-2-510(b).

21.

Defendant American Shooting Sports Council, Inc. is subject to the jurisdiction of this Court pursuant to Ga. CONST. Art. 6, § 3, ¶ 1 and O.C.G.A. § 15-7-4 and is subject to the venue of this Court pursuant to Ga. CONST. Art. 6, § 2, ¶ 4 and O.C.G.A. § 14-2-510(b).

22.

Defendant Smith & Wesson Corp. is subject to the jurisdiction of this Court pursuant to Ga. CONST. Art. 6, § 3, ¶ 1 and O.C.G.A. § 15-7-4 and is subject to the venue of this Court pursuant to Ga. CONST. Art. 6, § 2, ¶ 6 and O.C.G.A. § 14-2-510(b).

23.

Defendants Sturm, Ruger & Co., Beretta U.S.A., Colt's Manufacturing Co., Taurus International Marketing, Inc., Sigarms, Inc., Bryco Arms, B.L. Jennings, Inc., Phoenix Arms, Davis Industries, Navegar, Inc. (d/b/a "Intratec"), Full Metal Jacket, Inc., Arms Technology, Incorporated, National Shooting Sports Foundation, Inc. and Sporting Arms and Ammunition Manufacturers Institute, Inc. are subject to the jurisdiction of this Court pursuant to Ga. CONST. Art. 6, § 3, ¶ 1 and O.C.G.A. § 9-10-91 and are subject to the venue of this Court pursuant to Ga. CONST. Art. 6, § 2, ¶ 4 and O.C.G.A. § 9-10-91.

GENERAL ALLEGATIONS

24.

Under the Constitution of the State of Georgia, and the Home Rule Charter for the City of Atlanta, Plaintiff is responsible for the health, safety and welfare of its citizens and has a duty to protect the interest of the general public.

25.

For many years, Plaintiff has suffered harm and has incurred significant expenses associated with the manufacture, distribution, marketing, promotion, and sale of firearms which are defective, unreasonably dangerous and negligently designed under Georgia law, for the reasons stated herein.

26.

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 when they possess a firearm.

27.

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 Plaintiff by the Defendants, who have been and continue to be unjustly enriched thereby at the expense of Plaintiff and its residents.

28.

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 to 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.

29.

Defendants' actions have caused Plaintiff to pay out large sums of money to provide services including but not limited to necessary police and emergency services, police pension benefits and related expenditures, as well as to have lost substantial tax revenues due to lost productivity .

30.

At all pertinent times, Defendants have been able to manufacture, market, sell and/or promote firearms which would have prevented 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.

31.

However, Defendants have failed to manufacture, market, sell and/or promote firearms with the safety features set forth in the preceding paragraph.

32.

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.

33.

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, and in fact they were marketed and promoted in a manner which suggested that they did not pose such risks to users and their households, and which suggested, promoted, and encouraged unsafe storage practices.

34.

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, and do not prevent their guns from firing when the magazine is removed.

35.

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 tragic, preventable shootings by unauthorized users.

36.

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.

37.

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 or unloaded.

38.

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.

39.

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

40.

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.

41.

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 -- as many as 320 to 345 deaths each year.

42.

For each of these deaths, there are many more unintentional shooting injuries that are not fatal.

43.

A vast percentage of the injuries and deaths caused by an undetected round of ammunition in the firing chamber occur when an unintended user of the gun, such as an adolescent, unintentionally shoots another person.

44.

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.

45.

The design of Defendants' guns, which enable any person who gains possession of them to fire them, also results in thousands of adolescent suicides.

46.

The odds that potentially suicidal adolescents will kill themselves double when a gun is kept in the home.

47.

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.

48.

Among 15-19 year-olds, firearm-related suicides accounted for 81% of the increase in the overall rate of suicide from 1980-1992.

49.

The design of Defendants' guns, which enables any person who gains possession of them to fire them, also results in thousands of homicides by unauthorized users, including juveniles.

50.

Many of these homicide victims are themselves children and teenagers, and many of these perpetrators gained access to guns in homes or through theft.

51.

At all pertinent times it was foreseeable that Defendants' guns would fall into the hands of unintended users.

52.

The Centers for Disease Control estimate that 1.2 million elementary-aged, latch-key children have access to guns in their homes.

53.

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.

54.

Another survey reports that 36% of gun owners with children in their home keep their guns unlocked.

55.

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.

56.

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.

57.

At all such times, it was also foreseeable that when unintended users would gain access to these guns, that either the guns would be loaded or that the user would be able to obtain ammunition.

58.

At such times it was also foreseeable that when unintended users would gain

access to Defendants' guns, tragic, preventable shootings would result.

59.

It was foreseeable at these times that many of these shootings would be unintentional, and many would involve children - as victims and/or as shooters.

60.

It also was foreseeable that many of these shootings would involve suicides by children and adolescents.

61.

It also was foreseeable that many of these shootings would involve homicides by juveniles, whose victims are juveniles.

62.

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.

63.

Defendants were also aware of safety devices, warnings, and other measures which would prevent and decrease these dangers.

64.

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.

65.

Plaintiff's citizens, particularly its children, repeatedly have been victimized by Defendants' unreasonably dangerous products.

66.

Year after year, Atlanta 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.

67.

For example, the following incidents were reported in Georgia in a single seven month period.

- February 15, 1996 - College Park 10 year old accidentally shot & paralyzed by 9 year old cousin. (Atlanta, GA)
- December 16, 1995 - 17 month old girl accidentally shot by 3 year old playmate. (Macon, GA.)
- December 15, 1995 - 10 year old shot by cousin playing with rifle. (Macon, GA)
- April 4, 1996 - 15 year old boy killed by 17 year old friend in Union Point. (Greensboro, GA)
- March 26, 1996 - Girl, 11, shot and killed by 10 year old sister. (Pelham, GA)
- June 4, 1996 - 9 year old boy accidentally shot by 10 year old sister. (Buford, GA)

– May 10, 1996 - 15 year old girl shot in face by 16 year old boy playing with hand gun. (Augusta, GA)

68.

These tragedies, and others like them, demonstrate that Plaintiff's citizens are under a continuing threat of injury and death, particularly to children, from Defendants' unreasonably dangerous products.

69.

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.

70.

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 stores and other locations to be employed by unauthorized users in violent criminal acts.

71.

Furthermore, Defendants purposefully and intentionally engaged in these activities knowing full well that Plaintiff's citizens, its Police Officers and 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 these people would be injured thereby.

72.

At all times pertinent, the Defendants purposefully and intentionally engaged in these activities, and continue to do so, knowing full well that Plaintiff, in its role of providing protection and care for their citizens, would provide or pay for additional police protection, emergency services, pension benefits 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.

73.

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.

74.

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 and to the importance of proper storage of guns.

75.

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

- (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.

COUNT ONE
DEFECTIVE AND NEGLIGENT DESIGN

76.

Plaintiff incorporates by reference paragraphs 1 through 75 as if fully set forth herein.

77.

Defendant Manufacturers are liable under O.C.G.A. § 51-1-11, because the risks of their product design outweigh the benefits, their products were not merchantable and reasonably suited for the use intended at the time these weapons left the manufacturers' control and such defects in design were the proximate cause of the damages suffered by plaintiffs.

78.

Defendant Manufacturers are liable as they failed to employ alternative designs which would have reduced, if not prevented, many of Plaintiff's damages.

79.

Defendant Manufacturers' failure to employ these alternative designs was a proximate cause of the damages suffered by Plaintiff.

80.

Defendant Manufacturers are liable as they each knew the likelihood that their products' designs would cause Plaintiff's injuries, and they knew the gravity of these injuries.

81.

Defendant Manufacturers are liable as they each knew or reasonably should have known that the gravity of the damages which might be and which have been suffered by Plaintiff 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 designs.

82.

Defendant Manufacturers are liable for the damage caused as a result of the design defects of their products, including the damage incurred by Plaintiff.

83.

Defendant Manufacturers' conduct was a direct and proximate cause of the injuries suffered by Plaintiff.

84.

Plaintiff suffered substantial actual injury and damages as the direct and proximate result of Defendant Manufacturers' wrongful acts described above, and Plaintiff has been obligated to pay and has paid millions of dollars in the past to enhance police protection, emergency services, police pension benefits, 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 has lost substantial tax revenue due to lost productivity.

85.

Plaintiff specifically alleges that alternative designs would have reduced the injuries suffered by Plaintiff's citizens, police, emergency services and other agencies.

COUNT TWO
DEFECTIVE AND NEGLIGENT DESIGN -
FAILURE TO INCLUDE SAFETY DEVICES IN DESIGN

86.

Plaintiff incorporates by reference paragraphs 1 through 85 as if fully set forth

herein.

87.

Defendant Manufacturers are liable under O.C.G.A. § 51-1-11 because the risks of their product design outweigh the benefits, the products were not merchantable and reasonably suited for the use intended at the time these weapons left the manufacturers' control, and such defects in design were the proximate cause of the damages suffered by plaintiffs which could have been prevented by alternative designs which incorporated safety devices, including but not limited to devices which would:

- (a) prevent these weapons from being fired by unauthorized users;
- (b) alert users that a round was in the chamber;
- (c) prevent these weapons from being fired when the magazine was removed from them.

88.

Defendant Manufacturers are liable 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 Plaintiff.

89.

Defendant Manufacturers are liable as they failed to employ alternative designs incorporating safety devices which would have reduced, if not prevented many of Plaintiff's damages.

90.

Defendant Manufacturers' failure to employ these alternative designs incorporating safety devices was a proximate cause of the damages suffered by

Plaintiff, and Plaintiff has been obligated to pay and has paid millions of dollars in the past to enhance police protection, emergency services, police pension benefits, 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 has lost substantial tax revenue due to lost productivity.

91.

Defendant Manufacturers are liable as they each knew the likelihood that their products' designs would cause Plaintiff's injuries, and they knew the gravity of these injuries.

92.

Defendant Manufacturers are liable as they each knew or reasonably should have known that the gravity of the damages which might be and which had been suffered by Plaintiff 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 designs.

COUNT THREE
FAILURE TO PROVIDE ADEQUATE WARNING

93.

Plaintiff incorporates by reference paragraphs 1 through 92 as if fully set forth herein.

94.

Defendants are liable as they knew or reasonably should have known that 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 but not limited to households with children, not only because of their design, but because they did not have a suitable warning or instruction as to the risks and operation 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/or empty, and the attendant risks that could and did thereby occur.

95.

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.

96.

For the foregoing reasons as well, Defendants' guns were unreasonably dangerous and were not merchantable and reasonably suited for the use intended.

97.

Defendants' failure to provide adequate or suitable warnings to users also constituted negligence.

98.

As a direct and legal result of the inadequate warnings, instructions, advertising

and promotion of the guns, Plaintiffs suffered the damages alleged herein, and Plaintiff has been obligated to pay and has paid millions of dollars in the past to enhance police protection, emergency services, police pension benefits, 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 has lost substantial tax revenue due to lost productivity.

COUNT FOUR
NEGLIGENCE

99.

Plaintiff incorporates by reference paragraphs 1 through 98 as if fully set forth herein.

100.

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

101.

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, and failed to act with reasonable care, 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.

102.

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 Plaintiff's citizens and that the Plaintiff, in its role of providing protection and care for its citizens, would provide or pay for additional police protection, emergency services, pension benefits 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.

103.

The actions on the part of all Defendants rise to the level of willful misconduct, wantonness, and that entire want of care which raises the presumption of conscious indifference to the consequences of their actions and gives rise to an award of punitive damages.

WHEREFORE, Plaintiff demands a trial by jury and requests this Court:

(a) grant Judgment for Plaintiff and against Defendants on all counts of the Complaint;

(b) grant Plaintiff an award of damages representing the sums of money paid and to be paid by Plaintiff on account of the Defendants' wrongful conduct;

(c) grant Plaintiff an award of punitive damages in such amount as will sufficiently punish the Defendants for their conduct and prevent a repetition of such conduct in the future;

(d) grant Plaintiff an award of attorney fees;

(e) tax all costs against Defendants; and

(f) grant Plaintiff such additional relief as this Court deems just.

This 4th day of February, 1999.

Respectfully submitted,

A handwritten signature in cursive script, reading "Susan Pease Langford". The signature is written in black ink and is positioned above the printed name and title.

SUSAN PEASE LANGFORD
City Attorney for the City of Atlanta
Georgia Bar No. 436400
WILLIAM H. MCLEAN
Senior Assistant City Attorney
Georgia Bar No. 496891
Suite 4100, City Hall Tower
68 Mitchell Street, S.W.
Atlanta, GA 30335-0332
Telephone: (404) 330-6400
Fax: (404) 658-6894

The Atlanta Constitution

WWW.ACCESSATLANTA.COM

THURSDAY, FEB. 4, 1999

Atlanta teen slain after attacking youth, police say

By Doug Payne
STAFF WRITER

A 14-year-old youth was shot in the head and killed Sunday morning in the Bedford Pines community off Boulevard, Atlanta police said.

The suspect in the shooting, Tethine Thomas, 18, called police within an hour of the shooting and surrendered to be charged with murder, said Detective Louis Torres.

Thomas is "a big kid but very timid," Torres said. He had had numerous run-ins with three youths who often attacked him and took money from him, according to his statement to police.

About 12:10 a.m. Sunday, the trio met up again with Thomas, who was armed with a .38-caliber revolver, Torres said. The three youths attacked Thomas, who pulled out his gun and

waved it in their direction to frighten them off, the suspect told investigators.

But the gun went off and Bobby Welch, a member of the group, was struck once in the head, Torres said. Welch was dead at the scene.

The two youths who were with Welch at the time of the attack have given statements to police, Torres said.

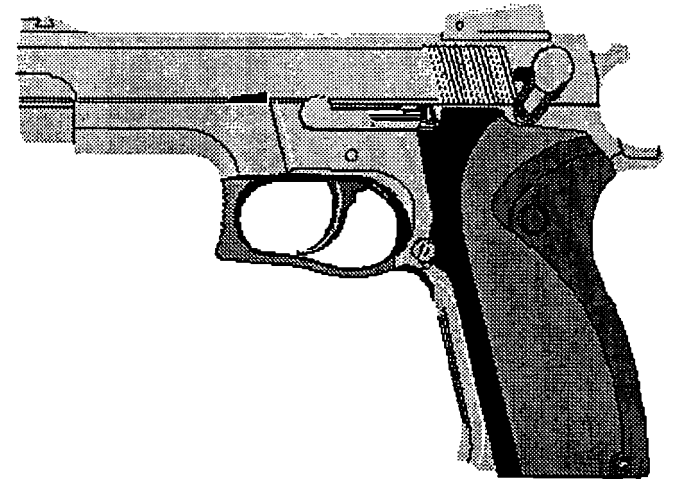
Mary Webb, a neighbor for almost all of Bobby's life, said he lived with his mother, sister and brother. She said it was not unusual for a boy that young to be out that late on a weekend night. But it is not a safe neighborhood, she said.

"Police are called all the time over here," Webb said. "If you threaten to call the police, you might get a gun drawn on you. I have gone out there with my gun in my hand. I've been blessed that nobody retaliated."

■ ATLANTA

Boy, 9, shoots himself in hand with a pistol

A 9-year-old boy shot himself in the hand with a .357-caliber Magnum he pulled from under a mattress in a southwest Atlanta home Tuesday night. The fourth-grader at Frank L. Stanton Elementary School was listed in stable condition at Grady Memorial Hospital after shooting himself at the home of a classmate, also 9. The two boys were playing in the bedroom of the house in the 300 block of Betsy Avenue after school Tuesday when they decided to look at the gun belonging to Larnette Clowers, the grandmother of one of the children. Clowers was not at home at the time of the shooting. Vera Binns, Clowers' daughter and the boy's mother, was in the kitchen cooking but told police she thought nothing of the boys playing in the bedroom. Clowers was charged with reckless conduct for leaving the weapon unsecured, a police report showed.



■ FULTON COUNTY

Men selling guns caught after chase

Police chased a Jeep Wednesday night with three men who were selling guns out of their vehicle in an Atlanta neighborhood known for crack sales, police said. During the 8 p.m. chase, the Jeep ran a red light at John Wesley Dobbs Avenue and Peachtree Center and collided with a van. Two men in the Jeep were taken to Grady Memorial Hospital and one was listed in serious condition. No one in the van was injured. Police found 22 guns in the Jeep, said Atlanta police Lt. Bill Charles, a guns unit supervisor. None of the guns was listed as stolen on a national database, but police were trying to locate owners of the guns to see if they were stolen, Charles said. Late Wednesday, police were still trying to confirm the identities of the men, who were between the ages of 17 and 25.

Bullet kills dream of Southside teen

By David Fendered
STAFF WRITER

Things had been looking up for Gregory Ferrell. The 15-year-old Southside

at the Sept. 4 season-opening football game.

Young men hanging out Sunday at a neighborhood convenience store described the rising soph-



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.

-MORE-

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.

-MORE-

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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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

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.

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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.

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- (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.

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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

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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'

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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.

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cc: Pouch

Cities to share strategies in suits against gunmakers

By Gary Fields
 USA TODAY

WASHINGTON — Officials from at least 15 cities are meeting in Chicago Thursday to discuss how to file lawsuits against the firearms industry.

At the center of the discussion are lawsuits filed in October and November by the mayors of New Orleans and Chicago.

New Orleans Mayor Marc Morial wants the gun industry to pay the city for the cost of police and emergency services and health care expenses resulting from gun violence.

The lawsuit filed by Chicago Mayor Richard Daley seeks \$433 million. It accuses the industry of saturating Chicago's suburbs with more guns than could be bought by law-abiding citizens. As a result, the suit alleges, the surplus is ending up in the hands of city gangs and other criminals. Gun sales are banned in Chicago.

The U.S. Conference of Mayors is sponsoring Thursday's session. Executive Director Tom Cochran said the mayors, legal officers and law enforcement officials attending will investigate whether the technology is available to make guns safer. For example, they will try to determine whether "smart guns" that only fire when authorized people hold them can be manufactured on a wide scale.

They also will try to reach consensus on how to hold the gun industry responsible for violence.

The results of Thursday's meeting will be presented at a conference meeting in January. One possibility is that mayors will join in a class-action lawsuit holding the firearms industry responsible for gun violence.

Cochran said the issue of lawsuits against the gun industry first came up last June at a conference meeting in Reno. He said the goal is "to keep guns out of the hands of felons, criminals and juveniles and to make guns safer. We're not talking about banning guns," he said.

Among the cities expected to send representatives are Miami; Newark, N.J.; San Francisco; and St. Louis.

Doug Painter, spokesman of the Sporting Arms and Ammunition Manufacturers' Institute, said the Chicago and New Orleans lawsuits "contain a great deal of misleading information."

Painter said the New Orleans suit is based on the premise that the industry has created "smart guns" but is not making them available to the public. "This owner recognition technology is very much in the development stage," he said.

Painter said the issue in Chicago centers on illegal gun sales from suburban dealers. "Our comment is if a dealer makes an illegal sale, that dealer should be prosecuted," Painter said.

Richard Feldman, executive director of the American Shooting Sports Council said the issues could be addressed without lawsuits. Educating the public on what to do when they encounter guns and the continuing support of gun locks that stop firearms from firing would solve part of the problem, he said.

WEDNESDAY, DECEMBER 9, 1998, USA TODAY

Results in Tobacco Litigation Spur Cities to File Gun Suits

By FOX BUTTERFIELD

BOSTON, Dec. 23 — First the states sued the tobacco companies and recovered hundreds of billions of dollars in smoking-related Medicaid costs. Now more than a dozen cities either have sued the gun industry or are preparing to, in a growing campaign to ultimately win in court the handgun controls that gun interests have kept them from winning in state legislatures and Congress.

Although gun manufacturers have defeated suit after suit brought by individuals, many mayors express confidence that they will prevail, forcing firearms makers to pay huge

damages or accept new restrictions on the production and marketing of handguns.

"The success of the tobacco litigation had a tremendous impact on us," said Mayor Alex Penelas of Miami-Dade County. "Before, people thought the tobacco industry was untouchable, and the same with the gun industry. Now there is a ray of hope, and it's time to send the bill for gun deaths and injuries to the gun makers."

One city after another is joining the list of those taking on the industry, and the number is expected to grow to 40 or 50 by next summer. Where juries that heard individuals' suits tended to place responsibility on a criminal or a negligent owner rather than on the industry, the mayors believe that jurors who hear the cities' suits will be receptive to the argument, as in the tobacco litigation, that the entire public is burdened by the costs resulting from use of a dangerous product.

The cities are encouraged as well by their recognition that the gun industry not only is much smaller than the tobacco industry, with far less money to wage courtroom wars, but

Gun Industry Moves Closer To Facing Jury in January

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—A federal judge in Brooklyn, N.Y., has cleared the way for a closely watched lawsuit against the gun industry to go before a jury in January.

U.S. District Judge Jack Weinstein denied a final round of requests by a group of handgun manufacturers and distributors that he throw out the suit. Brought on behalf of a group of gunshot victims, the lawsuit alleges that the industry negligently distributes handguns in a manner that results in many ending up in criminal hands.

The suit, filed in 1995, was the first to allege that the gun industry ought to be held collectively liable for the effects of commerce in handguns. Gun companies have defeated most lawsuits alleging that guns are inherently too dangerous or defective.

The Brooklyn case has grown in importance since the mayors of New Orleans and Chicago this autumn filed separate suits against the industry, with more such municipal lawsuits expected next year. The case in Brooklyn is now seen as something of a test run of whether the industry can fend off allegations of collective negligence.

Wall Street Journal

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New York Times

12/24/98

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PHOTOCOPY
PRESERVATION

Heartened by Tobacco War, Cities Sue the Gun Industry

Continued From Page A1

also could be a more vulnerable foe before urban jurors, many acutely sensitive to the effects of gun violence.

The municipal handgun litigation, derided by the gun makers as entirely without merit, began in late October, when New Orleans became the first city to sue the industry. New Orleans contended that gun makers failed to incorporate enough safety devices in their weapons, a shortcoming that the suit said made them "unreasonably dangerous."

Chicago followed two weeks later, advancing a different argument: its officials maintained that Chicago suburbs, where gun-control laws are more lax than in the city, were being flooded with guns by the industry. The resulting illicit flow of weapons into the city creates a "public nuisance," says Chicago, whose suit demands \$433 million to cover police and hospital costs attributable to handgun violence since 1994.

Bridgeport, Conn., and Newark plan to file suit before the end of the year, officials there say, to be followed in January by Miami and by Gary, Ind., and in February by Boston. Leaders in Philadelphia, St. Louis, Atlanta, San Francisco, Los Angeles, Portland, Ore., and Tampa, Fla., plan suits later in the winter or in the spring. New York City has not indicated when, or even whether, it will join the list, but many others are expected to do so.

"I think it is reasonable to assume that unless we have some strong action by the gun industry, there will be 40 to 50 lawsuits out there by July 1," said Mayor Edward G. Rendell of Philadelphia, who heads a task force on guns for the United States Conference of Mayors. "This is going to be a different day" for the gun makers, he said.

Eventually, said Tom Cochran, executive director of the Conference of Mayors, more than a hundred cities will sue.

"There is a lot going on," Mr. Cochran said. "The lawyers are seeing green on this issue." Some of those lawyers were involved in the tobacco litigation, he said, and they think "they can bring the gun industry to its knees."

The suits are especially threatening to the industry because it is so much smaller than the cigarette industry, with combined sales of handguns, rifles, shotguns and ammunition of only \$1.4 billion in 1997, compared with sales of \$48 billion for the tobacco companies.

Moreover, sales of all types of firearms have been stagnant for almost a decade, slipping to 3.8 million guns in 1996 from 4.3 million in 1989, according to the Federal Bureau of Alcohol, Tobacco and Firearms. In California last year, sales of handguns were at their lowest level since 1973.

"They don't have the deep pockets the tobacco companies have," said Kristen Rand, a senior lawyer for the Violence Policy Center, a research and advocacy group in Washington. "The gun industry is in denial. They were shocked that the cities filed suit."

But gun industry executives express equal confidence that the cities will fail, just as did suits on behalf of individuals.

"They don't have a leg to stand on, as far as the law is concerned," said Paul Januzzo, vice president and general counsel for one gun maker, Glock Inc.

"Cigarettes were supposed to be enjoyable, relaxing, and they turned out to be lethal," Mr. Januzzo said. "But guns are designed to be lethal. That's why people buy them," he said, dismissing the accusation, as is made in the New Orleans suit, that the gun manufacturers are liable for a defective product.

"What we have is a bunch of frustrated big-city executives who have lost control of the crime problem," Mr. Januzzo said, "and they are looking to blame someone else."

There are signs that the dozens of gun companies, most of them small and privately held, are taking steps to set aside customary rivalries and mount a joint defense. Richard Feldman, executive director of the American Shooting Sports Council, a trade association, has been busy lining up national law firms with experience in tobacco litigation, like Goodwin, Proctor & Hoar in Boston, to help represent the firearms companies.

"We are either going to address the issues that are coming at us head on or we are going to get picked off, one by one," Mr. Feldman said. It was just the manufacturers who were sued in the tobacco cases, he noted, but some of the cities are planning to sue not only the gun makers but the distributors and local dealers as well, and some gun makers may be tempted to blame dealers who have been caught selling illegally.

Ralph Boyd, a lawyer with Goodwin, Proctor & Hoar, said the gun companies as well as the cities could learn from the tobacco litigation.

"The plaintiffs don't have to win all of these cases, they just have to file enough of them and you can count on an aberrant decision by a judge somewhere letting a case go to trial," Mr. Boyd said. "That creates enormous risk for the industry."

"These suits," he added, "are far more political than legal. They are a

The Manufacturers

The 10 largest producers of pistols and revolvers in the United States in 1995. They accounted for nearly 90 percent of the 1.7 million handguns made domestically.

■ Smith & Wesson	500,129
■ Sturm, Ruger	345,838
■ Beretta USA	158,858
■ Colt's Manufacturing	158,547
■ Lorcin Engineering	83,463
■ Bryco Arms	56,727
■ Arms Technology	51,531
■ Phoenix Arms	48,381
■ Davis Industries	45,171
■ Wayne E. Daniel	39,199

The 10 guns most commonly involved in crimes in 1997, according to the Bureau of Alcohol, Tobacco and Firearms.

■ Smith & Wesson .38 Special revolver
■ Lorcin .380 pistol
■ Raven .25 pistol
■ Ruger 9 mm pistol
■ Smith & Wesson 9 mm pistol
■ Davis .380 pistol
■ Smith & Wesson .357 Magnum revolver
■ North China Industries SKS rifle
■ Colt .38 Special revolver
■ Mossberg 12-gauge shotgun

Source: "Making A Killing: The Business of Guns in America," by Tom Diaz, to be published in January by The New Press

multifront attack through a public forum, and if you don't rebut them politically you can find yourself losing entirely. And that in turn affects judges who are sensitive to political currents."

Mr. Feldman described the cities' resort to litigation as "very dangerous to American democracy."

"These things are supposed to be decided in the legislature," he said, "not the courts."

But the mayors say that for too many years, the gun makers and the National Rifle Association have controlled the state legislatures and Congress as well.

"It is practically politically impossible to go into our state legislature in Indianapolis and reasonably hope to get more restrictive gun laws," said Mayor Scott King of Gary, which has long had one of the nation's highest homicide rates.

One difficulty for the cities has been in deciding which legal avenue to travel: a product liability claim, the New Orleans model, or Chicago's claim of a public nuisance, or both. Most cities say they are leaning toward the product liability approach, although the final decision depends on differences in state and city gun regulations.

Whatever the case, Mayor Rendell, of Philadelphia, believes that it will take five or six years — from filing suit until the end of the appeals process — to win any money from

Rebuffed by legislatures, mayors seeking gun controls turn to courts.

the industry. He believes there is a better alternative, in which pressure from the suits leads the industry to engage in collective negotiations with the cities for a settlement providing new controls. Among the changes he would like are a limit of one handgun purchase a month per customer, a ban on advertisements that guns are safe and a halt to the production of large clips for handguns and bullets that can pierce police armor.

Ms. Rand, of the Violence Policy Center, said she worried that such negotiations "could be a disaster" because many city officials and gun-control groups "would be willing to settle for very little." Many gun-control advocates feel the cities ought to hold out for making the gun makers submit to oversight by the Consumer Product Safety Commission, like other industries, and forcing them to adopt more careful inventory controls to prevent sales to criminals or straw purchasers acting on behalf of criminals. Recent investigations by the Bureau of Alcohol, Tobacco and Firearms have found that as many as half the handguns used in crimes had been purchased from licensed dealers within the prior three years.

Mayor Sharpe James of Newark agreed that gun makers ought to be subjected to additional Federal regulation. "I think it's reached a point where we want to hold the gun manufacturers accountable," he said. "They are putting concerns for profit over life. We've just allowed them to sell weapons like popcorn and ice cream."

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Cities Vow More Lawsuits Against Gun Industry During December 10 Chicago Meeting

By Ed Somers

Meeting in Chicago on December 10, mayors and representatives from 15 cities discussed lawsuit strategies against the gun industry.

During the meeting, convened by The U.S. Conference of Mayors and hosted by Chicago Mayor Richard M. Daley, the cities represented indicated that they are either committed to suing the industry or are seriously exploring the possibility.

Participating in the meeting were Mayors Daley, Marc Morial of New Orleans, Scott King of Gary, Alexander Penelas of Miami-Dade County, Rita Mullins of Palatine, Arlene Mulder of Arlington Heights, and Joseph P. Ganim of Bridgeport. Also represented at the meeting were the cities of Tampa, St. Louis, Newark (NJ), Atlanta, San Francisco, Detroit, Minneapolis and Portland (OR).

The meeting began with presentations by Mayors Daley and Morial, and their legal and investigative teams, on their existing lawsuits against the gun industry. The Chicago and New

Orleans lawsuits are based on different legal theories.

The Chicago/Cook County \$433 million lawsuit against 12 gun shops in suburbs ringing the city, 22 gun manufacturers and four gun distributors, announced on November 12, was the climax of 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.

The Chicago suit alleges that 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."

In commenting on the suit, Mayor Daley said, "We know that most guns used in crimes are purchased by straw buyers." He added that not only the local sellers, but the manufacturers must be held liable in this matter, specifically criticizing the industry for manufactur-



Mayors Daley and Morial brief mayors on their lawsuits: (left-right) Dennis Henigan from the Center to Prevent Handgun Violence, Wendell Gauthier, Esq., New Orleans Mayor Marc H. Morial, Conference Executive Director J. Thomas Cochran, Chicago Mayor Richard M. Daley, Chicago Police Superintendent Terry Hillard, and Chicago Corporation Counsel Brian Crowe

ing weapons which have no legitimate purpose such as those that can shatter a police vest.

"The industry needs to look the families of every slain police officer in the eyes," Mayor Daley said.

The New Orleans suit against 15 gun manufacturers, three trade associations and several local pawnshops and gun dealers, announced on October 30, seeks to recover economic dam-

age to the city from the sale of guns that are not "personalized" to incorporate safety designs which prevent their use by children and other unauthorized users.

The legal basis for the suit stems from the Louisiana Products Liability Act, under which a manufacturer can be held liable for damage caused by a product that is inherently and unreasonably dangerous in design. In the New Orleans suit, the city alleges that guns which fail to incorporate safety systems that prevent their use by children and other unauthorized users are unreasonably dangerous in their design.

In just one case, the bill for a 40 year old male shot in Miami-Dade County and treated in a public hospital came to \$768,127.29 — Mayor Alexander Penelas of Miami-Dade County.

In commenting on the suit, Mayor Morial said, "This is not an assault on the Second Amendment... We need to use the judicial system, as was done to

inventiveness of the weapons... a kindergarten graduate did not design these weapons."

Strategy Discussion

The Chicago meeting provided participants with the opportunity to discuss the legal theories behind the lawsuits, and strategies in moving forward.

Gary Mayor Scott King, a Vice Chair of The U.S. Conference of Mayors Gun Violence Task Force, expressed serious disappointment with negotiations held with the gun industry over the summer, and their refusal to support even the most modest anti-gun violence proposals. "I don't have a good taste in my mouth," King said.

In commenting on the costs of gun

See GUN page 7

Conference Supports Ending Gunshow Loophole

By Ed Somers

In a December 8 letter to President Clinton, The U.S. Conference of Mayors called for an end to the federal loophole which exists regarding gun shows.

The letter, signed by Conference President Mayor Deedee Corradini of Salt Lake City and Philadelphia Mayor Edward Rendell, Chair of the Gun Violence Task Force, came in response to a November 7 directive from President Clinton that the Departments of Treasury and Justice review the gun show loophole and recommend action within 60 days.

The issue of gun show regulation has been one of the major areas of concern discussed in meetings of the Gun Violence Task Force with the firearms industry.

It is estimated that about 5 million people attend an estimated 5,000 gun shows a year.

There exists a loophole in federal law which allows non-licensed gun show participants to evade federal requirements that a licensed gun dealer must comply with (identification checks, criminal background checks,

and record keeping requirements including multiple purchase forms).

As stated in the letter, "The U.S. Conference of Mayors believes that this loophole must be closed, and that a mechanism be established to ensure that every person selling a weapon on the secondary market, either at a 'gun show' or any other venue, comply with all federal statutory and regulatory requirements including age-sensitive identification checks and criminal background checks.

"In addition, it is essential that a mechanism be established so that law enforcement agencies have access to records necessary to trace guns sold on the secondary market which are then used in the commission of a crime.

"Finally, as in all areas of law enforcement, agencies with the responsibility for enforcement of current laws must have the resources necessary to meet their obligations. We support a significant increase in funding for the Bureau of Alcohol, Tobacco and Firearms targeted specifically toward enforcement of current gun sales laws, and to ensure that when the existing federal loophole is closed, compliance can be assured," the letter concludes.