

OPINION: Upholding Liability Law In The Face Of Tragedy

By Victor Schwartz, Shook Hardy & Bacon LLP

Law360, New York (December 13, 2016, 11:52 AM EST) -- To the surprise of many, the Connecticut Supreme Court recently decided to review a trial court's dismissal of a lawsuit against the makers and sellers of the Bushmaster AR-15 rifle used in the Sandy Hook Elementary School mass shooting on Dec. 14, 2012. On that day, America was stunned to learn that a 20-year-old man entered the Newtown, Connecticut, elementary school and savagely murdered 26 people, including 20 children between ages six and seven.

When tragedies of this magnitude occur, it is natural to look for causes and cast blame. The clear cause of this tragedy was a conscious decision made by a deeply disturbed individual. An ironic twist here adding to the tragedy is that before the gunman engaged in his elementary school killing spree, he shot and killed his mother from whom he had taken the weapon.

With respect to legal responsibility for such heinous acts, the focus should remain on the gunman. Nevertheless, plaintiffs' lawyers with perhaps ideological and economic motivations have sought to place responsibility on the manufacturer, distributor and seller of the rifle. They filed a lawsuit in January 2015 alleging a multiplicity of negligence-based theories against these entities, even though the gun had been lawfully sold to the shooter's mother several years earlier.

In October 2016, Connecticut Superior Court Judge Barbara Bellis wisely dismissed the claims against all of the defendants, in the decision now being reviewed by the state high court. Her ruling was rooted in the application of a federal law called the Protection of Lawful Commerce in Arms Act (PLCAA). Congress enacted the PLCAA in 2005 to codify a fundamental principle of liability law, namely that the manufacturer or seller of a lawful product should not be subject to liability where it has no knowledge of or control over the product's unlawful or criminal use by others.

This principle explains why manufacturers of knives are not subject to liability when someone stabs another person, why manufacturers of matches are not subject to liability for the acts of arsonists, and why manufacturers of cars are not subject to liability when a drunk driver hits a pedestrian. The PLCAA incorporated this principle into federal law in the context of the manufacture and sale of firearms specifically to prevent unsound litigation that could threaten the continued production of these lawful products.



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Judge Bellis' decision appreciated that the PLCAA is a fairly complex statute. Although some opponents of the PLCAA have maligned the act as giving gun makers "total immunity," that is simply not true. The PLCAA provides common-sense protections from lawsuits when a person intentionally misuses the product. It does not provide any liability protections in two important situations. These two exceptions were the focus of Judge Bellis' opinion.

The first exception allows a claim against a seller that negligently entrusts a firearm to someone who is likely to use the product in an unlawful manner. The PLCAA does not create a private right of action, but rather allows a state negligent entrustment claim (where it exists) so long as the scope of that action does not extend beyond boundaries set forth in the act. Connecticut allows negligent entrustment claims, but Judge Bellis determined that such a claim could not exist in the Sandy Hook case because the defendants made no direct sale of a firearm to the gunman. (Again, the gunman took the rifle from his mother.)

The second exception allows a claim against a firearm manufacturer or seller that knowingly violated a state or federal law regarding the firearm's sale or marketing. The plaintiffs' lawyers in the Sandy Hook case alleged a violation of the Connecticut Unfair Trade Practices Act (CUTPA) as the "predicate" for triggering this PLCAA exception. Judge Bellis rejected this claim because the CUTPA is a law designed to protect consumers against deceptive business practices and none of the plaintiff shooting victims had any business relationship with any of the defendants.

The core takeaway of Judge Bellis' opinion is that, as horrific as the Sandy Hook shooting was, it should not open the door to liability against the manufacturer or seller of the rifle that happened to be used in the shooting. Doing so would undermine the most basic principles of liability law and subvert Congress's basis in enacting the PLCAA. The Connecticut Supreme Court should respect these common-sense principles and the rule of law, and affirm Judge Bellis' dismissal.

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