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Gun Litigation (4 pages)

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FOLDER TITLE:

Gun Litigation [binder] [2]

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ms337

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

- C. Closed in accordance with restrictions contained in donor's deed of gift.
- PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- RR. Document will be reviewed upon request.

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GUN LITIGATION: POTENTIAL REMEDIES

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The following represents a sampling of the remedies that might be included in a complaint, injunction or consent decree. This list is not intended to signify support for any of these proposals.

Distribution

- Manufacturers could be required to develop an effective system for screening in advance the distributors or dealers that sell their guns.
- Manufacturers could be required to contribute to a fund for the education, supervision and regulation of the approximately 16,000 stocking gun dealers.
- Manufacturers could be required to provide certain training to all employees and sales agents of distributors and dealers that sell their guns, on subjects such as compliance with guns laws and how to recognize and prevent gun trafficking and attempts to illegally purchase guns.
- Manufacturers could be required to develop an effective system for monitoring sales of their products by distributors and dealers and determining when illegal or unsafe practices are occurring. This could include reviews of each dealer's and retailer's gun acquisition and disposition records ("bound books"), and all other records relating to sales incentive records, at least 4 times per year.
- Manufacturers could be required to develop an effective system to retrain, and suspend or terminate if necessary, distributors or dealers who engage in illegal or unsafe sales practices.
- Manufacturers could be required to maintain adequate liability insurance.
- Manufacturers could be required to refrain from using any unfair or deceptive advertising practices in the future.
- Manufacturers could be required to institute an industry-wide program of warranty revocation upon individual resale of handguns, unless the firearm is resold through a bona fide stocking handgun retailer so that secondary sales are subject to background checks under the Brady Handgun Violence Prevention Act.

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In addition, negligent distribution practices could be curtailed by imposing significant restrictions and requirements on gun dealers. That could be accomplished by suits directly against the dealers, but it could also be achieved by injunctive relief or settlement agreements, for example, that require the manufacturers to sell guns only to authorized dealers who have committed themselves by contract to abide by the restrictions and requirements. For example:

- Dealers could be prohibited from selling two or more guns (or some limited category of guns such as handguns or assault rifles) to any person within a 30-day period.
 - If multiple sales are permitted, there could be a waiting period (e.g. 5 days, 7 days) between picking up the first gun and picking up the second gun.
 - If multiple sales are permitted, dealers could be prohibited (or suspended) from selling guns if they have had more than one criminal trace request resulting from multiple sale transactions.
- Dealers could be prohibited (or suspended) from selling guns if they have had more than 2 criminal trace requests in any 1 month period.
- Dealers could be required to operate only from a genuine store or commercial place of business (i.e., no "kitchen table dealers") and to have a minimum dollar amount of firearm inventory (e.g. \$250,000).
- Dealers could be required to certify their compliance with all local, state, and federal firearms laws.
- Dealers could be required to carry specified minimum amounts of liability insurance coverage at all times.
- Dealers could be prohibited from selling guns over the internet or at gun shows.
- Dealers could be required not to use any incentive sales practices that tie a salesperson's compensation to sales volume.
- Dealers could be required to provide documentation of their sales employees' and agents' eligibility to sell guns.
- Dealers could be required to maintain computerized inventory tracking programs containing detailed information about their acquisition and disposition of every gun.
- Dealers could be subject to audits of their inventory and sanctioned if they cannot account for any firearms.
- Dealers could be required to meet specified store security requirements to prevent theft of guns.

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- Dealers could be required to make all their employees and sales agents who sell or handle firearms participate in training programs provided by manufacturers, ATF, or law enforcement, and to pass written exams on the material covered.
- Dealers could be required to sell only guns that meet all of the safety design and warning requirements described above.
- Dealers could be required to cooperate with all monitoring of firearms distribution, whether done by manufacturers, ATF, or law enforcement.
- Dealers could be required to maintain records of all trace requests initiated by ATF, and to report those trace requests to the manufacturer of each firearm traced.

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Product Design

- Manufacturers could be required to employ existing safety features such as child-proofing, internal trigger locks, magazine disconnect safeties, and chamber-loaded indicators.
- Manufacturers could be required to employ new safety features as soon as they are technologically feasible, such as personalization devices.
- Manufacturers could be prohibited from making any design or engineering decisions that produce guns that appeal particularly to criminals or to juveniles. Various indicia of such guns could be identified, such as high caliber, high power, and large capacity magazines.
- Manufacturers could be prohibited from including any features in a gun that facilitate criminal activity or make criminals more difficult to apprehend and prosecute, such as fingerprint resistance, easily obliterated serial numbers, the capability to be easily converted to an illegal firearm such as a fully automatic weapon, or the capability to accept a magazine with more than 10 rounds of ammunition.
- Manufacturers could be required to track models of their firearms to determine whether any are used illegally in disproportionate numbers, and required to make necessary design, engineering, or manufacturing changes to eliminate the features that make those models appealing to criminals.
- Manufacturers could be required to make guns that conform to safety standards that are already in effect for some places or some kinds of guns, such as the standards promulgated by the New York State Police under 9 NYCRR §§ 482.5 - 482.6.
- Manufacturers could be required not to sell packages of parts that can easily be assembled into a firearm.
- Manufacturers could be prohibited from making guns from inferior materials and, for example, required to use materials meeting specific metal strength and density standards.

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- Manufacturers could be required to sell only guns that pass specified tests, such as drop tests or firing reliability tests.
- Manufacturers could be required to carry out research and development of new gun safety technology, with a minimum percentage of their revenues dedicated to such research.
- Manufacturers could be required to place prominent and strong warnings in packaging materials and to provide clear instructions about proper storage and use of guns.

Other

- Manufacturers could be required to fund public service campaigns to inform the public about risks relating to guns.
- Manufacturers could be required to issue public reports on a regular basis specifying the extent of their efforts to reduce the harm caused by their products.
- Manufacturers could be required to fire every gun before it is sold and to provide the fired casings and serial numbers to the ATF or another law enforcement agency for inclusion in a database for use in identifying guns used in crimes.

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