



Immunizing the Gun Industry

The Harmful Effect of the Protection of Lawful Commerce in Arms Act

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What is the Protection of Lawful Commerce in Arms Act?

The Protection of Lawful Commerce in Arms Act, or PLCAA, is a federal law enacted in 2005 that grants broad immunity from liability to gun manufacturers and dealers in federal and state courts.¹ PLCAA prevents plaintiffs from filing lawsuits against gun manufacturers or dealers in many cases when these parties have been negligent and there has been “criminal or unlawful misuse” of a firearm or ammunition—regardless of whether plaintiffs are seeking monetary damages or injunctive relief.²

The law includes some narrow exceptions for permissible civil lawsuits against gun manufacturers and dealers, including for knowingly transferring a gun to a person with the knowledge that they intended to use it in a crime of violence; violating state or federal laws governing the conduct of the gun industry; negligent entrustment; breach of a contract; or limited cases involving harm to individuals caused by design defects.³

PLCAA was introduced at the behest of the gun industry, and National Rifle Association Executive Vice President and CEO Wayne LaPierre touted its passage as “a historic piece of legislation” in 2005.⁴

Why is it important to keep courthouse doors open to civil lawsuits against the gun industry?

A basic feature of American law is that victims of harm can seek redress in court from wrongdoers.⁵ By preventing victims of gun violence from pursuing well-established legal claims against irresponsible gun manufacturers and sellers—without presenting an alternative means for the victims to be compensated—PLCAA is an injustice that is unfair and unprecedented.

Beyond the basic injustice of depriving victims of gun-industry harm access to courtrooms—access that is available to victims of negligent acts by other industries—civil litigation is also important to incentivize industry actors to act responsibly; take steps to prevent negligent and criminal use of their products; and improve product safety.⁶ Prior to the enactment of PLCAA, civil lawsuits were used successfully against the gun industry to secure the adoption of new safety measures and other best practices:

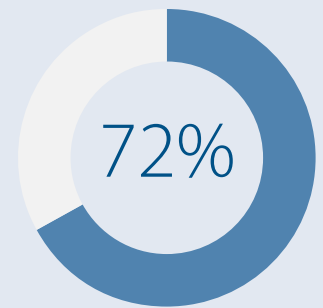
- In 2000, Smith & Wesson agreed to adopt additional safety practices, such as selling safety devices with each handgun; establishing a code of conduct for authorized dealers and distributors; and including a hidden set of serial numbers on the inside of all new guns in order to make it more difficult for criminals to scratch off these identifying markings. The company did this as part of a settlement agreement that ended several lawsuits.⁷
- In 2002, John Allen Muhammad and Lee Boyd Malvo went on a nine-month crime spree that left 17 people dead and seven injured, including 10 individuals killed in what is now infamously known as the Beltway sniper shootings. After federal agents traced the guns used in the attacks back to Bull’s Eye Shooter Supply, they discovered that the retailer failed to keep required records of the gun sales and had lost more than 238 guns over the previous three years—guns that were supposed to be in their inventory. Victims’ families sued the snipers, Bull’s Eye, as well as the gun manufacturer, Bushmaster, arguing that the store was responsible for the shootings because of its negligent sales practices and that Bushmaster was responsible because it continued to supply firearms to the store despite the store’s known negligence. In 2004, both the dealer and manufacturer were held liable in a \$2.5 million settlement. In addition to monetary damages paid by both parties, Bushmaster agreed to change its distribution practices.⁸

What effect has PLCAA had on efforts to hold the gun industry accountable?

PLCAA has had a significant chilling effect on litigation against the gun industry. Since 2005, when PLCAA was enacted, only two lawsuits against the gun industry have survived pretrial efforts to dismiss and have made it to a jury.⁹

This means that many valid cases against the gun industry are dismissed before evidence of industry wrongdoing is even considered:

- Lonnie Phillips and Sandy Phillips, whose daughter was killed in the 2012 Aurora, Colorado, theater shooting, sued the companies that sold the shooter thousands of rounds of ammunition, as well as the 100-round ammunition magazine he used to kill 11 people. The Phillips’ lawsuit against the online retailer Lucky Gunner claimed that its Internet business practices do not provide reasonable safeguards to prevent potentially dangerous individuals from obtaining weapons.¹⁰ The case was dismissed under



Seventy-two percent of Americans—including 67 percent of gun owners—support allowing cities to sue gun dealers when there is strong evidence that the dealer’s careless sales practices allow criminals to obtain guns.²¹

PLCAA, and—as a result of a combination of PLCAA and a Colorado state law that provides for attorneys fees in unsuccessful cases against the gun industry—the Phillips were ordered to pay the ammunition company more than \$200,000 in legal fees.¹¹

- After 11-year-old Billy Swan of Illinois accidentally shot and killed his friend, Josh Adames, while playing with his father’s handgun in 2001, Josh’s father, Hector Adames Jr., sued the handgun manufacturer Beretta in 2009 under a product liability theory that Beretta not only failed to include an inexpensive device on the firearm that prevents a gun from firing without a magazine¹² but also failed to include a warning that the weapon could be used without a magazine. The case was dismissed under PLCAA.¹³
- In 2003, police officer Matthew Pavelka was shot and killed by a known gang member. In California state court, Pavelka’s family sued the dealer who sold the weapons that the shooter used, as well as the manufacturers of these guns. Their lawsuit claimed that the defendants failed to take appropriate steps to prevent illegal gun sales. The judge dismissed the case on the basis that PLCAA barred the action.¹⁴

How does the immunity from suits afforded to the gun industry compare with other industries?

PLCAA affords the gun industry much broader immunity than other consumer product industries. While federal law sets caps on the amount a plaintiff can recover through civil lawsuits against other industries—such as the railroad¹⁵ and nuclear power¹⁶ industries—no other industry enjoys such extensive blanket immunity.

In fact, civil litigation in other industries has resulted in safety improvements for potentially dangerous products:

- **Tobacco.** Numerous lawsuits against the tobacco industry in the 1990s resulted in a historic settlement and—in order to reduce youth smoking—a number of changes in the way the industry marketed its products.¹⁷
- **Motor vehicles.** Lawsuits against car manufacturers have been a crucial element of ongoing efforts to ensure the safety of motor vehicles.¹⁸

Congress must repeal PLCAA

With approximately 33,000 people in the United States killed with guns every year,¹⁹ it is crucial that the gun industry be held accountable for its role in these deaths. Congress must act now to repeal PLCAA.

- The 2013 Equal Access to Justice for Victims of Gun Violence Act, introduced by Rep. Adam Schiff (D-CA), would repeal the most harmful aspects of PLCAA and rescind the broad immunity for gun manufacturers and dealers.²⁰



The American Bar Association opposes PLCAA, saying in 2005 that it “would sweep away the legitimate rights of those harmed by industry negligence” and “preempt state substantive law standards for most negligence and product liability actions for this one industry.”²²

Endnotes

- 1 Protection of Lawful Commerce in Arms, 15 U.S.C. § 7901-7903.
- 2 The Law Center to Prevent Gun Violence, "Gun Industry Immunity Policy Summary," May 20, 2015, available at <http://smartgunlaws.org/gun-industry-immunity-policy-summary/>.
- 3 15 U.S.C. § 7903(5).
- 4 Cheryl Gay Stolberg, "Congress Passes New Legal Shield for Gun Industry," *The New York Times*, October 21, 2005, available at <http://www.nytimes.com/2005/10/21/politics/congress-passes-new-legal-shield-for-gun-industry.html>.
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- 11 Alan Pyke, "Clinton: Why Shrink Gun Industry's Liability Shield When We Could Just Get Rid of It?," Think Progress, January 10, 2016, available at <http://thinkprogress.org/politics/2016/01/10/3737838/clinton-sanders-gunmaker-liability/>; Lonnie Phillips and Sandy Phillips, "We Lost Our Daughter to a Mass Shooter: Here's What We Want to Know From Democratic Candidates," *The Huffington Post*, October 13, 2015, available at http://www.huffingtonpost.com/lonnie-and-sandy-phillips/presidential-candidates-i_b_8287170.html.
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