

Gun Control Through Litigation

The Pennsylvania Superior Court in the case of *Gustafson vs. Springfield, Inc.*, 2022 Pa. Super. LEXIS 356 (August 12, 2022), has entered the fray as to when civil litigation can constitute a form of gun control.

Federal law **prevents** any civil action or administrative proceeding against the manufacturer or seller of firearms moving through interstate commerce for damages, fines, and other remedial actions which result from the criminal or unlawful misuse of that firearm by a third party. This case involved criminal or unlawful misuse of a gun. The trial court had granted preliminary objections and dismissed the case.

The plaintiff claimed the matter fell within one of the six exceptions to the appropriate definitions found within the Protection of Lawful Commerce and Arms Act of 2005, 15 U.S.C.S. §§7901-7903. The Act commonly known as the PLCAA has an exception for actions brought against the seller for negligent entrustment or negligence *per se*. There also is exception for breach of contract or warranty. Further, an action may be brought for death, physical injury or damages resulting from a defect in the design or manufacture when the gun is used in a foreseeable manner.

The Gustafsons filed a product liability lawsuit under Pennsylvania common law. “But for” the federal statute, this matter would have proceeded through the state courts like every other civil action.

A claim apparently had been made that the gun was defective. A *per curiam* order was filed August 12, 2022. The order of the trial court sustaining preliminary objections was reversed by the Superior Court.

Judge Kunselman filed an opinion in support of the *per curiam* order to reverse in which Judges Panella and Lazarus joined. Bender, President Judge, filed an opinion in support of the *per curiam* order to reverse. Dubow filed an opinion in support of the *per curiam* order to reverse. Olson filed a dissenting opinion in which Bowes and McCaffery joined and Murray concurred in the result. Murray filed a dissenting opinion in which Olson and McCaffery concurred in the result. Confused yet?

A 13-year-old was killed and a products liability claim followed. Gustafson and his 14-year-old friend visited the home of a friend and obtained a semi-automatic handgun there. The friend removed the handgun’s magazine and believed it was unloaded because there were not adequate warnings or indicators to inform that a live round remained in the chamber. Thinking the gun was unloaded, the boy pulled the trigger. The chamber bullet fired and killed Gustafson. The District Attorney charged Gustafson’s friend with general homicide, and the friend eventually pleaded delinquent to involuntary manslaughter in juvenile court.

Gustafson, as administrator of his son’s estate, sued the manufacturer and seller of the handgun. They claimed strict liability. The Gustafsons said the PLCAA did not apply to their lawsuit. It certainly seems that it fit one of the exceptions, that being of a defective product. That is one of the exceptions under the Act. It is exception (v);

products liability suits. Some of the judges believed that the law is unconstitutional, but the narrower ground that an exception was met seems to have prevailed.

At issue also was the Commerce Clause which was raised and discussed extensively in the opinion. After examining the cases, some of the judges believed that the Commerce Clause did not permit this Act to be enacted.

The Act immunizes the gun industry from any common law liability that arises any time after the firearm or ammunition has moved through and exited interstate commerce. Neither Congress nor the federal government provided any explanation for how state civil lawsuits and local torts involving those products burden or obstruct the free flow of interstate commerce. Whether Pennsylvania jurisprudence would recognize litigation costs as a justification to assert commerce clause authority is highly doubtful. In other words, some of the judges believed that the Commerce Clause could not be interpreted so broadly as to permit the statute. There was also a claim pursuant to the Tenth Amendment that the PLCAA invades the province of state sovereignty reserved by the Tenth Amendment. This is an interesting claim for which there is unfortunately little support.

In reviewing the Tenth Amendment, at least some of the judges would hold that Section 7902(b) of the PLCAA is repugnant to the Constitution of the United States presumably under the Tenth Amendment, which reserves rights dealing with claims against firearm manufacturers as a state matter. This majority concluded that Section 7902(b) of PLCAA directs courts to dismiss common-law claims that fall within the definition of “qualified-civil-liability action” violative of the Tenth Amendment. In terms of severability, some judges would not find that to be appropriate either. The constitutional safeguards that override the PLCAA are the structural pillars of American government, wrote the one judge in support of the *per curiam* reversal.

Take away bullet points are:

- Whether the trial court erred by finding that a federal statute, the Protection of Lawful Commerce in Arms Act of 2005, 15 U.S.C. 7901-7903 bars a state, product-liability lawsuit arising from the shooting death of a 13-year-old?
- The claim was brought that the gun lacked warnings and therefore a bullet was discharged because the child in question, who discharged it, did not know there was a bullet remaining in the chamber.
- He therefore inadvertently killed his friend.
- One of the exceptions to 15 U.S.C. 7902(a) is for product liability actions.
- The Act would apply, otherwise, to any claim against a manufacturer or seller of firearms moving through interstate commerce for any kind of claim.
- The opinion in support of the *per curiam* reversal, however, went further and found that aside from exception (v) applying, the law was also unconstitutional because the commerce clause was not a sufficient justification.
- Some judges will also rely upon the Tenth Amendment reserving rights to the states, including presumably the rights to bring civil actions.
- Strong statement made by the opinion in support of *per curiam* reversal that this law is unconstitutional.

On September 12, 2022, a Petition for Allowance of Appeal was filed by Appellees Springfield, Inc.; Saloom Department Store; and Saloom Dept. Store. LLC, in the Pennsylvania Supreme Court.