

US Supreme Court Denies Certiorari in Appeal by Gun Manufacturer, Remington, in Case Brought by Families of Sandy Hook Massacre Victims

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Product Liability Alert

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On November 12, 2019, the United States Supreme Court denied certiorari without comment to hear an appeal of the Connecticut Supreme Court ruling that allowed the families of the victims in the Sandy Hook massacre to pursue claims against Remington as the manufacturer of the firearm used in the shooting.

The pivotal issue addressed in this case is the scope of the "predicate exception" to the immunity afforded to firearm and ammunition manufacturers and sellers under the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 et seq. (PLCAA). While the PLCAA generally preempts claims against these manufacturers and sellers resulting from the criminal use of their products, the "predicate exception" to the act applies where the manufacturer or seller "knowingly violated a State or federal statute *applicable* to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. § 7903(5)(A)(iii) (emphasis added).

In this case, the plaintiffs alleged that Remington's marketing of the rifle used in the massacre violated the Connecticut Unfair Trade Practices ACT (CUPTA), which forbids "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a).

Despite Remington's argument that the predicate exception only applied to statutes applicable to "firearms," the Connecticut Supreme Court interpreted the predicate exception more broadly, holding that a reasonable interpretation of "applicable" was "capable of being applied." Accordingly, it held that CUPTA was "capable of being applied" and therefore, fell within the predicate exception to immunity under the PLCAA.

Since the United States Supreme Court denied certiorari, the Connecticut Supreme Court's decision is controlling law in Connecticut. However, since all states have statutes with analogous unfair trade practice laws, this case potentially opens the door for victims of gun violence in other states to also bring suit against firearm and ammunition manufacturers and sellers. Accordingly, even though PLCAA was intended to protect the firearms industry from being overwhelmed by the cost of defending a multitude of cases, this broad "predicate exception" has the potential to increase litigation significantly against these previously immune manufacturers and sellers.

The docket for the United States Supreme Court Case can be found at *Remington Arms Co., LLC v. Soto*, No. 19-168.

The underlying 71-page Connecticut Supreme Court decision can be found at *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262 (Conn. 2019)

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