

*Donna L. Soto, Administratrix (Estate of Victoria L. Soto), Et Al. v. Bushmaster Firearms International, LLC, Et Al. (SC 19832)*

The plaintiffs in the present case sought damages from the defendants for several wrongful deaths which occurred as a result of the Sandy Hook school shooting. The defendants in this case were the manufacturers, distributors, and retailers of the semiautomatic rifle used by Adam Lanza to carry out the mass shooting. The rifle was capable of rapid fire, had large capacity magazines, and was designed to cause catastrophic injuries to its targets. Lanza's mother had purchased the rifle in 2010. On the day of the shooting, Lanza took the gun, drove to Sandy Hook Elementary School, shot his way into the building, and ultimately killed 26 people.

The plaintiffs contend that the defendants acted negligently by “entrust[ing] to civilian consumers an assault rifle that is suitable for use only by military and law enforcement personnel and violated the Connecticut Unfair Trade Practices Act (CUTPA) . . . through the sale or wrongful marketing of the rifle.” The plaintiffs base their claim on the contention that due to the nature of the rifle, as a military grade weapon, it was “grossly ill-suited for legitimate purposes such as self-defense or recreation.” The plaintiffs further argue that type of weapon had become the weapon of choice for mass shooters and that the defendants continued to manufacture and sell these weapons to civilians despite their knowledge of the potential harm.

The plaintiffs provided a second theory of liability claiming that the defendants had marketed the weapon through an “unethical, oppressive, immoral, and unscrupulous manner” by emphasizing the militaristic aspects and by emphasizing that the intended purpose of the weapon was “waging war and killing human beings.” The plaintiffs claim that the defendants intentionally promoted the gun as an “offensive assault” weapon rather than for recreational purposes. The plaintiffs further contend that this marketing was a substantial factor in Lanza's choice in weapon and the resulting injuries suffered by the decedents.

The defendants contend that the plaintiffs' claims were barred by the Protection of Lawful Commerce in Arms Act (PLCAA) and moved to strike the complaint. The defendants provided an alternative argument, contending that the plaintiffs had failed to "state a legally valid negligent entrustment claim under Connecticut common law and that their claims predicated on alleged CUTPA violations were legally insufficient." The defendant claimed that the plaintiffs lacked standing and were also barred by CUTPA's statute of limitations. The trial court granted the defendants' motion to strike the complaint.

The Court first determined that the trial court correctly ruled that the plaintiffs had failed to plead a "legally sufficient cause of action" for their common law negligence claim and properly struck the complaint. The Court reasoned that the defendants did not act negligently in selling Lanza's mother the rifle because they had no reason to expect that the gun would be used in an unsafe or illegal manner, or that it would be shared with someone other than the direct buyer. The Court determined that the doctrine of negligent entrustment should not be expanded to allow such a claim to be a valid cause of action.

The Court next determined that the trial court had improperly struck the plaintiffs' CUTPA claim based on the idea that they lack standing. The trial court reasoned that they the plaintiffs lacked standing because they were third-party victims and had no consumer relationship with the defendants. However, the Connecticut Supreme Court determined that CUTPA §42-110g(a) allows "any person who has suffered an ascertainable financial loss caused by an unfair trade practice to bring action under CUTPA." The Court further reasoned that precedent case law did not require a business relationship. The Court also determined that the claim should not have been struck based on the attenuated linked between the wrongful act and the injuries suffered by the plaintiffs because in past cases, the Court has allowed for far less

direct relationships between the wrongful act and the plaintiff's injury. The Court ultimately found that the trial court erred in striking the plaintiffs' claim for lack of standing.

In regard to the defendants' claim that the statute of limitations had expired, the Court found that the plaintiffs' claim for wrongful death based on their theory that the sale of military style weapons to civilian consumers constituted an unfair trade practice was barred by the three-year statute of limitations. However, the Court found that the plaintiffs' wrongful death claim based on the defendants' violation of CUTPA through their marketing of the assault weapon were not barred by the statute of limitations. The Court reasoned that the plaintiffs' claims regarding wrongful advertisements were articulated in the present tense, suggesting that the defendants' wrongful advertising continued through the time the complaint was filed.

The Court next determined that the defendants could not prevail on their alternative claim that the exclusivity provision of the Connecticut Product Liability Act. The Court found that the defendants failed to establish that the plaintiffs' claims were, in fact, product liability claims. In light of that failure, the Court found that the plaintiffs' claim could not be barred by the Product Liability Act.

The Court also disagreed with the defendants' claim that personal injuries which result from wrongful advertising are not actionable under CUTPA. The Court reasoned that the term "actual damages", though not defined in CUTPA, can be interpreted to include personal injuries. The Court also determined that the phrase "ascertainable" in CUTPA did not limit recovery of damages to only those who were directly injured by unfair trade practices. The Court made these determinations based on prior case law and previous Federal Trade Commission rulings.

Lastly, contrary to the defendants' arguments, the Court determined that Congress had not intended PLCAA to preclude the present case and like cases, and therefore CUTPA

constituted a predicated statute. The Court based their reasoning for this determination largely on legislative intent. The Court found that if Congress had intended to limit the scope of the predicate exceptions to PLCAA to include only statutes directly applicable to firearms, then they would have done so. Because Congress did not articulate such a limited scope, the most logical conclusion is that Congress intended other types of statutes to apply. Such a determination is consistent with the findings of other courts.

The Court additionally looked to congressional statements regarding the intended purpose of PLCAA. Such statements fall in line with the Court's interpretation of the meaning of the Act. Through the congressional statements, the Court found that Congress only intended to preclude novel civil actions and those "based on legal theories without foundation in the common law." Congressional statements illustrated Congress's desire to protect the Second Amendment rights of U.S. citizens. However, the Court found that Their application of PLCAA did not run contrary to that goal as it is not clear whether the Second Amendment's "protections extend to assault weapons" such as the weapon used in this case.

The Court rejected the defendants' contention that allowing statutes of general applicability to be a predicated statute would then allow "virtually any action seeking to hold firearms manufacturers or sellers liable for third-party gun violence" to proceed. The Court further found that the canon of statutory construction did not apply because there was no evidence that Congress intended to restrict the power of the states to regulate wrongful advertising and therefore, they could not find that the plaintiffs' CUTPA claims were precluded by PLCAA. Additionally, the Court found that the canon of ejusdem generis similarly did not apply as allowing its application would be contrary to legislative intent.

Ultimately, the Court reversed the judgement of the trial court in regard to the plaintiffs' lack of standing and the statute of limitations claims as they apply to the plaintiffs' claim of wrongful death based on unfair trade practices. The Court upheld the remaining rulings of the trial court.