

[Products Liability Law Daily Wrap Up, DEFENSES TO LIABILITY—
WEAPONS AND FIREARMS—Conn. Super.: Suit against Sandy Hook rifle
manufacturers tossed based on federal law’s immunity, \(Oct. 17, 2016\)](#)

Products Liability Law Daily Wrap Up

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By Susan Lasser, J.D.

A lawsuit brought by the families/estates of the individuals injured or killed at Sandy Hook Elementary School in Connecticut on December 14, 2012 against the manufacturers and sellers of the Bushmaster AR-15 rifle that was used in that shooting has been dismissed by a Connecticut state court. The complaint alleged that the manufacturers and sellers continued to sell the rifle, which was designed as a military weapon and had little utility for legitimate civilian purposes, to the civilian market without regard for the unreasonable risks posed by the weapon. The court found that the families' suit was barred by the federal Protection of Lawful Commerce in Arms Act (PLCAA) (*Soto v. Bushmaster Firearms Int'l. LLC*, October 14, 2016, Bellis, B.).

The families/estates sought damages and injunctive relief against Bushmaster Firearms International, LLC, Freedom Group, Inc., Bushmaster Firearms, Bushmaster Firearms, Inc., Bushmaster Holdings LLC, Remington Arms Co., LLC, and Remington Outdoor Company (collectively, Remington defendants); Camfour, Inc. and Camfour Holding, LLP (collectively Camfour defendants); and Riverview Sales, Inc. and David LaGuercia (collectively, Riverview defendants). In a 33-count amended complaint dated October 29, 2015, the families/estates alleged that on the morning of December 14, 2012, Adam Lanza entered Sandy Hook Elementary School in Newtown, Connecticut, carrying a Bushmaster AR-15 rifle, model XM15-E2S. He then used the weapon, which was designed for military use and "engineered to deliver maximum carnage with extreme efficiency," to kill 26 people in five minutes. The weapon had been bought by Lanza's mother. The families/estates alleged that the defendants, manufacturers and sellers of the rifle, knew that civilians are unfit to operate it, yet continue selling it to the civilian market, disregarding the unreasonable risks posed by the weapon "outside of specialized, highly regulated institutions like the armed forces and law enforcement," in order to continue profiting from the sale of the weapon. Their claims also included that the defendants knew that the sale of assault rifles like the one at issue to the civilian market "posed an unreasonable and egregious risk of physical injury to others," as a mass casualty event was in the scope of the risk created by the weapon; and that despite this knowledge, the manufacturers and sellers promoted the assaultive qualities and military uses of the rifle to civilian purchasers.

The Remington, Camfour, and Riverview defendants moved to strike the amended complaint for failure to state legally sufficient claims upon which relief could be granted, on grounds that the defendants were immune from claims under the PLCAA because the plaintiffs had not sufficiently alleged causes of action that are permitted under any exception to the immunity set forth in the statute, particularly, the negligent entrustment exception.

PLCAA and negligent entrustment exception. The court found that the current case fell squarely within the broad immunity provided by PLCAA. Congress, through the PLCAA, broadly prohibits lawsuits "against manufacturers, distributors, dealers, and importers of firearms ... for the harm solely caused by the criminal or unlawful misuse of firearm products ... by others when the product functioned as designed and intended." Because the families/estates' lawsuit sought damages for harms, including the deaths of their decedents, that were caused solely by the criminal misuse of a weapon by Adam Lanza, the manufacturers and sellers of the weapon he used were immune from suit under the PLCAA. Although the statute provides a narrow exception under which plaintiffs can maintain an action for negligent entrustment of a firearm, the allegations in the families/estates' case did not fit within the common-law tort of negligent entrustment under well-established Connecticut law, the court held. Nor did the allegations come within the PLCAA's definition of negligent entrustment—i.e.,

"the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." The court stated that this statutory definition of negligent entrustment claims is narrower than the common-law Connecticut definition, and that the plaintiffs' negligent entrustment claims had to satisfy the statutory definition as well in order to fit the negligent entrustment exception to immunity set forth in PLCAA.

Connecticut Unfair Trade Practices Act (CUTPA). Moreover, the families/estates could not use the CUTPA to bring their action within PLCAA's exception allowing lawsuits for violation of a state statute applicable to the sale or marketing of firearms. Under the CUTPA, a plaintiff must allege a consumer, competitor, or other commercial relationship with a defendant, and the families/estates failed to allege such a relationship. Thus, the court granted the defendants' motions to strike the amended complaint in its entirety.

The case is No. [FBT-CV-15-6048103-S](#).

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Companies: Bushmaster Firearms International, LLC; Reminton Arms Co. LLC; Camfour, Inc.; Camfour Holding, LLP; Riverview Sales, Inc.

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