

Families' Suit Against Gunmaker Returned to State Court

Law Tribune Staff, The Connecticut Law Tribune

October 1, 2015 One matter that attorneys for the Sandy Hook School massacre victims and counsel for the gun industry have agreed upon is that the venue for the wrongful death claim filed against the makers of an assault-style rifle used in the shooting is critical to the fate of the litigation.

Now plaintiffs' attorneys are claiming a procedural victory as a federal judge in Connecticut has ordered the lawsuit moved back to state court, where it was originally filed.

"All my clients seek is an opportunity to present their case to a Connecticut jury," Joshua Koskoff of Koskoff, Koskoff & Bieder in Bridgeport said, in a prepared statement. "This ruling brings them one step closer to that goal. It is a major setback for the gun industry in their attempt to avoid responsibility for tragedies like Newtown."

Koskoff said federal courts have consistently refused to hold gun manufacturers liable or permit lawsuits against gun manufacturers for injuries caused by third parties.

Nine families of shooting victims and survivor Natalie Hammond filed a state lawsuit in December against the North Carolina-based makers of the Bushmaster AR-15 rifle that was used to kill 20 first-graders and six adults at Sandy Hook Elementary School. In their complaint, the plaintiffs claim the rifle is too dangerous to be sold to civilians.

The gun manufacturers, which include Remington Arms Co., moved to have the lawsuit handled in federal court in January. A notice of removal was filed in U.S. District Court in New Haven. The case was placed for docketing purposes before U.S. District Judge Robert Chatigny after Remington argued that because it is located in North Carolina and not Connecticut, federal courts had jurisdiction.

Other defendants include firearm distributor Camfour, based in Westfield, Massachusetts, and Riverview Gun Sales, the East Windsor store where gunman Adam Lanza's mother legally purchased the Bushmaster rifle in 2010.

In their efforts to have the case moved back to state court, the plaintiffs argued that a federal court can exercise jurisdiction over a case in only two circumstances: if the claims derive from the U.S. Constitution or federal law; or if all of the defendants are "diverse," meaning not from the same state as the plaintiffs. In this instance, Koskoff said the case belongs in Connecticut because the now-closed Riverview Gun Sales is a defendant.

But James Vogts, of Chicago's Swanson, Martin & Bell, the lawyer for Remington, had argued that Riverview was not a legitimate defendant because the gun store was protected from such litigation under the Protection of Lawful Commerce in Arms Act, the federal statute that grants gun sellers immunity in most instances. But there are exceptions to the act, as the plaintiffs noted in their lawsuit.

On Sept. 30, Chatigny ruled for the plaintiffs and remanded the case to state court. "Defendants have not met their burden of establishing that there is no possibility plaintiffs can state a cause of action against the non-diverse defendant, Riverview Sales Inc.," Chatigny wrote, stating that he would issue a longer decision at a later date.

The Associated Press reported that lawyers for Remington didn't return messages seeking comment on Oct. 1.

The families' complaint argues that Bushmaster and the other defendants should be held accountable for their decision to entrust a highly lethal assault weapon to the general public. "The AR-15 assault rifle was designed as a military weapon," said Katie Mesner-Hage, also of Koskoff, Koskoff & Bieder. "The defendants chose to make that weapon available to Connecticut citizens and to market it in explicitly militaristic terms – even in the wake of Columbine, Aurora, and countless other tragedies. A Connecticut jury should have the opportunity to evaluate that choice and decide whether defendants bear some responsibility for what happened at Sandy Hook Elementary School."