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Lawyers: Federal law loophole could protect makers of gun used in Sandy Hook

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Early arguments in the case of 10 families suing the maker of the semi-automatic rifle used in the Sandy Hook massacre show why this could be a landmark case.

In pretrial motions, lawyers have begun building their cases concerning a loophole in a federal law passed in 2005 to protect the firearms industry from liability when gun buyers misuse their weapons.

Under the 2005 Protection of Lawful Commerce in Arms Act, the industry can be liable in circumstances when the seller knows or should know the buyer could use the weapon for harm.

The 10-family lawsuit filed in December claims the manufacturer, the distributor and the seller of the Bushmaster AR-15 used in the rampage should have known the weapon would fall into the hands of an unfit person and result in the death of innocent people.

On Dec. 14, 2012, a deeply troubled 20-year-old Adam Lanza took the Bushmaster rifle from his mother's unlocked closet, shot his way into the Sandy Hook Elementary School, and killed 20 first-graders and six educators.

Lawyers representing Bushmaster have asked a federal judge to remove from the lawsuit one of the defendants, East Windsor retailer Riverview Gun Sales, arguing all the merchant did was sell the AR-15 rifle in 2010 to Lanza's mother, Nancy.

"(A) negligent entrustment action against a firearm seller must involve a sale of a firearm by a seller to the same person who thereafter 'uses' the firearm to cause harm to himself or herself, or others," reads a motion by Stamford defense attorney Jonathan Whitcomb to U.S. District Judge Robert Chatigny. "Plaintiffs cannot plead a negligent entrustment action against Riverview Sales Inc. under the definition provided by Congress."

The lead attorney for the families responded in a motion to the judge on Wednesday that the defense hadn't cited any case law to support that interpretation.

All the more reason, the families' attorney urged the judge, the case should be argued in court.

"There is absolutely nothing ... that suggests 'use' should be read as narrowly as defendants would like," Bridgeport attorney Joshua Koskoff wrote. "(T)here is not only no settled law supporting defendants' argument that 'use' is synonymous with discharge, there is no law at all."

It is not clear when the judge would make a decision.

"Federal judges have wide discretion," Koskoff said Thursday. "So it is anybody's guess."

Attorneys for Bushmaster are trying to keep the case in federal court. In order to do so, they need to remove Riverview from the list of defendants. The defense's argument is the families do not have a case against Riverview, because the retailer is protected by the 2005 federal law, known as PLCAA.

Koskoff, who is trying to get the case moved to Connecticut Superior Court, responded the defense was presuming its interpretation of the federal law would be the same as the court's view.

"Neither the United States Supreme Court nor any Connecticut high court has spoken on the meaning of this (law)," Koskoff wrote in his motion to the judge. "In other words, there is no interpretation that is binding in Connecticut."