



## The Crimes of Others: Adam Lanza, Sandy Hook, and Protection Against Tort Liability for Selling Firearms

12.17.2014

BY: CAMDEN R. WEBB

The families of the victims of the Newtown, Connecticut shooting, in which Adam Lanza attacked the Sandy Hook Elementary School, have filed a lawsuit against the seller of the AR-15 rifle that Lanza used in the crime, and against the distributor and the manufacturer of the rifle. The lawsuit seeks to recover damages against the seller, distributor, and manufacturer for the deaths and injuries that Lanza caused. The plaintiffs filed suit right before the second anniversary of the shooting, and this is obviously a politically and emotionally charged case. But does this lawsuit have sound legal foundation, and will the firearms seller, distributor, and manufacturer be liable for Lanza's criminal activities? The answer is probably no.

In 2005, the Federal Government enacted the Protection of Lawful Commerce in Arms Act (?PLCAA?), **15 U.S.C. §§ 7901 - 7903**. This statute bars any civil liability claims against firearms sellers and manufacturers for crimes committed with their products, unless certain specific and narrow exceptions apply. This statute is grounded in the legal principle that a person ordinarily will not be held liable for the intentional criminal acts of another. Such liability as a general matter is rather rare, because tort law in the United States does not often impose civil liability on one person when another person commits a crime. This rule is chiefly based on causation principles, which hold that when one party's intentional criminal conduct causes harm to another, that conduct is deemed the sole proximate cause of injury.

However, in the area of firearms, some courts varied from this general rule and allowed lawsuits to go forward against firearms sellers and manufacturers when someone committed crimes with these products. In response, Congress enacted the PLCAA to address situations where crimes are committed and sellers or manufacturers are sued for injuries inflicted by criminals.

The provisions of the PLCAA are straightforward. The section barring liability, **15 U.S.C. § 7902**, states plainly that "a qualified civil liability action may not be brought in any Federal or State court." A "qualified civil liability action" is any civil action or administrative proceeding by any person brought against a seller or manufacturer of firearms or ammunition for any relief whatsoever when harm results

from criminal or unlawful misuse of the products. **15 U.S.C. § 7903(5)(A)**. Thus, in the United States, firearms sellers and manufacturers generally are not liable when a criminal commits a crime using one of their products.

The plaintiffs in the Lanza lawsuit likely will face an uphill battle. The intent of the PLCAA is abundantly clear from its terms, and the PLCAA even includes a section that states crystal-clear Congressional findings and intent that place the Lanza lawsuit squarely within the parameters of the PLCAA. See **15 U.S.C. § 7901**.

The plaintiffs' attorneys in the Lanza lawsuit have studied the PLCAA and are attempting to fit their case into one of the statute's narrow exceptions. Under the PLCAA, a "qualified civil liability action," specifically excludes an action brought against a seller for "negligent entrustment." **15 U.S.C. § 7903(5)(A)(ii)**. The statute defines "negligent entrustment" to mean that a seller supplied a firearm or ammunition to an individual when the seller knew or reasonably should have known that the individual would likely misuse the product to harm others. **15 U.S.C. § 7903(5)(B)**.

But the plaintiffs' theory in this case does not appear to rely upon individualized facts about Adam Lanza. Instead, the theory is that an AR-15 rifle is close in function to a military weapon, and that the sale of *any* AR-15 means amounts to negligent entrustment when a crime is committed.<sup>1</sup>

While this theory is creative, its main hurdle is the language of the PLCAA itself. The statute's definition of negligent entrustment plainly contemplates that a seller must actually know, or must be aware of circumstances leading the seller to reasonably conclude, that the individual to whom a product is sold would misuse the product. **15 U.S.C. § 7903 (5)(B)**. Thus, "negligent entrustment" under the PLCAA must focus on the *individual who purchases the product*, not the type of product sold. Moreover, the definition of negligent entrustment only addresses the actions of a "seller," and it conspicuously excludes mention of a "manufacturer," a term that is used elsewhere throughout the statute. This implies that the negligent entrustment exception likely applies only to a seller dealing directly with the individual purchasing the product, reinforcing the premise that the relevant inquiry focuses on individualized facts about the purchase, not the nature of the product purchased.

The Lanza lawsuit is pending in Connecticut state court, and it will be up to the trial court judge, and likely the Connecticut appellate courts, to decide whether the negligent entrustment exception applies. The defendants have not yet responded to the lawsuit, and they have not commented to the media. However, it appears that the plaintiffs in this case have a tough road ahead to prove liability.

<sup>1</sup> In a December 15, 2014 **interview**, plaintiffs' attorney Joshua Koskoff stated that "it is no longer reasonable to entrust" AR-15s to the civilian world.

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- Camden R. Webb ? 919.981.4021 ? crwebb@williamsmullen.com

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