

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Department
of the Trial Court
Civil Action No. 99-02590-C

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

JAN 14 2 11 PM '18

NICHAELE JOSEPH DONOVAN
CLERK/MAGISTRATE

THE CITY OF BOSTON AND THE BOSTON
PUBLIC HEALTH COMMISSION

Plaintiffs,

v.

SMITH & WESSON CORP., et al.,

Defendants.


**PLAINTIFFS', THE CITY OF BOSTON AND THE BOSTON PUBLIC HEALTH
COMMISSION, UNOPPOSED MOTION TO DISMISS PURSUANT TO
MASS.R.CIV.P. 41(a)**

The Plaintiffs', the City of Boston and the Boston Public Health Commission (the "City of Boston"), pursuant to Mass R. Civ. P. 41(a)(2), moves this Court for an Order dismissing with prejudice this action, all parties bearing their own costs and fees, and all parties waiving any rights of appeal.

In support therefore, the City of Boston refers to the attached Exhibit A. The City of Boston, through counsel, further states that all Defendants waive further notice of this Motion and have assented to this Motion.

Accordingly, the City of Boston respectfully requests that this Court enter an order dismissing this action with prejudice, each party bearing its own costs and fees, and all parties waiving any rights of appeal.

Respectfully submitted,



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**CITY OF BOSTON AND FIREARMS INDUSTRY TO
CONTINUE EFFORTS TO REDUCE FIREARMS MISUSE;
CITY TO DISCONTINUE SUIT AGAINST INDUSTRY**

Beginning in late 1998, certain municipalities filed lawsuits against firearm manufacturers, distributors and industry trade associations (the "Industry"), alleging that the conduct of these lawful and regulated businesses contributed to the criminal, accidental and suicidal misuse of firearms in those communities. The City of Boston and the Boston Public Health Commission (collectively, "Boston" or the "City") were among the municipal entities to file suit against the Industry. The stated goal of this suit was to decrease the misuse of firearms by criminals and others, thereby reducing the crime-fighting and related costs to the City, and improving the quality of life in Boston. Since its filing, the City has vigorously prosecuted this suit and has taken many depositions and reviewed hundreds of thousands of pages of documents produced by the members of the firearms industry and the industry trade associations.

Firearms manufacturers and the industry trade associations, while denying any wrongdoing and vigorously defending against this suit, have nevertheless reaffirmed their long-standing commitment to seek ways to further reduce the number of firearm accidents, to assist law enforcement to further decrease criminal violence committed with firearms, and their continued commitment to the safe, responsible and lawful distribution of their products.

The City and the Industry acknowledge that criminal and negligent misuse of firearms is a complex social issue with a host of contributing causes. During the litigation the City has learned that members of the firearm industry have a longstanding commitment to reducing firearm accidents and to reducing criminal misuse of firearms. In addition, the tragic events of September 11, 2001, have caused us as a nation to reorganize our priorities and to emphasize cooperation among Americans rather than confrontation.

Recently, as has been widely reported in the media, Boston has experienced an increase in violence, including violence perpetrated with firearms. Boston is committed to doing everything possible to find ways to reduce such violence as quickly and as effectively as possible and the Industry shares this goal. Boston now believes that by enlisting the voluntary cooperation of the Industry and its safety programs and by working together with industry officials, the City can best address the complex social problem of gun violence. This cooperative partnership will benefit local law enforcement and the citizens of Boston for years to come.

The City and the Industry have now concluded that their common goals can be best achieved through mutual cooperation and communication, rather than through litigation, which has been expensive to both the Industry and taxpayers, time-consuming and distracting in a time of national crisis.

This litigation has raised the nation's consciousness about gun safety, safe handling and storage of firearms, and efforts to prevent the criminal acquisition and

misuse of guns. The firearm industry and cities have promoted this heightened public awareness with important safety messages and programs, and they recognize that these efforts can be enhanced through the cooperation of the firearm industry and local, state, and federal law enforcement. Over the years, initiatives undertaken by both the industry as well as federal, state and local authorities have taken positive, realistic and concrete steps to reduce the illegal acquisition of firearms by criminals, reduce the incidents of firearm accidents and increase public awareness concerning the safe handling and storage of firearms.

Example of efforts to reduce firearms accidents include:

- Continued efforts by firearm manufacturers to promote the safe and responsible handling of firearms through the use and distribution of firearm safety educational information with their products.
- Manufacturers including free locking devices with their firearms.
- The incorporation of numerous safety features into their firearm designs that are intended to prevent accidents, and continued research by companies into improving their products.
- “*Project Home Safe*,” the award-winning industry-supported national firearms safety education program that was recently awarded a \$5 million dollar federal grant to distribute free firearm safety kits, including a firearm locking device, nationwide.
- National Crime Prevention Council’s “*McGruff The Crime Dog*” firearms safety video for juveniles that the industry trade associations funded and are distributing in partnership with NCPC.
- Numerous firearm safety training programs sponsored or supported by the firearm industry, as well as state legislatures and organizations like 4H and the Boy Scouts of America.
- Enactment of “child access” laws requiring that firearms kept in a home with children should be locked up when not in use, consistent with the safety message firearm manufacturers and others have been providing for years.

As a result of these and other efforts, firearm accidents have dropped a dramatic 67% since 1991 and over 25% since 1998, according to the National Safety Council, and are now at their lowest level since record keeping began in 1903.

Example of efforts to reduce criminal violence committed with firearms include:

- Programs such as the “Boston Gun Project” developed by the cities to interdict the supply of illegal firearms have resulted in the reduction of illegal gun supplies with the cities.
- Aggressive enforcement of our nation’s gun laws, exemplified by the successful and highly effective “*Project Exile*” program implemented in Richmond, VA and other cities.
- Comprehensive gun tracing programs by law enforcement and computerized analysis of pertinent information which, when combined with traditional law enforcement investigative tools, can assist the Bureau of Alcohol, Tobacco and Firearms (“ATF”) and other law enforcement agencies in their efforts to identify, investigate and prosecute anyone involved in illegal gun trafficking.
- Industry-sponsored programs such as “*Don’t Lie For the Other Guy*,” developed in partnership with the Bureau of Alcohol, Tobacco and Firearms, are helping firearm retailers to identify and prevent the illegal sale of a firearm to a prohibited person by so-called “straw purchasers,” a method the ATF identified as one way criminals illegally obtain firearms.
- Implementation of the industry-supported National Instant Check System (NICS) criminal records checks for all firearms sold at retail through the FBI and state police.
- Closer cooperation between law enforcement, cities, ATF, and industry have resulted in additional programs to help educate firearm dealers on vital issues such as store security, prevention of thefts, and ascertaining the “*bona fides*” of retail gun buyers.
- Increased supervision of retail dealers by state investigatory, regulatory and law enforcement agencies.
- Manufacturing firearms with “tamper resistant” serial numbers as mandated by federal firearm laws prevents criminals from attempting to obliterate the serial number and maximizes law enforcement’s ability to trace firearms used by criminals.

The City acknowledges that the members of the industry and firearms trade associations are genuinely concerned with and are committed to, the safe, legal and responsible sale and use of their products. The Industry has for its part always acknowledged that the misuse of firearms by criminals and others has significant detrimental effects upon all law-abiding citizens and pledges to continue its longstanding efforts to help prevent such occurrences. The Industry and the City believe that through cooperation and communication they can continue to reduce the number of firearm

related accidents, can increase awareness of the issues related to the safe handling and storage of firearms, and can reduce the criminal acquisition of firearms. To those ends, they pledge to focus their mutual efforts on positive, realistic and beneficial programs.

Creation of a Joint Council on Firearm Safety

The City and the members of the firearms industry and the trade associations will establish a Joint Council on Firearm Safety (the “Joint Council”) to provide feedback and improve communications with each other concerning these important matters of public safety and to recommend programs and methods to enhance their effectiveness. The Joint Council will provide an opportunity to discuss the problems and successes encountered by the City and the Industry in meeting their objectives. The Joint Council will serve as a forum for discussion and information concerning emerging issues in the areas of firearm safety education, continuing efforts to improve safe, responsible and legal distribution of firearms, and efforts to increase enforcement of existing firearms regulations. The following are some examples of activities that will be undertaken by the Joint Council.

- Members of the Joint Council will work to obtain, where appropriate, written clarification of the Massachusetts Attorney General Regulations which are codified at 940 CMR 16.00 et. seq.
- The Industry and the City acknowledge that there currently exist an extensive number of federal, state and local regulations to which firearm retailers must adhere in the conduct of their business. In addition to these regulations, there also exists information made available to retailers through the Bureau of Alcohol, Tobacco and Firearms (ATF) and Industry publications, newsletters and other resources related to the safe and lawful distribution of firearms. Industry trade associations, in cooperation with the ATF, will continue to strive to help communicate this information to retail firearm dealers throughout the United States in an efficient and effective manner which will contribute to the safe and lawful distribution of firearms.
- Members of the Joint Council will share information regarding particular issues of concern to law enforcement in the City of Boston as it relates to apparent trends in illegal use or possession of firearms. The Industry will continue to serve as a resource to law enforcement authorities and support appropriate efforts to vigorously enforce existing firearms laws.
- The Joint Council shall serve as a forum for discussion and consideration of other programs or efforts, including those implemented in other parts of the United States, that may be

practical and effective in further reducing the illegal and irresponsible use of firearms in Boston.

Continued Support for the Promotion of Firearms Safety Education

The City and the members of the firearms industry will continue efforts to urge citizens to safely and responsibly use and to store firearms and ammunition in a secure manner, to help prevent accidents, theft and unauthorized and unsupervised use, and will continue to encourage the use of appropriate firearm safety measures and mechanisms such as firearm locks and safes.

Efforts to accomplish these goals will include:

- Through the industry trade associations, the members of the firearms industry will conduct “*Project HomeSafe*” programs in Boston and make available for distribution through the Boston Police Department, 10,000 firearm safety education kits, including free firearm locking devices. In addition, the Industry will co-sponsor, with the support of the City, an educational campaign tour in Boston by the *Project HomeSafe* Mobile Classroom.
- The industry trade associations shall make up to 50,000 free copies of its new “*It’s Your Call: Playing It Safe Around Guns*” school educational program available for distribution to schools in interested municipalities, including Boston.
- The cities and the members of the firearms industry will continue to disseminate in public media and in public areas appropriate firearm safety messages and public service announcements to better educate the public on the importance of safe firearm handling and storage.
- The City and Industry will continue to support appropriate firearm safety education programs and initiatives by organizations that are dedicated to providing important educational tools and resources to help keep kids safe from improperly stored or mishandled firearms.

Continued Efforts to Educate Consumers and Retailers About Safe Firearms Sales

The City and the members of the firearms industry will continue their efforts to help minimize the diversion of firearms from legal purchasers to criminals and other unauthorized users.

Efforts to accomplish this goal will include:

- The Industry will continue with its “*Don’t Lie for the Other Guy*” program, developed in partnership with the ATF, in order to continue to provide education to potential purchasers, as well as to firearms dealers, about identifying and preventing the diversion of firearms out of the legal firearms market.
- The City will continue to aggressively investigate, arrest and prosecute illegal gun traffickers and others who violate our nation’s firearm laws, and the Industry pledges its full support and cooperation of all such law enforcement efforts.
- The City and the members of the firearms industry will jointly support appropriate requests by the Bureau of Alcohol, Tobacco and Firearms for increased congressional funding that would enable that agency to better investigate and enforce our nation’s firearm laws and regulations.

Continued Funding of Safety and Educational Programs

The members of the firearms industry recognize the importance of the safety and educational programs mentioned above and are committed to the continued financial support of its programs.

The City and the members of the firearm industry acknowledge that the time and money spent on litigating these issues is far better spent attempting, together, to achieve these stated mutual goals. Accordingly, this suit has been dismissed and the programs above described will be immediately implemented or augmented, as appropriate.