

**Pending Motions to Dismiss Based on the Protection of Lawful Commerce in Arms Act**

On Oct. 26, 2005, President Bush signed the Protection of Lawful Commerce in Arms Act ("PLCAA") into law. (Public Law 109-92; 119 Stat. 2095)

**Gary v. Smith & Wesson Corp. et al.**

On Dec. 23, 2003, IN S. Ct. reversed IN Ct. of App. and remanded case to trial court for further proceedings. US Dept. of Justice intervenes to support constitutionality of PLCAA. Defendants' motion to dismiss based on PLCAA denied Oct. 23, 2006. Trial court found PLCAA to be an unconstitutional *Ex Post Facto* law in violation of the city's Due Process rights, as well as a violation of Separation of Powers under US v. Klein, 80 US 128 (1872). Defendants' motion for interlocutory appeal of trial court's denial to dismiss subsequently granted by IN Ct. of App. On October 29, 2007, IN Ct. of App. affirmed trial court's denial finding PLCAA does not bar city's claims but does not rule on constitutionality of PLCAA. IN Ct. of App. denies defendants' petition for rehearing. Defendant's petition to transfer case to IN. S. Ct. denied. Case to proceed to trial unless Defendant's appeal to US Supreme Ct.

**Hernandez v. Kahr, Inc. et al. & Maisonet v. Kahr, Inc. et al.**

Suits arising from same shooting incident filed in MA Sup. Ct. (Worcester) for wrongful death, negligence and nuisance brought separately by Armando Maisonet, who was wounded, and relatives of decedent Danny Guzman. The criminal shooting occurred Christmas Eve 1999 at a well-known gang hangout and was committed with an unfinished, but functioning firearm assembled from individual parts that were stolen from Kahr by an ex-employee. Case now in discovery. Defendants have filed separate motions to stay both proceedings and immediately dismiss the cases as required by the PLCAA. Amicus brief filed by the Commonwealth of Massachusetts on March 16, 2006 supporting plaintiffs' opposition to defendants' motion to dismiss based on the PLCAA. On Feb. 3, 2006, US Dept. of Justice filed its brief supporting the constitutionality of the Act.

**Other Cases of Note**

**District of Columbia vs. Heller (f/k/a Parker et al. v. District of Columbia)**

The US Supreme Ct. in a 5-4 decision written by Justice Scalia determined that the 2<sup>nd</sup> Amendment of the U.S. Constitution guarantees an individual right to keep and bear arms and struck down the District of Columbia's handgun ban and trigger-lock requirement as a violation of the 2<sup>nd</sup> Amendment (in the context of self-defense).

**Williams v. Beemiller, Inc. d/b/a Hi-Point et al. (Erie County, NY)**

Suit alleging public nuisance and negligence against Hi-Point, MKS Supply (and owner) and a firearm trade show operator for handgun sales that included a Hi-Point 9mm semiautomatic pistol used by a convicted gang member in 2003 criminal shooting. Plaintiffs amended complaint filed to fit within the exceptions of the PLCAA. Case removed to US Dist. Ct. Western Dist. NY. Plaintiffs' motion for remand filed Dec. 23, 2005; Defendants' response filed Jan. 25, 2006. Plaintiffs' reply filed Jan. 31<sup>st</sup>. Hearing date on motion to remand yet to be scheduled.

**Oliver v. Lou's of Upper Darby, Inc. et al. (Phil. County, PA)**

Suit alleging public nuisance, negligence and wrongful death against licensed dealer and Phoenix Arms by parents of 14-year old boy shot and killed in 2004 by a minor while playing video games. The firearm misused was lawfully sold following an approved NICS check. The dealer's employee who conducted the sale was an off-duty federal law enforcement agent. Plaintiffs amended their complaint less than two weeks before the enactment of the PLCAA in an attempt to fit within the exceptions of the Act. The US Dept. of Justice has intervened to support the constitutionality of the PLCAA. Defendants' separate motions to dismiss and for an order certifying the case for interlocutory appeal denied. Defendants' notice of appeal to and petition for review by PA Sup. Ct. of the trial court's decisions denied; plaintiff's motion to quash appeal granted. Defendants have filed their petition for review with the PA S. Ct. Case consolidated with Thomas-Childs v. American Security for discovery purposes.

**Thomas-Childs v. American Security et al. (Phil. County, PA)**

Suit alleging public nuisance, negligence and wrongful death against licensed dealer and Sturm, Ruger by mother of 10-year old boy shot and killed in 2004 by feuding drug gangs. The US Dept. of Justice has intervened to support the constitutionality of the PLCAA. Defendants' separate motions to dismiss and for an order certifying the case for interlocutory appeal denied. Defendants' notice of appeal to and petition for review by PA Sup. Ct. of the trial court's decisions denied; plaintiff's motion to quash appeal granted. Defendants have filed their petition for review with the PA S. Ct. Case consolidated with Oliver v. Lou's of Upper Darby for discovery purposes.

**Tucker v. Cary Jewelry & Pawn et al. (Wake County, NC)**

Suit alleging negligence and wrongful death against licensed dealer and convicted felon Matthew Grant by widow of a Wake County Sheriff's Investigator shot and killed in 2004 by Grant (now serving a life sentence for the shooting). This suit, filed less than two weeks before the enactment of the PLCAA, attempts to fit within the exceptions of the Act. Counsel for plaintiff includes the Brady Center to Prevent Gun Violence. On March 3, 2006, plaintiff amended her complaint. Defendant Cary Jewelry & Pawn filed amended motions to dismiss and amended answers to the complaint May 10, 2006.

**City of New York v. A-1 Jewelry & Pawn et al. (Eastern District, New York)**

Lawsuit filed by the city in the Dist. Ct. (E.D.N.Y.) against 15 out-of-state gun dealers for damages and injunctive relief to halt the dealers' supposed illegal business practices and alleged improper gun sales. The suit follows 6 weeks of sting operations in GA, OH, PA, SC and VA by private detectives hired by the city to visit gun dealers for the sole purpose of making illegal straw purchases. Defendants' motion to dismiss for lack of personal jurisdiction denied by Dist. Judge Jack Weinstein Aug. 15, 2007. Weinstein also denied certification for interlocutory appeal. The remaining defendants in the case and their counsel have opted not to put up a defense in what will essentially turn out to be a bench trial with the verdict being rendered by Weinstein instead of a jury. Adventure Outdoors has filed its opposition to the city's motion for default judgment against Adventure for failure to defend.

**City of New York v. Bob Moates' Sport Shop, Inc., et al. (Eastern District, New York)**

Companion lawsuit to City of New York v. A-1 Jewelry & Pawn et al.

**Fiscal v. City and County of San Francisco**

Lawsuit filed against the city and county of San Francisco, S.F. Police Chief and S.F. Police Dept. by firearms industry challenging a voter-approved ordinance (Proposition H) that banned the manufacture and distribution of all firearms and ammunition in the city and county of San Francisco, including possession of handguns within city and county limits. On Jan. 9, 2008, the CA Ct. of Appeal (1<sup>st</sup> App. Dist.) affirmed the San Francisco County Superior Court's decision holding Prop. H invalid as preempted by state law.

**\*\* For more information or to obtain copies of the latest court documents filed by the firearms industry in the lawsuits appearing in this Scorecard, please contact the NSSF Legal Department.**

### Complete Dismissals

#### Fully & Finally Adjudicated Cases

<u>New Orleans</u>	Affirmed LA S. Ct., cert. denied by U.S. S. Ct.
<u>Bridgeport</u>	Affirmed CT S. Ct.
<u>Miami-Dade Co.</u>	Affirmed FL App. Ct., petition denied by FL S. Ct.
<u>Camden Co.</u>	Affirmed U.S. 3 <sup>rd</sup> Cir. Ct. of App.
<u>Philadelphia</u>	Affirmed U.S. 3 <sup>rd</sup> Cir. Ct. of App.
<u>Atlanta</u>	Case dismissed by GA Ct. of App.
<u>Boston</u>	Voluntarily dismissed with prejudice.
<u>Wilmington</u>	Case dismissed by Sup. Ct., New Castle Co. No appeal taken.
<u>Cincinnati</u>	On April 30, 2003, City Council voted unanimously to voluntarily dismiss case.
<u>NAACP</u>	On May 14, 2003, advisory jury found no defendants liable. Case dismissed on July 21, 2003. NAACP dismissed its appeal on Oct. 20, 2003. U.S. 2d Cir. Ct. of App. granted NAACP's motion to dismiss defendants' appeal on August 3, 2004.
<u>Camden City</u>	Dismissed without prejudice on July 7, 2003.
<u>Detroit/Wayne Co.</u>	MI Ct. of Appeals reversed trial court and remanded for dismissal on August 7, 2003.
<u>New York State</u>	Dismissed by trial court (August 2001), affirmed [3-1] by NY State App. Div., 1 <sup>st</sup> Dept. on June 24, 2003. On Oct. 21, 2003, NY Ct. of App. denied leave to appeal.
<u>Newark</u>	On March 10, 2004, trial court ordered case dismissed with prejudice.
<u>St. Louis</u>	On Oct. 15, 2003, trial court granted defendant manufacturers' motion to dismiss. On July 27, 2004, MO Ct. of App. affirmed dismissal based on retroactive application of MO state preemption statute. On Sept. 9, 2004, MO Ct. of Appeals denied St. Louis' motion to rehear its appeal. On Oct. 26, 2004, MO Supreme Ct. rejected St. Louis' appeal.
<u>Jersey City</u>	Complaint voluntarily dismissed on Nov. 7, 2003.
<u>Chicago</u>	On Nov. 18, 2004, a unanimous IL S. Ct. reversed Ct. of App. and reinstated Sup. Ct's order of dismissal. On Jan. 24, 2005, plaintiffs' petition for rehearing denied by IL S. Ct.
<u>California</u>	On Feb. 10, 2005, CA Ct. of App. unanimously affirmed the Sup. Ct's dismissal of claims. Municipal motion to "depublish" the certified opinion of the Ct. of App. subsequently denied by the CA S. Ct.
<u>Cleveland</u>	Case dismissed on Sept. 26, 2005 without prejudice, to re-file by Jan. 21, 2006.
<u>Young, Smith and Ceriale</u>	On Nov. 18, 2004, a unanimous IL S. Ct. reversed Ct. of App. and ordered the dismissal of three cases arising out of separate criminal shootings.
<u>Smith v. Bryco and Johnson v. Bryco</u>	Case dismissed as to distributor AcuSport on July 7, 2005.
<u>Grunow v. Valor</u>	Case dismissed on June 1, 2005 by FL 4 <sup>th</sup> Dist. Ct. of App.

### Cases Terminated by State Legal Reform Acts

<u>New Orleans</u>	(retroactively)
<u>Detroit</u>	(retroactively)
<u>Philadelphia</u>	
<u>Wayne County, MI</u>	(retroactively)
<u>Atlanta</u>	(retroactively)
<u>St. Louis</u>	(retroactively)

### Cases Terminated by Protection of Lawful Commerce in Arms Act

#### Ileto et al. v. Glock, Inc. et al.

Case dismissed on remand as to Glock and RSR on March 14, 2006 by U.S. Dist. Ct. (C.D. CA). On May 11, 2009, U. S. 9<sup>th</sup> Cir. Ct. of App. upholds constitutionality of the PLCAA and affirms dismissal of all claims against Glock and RSR as being preempted by the Act.

#### Pavelka v. Beretta U.S.A., Corp. et al. (Los Angeles County, CA)

Case dismissed May 19, 2006 CA Sup. Ct., LA County.

#### District of Columbia and Lawson, et al. v. Beretta U.S.A., Corp. et al.

Case dismissed by DC Sup. Ct. May 22, 2006. Dismissal aff'd unanimously by 3-judge panel of the DC Ct. of App. Jan. 10, 2008. Reh'g en banc denied June 9, 2008; Cert. denied by U.S. S. Ct. March 9, 2009.

#### City of New York, et al. v. Beretta U.S.A., Corp. et al.

U.S. Dist. Ct. (E.D.NY) upheld constitutionality of PLCAA but denied motion to dismiss Dec. 2, 2005. U.S. 2<sup>nd</sup> Cir. Ct of App. rev'd in part and aff'd in part April 30, 2008. Case remanded w/ instructions to dismiss NYC's suit as barred by the PLCAA. Reh'g en banc denied Aug. 20, 2008; Cert. denied by U.S. S. Ct March 9, 2009.

#### Charlot v. Bushmaster

Case arises out of a criminal shooting by Washington-area snipers (Muhammad & Malvo). The complaint asserting violation of the DC "absolute liability" statute was originally filed in DC Sup. Ct. then subsequently removed to U.S. Dist. Ct. for DC. Following dismissal of District of Columbia and Lawson, et al. v. Beretta U.S.A., Corp. et al. by the DC Ct. of App, Bushmaster filed a renewed motion to dismiss with the Dist. Ct. based on the PLCAA. On June 25, 2009, Dist Ct. granted Bushmaster's motion finding the PLCAA constitutional and the plaintiffs' strict liability claim preempted by the Act.

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