



Center for Justice & Democracy
90 Broad Street, Suite 401
New York, NY 10004
Tel: 212.267.2801
centerjd@centerjd.org
<http://centerjd.org>

OUR CHILDREN ARE NOT IMMUNE FROM GUN VIOLENCE. WHY SHOULD THE GUN INDUSTRY BE IMMUNE FROM RESPONSIBILITY?

The gun industry is virtually the last unregulated manufacturer of a consumer product in America. In other words, the civil justice system serves as the only safety “regulation” of the gun industry. And litigation is becoming an increasingly important tool for those working to reduce gun violence. Memo from Kristen Rand, Violence Policy Center, to New York Gun Control Activists, September 8, 1998.

Freddie Hamilton, mother of a murder victim who sued gun manufacturers for deliberately feeding an illegal firearms market in New York, said, “Time and again, we have seen instances where the only way our voice can be heard or we can get the attention of those who've harmed us is a court of law.”

“Tort reform” is a windfall for the gun industry. For example, some common “tort reform” provisions would even limit the liability of gun makers and dealers that distribute firearms to minors or convicted felons. The following are additional examples:

- **LIMITS ON JOINT AND SEVERAL LIABILITY.**

Joint and several liability protects victims if more than one wrongdoer is fully responsible for causing an injury when one is insolvent or unable to pay. For example, in a 1994 Ohio case, a gun show’s security was so lax that two teenage boys walked out with three handguns and several knives. When local resident Greg Pavlides chased them later for neighborhood vandalism, they shot him. He was paralyzed from the waist down. Because the gun show was negligent in letting the youths walk out with dangerous weapons, the jury found it liable along with the boys. The boys had no assets or income, and in fact were incarcerated. An Ohio jury found the youths and the gun show fully liable under joint and several liability and the gun show compensated Mr. Pavlides for his injuries. Without this doctrine, compensation to Mr. Pavlides would have been severely reduced. *Pavlides v. Niles Gun Show*, 637 N.E. 2d 404 (Ohio App. 1994); Memo from Kristen Rand, Violence Policy Center, to New York Gun Control Activists, September 8, 1998.

- **STATUTE OF REPOSE.**

A statute of repose arbitrarily cuts off liability for manufacturers of older, defective products, no matter how many people have been injured over time and even if the defect

is latent and takes years to manifest. Statute of repose laws are particularly harmful in cases involving firearms, which are designed for long useful lives. For example, in one case involving the Sturm, Ruger & Company's Old Model single action revolver, more than 600 people, including children, had been killed or injured by accidental discharges of the gun. By the time the gun was designed, 1.5 million were in the hands of consumers. The company refused to recall the guns. In 1990, Andrew Baxter, a minor, was shot in the abdomen when his father's Old Model accidentally discharged. The gun was manufactured 20 years prior to the accident. *Baxter v. Sturm, Ruger & Company*, 644 A. 2d 1297 (Sup. Ct. 1994); Memo from Kristen Rand, Violence Policy Center, to New York Gun Control Activists, September 8, 1998.

- **PRODUCTS LIABILITY EXEMPTIONS FOR NEGLIGENT GUN SALES.**

Sometimes “tort reform” bills exempt from their provisions certain cases involving negligent gun sales, such as negligent entrustment, negligence per se and dram shop actions. However, according to the Violence Policy Center, there are additional liability theories that have been used successfully against firearm retailers and proprietors of gun clubs or target ranges, that may be covered by a tort reform bill. For example, theories of nuisance and trespass have been used successfully by plaintiffs harmed by bullets fired at gun clubs. Under these other theories, an injured consumer would have to show that the seller was negligent, breached an express warranty or engaged in intentional wrongdoing. A nuisance action, increasingly used in firearm litigation, would not fall within any of these categories and would, therefore, be subject to “tort reform” legislation that reduce the liability of the dealer or gun club.