Gun Violence in Court

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I. Introduction

Litigation cannot solve a public health crisis. But litigation can be an effective complementary tool to regulation by increasing the salience of a public health issue, eliciting closely guarded information to move public opinion, and prompting legislative action. From tobacco to opioids, litigants have successfully turned to courts for monetary relief, to initiate systemic change, and to hold industry accountable.[1]

For years, litigators have been trying to push firearm cases into their own litigation moment. The recent success of the opioid litigation provides a tantalizing model for those who would turn to courts for gun control. But litigation against the gun industry poses special challenges. Not only has the regulatory regime failed to prevent a public safety hazard, Congress has consistently underfunded and understaffed the relevant regulatory actors. And in 2005, it legislatively immunized the gun industry from suit with the Protection of Lawful Commerce in Arms Act (PLCAA) — a protection not replicated in any other field.

Over the last several decades, victims and stakeholders suing the gun industry have had limited success; victories remain confined to individual actors and unlike high-impact public litigations in other areas, aggregate class actions and major public litigation led by state attorneys general are noticeably absent in the firearm context. Industry-wide, high leverage lawsuits have been critical turning points in suits involving other high-risk products. Why not for guns?

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II. Why Litigation?

Litigation can do more than generate funds: it can complement regulation, especially when the regulatory backdrop is weak as in the gun context. Among other things, litigation can raise the public profile of an issue for reform, disclose private industry information, and compel change in industry practices.

A. Regulatory Vacuum

The United States has "the most severe gun problem of any high-income country," and yet "no national requirements for training, licensing, registration, or safe storage."[2] The Federal Assault Weapons Ban of 1994 lapsed in 2004 and has never been renewed. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) consistently struggles to meet its responsibility to oversee federal firearms license holders, leaving the industry's flow of weapons largely unchecked. And the Consumer Product Safety Commission lacks jurisdiction to regulate firearms.

State-level legislation also remains patchwork, and individual states cannot provide the comprehensive monitoring or information benefits that would come from a federal regime. And because states with lax gun laws have spillover effects on their neighbors, state-level regulation is an imperfect solution.

The lack of a robust regulatory regime forces litigants to courts for individualized, case-specific relief against bad actors. But the lack of a regulatory regime also poses challenges for lawsuits, creating relatively few statutory causes of action under which distributors can be held accountable. Firearm litigants are

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thus stymied by a lax regulatory regime at both ends of the lawsuit.

B. Information Problems

A ban on federal funding for gun injury research has produced large gaps in scientific knowledge on the scope of gun violence and what policies reduce injuries. The Dickey Amendment, first passed in 1996 and renewed every year since, prohibits federal funds from being used "to advocate or promote gun control." The Amendment until 2020 had been interpreted to prevent the Center for Disease Control (CDC) from doing any research on gun violence. In 2019, Congress authorized $25 million to the CDC and the National Institutes of Health (NIH) to fund studies on gun violence.

There is also no firearms surveillance system that could help researchers understand trends in injury and suicide involving guns. The Tiahrt Amendments functionally prohibit ATF from releasing firearm trace data, which could help track illegal gun traffickers and preventing gun crimes.

The lack of information increases pressure on litigation as a key method of disclosure. Discovery has become essential to understanding the effects of firearm marketing strategies on violence, or the extent to which industry leaders are aware that their distribution strategies allow guns to end up in criminal hands.

C. Lawsuit-Blocking Federal Legislation

A final hurdle is the 2005 federal Protection of Lawful Commerce in Arms Act (PLCAA). PLCAA prohibits all civil actions "against manufacturers, distributors, dealers, or importers of firearms or ammunition" for any harm caused by the criminal or unlawful action of third parties.

The Act contains six exceptions:

1. Suits against those who "knowingly transfer a firearm, knowing that such a firearm will be used to commit a crime of violence;"
2. Negligent entrustment or negligence per se suits against sellers;
3. Suits against a manufacturer or seller of a qualified product who knowingly violated a "State or Federal statute applicable to the sale or marketing of the product," where the violation was a "proximate cause" of the relevant harm (also called the "predicate exception");
4. Suits for breach of contract or warranty;
5. Defective design suits;
6. An action commenced by the Attorney General to enforce the Gun Control Act or the National Firearms Act.

As we discuss in Section III.C, courts have interpreted the litigation shield broadly despite the exceptions. The effect has been a functional immunization of the gun industry from suit, unseen in any other areas.

III. Waves of Litigation and the Current Plateau

Gun violence cases began as scattered individual injury suits. Over time, these cases attracted the involvement of municipalities and other institutional actors. Nevertheless, the litigation remains immature as compared to other public-health litigation efforts. It has failed to achieve mass aggregation, government actors have much more limited involvement in the cases, and strategies continue to emphasize targeting individual manufacturers, distributors, and retailers in ways that fail to elicit the necessary industry information that could promote broader, systematic change in practices at the industry level.

The cases discussed below are a representative sample of a universe of cases compiled through searches of Westlaw; Bloomberg; and state attorneys general press releases.[3] An initial search of these sources uncovered a body of over 400 cases. We excluded cases that did not concern litigation stemming from gun violence and arrived at a final body of 215 cases occurring between 1975 and 2020. We corroborated our findings with litigators from the Brady Center, the National Association of Attorneys General, and through a review of the relevant secondary literature.

A. First Wave of Litigation (1970-1998)

Beginning in the 1970s, scholars began to conceptualize gun violence as a public health issue. This new framing shifted the focus upstream, with an emphasis on the "'environmental factors' that foster gun violence" including the "marketing and distribution of firearms," later available for criminal misuse.[4]

Coupled with the fast-growing prevalence of firearm-related homicides in the 1980s, victims began seeking liability not only against their assailants, but also against the manufacturers and sellers. Cases during this period fell into several broad categories: defective design, negligent sales, and abnormally dangerous activity claims. In the end, courts dismissed the vast majority of these lawsuits before trial.

1. PER SE LIABILITY FOR DANGER TO THE PUBLIC

The most ambitious claims argued that manufacturing firearms was an abnormally dangerous activity for which strict liability should attach, even when the firearms themselves were not defective. Of the thirty such cases of this kind in our sample, nearly all were

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dismissed at either summary judgment or on a motion to dismiss.

For example, in *Mavilia v. Stoeger Industries*,[5] the family of a bystander killed by a pistol unsuccessfully argued in Massachusetts federal court that the manufacturer was strictly liable because the weapon presented an inherent danger to the public. The court relied upon the "formidable Massachusetts legislative policy against banning handguns" to reject strict liability. Similarly, in *Riordan v. International Armament Corp.*, plaintiffs shot during a criminal assault argued that manufacturers were liable for failing to "tak[e] adequate precautions to prevent the sale of [their] handguns to persons…reasonably likely to cause harm to the general public." The Illinois Circuit and Appellate Courts ultimately found that manufacturers owed no duty to members of the public to control the distribution of their handguns under state law. And in *Forni v. Ferguson*, New York's Appellate Division refused to question legislative policy toward firearms, leaving it to the legislature to analyze risk versus utility "to decide whether manufacture, sale and possession of firearms is legal."

In only one case — *Kelley v. R.G. Industries* in 1985 — was this argument successful. There, the Maryland Supreme Court held manufacturers strictly liable for injuries resulting from so-called "Saturday Night Specials" — lightweight and easy-to-conceal handguns. The court argued that these weapons were "particularly attractive for criminal use and virtually useless for the legitimate purposes of law enforcement, sport, and protection of persons, property and businesses." However, the Maryland legislature eventually passed article 27 § 36-I(h) overturning *Kelley*'s strict liability holding.

2. DEFECTIVE DESIGN

Products liability claims for injuries resulting from firearm malfunctions were also common during this period — comprising forty-five cases in our dataset — sometimes leading to significant compensation for victims. For example, in *Johnson v. Colt Industries*, a jury in the federal district court in Kansas awarded $2.1M to two plaintiffs injured when the handgun they dropped accidentally discharged. Some courts recognized more capacious understandings of what constituted a design defect. For example, in *Smith v. Bryco*, the New Mexico Supreme Court held a manufacturer liable for their failure to include "available and economically reasonable design features and warnings which would have prevented the shooting."

Claims brought by crime victims were less likely to succeed. These complaints often failed to allege any actual defect in the firearm itself. For instance, in *Addison v. Williams*, the victims of a shooting using a Colt rifle did not argue that the weapon malfunctioned. Rather, they relied on a risk/utility assessment to argue that the weapons were per se dangerous and defective. The Louisiana Court of Appeals held that defective design claims must allege a specific defect in the weapon to proceed to such a risk/utility analysis. Federal and state courts in California, Illinois, and Texas came to the same conclusion.

3. NEGLIGENT SALES AND MARKETING

Negligent marketing or sales claims made up thirty-four of the cases in our dataset. These cases relied on theories that manufacturers failed to take adequate precautions against foreseeably dangerous misuses of their weapons.

In some cases, plaintiffs targeted retailers who sold firearms to an individual who the retailer should have suspected would misuse the weapon. In *Bernethy v. Walt Failor's, Inc.*, a retailer sold a rifle to a visibly intoxicated man who threatened store employees before leaving to shoot and kill his estranged wife. The Washington Supreme Court recognized a negligent entrustment theory and a duty not to furnish a gun to an intoxicated buyer. The Florida Supreme Court in *Kitchen v. K-Mart Corp.* similarly recognized that negligent entrustment was available to hold a merchant liable for selling a rifle to a visibly intoxicated purchaser who misuses the weapon.

However, foreseeability was a crucial factor in these cases. For example, in *Everett v. Carter*, the representative of a homicide victim unsuccessfully sued a local handgun dealer in Florida state court for illegally selling a firearm to a nineteen-year-old who later used the gun to kill the decedent. Although underage sales are prohibited under both state and federal law, the court found that the chain of causation was broken by the criminal misuse of the weapon to commit homicide six weeks after the illegal sale.

In *Buczkowski v. McKay*, the Supreme Court of Michigan also mused about whether imposing a duty on retailers was a prudent method of decreasing gun violence after refusing to hold a merchant liable for the criminal misuse of ammunition sold to an individual allegedly behaving erratically during the sale. The court noted that imposing liability would "raise the price of a multitude of potentially harmful products as sellers redistribute the cost of potential liability to all consumers" and that it is "unlikely" that this "will have 'a substantial impact on crime.'"

Finally, some plaintiffs accused manufacturers of negligently marketing their guns, leading to crime-related injuries. Nearly all these claims — fourteen of which were in our dataset — were dismissed prior

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to trial or defeated on summary judgment "based on judicial insistence that manufacturers owe no duty of care to the public in marketing non-defective guns."[6] The notable exception came in *Merrill v. Navegar*, in which plaintiffs claimed that the manufacturer marketed their firearms to persons at high risk of criminal misuse. The California Court of Appeals held that defendants had a duty to exercise reasonable care in marketing weapons, and that liability for marketing would further the social policy of decreasing gun-related injuries. This theory of liability of overpromotion of a weapon served as a predecessor to a recent, important case from Connecticut, *Soto v. Bushmaster*, which we discuss *infra*.

B. Second Wave of Litigation (1998-2005)

In most major successful public health litigation, there is a common pattern: individual suits against individual defendants mature into government-initiated legal actions against broader swaths of the industry. In this way, state-initiated suits against the tobacco industry in the late 1990s and locality- and state- initiated opioid suits today transformed individual personal injury claims into mass torts.

In the late 1990s, municipalities began suing the gun industry, "inspired by state lawsuits against the tobacco industry."[7] Although municipalities brought similar claims to those raised in earlier individual suits, they also advanced novel public nuisance theories and sought injunctive relief in addition to damages.

In *Morial v. Smith Wesson Corporation*, New Orleans brought the first such suit in 1998 against ten manufacturers, five local pawn shops, and three sporting goods retailers. That same year, in *City of Chicago v. Beretta*, Chicago sued "18 manufacturers, 4 distributors, and 11 dealers of handguns that have been illegally possessed and used in the city." Over the coming years, Atlanta, Boston, Cincinnati, Los Angeles, Miami, Philadelphia, San Francisco, and others filed similar cases. These suits were part of a coordinated effort organized by the Castano Safe Gun Litigation Group, which had arisen out of the same Castano Group that spearheaded the tobacco class actions.[8]

The efforts to frame the industry's marketing, distribution, and design activity as contributing to a public nuisance largely failed. For instance, the Third Circuit rejected a City of Philadelphia suit, holding that Pennsylvania state law did not support public nuisance claims involving "lawful products…lawfully placed in the stream of commerce." New York's Appellate Division came to the same conclusion in *People v. Sturm, Ruger Company*, pointing to decisions in the Third Circuit, California, DC, and Indiana to demonstrate that "other jurisdictions have dismissed public nuisance claims against firearms manufacturers."

A notable outlier is *City of Gary*, in which the Indiana Supreme Court reinstated a nuisance claim against ten firearms manufacturers. However, these victories were rare and required significant municipal resources to litigate. The *City of Gary* suit has yet to be resolved more than twenty years later.

Other municipalities chose not to continue their litigation even after legal victories. Boston and Cincinnati abandoned their suits by 2003, citing low likelihoods of success and high litigation costs. Cincinnati's decision came despite the Ohio Supreme Court's favorable holding that a public nuisance claim could move forward based on allegations of "marketing, distributing, and selling firearms in a manner that facilitated their flow into the illegal market."

This second wave of litigation also saw the involvement of issue-driven organizations such as the Brady Center and the NAACP, which filed a case against AcuSport highlighting the public health effects of handguns on the Black community. While the court ultimately dismissed the case for lack of specific organizational standing, Judge Weinstein used his opinion to expound on how the merits of the NAACP's public nuisance claims could be established on the available record. He concluded that the evidence showed defendants were responsible for creating a public nuisance, and that through "voluntarily and . . . easily implemented changes in marketing," manufacturers and distributors could "substantially reduce the harm occasioned by the diversion of guns to the illegal market." The passage of PLCAA two years later, however, would curtail hopes that this dicta could be used as a roadmap for ushering in the "golden age" of firearm litigation.

Individual claims also began to expand beyond specific manufacturer grievances. In *Hamilton v. Accu-Tek*, the relatives of individuals killed by handguns sued twenty-five manufacturers in federal district court in New York, alleging that negligent marketing practices led to the sale of handguns to criminals. They also introduced an affidavit from a former Smith & Wesson employee who testified that the "industry as a whole are fully aware of the extent of the criminal misuse of firearms" and yet "take no independent action to [ensure] responsible distribution practices." Despite an initial jury verdict for millions of dollars, New York's highest court eventually overturned the verdict, determining that the manufacturers owed no duty to the plaintiffs to exercise reasonable care in the marketing and distribution of their handguns.

In some cases, municipalities were able to elicit key settlement agreements with manufacturers. For

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instance, in 2000, Brady-led litigation on behalf of cities nationwide elicited a settlement from Smith & Wesson in which the manufacturer agreed to design, marketing, and distribution changes — including the installation of trigger locks on weapons — in exchange for an agreement to drop threatened lawsuits. Similarly, in 2003, cities across California coordinating litigation against five firearms distributors and retailers, obtaining a settlement for $70,000, and a promise to cease selling firearms at gun shows and to annually train employees on avoiding sales to straw purchasers.[9]

Some commentators have argued that these municipal lawsuits acted as stand-ins for aggregation. Neither the first nor second wave yielded a successful class action certification, largely because individual claims of gun victims lacked commonality and instances of gun violence were too infrequent to yield the thousands of clients needed to tempt law firms.

C. The Third Wave and Effects of PLCAA (2005-Present)

But momentum towards municipal suits and coordinated nationwide action in the second wave came at a price, spurring the gun industry to lobby for statutory immunity from tort claims. In 1999, Louisiana enacted Act 291 which "preclude[d] suits from being filed by any political subdivision or local governmental authority against any firearms or ammunition manufacturer, trade association, or dealer for damages relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition." Similarly, in response to a suit by the City of Atlanta, Georgia amended its firearm regulations, reserving the right to bring civil actions against the gun industry to the State.

These state efforts served as a predecessor to PLCAA. Congress passed PLCAA in 2005 to preempt individual and municipal lawsuits that threatened the industry. Pro-gun lobbyists saw the bill as saving the industry from collapse at the hands of politically motivated suits. PLCAA in turn inspired further legislation in 34 states which shields manufacturers from litigation by state and local governments.

Pressure from litigation in the early 2000s had begun to yield limited results, such as Smith & Wesson's agreement to establish a "code of conduct" for its dealers and distributors as part of a settlement with fifteen cities seeking damages for gun violence.[10] As the court in *NAACP v. AcuSport* noted, litigation discovery against industry defendants had also revealed that some members of the firearm industry had failed to take "obvious and easily implemented steps" to "check[] illegal handgun diversion," such as prohibiting repeat sales to the same individual. Reformers worried PLCAA would stymie this progress and also that a broad federal shield would "diminish[] incentives for safer designs and distribution, at the expense of gun consumers and bystanders alike."

Post-PLCAA, gun litigation still involves mostly private individuals and municipalities filing suit. Although some individual litigants have won limited relief, manufacturer liability remains elusive. Throughout, state attorneys general have remained uninvolved in aggregated class actions or multi-district litigation.

1. CLAIMS AND REQUESTED RELIEF

Post-PLCAA, there remain four broad categories of claims: negligent sales and marketing, deceptive marketing, municipal public nuisance, and defective design claims. Plaintiffs continue seeking compensatory and punitive damages as well as injunctive relief.

(a) Individual Tort Claims

Private litigants continue to advance claims that defendants should be held liable for injuries caused by their negligent sales and marketing practices. Claims tend to cluster around negligent sale and entrustment theories. Litigants likely turn to negligent entrustment because it is an express exception under PLCAA. However, general negligence is not excepted and those claims have had less success.

For example, the plaintiff in *Delana v. CED Sales* alleged that she called the defendant firearms store begging them not to sell a gun to her daughter, who suffered from schizophrenia. The store ignored her warnings and sold her daughter the firearm she later used to kill her father. The plaintiff argued that the defendant had negligently entrusted her daughter with the firearm, because they "knew or had reason to know" that the sale "posed an unreasonable risk" due to the daughter's "severe, ongoing mental illness." The Missouri Supreme Court upheld the claim as valid under PLCAA, and the case ultimately settled for $2.2M.

Other negligent entrustment suits have also had successful results: a $6M award after the jury found the gun shop had negligently entrusted firearms to an obvious straw purchaser in *Norbert v. Badger Guns*; a $2M settlement against the pawn store that sold guns used in a 2016 Kansas mass shooting in *Luke v. A Pawn Shop*; and a $132k settlement in *Shirley v. Glass* against the gun store that sold the firearm used in a 2015 murder-suicide in Kansas.

Plaintiffs have also asked for creative forms of injunctive relief. In *Englund v. J&G Sales & World Pawn Exchange*, the Brady Center helped plaintiffs sue a gun store that sold firearms to the shooter's mother, even though the shooter had emailed the

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store explaining he was the actual buyer. As part of the settlement, the defendant agreed to improve employee training and change their purchase-tracking system to prevent future such straw purchases. While inventive, relief in these cases continues to be against individual gun shop owners. Large, industry-wide payouts or injunctions have yet to materialize.

On the other hand, courts almost universally agree that general negligence claims are preempted by PLCAA. In *Jefferies v. District of Columbia*, where the mother of the decedent filed a negligence suit against ROMARM, the manufacturer of the AK-47 used to kill her daughter in a drive-by shooting. The DC District Court found such claims were "unambiguously bar[red]" by PLCAA.

Courts have dismissed other negligence actions because the intervening actions of a third party severs the chain of causation between the defendant's negligent act and the plaintiff's injury. In *Johnson v. Wal-Mart Stores, Inc.*, a federal district court in Illinois found that a Wal-Mart employee's failure to verify the buyer's ID in an ammunition sale as required by state law did not make Wal-Mart liable because the victim's intervening suicide severed the chain of causation.

The courts' narrow approach to causation mirrors the first wave of cases against opioid manufacturers in the early 2000s. There, courts often found that plaintiffs' addiction — considered an intervening moral wrong — broke the chain of causation. Over time, cases matured, addiction stigma lessened, and courts accepted arguments for deceptive marketing and careless distribution and sale, regardless of the actions taken by the injured or their physicians. Growing understanding of the biological nature of addiction may explain that shift.

As other papers in this volume discuss, scientific understanding of the relationship between mental and behavioral health and gun violence is still evolving. But as evidence develops about how firearm marketing containing violent imagery affects vulnerable audiences such as individuals who struggle with suicidal ideation, views of culpability and causation around gun violence may similarly change.

(b) Deceptive and Unfair Trade Practices

Deceptive marketing suits continue and may be emerging as litigation safe harbors under PLCAA. PLCAA's predicate exception allows plaintiffs to sue where they can demonstrate that a defendant knowingly violated an underlying statute "applicable to the sale or marketing" of a firearm. As detailed elsewhere in this volume, courts have held that if the plaintiff satisfies the statutory predicate exception then *all* claims, including common law claims for negligence and nuisance, are allowed to proceed.

A recent victory was *Soto v. Bushmaster*, which arose out of the Sandy Hook Elementary school shooting. Plaintiffs argued that the defendant Bushmaster had marketed the weapon used in the shooting as "militaristic and assaultive…suitabl[e] for offensive combat missions" in violation of the Connecticut Unfair Trade Practices Act. The Connecticut Supreme Court allowed the case to go forward, taking a position on a yet-unresolved PLCAA question: whether PLCAA's predicate exception includes statutes of general applicability like CUTPA. The court held it did, and the U.S. Supreme Court denied certiorari.

In a subsequent case *Prescott v. Slide Fire Solutions*, the plaintiffs argued that the defendant, a bump stock manufacturer, had marketed its product "as a 'military-grade accessory for civilians.'" A Nevada federal court upheld the plaintiff's deceptive advertising claims under the Nevada Deceptive Trade Practice Act. Like the Connecticut Supreme Court, it found that the predicate exception did not require a statute "that pertained *exclusively* to the sale or marketing of firearms." The case is still in discovery.

(c) Municipal Suits

Cities including New York City, Kansas City, and D.C. continue to sue, but face novel problems under courts' broad interpretation of PLCAA. Only Kansas City's suit is still pending post-*Soto*. In *City of New York v. Beretta*, the City sued manufacturers and distributors for public nuisance under state statutes, claiming that the defendants failed to "monitor, supervise or regulate the sale and distribution of their guns by" downstream suppliers, and that as a result, "thousands of guns manufactured or distributed by defendants were used to commit crimes" in the city. The city sought injunctive relief and abatement of the public nuisance. The New York court held that PLCAA's predicate exception did not encompass statutes of "general applicability" like the public nuisance statute. On the other hand the Indiana Court of Appeals in *City of Gary* was willing to find a statutory predicate in state *regulations* that "deal[] with the sale of handguns." The case is still pending.

(d) Defective Design

Defective design suits fall into two general categories: exploding firearms and unintended discharges. While these suits easily circumvent PLCAA under the defective design exception, the majority of cases are still dismissed during motions practice or at summary judgment on the merits. For example, in *Harris v. Remington Arms Company*, an Oklahoma federal

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court granted the defendant's motion for summary judgment on an unintended discharge claim, finding there was no causal connection between the alleged design defect and the injury-causing event. Similarly in *A.S. v. Remington Arms*, an Indiana federal court found the plaintiff had failed to establish that a defect in the rifle had caused it to explode when fired.

Product liability claims have also proved the exception to the paucity of aggregation in gun litigation, likely because commonality is more easily satisfied if all guns have the same defect. In the 2017 case *Pollard v. Remington Arms*, a court approved a nationwide class-action settlement against Remington for rifles which discharged unexpectedly. In March 2020, Sig Sauer also reached a settlement in a class action lawsuit involving the P320's faulty trigger design.

2. CLASS AGGREGATION AND STATE ATTORNEYS GENERAL

Outside of defective design claims, the third wave of litigation has seen very few successful class actions. Classes have been certified in only two pending cases, both arising from mass shootings — *Soto* and *Prescott*. In some ways, the difficulty of successful of aggregation is foreseeable given the peculiarities of firearm litigation. Plaintiffs may not share enough commonality to obtain class certification. Victims of gun violence may not be numerous enough, or gun industry actors wealthy enough, to tempt the private plaintiffs' bar into collecting thousands of clients into mass suits. However, the momentum towards larger-scale, municipal lawsuits throughout the 1990s and early 2000s suggests that for government plaintiffs these obstacles were not insurmountable.

Why then have municipal suits not led to larger-scale litigation by states? One possible explanation is politics. Most state AGs are elected; gun cases may be too politically toxic, even in otherwise liberal states such as Massachusetts. AG-driven large-scale, multistate litigation often is bipartisan so politics may also be a barrier there. However, in light of recent shifts in public opinion towards greater support for gun control, AGs' continued reticence remains a puzzle. A full answer lies outside the scope of this paper, but presents an interesting avenue for future research.

IV. Conclusion: Paths Forward

The past four decades of litigation against the firearm industry have seen patchwork success but stunted growth. Gun litigation has yet to reach the tipping point towards industrywide accountability or large multidistrict settlements. But lawyers and plaintiffs can still push firearm litigation beyond the framework of the last forty years. Aggregation and aggressive claims remain live possibilities for innovative lawsuits against the firearm industry.

The past four decades of litigation against the firearm industry have seen patchwork success but stunted growth. Gun litigation has yet to reach the tipping point towards industrywide accountability or large multidistrict settlements. But lawyers and plaintiffs can still push firearm litigation beyond the framework of the last forty years. Aggregation and aggressive claims remain live possibilities for innovative lawsuits against the firearm industry.

Most theories of mature tort litigation rely on aggregation. The classic counterargument to aggregation here is that it is unnecessary for firearms. If only about 5% of bad actors are responsible for 90% of the firearms used to harm people, then the existing strategy of individual payouts and injunctive relief is enough to remove the few "bad apples." But ongoing lawsuits point to more systemic wrongdoing: municipalities allege that firearm manufacturers are aware that their distribution and marketing practices put many of their guns in criminal hands; and the plaintiffs in *Soto* and *Prescott* base their suits on the defendants' use of violent advertisements to sell firearms. So reconceived, the problem is not a few non-compliant actors, but rather common industry practices that help create the conditions for gun violence.

Moreover, there are reasons to think that earlier impediments to class aggregation — a lack of commonality and too few plaintiffs to bring lawsuits — have become less relevant. Firearm litigation is already seeing nascent aggregation. The changing reality of mass shootings makes commonality easier to find amongst plaintiffs. The plaintiffs in *Prescott* are a class comprising victims of the same Las Vegas shooting, and the plaintiffs in *Soto* are also a class of the Sandy Hook victims and their family members. Mul-

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tidistrict litigation — consolidation of individual cases not amenable to class action — has also proved a valuable tool in other public health mass torts, including opioids and JUUL.

Economic concerns, however, may still be important barriers. For instance, the Brady Center reports obtaining $30 million in settlements for victims of gun violence, but those settlements come from over 250 lawsuits, bringing the average expected to only $120,000 per suit on average. There are, of course, outliers. While in the high-profile DC sniper case, *Johnson v. Bull's Eye Shooter Supply*, plaintiffs' negligent sale claim resulted in a settlement of over $2 million, this outcome is the exception to the rule. Most gun violence is the product of decentralized systems of negligent dealers and the unethical marketing which distribute the costs of gun violence widely and so make blockbuster settlements difficult.

Economic impediments to litigation spotlight the importance of government involvement. Municipalities themselves can fill the gap in aggregated cases left by State AGs. Local government plaintiffs have played an outsized role in the most recent opioid multidistrict litigation, bringing suits even where their own State governments initially declined to do so.

Litigators also should not lose track of the fact that even unsuccessful lawsuits can be essential to obtaining disclosure of guarded information through discovery. In the tobacco and opioids cases (still in progress), early stages of the litigation exposed to public view internal documents fueling "exposes of industry misconduct,"[11] which in turn led to more information production, settlements, changes in public opinion, longer-lasting reforms to public health policy, and even preemptive changes by industry itself. There can be "winning through losing": individual court defeats can still be a productive part of broader social changes.[12]

Gun litigation has already had a role in revealing gun-industry executives' awareness of their role in contributing to the proliferation of gun violence. Consider, for example, the affidavit from the former industry employee in *Hamilton v. Accu-Tek*, discussed above. In cases where settlement is an option, litigators might try to get some discovery first. In *Soto*, however, even as litigants enter the crucial discovery phase, a court protective order motivated by a desire to protect confidential trade secrets prevent information dissemination. The opioids MDL likewise has sealed discovery.

Finally, although national gun control legislation may not be politically feasible, even modest legislative proposals might significantly improve the odds of successful litigation against firearms manufacturers. PLCAA's predicate exception invites dialogue with state legislatures. Passing state statutes "applicable to the sale or marketing of [firearms]" would unlock new theories of liability beyond basic product liability claims. A comprehensive modern litigation strategy should include aggressive lobbying in statehouses on this front.

Note

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Gun Violence in Court

Abbe R. Gluck, Alexander Nabavi-Noori, and Susan Wang

APPENDIX A
First Wave of Litigation: 1970-1998

Table 1

Case Name	Circuit/Court	Year
Dixon v. Bell, [1816] 105 Eng. Rep. 1023, 1024 (K.B.)	UK	1816
Mears v. Olin, 527 F.2d 1100 (8th Cir. 1975)	8	1975
De Rosa v. Remington Arms Co., 509 F. Supp. 762 (E.D.N.Y. 1981)	2	1981
Bernethy v. Walt Failor's, Inc., 97 Wn. 2d 929 (Wash. 1982)	Washington	1982
Adkinson v. Rossi Arms Co., 659 P.2d 1236 (Alaska 1983)	Alaska	1983
First Commercial Trust Co. v. Lorcin Eng'g, Inc., 900 S.W.2d 202 (Ark. 1995)	Arkansas	1983
Mavilia v. Stoeger Industries, 574 F. Supp. 107 (D. Mass. 1983)	1	1983
Linton v . Smith & Wesson , 469 N.E.2d 339 (Ill. App. Ct. 1984)	Illinois	1984
Martin v. Harrington & Richardson, Inc., 743 F.2d 1200 (7th Cir. 1984)	7	1984
Rhodes v. R.G. Indus., 325 S.E.2d 465 (Ga. Ct. App. 1984)	Georgia	1984
Burkett v. Freedom Arms, Inc., 704 P.2d 118 (Or. 1985)	Oregon	1985
Kelley v. R.G. Industries, 497 A.2d 1143 (Md. 1985)	Maryland	1985
Patterson v. Rohm Gesellschaft, 608 F. Supp. 1206 (N.D. Tex. 1985)	5	1985
Perkins v. F.I.E. Corp., 762 F.2d 1250 (5th Cir. 1985)	5	1985
Riordan v. International Armament Corp., 477 N.E.2d 1293 (Ill. App. Ct. 1985)	Illinois	1985
Coulson v. DeAngelo, 493 So. 2d 98 (Fla. Dist. Ct. App. 1986)	Florida	1986
Everett v. Carter, 490 So. 2d 193 (Fla. Dist. Ct. App. 1986)	Florida	1986
Johnson v. Colt Industries Operating Corp., 797 F.2d 1530 (10th Cir. 1986)	10	1986
Moore v. R.G. Indus., 789 F.2d 1326 (9th Cir. 1986)	9	1986
Shipman v. Jennings Firearms, Inc., 791 F.2d 1532 (11th Cir. 1986)	11	1986
Strickland v. Fowler, 499 So. 2d 199 (La. Ct. App. 1986)	Louisiana	1986
Trespalacios v. Valor Corp., 486 So. 2d 649 (Fla. Dist. Ct. App. 1986)	Florida	1986
Caveny v. Raven Arms Co., 665 F. Supp. 530 (S.D. Ohio 1987)	6	1987
Richardson v. Holland, 741 S.W.2d 751 (Mo. Ct. App. 1987)	Missouri	1987
Knott v. Liberty Jewelry & Loan, Inc., 748 P.2d 661 (Wash. Ct. App. 1988)	Washington	1988
Addison v. Williams, 546 So.2d 220, (La. Ct. App. 1989)	Louisiana	1989
Buczkowski v. McKay & Kmart, 441 Mich. 96, 108 (Mich. 1992)	Michigan	1992
Forni v. Ferguson, 648 N.Y.S.2d 73 (App. Div. 1996)	New York	1996
McCarthy v. Sturm Ruger & Co., 916 F. Supp. 366 (S.D.N.Y. 1996)	2	1996
Alderman v. Bradley, 957 S.W.2d 264	Kentucky	1997
Kitchen v. K-Mart Corp., 697 So. 2d 1200 (Fla. 1997).	Florida	1997
McCarthy v. Olin Corp., 119 F.3d 148 (2d. Cir. 1997) (ammunition)	2	1997
Resteiner v. Sturm, Ruger & Co., 566 N.W.2d 53 (Mich. Ct. App. 1997)	Michigan	1997

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APPENDIX A
First Wave of Litigation: 1970-1998 (continued)

Table 1

Case Name	Circuit/Court	Year
Ahlschlager v. Remington Arms Co., Inc., 750 S.W.2d 832	Texas	1998
Bubalo v. Navegar, Inc., No. 96 C 3664, 1998 WL 142359 (N.D. Ill. Mar. 20, 1998)	7	1998
Copier v. Smith & Wesson Corp., 138 F.3d 833 (10th Cir. 1998)	10	1998
Copier v. Smith & Wesson, 138 F.3d 833 (10th Cir 1998)	10	1998
Dix v. Beretta, No 750681-9 (Cal. Super. Ct. County of Alameda filed Apri 15 1998)	California	1998
Halberstam v. Daniel, No. CV-95-3323 (E.D.N.Y. 1998)	2	1998

APPENDIX B
Second Wave of Litigation: 1998-2005

Table 1

Case Name	Circuit/Court	Year
Morial v. Smith & Wesson, No. 98-18578 (La. Civ. Dist. Ct. Parish of Orleans filed Oct. 30, 1998)	New Orleans	1998
Archer v. Arms Tech., Inc., 725 F. Supp. 2d 784 (E.D. Mich. 1999)	6	1999
City of Bridgeport v. Smith & Wesson, Inc., No. CV-99-0361279 (Conn. Super. Ct. filed Jan. 27, 1999)	Connecticut	1999
City of Chicago v. Beretta U.S.A. Corp., No. 99-2518 (Ill. Cir. Ct. Cook County filed November 12, 1999)	Illinois	1999
Ganim v. Smith & Wesson No CV 99 361279-S (Conn Super Ct Fairfield County filed Feb. 5 1999)	Connecticut	1999
Hamilton v. Accu-Tek, 62 F. Supp. 2d 802 (EDNY 1999)	2	1999
Merrill v. Navegar, Inc., 89 Cal. Rptr. 2d 146 (Ct. App. 1999), rev. granted 991 P.2d 775 (2000)	California	2000
Merrill v. Navegar, Inc., 26 Cal.4th 465 (Cal. 2001)	California	2001
Smith v. Bryco Arms, 131 N.M. 87 (N.M. Ct. App. 2001)	New Mexico	2001
City of Gary v. Smith & Wesson Corp, 801 N.E.2d 1222, 1234 (Ind. 2003).	Indiana	2003
Johnson v. Bull's Eye Shooter Supply, 2003 WL 21639244 (Wash. Super. Ct. 2003)	Washington	2003
McGuire and Lemongello v. Will Co., Inc., No 02-c-2952 (Cir. Court, Kanawha County, W.Va) (March 19, 2003)	West Virginia	2003
Smith & Wesson v. City of Gary (CoA Indiana 2003)	Indiana	2003
People v. Sturm, Ruger Company, Inc., 309 A.D.2d 91 (N.Y. App. Div. 2003)	New York	2003
City of Chicago v. Beretta, 213 Ill.2d 351 (Ill. 2004)	Illinois	2004
Other Cases Filed by Cities		
City of Philadelphia v. Beretta U.S.A., Corp., 126 F. Supp. 2d 882 (E.D. Pa. 2000)	3	2000
In re Firearm Cases, 126 Cal. App. 4th 959 (Cal. Ct. App. 2005)	California	2005
Penelas v. Arms Technology, Inc., 778 So. 2d 1042 (Fla. Dist. Ct. App. 2001)	Florida	2001
Smith Wesson v. City of Atlanta, 273 Ga. 431 (Ga. 2001)	Georgia	2001
Boston v. Smith Wesson Corp., 12 Mass. L. Rptr. 225 (Mass. Super. Ct. 2000) (No. 1999-02590)	Massachusetts	2000
Cincinnati v. Beretta U.S.A. Corp., 95 Ohio St. 3d 416 (Ohio 2002)	Ohio	2002

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APPENDIX C
Third Wave of Litigation: 2005-Present

Table 1

Case Name	Circuit/Court	Year
Sisemore v. Sturm, Ruger (1:05-cv-01093) (W.D. Ark. Oct. 6, 2005)	8	2005
Grunow v. Valor Corp. of Florida, 904 So. 2d 551 (DCT Fla. 2005)	Florida	2005
T&M Jewelry, Inc. v. Hicks ex rel. Hicks, 189 S.W.3d 526 (KY 2006)	Kentucky	2006
City of New York v. A-1 Jewelry & Pawn, Inc., 247 F.R.D. 296 (E.D.N.Y. 2007)	2	2007
Bezet v. Smieth & Wesson (3:08-cv-00685) (M.D. La. Oct. 24, 2008)	5	2008
Brown v. Smith & Wesson (1:08-cv-01059) (W.D. Ark. Jul. 18, 2008)	8	2008
City of New York v. Beretta U.S.A. Corp., 524 F.3d 384 (2d Cir. 2008)	2	2008
District of Columbia v. Beretta, 940 A.2d 163 (D.C. 2008)	DC	2008
Foltz v. Smith & Wesson (3:08-cv-00858) (N.D. Tex. May 20, 2008)	5	2008
Hunter v. Smith & Wesson (3:08-cv-00733) (S.D. Ill. Oct. 17, 2008)	7	2008
Rider v. O. F. Mossberg & Sons (3:08-cv-00980) (W.D. La. July 10, 2008)	5	2008
Adames v. Sheahan, 233 Ill. 2d 276 (Ill. 2009)	Illinois	2009
Estate of Charlot v. Bushmaster, 628 F. Supp. 2d 174 (D.D.C. 2009)	DC	2009
Ileto v. Glock, Inc. 565 F.3d 1126 (9th Cir. 2009)	9	2009
Johnson v. Wal-Mart Stores, Inc., 588 F.3d 439 (7th Cir. 2009)	7	2009
Worrall v. Smith & Wesson (2:09-cv-00051) (S.D. Ind. Feb. 13, 2009)	7	2009
Bridges v. Remington (2:10-cv-07487) (E.D. Pa. Dec. 23, 2010)	3	2010
Norberg, et al. v. Badger Guns, Inc., et al., No. 2010-CV-20655 (Milw. Co. Cir. Ct. 2010).	Wisconsin	2010
Thompson v. Remington, 2010 WL 3737869 (S.D. Miss. Sept. 17, 2010)	5	2010
Gilland v. Sportsmen's Outpost, Inc., 2011 WL 2479693 (Sup. Ct. Conn. May 26, 2011)	Connecticut	2011
Rice v. Mossberg (3:11-cv-00516) (M.D. Tenn. June 1, 2011)	6	2011
Williams v. Beemiller, Inc., 2011 N.Y. Slip Op. 34303 (N.Y. Sup. Ct. 2011)	New York	2011
Bailey v. Remington (7:12-cv-0003) (M.D. Ga. Jan. 4, 2012)	11	2012
Chavez v. Glock, Inc., 144 Cal. Rptr. 3d 326 (Ct. App. Cal. 2012)	California	2012
Riley v. Remington (0:12-cv-02844) (D. Minn. Nov. 9, 2012)	8	2012
Ryan v. Hughes-Ortiz, 959 N.E.2d 1000 (Mass. App. Ct. 2012)	Massachusetts	2012
Sewell v. Smith & Wesson (4:12-cv-00364) (N.D. Ala. Feb. 2, 2012)	11	2012
Webb v. Remington (4:12-cv-04140) (D.S.D. Aug. 2, 2012)	8	2012
Williams ex rel. Raymond v. Wal-Mart Stores East, L.P., 99 So. 3d 112 (Miss. 2012)	Mississippi	2012
Estate of Kim ex rel. Alexander v. Coxe, 295 P.3d 380 (AK 2013)	Alaska	2013
Jefferies v. D.C., 916 F.Supp.2d 42 (D.D.C. 2013)	DC	2013
Paulmann v. Hodgdon Powder Company (3:13-cv-00021) (W.D. Ky. Jan 7, 2013)	6	2013
Pfitzer v. Smith & Wesson (4:13-cv-00676) (E.D. Mo. April 11, 2013)	8	2013
Shirley v. Glass, 308 P.3d 1 (Kan. 2013)	Kansas	2013
Woods v. Steadman's Hardware, 2013 WL 709110 (D. Mon. 2013)	Montana	2013
Chiapperini v. Gander Mountain Co., 2014 N.Y. Slip Op. 24429 (N.Y. Sup. Ct. 2014)	New York	2014

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APPENDIX 3
Third Wave of Litigation: 2005-Present (continued)

Table 1

Case Name	Circuit/Court	Year
Maffei v. Smith & Wesson (7:14-cv-01374) (S.D.N.Y. Feb. 28, 2014)	2	2014
Sambrano v. Savage Arms, Inc., 338 P.3d 103 (N.M. Ct. App. 2014)	New Mexico	2014
Bachert v. Remington (4:15-cv-03220) (S.D. Tex. Nov. 2, 2016)	5	2015
Corbett v. Remington (4:15-cv-00279) (D. Idaho Jul. 22, 2015)	9	2015
Harris et al. v. Remington (5:15-cv-01375) (W.D. Okla. Dec. 23, 2015)	10	2015
Phillips v. Lucky Gunner, 84 F. Supp. 3d 1216 (D. Color. 2015)	10	2015
Turner v. Remington (4:15-cv-00087) (M.D. Ga. June 5, 2015)	11	2015
Burdett v. Remington, 2016 WL 3745682 (N.D. Tex. July 13, 2016)	5	2016
Corporon v. Wal-Mart Stores East, 2016 WL 3881341 (D. Kans. 2016)	10	2016
Delana v. CED Sales, 486 S.W.3d 316 (MO 2016)	Missouri	2016
Fear v. Taurus Int'l Manufacturing (2:16-cv-10715) (E.D. Mich. Feb. 29, 2016)	6	2016
Garrison et al. v. Sturm, Ruger (5:16-cv-01559) (N.D. Ala. Sept. 20, 2016)	11	2016
Liverman v. Remington (1:18-cv-00275) (W.D. Tex. Nov. 2, 2016)	5	2016
McNeal et al. v. Smith & Wesson (3:16-cv-00067) (M.D. Tenn. Jan. 21, 2016)	6	2016
Ramos v. Wal-Mart Stores, 202 F. Supp. 3d 457 (E.D. Pa. 2016)	3	2016
Turner v. Strum, Ruger (1:16-cv-02003) (N.D. Ala. Dec. 14, 2016)	11	2016
Alberti v. Remington (1:17-cv-00108) (D. Idaho Mar. 13, 2017)	9	2017
Arnold v. Remington (1:17-cv-00225) (W.D. Tex. Mar. 10, 2017)	5	2017
Batts v. Remington (6:17-cv-00346) (W.D. Tex. Dec. 8, 2017)	5	2017
Contreras v. Remington (1:17-cv-00075) (D. Mont. May 30, 2017)	9	2017
Garnett v. Remington (6:17-cv-00263) (W.D. Tex. Oct. 2, 2017)	5	2017
Johnson v. Remington (9:17-cv-00151) (E.D. Tex. Aug. 23, 2017)	5	2017
KS&E Sports v. Runnels, 72 N.E.3d 892 (Ind. 2017)	Indiana	2017
Luke v. A Pawn Shop (Kan. Dist. Ct. 2018) available at < https://www.bradyunited.org/legal-case/luke-v-a-pawn-shop>	Kansas	2018
Lefebre v. Remington Arms, 415 F. Supp. 3d 748 (W.D. Mich. 2019)	6	2017
Pollard v. Remington Arms, 320 F.R.D. 198 (W.D. Miss. 2017)	8	2017
Rivers v. Remington (2:17-cv-17124) (E.D. La. Dec. 12, 2017)	5	2017
Seguin v. Remington Arms Company, 260 F. Supp. 3d 674 (E.D. La. 2017)	5	2017
Shearouse v. Remington (4:17-cv-00107) (S.D. Ga. June 19, 2017)	11	2017
Garrison v. Sturm, Ruger & Company, Inc., 322 F. Supp. 3d 1217 (N.D. Ala. 2018)	11	2018
Seward v. Smith & Wesson (5:18-cv-00116) (W.D. Okla. Feb. 07, 2018)	10	2018
Stratton v. Thompson/Center Arms (4:18-cv-00040) (D. Utah June 18, 2018)	10	2018
Stringer v. Remington Arms Company, 2:18-CV-00059 (S.D. Miss. April 10, 2018)	5	2018
City of Gary v. Smith & Wesson Corp, 126 N.E.3d 813 (CoA Indiana 2019)	Indiana	2019
Crawford v. Jimenez Arms (1916-CV17245) (June 24, 2019)	Missouri	2019
Daniel v. Armslist, 386 Wis.2d 449 (Wis. 2019)	Wisconsin	2019

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APPENDIX 3
Third Wave of Litigation: 2005-Present (continued)

Table 1

Case Name	Circuit/Court	Year
Fischer v. Remington (2:19-cv-01342) (S.D. Ohio April 10, 2019)	6	2019
Harris et al. v. Remington, 398 F. Supp. 3d 1126 (W.D. Okla. 2019)	10	2019
Hilde v. Sturm, Ruger (9:19-cv-00073) (D. Mont. April 22, 2019)	9	2019
Pannell v. Remington (4:19-cv-00061) (N.D. Ala. Jan 11, 2019)	11	2019
Prescott v. Slide Fire Solutions, 410 F.Supp.3d 1123 (D. Nev. 2019)	9	2019
Soto v. Bushmaster, 202 A.3d 262 (Conn. 2019)	Connecticut	2019
Summers v. Cabela's Wholesale, 2019 WL 1423095 (Super. Ct. Dela. 2019)	Delaware	2019
Swank v. Smith & Wesson (2:19-cv-02113)	4	2019
Timperio v. Bronx-Lebanon Hospital Center, 384 F. Supp. 3d 425 (S.D.N.Y. 2019)	2	2019
A.S. v. Remington, 2020 BL 96877 (S.D. Ind. Mar. 16, 2020)	7	2020
Parsons v. Colt's Manufacturing Company, 2020 WL 1821306 (D. Nev. 2020)	9	2020
Scott v. Remington (2:19-cv-01891) (N.D. Alab. Nov. 21, 2019)	11	2020
Travieso v. Glock (2:20-cv-00523) (D. Ariz. 2020)	9	2020
Williams v. ROMARM, 2020 WL 1557156 (D.D.C. 2020)	DC	2020
Sig Sauer P320 Settlement Agreement, available at <https://www.sig-sauer.com/wp-content/uploads/2020/03/Short-Form-Agreement-Notice.pdf?utm_campaign=Hartley&utm_medium=email&utm_source=Eloqua>	n/a	2020

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