

# *Suing the Gun Industry*

A Battle at the Crossroads of  
Gun Control and Mass Torts

Timothy D. Lytton, Editor

*University of Michigan Press*  
Ann Arbor

Copyright © by the University of Michigan 2005  
All rights reserved  
Published in the United States of America by  
The University of Michigan Press  
Manufactured in the United States of America  
⊗ Printed on acid-free paper

2008 2007 2006 2005 4 3 2 1

No part of this publication may be reproduced, stored in a retrieval system,  
or transmitted in any form or by any means, electronic, mechanical,  
or otherwise, without the written permission of the publisher.

*A CIP catalog record for this book is available from the British Library.*

Library of Congress Cataloging-in-Publication Data

Suing the gun industry : a battle at the crossroads of gun control and  
mass torts / edited by Timothy D. Lytton.

p. cm.

Includes bibliographical references and index.

ISBN 0-472-11510-3 (cloth : alk. paper)

1. Firearms—Law and legislation—United States. 2. Torts—United  
States. 3. Class actions (Civil procedure)—United States.

I. Lytton, Timothy D., 1965—

KF3941.S85 2005

346.7303'8—dc22

2004030731

# CONTENTS



<i>Acknowledgments</i>	v
<i>Introduction: An Overview of Lawsuits against the Gun Industry</i>	i
TIMOTHY D. LYTTON	
PART I Perspectives on Gun Violence, Gun Control, & the Gun Industry	
1. <i>A Public Health Perspective on Gun Violence Prevention</i>	39
JULIE SAMIA MAIR, STEPHEN TERET, & SHANNON FRATTAROLI	
2. <i>The Limited Importance of Gun Control from a Criminological Perspective</i>	62
DON B. KATES	
3. <i>The American Gun Industry: Designing &amp; Marketing Increasingly Lethal Weapons</i>	84
TOM DIAZ	
4. <i>A Cultural Critique of Gun Litigation</i>	105
DAN M. KAHAN, DONALD BRAMAN, & JOHN GASTIL	
PART II Perspectives on Gun Litigation	
5. <i>Private Lawyers, Public Lawsuits: Plaintiffs’ Attorneys in Municipal Gun Litigation</i>	129
HOWARD M. ERICHSON	

6. <i>The NRA, the Brady Campaign, &amp; the Politics of Gun Litigation</i>	152
TIMOTHY D. LYTTON	
7. <i>Gun Litigation in the Mass Tort Context</i>	176
RICHARD A. NAGAREDA	
8. <i>Comparing Tobacco &amp; Gun Litigation</i>	196
STEPHEN D. SUGARMAN	
PART III Gun Litigation as a Regulatory Response to Gun Violence	
9. <i>Why Regulating Guns through Litigation Won't Work</i>	225
PETER H. SCHUCK	
10. <i>The Complementary Role of Tort Litigation in Regulating the Gun Industry</i>	250
TIMOTHY D. LYTTON	
11. <i>Stubborn Information Problems &amp; the Regulatory Benefits of Gun Litigation</i>	271
WENDY WAGNER	
12. <i>Liability Insurance &amp; the Regulation of Firearms</i>	292
TOM BAKER & THOMAS O. FARRISH	
13. <i>Gun Litigation &amp; the Constitution</i>	315
BRANNON P. DENNING	
<i>Notes</i>	339
<i>Contributors</i>	397
<i>Table of Cases</i>	401
<i>Index</i>	405

## ACKNOWLEDGMENTS



This project was made possible by the encouragement of my faculty colleagues at Albany Law School and the generous financial support of Dean Tom Guernsey, who funded both my own research and a conference for contributing authors in the fall of 2003. Associate Dean Bob Begg and his library staff, in particular Bob Emery and Mary Wood, fielded a steady flow of research requests. Lucas Mihuta, Seth Zoracki, and Alexandra Harrington provided essential research assistance. Alexandra Harrington, Theresa Colbert, and Tammy Weinman helped organize the conference. Beyond this, Alexandra Harrington coordinated the editing process among all of the authors and kept the project on schedule. I am grateful for all of her many efforts.

I am especially indebted to Peter Schuck for encouraging me to undertake editing a book on gun litigation in the first place and coaching me throughout the process. When I was a law student in the late 1980s, Peter introduced me to the field of mass torts, and he both inspired me to pursue a career in the legal academy and helped me secure a position. I am very proud to be among Peter's many students, and the more I develop my own ideas about law, the more I realize just how deeply indebted to him I am.

Austin Sarat tutored me in how to write a book proposal and how to edit a volume of independent essays. Steve Wasby read the entire manuscript and offered sage advice about organization of the chapters. Jim Reische at the University of Michigan Press has shepherded the book

from proposal to publication, while Kevin Rennells provided valuable assistance coordinating the editing stages.

The greatest reward of working on this project has been the opportunity to work closely with the contributing authors. It has been an honor to work among such thoughtful and talented scholars, and I am grateful for their individual and collective mentoring.

My parents, Bernard and Norma Lytton, and my sister, Jennifer, have supported me enthusiastically in this project, as they have in so many others throughout my life. My wife, Rachel Anisfeld, continues to be my toughest scholarly critic and my most ardent supporter. This volume is dedicated to our children, Medad and Margalit, in the hope that by means of honest debate about the regulation of firearms the world they inherit will suffer less from government restrictions on liberty and the carnage of gun violence.