

Gunned Down

Governmental entities and gun manufacturers battled it out in the courtroom, then settled the matter by agreeing to implement safety features.

BY MATTHEW McNICHOLAS

Gun violence fallout is more than a dollars and cents issue, or simply a concern about saving resources expended apprehending gun-toting, violent criminals. The prevention of gun violence is the pursuit of a more livable, civilized society, and it has a direct effect on every member of the public.

In March 2000, California, Los Angeles, Berkeley and San Francisco, among other government entities, began negotiating a settlement agreement with handgun manufacturing giant Smith & Wesson.

■ **Gun safety litigation.** The governments had sued the company, alleging that the guns it produced were knowingly designed with insufficient safety features, they are the weapon of choice in a vast number of criminal endeavors, and their design characteristics contribute to the danger.

The governmental entities alleged that Smith & Wesson failed to change the products' designs in order to keep costs low and consumer sales high, placing corporate profits before consumer safety.

■ **A groundbreaking settlement.** The intent of the settlement, embodied in the preamble to the agreement, is to reduce criminal misuse of firearms, reduce the incidence of firearms accidents and educate the public on the safe handling and storage of firearms. In exchange for an agreement not to pursue civil damage claims against the company, Smith & Wesson agreed to preventive remedies aimed at making guns safer.

To achieve those goals, Smith & Wesson committed to implementing a variety of consumer protections, including a second serial number on each gun hidden on the interior of frame or receiver or visible only with the aid of an optical instrument, an external locking device that effectively prevents the operation of the firearm when locked, to be used as an interim measure, and a built-in, on-board locking system, by which the firearm can be operated only with a key or combination or other mechanism unique to that gun, within 24 months of the execution of the settlement.

In addition, Smith & Wesson agreed to commit 2 percent of annual firearms sales revenues to the development of a technology that recognizes only authorized users, to be incorporated into all new firearms within 36 months of the signing of the settlement.

These gun safety mechanisms are a victory for all consumers, even those who do not purchase firearms, because, often, it is not gun owners who are victimized by violent criminals armed with handguns.

The settlement also memorializes a significant concession by Smith & Wesson. In the agreement, the company agrees that handguns are illegally obtained and used in



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crimes to injure and kill to such an extent that major design changes are required.

■ **More must be done.** While praiseworthy, this settlement and the changes it institutes are only a first step in the fight for safety by limiting gun-related violence.

Most important, the settlement represents a significant shift in the fight for consumer rights. Like the first settlement against Big Tobacco, the Smith & Wesson agreement legitimizes legal action against gun makers, taking such lawsuits out of the fringe and placing them in the mainstream of consumer protection litigation.

■ **New attitudes toward gun safety litigation.** Attor-

neys representing consumers in gun safety lawsuits must now exploit this change in how the public views gun safety litigation. Public opinion in this arena has become one of the public's most valuable resources in the consumer bar's continuing fight against gun manufacturer irresponsibility.

The minds of jurors and judges are now receptive and open to new views about gun violence and the manufacturer's role in creating and sustaining these dangers. This new openness to these new approaches will be the cornerstone to the plaintiffs' bar's vindication of consumer rights.