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4 Takeaways From \$73M Remington Deal Over Sandy Hook

By **Emily Field** and **Y. Peter Kang**

Law360 (February 15, 2022, 10:17 PM EST) -- The historic \$73 million settlement announced Tuesday between the families of the victims of the 2012 shooting at Sandy Hook Elementary School and gunmaker Remington could spur more lawsuits against firearms manufacturers and prompt companies to tone down their marketing of lethal weapons, legal experts say.

After seven years of litigation that included a **key ruling** from the Connecticut Supreme Court in favor of the families and Remington's filing for bankruptcy, the settlement marks an end to a suit that challenged the marketing of the AR-15 rifle used in the shooting.

The **settlement amount** is more than double what Remington offered to pay to settle in July. The families held out so they could obtain more internal documents and take more depositions, Josh Koskoff of Koskoff Koskoff & Bieder PC, an attorney representing the families, said in a Tuesday statement.

Those documents will now see the light of day, according to Koskoff, and paint a picture of a company that changed its formerly sober approach to marketing guns into an aggressive campaign that pushed sales through product placements in video games after it was acquired by private equity firm Cerberus Capital Management LP in 2007.

That marketing was aimed at a specific audience, Koskoff said at a press conference Tuesday: insecure young men.

"Tap into their anxieties about masculinity, tap into their feelings of aggrievement or insecurity," Koskoff said. "Tell them that this weapon conveys power and masculinity."

In their suit, the families and one survivor of the 2012 Sandy Hook shooting in Newtown, Connecticut, claimed that Remington advertised the Bushmaster AR-15 rifle to civilians as a means to carry out combat missions against their enemies in violation of the Connecticut Unfair Trade Practices Act, which bars advertising that promotes violent or criminal behavior.

Here, Law360 shares four takeaways from the settlement.

Settlements Over Shootings Rare

Tim Lytton, a gun violence researcher and professor at Georgia State University College of Law, said that the settlement was a "historic event" since it is only the second time that a gunmaker has settled with shooting victims. The other, much smaller deal, \$2.55 million, was reached in 2004 when Bushmaster Firearms Inc. and a gun dealer settled with victims of sniper attacks in the Washington, D.C., area.

It's also the first time since the federal Protection of Lawful Commerce in Arms Act passed in 2005 that a firearms maker has settled with gun violence victims, Lytton said.

That law broadly shields gunmakers from liability when their products are used in crimes and was a major hurdle for the families until the Connecticut Supreme Court ruled in 2019 that Congress didn't intend for the law to bar lawsuits alleging that gun manufacturers' advertisements promote violent behavior.

"I think the lawyers in Connecticut figured out that there was an exception to that immunity and they focused on that," said Michael Lawlor, a criminal justice professor at the University of New Haven and former state legislator.

Lawlor called the amount of the deal "almost academic" and said he hoped the settlement makes gunmakers rethink their marketing.

"Their children are not going to be brought back," Lawlor said. "I think it is a significant milestone on the road to restoring some level of sanity to the marketing of firearms."

Discovery Info Could Prove Insightful

Kevin Boyle of Panish Shea Boyle Ravipudi LLP, a California attorney who represented victims of the 2017 mass shooting in Las Vegas that killed 58 people and resulted in an **\$800 million settlement** with MGM Resorts, told Law360 that the information obtained during discovery could shed light on industrywide marketing practices and could lead to change.

"I'm sure a lot of [the documents] are under a protective order, but the ones that did manage to get filed publicly will certainly be illuminating," he said. "I would think that at a minimum, some of the marketing practices are going to have to change. It was pretty clear that they were marketing these things not as hunting rifles but as combat weapons, with a style that seemed to be directed at the younger set, like 18-year-olds who would be into those types of weapons."

The gunman who killed 20 children and six adults at Sandy Hook Elementary was 20 years old.

Lytton of Georgia State said the settlement could not only prompt changes in the gunmakers' marketing tactics but also put insurance companies and banks doing business in the gun industry on notice of potential liability exposure.

"According to the plaintiffs, they are in a position to release a lot of information they have obtained during discovery," he said. "This could expose how Remington made its design decisions, sales practices ... and that could be new information or underappreciated information that could be released publicly."

The deal might make insurance companies and banks think twice about policies and loans due to fear of legal actions, he said.

"Insurance companies are often in the business of helping their insured reduce the risk of litigation, so insurance companies may make a point to incentivize companies to reduce the actions — firearms design, distribution practices — which give rise to lawsuits," he said. "Banks could also be shy about lending money to projects that could lead to litigation of this sort."

Deal Could Lead to Rise in Similar Suits

Lytton also believes that news of the deal could encourage other plaintiffs attorneys to pursue similar litigation, but just how successful those potential suits could be remains an open question.

"That future is unclear because the Sandy Hook lawsuit came under a federal exception to a federal law, PLCAA, an exception for unfair trade practices," he said. "That strategy has been used in other lawsuits [in other states] and was not successful in rulings that have been upheld by Ninth Circuit and Second Circuit."

"I think the settlement is likely to encourage other plaintiffs attorneys to bring other cases, but whether that will be a large volume of cases is not clear," he said. "Plaintiffs attorneys are willing to take a gamble but only if it's a strong case. I think Koskoff, because it was a horrific shooting, pursued this litigation for 10 years. Whether other attorneys could take on such a case of this size for this long is unclear."

Lytton noted that while the outcome of litigation against firearms makers is important, equally critical is using litigation to influence government policymaking and to put the practices of the gun industry

in the public spotlight.

"If one wants to understand why this litigation is significant, the filing of a lawsuit, the nitty-gritty of litigation often has as big or a bigger impact than the outcome," he said. "Whether plaintiffs attorneys want to take that on is another question. But as far as influencing policy, the litigation influences that. For 10 years, it's been putting the spotlight on the problem."

Remington's Bankruptcy Played Role in Deal

Remington filed for Chapter 11 protection in July 2020. Two months later, a bankruptcy judge approved a \$159 million asset sale, effectively closing its doors.

It was the second time since 2018 that Remington had filed for Chapter 11 protection over cash restraints, even though gun sales have surged during the COVID-19 pandemic. Its sale was **approved** despite the families' concerns about how much would be left over to cover their claims.

The families were also skeptical that Remington needed to rush to sale, said bankruptcy professor Melissa Jacoby of the University of North Carolina School of Law.

"I would say the quick sale in the bankruptcy limited the settlement amount to essentially whatever insurance policy proceeds the insurers were willing to agree to cover," Jacoby said. "The financial upside of the guns and ammunition business [is] in the hands of the buyers and their stakeholders now."

The families are represented by Joshua D. Koskoff, Alinor C. Sterling and Jeffrey W. Wisner of Koskoff Koskoff & Bieder PC and H. Christopher Boehning and Jacobus J. Schutte of Paul Weiss Rifkind Wharton & Garrison LLP.

Remington is represented by Kerry R. Callahan of Updike Kelly & Spellacy PC and James B. Vogts and Andrew A. Lothson of Swanson Martin & Bell LLP.

The case is Donna Soto et al. v. Bushmaster Firearms International LLC et al., case number UWY-CV15-6050025-S, in the Superior Court of Connecticut, Complex Litigation Docket, Judicial District of Waterbury.

--Editing by Robert Rudinger.

Correction: A previous version of this story had inaccurate counsel info. The error has been corrected.