

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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ON

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PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

WEDNESDAY, APRIL 2, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. Chris Cannon [Chairman of the Subcommittee] presiding.

Mr. CANNON. Morning, ladies and gentlemen. This hearing of the Subcommittee on Commercial and Administrative Law will now come to order. We consider today H.R. 1036, the Protection of Lawful Commerce in Arms Act, which was introduced on February 27 by Representative Stearns. It currently has 247 cosponsors, including me.

H.R. 1036 provides that a qualified civil liability action cannot be brought in any State or Federal court. Qualified civil liability action is defined as a civil action brought against any person or by any person against a manufacturer or seller of firearms or ammunition for damages resulting from the criminal or unlawful misuse of such products.

However, such term does not include an action against a person who transfers a firearm or ammunition knowing that it will be used to commit a crime of violence or drug trafficking crime or comparable or identical State felony law.

It also does not include an action brought against a seller for negligent entrustment or negligence per se. The bill also includes several additional exceptions, including an exception for action in which a manufacturer or seller of a qualified product knowingly and willfully violates a State or Federal statute applicable to sales or marketing when such violation was a proximate cause of harm for which relief is sought.

Other exceptions include actions for breach of contract or warranty in connection with the purchase of a firearm or ammunition and an exception for damages resulting directly from a defect in design or manufacturer of a firearm or ammunition when used as intended.

The bill also makes clear that only licensed manufacturers and sellers are covered by the bill. Tort law rests upon a foundation of personal responsibility in which a product may not be defined as defective unless there is something wrong with the product rather than with the product's user.

However, in the last several years lawsuits have been filed against the firearms industry on a series of liability that hold it liable for the actions of others who use their products in a criminal or unlawful manner. Such lawsuits threaten to separate tort law from its basis in personal responsibility and to force firearms manufacturers into bankruptcy, leaving potential plaintiffs asserting traditional claims of product manufacturing defects unable to recover more than pennies on the dollar, if that, in Federal Bankruptcy Court.

While some of these lawsuits have been dismissed and some States have acted to limit them in one way or another, the fact remains that these lawsuits continue to be aggressively pursued. For example, one of the personal injury lawyers suing the firearms industry, John Coale, told the Washington Post, "The legal fees alone are enough to bankrupt the industry." I might just point out that the tobacco litigation, the cost to defend those are about \$600 million, about three times what the total profits of the firearms industry in America is.

Dave Koppel, an Adjunct Professor at New York University Law School, also stated that the cities suing the firearms industry, "Don't even have to win. All they have to do is keep suing. They will kill the industry with the cost to defend all the lawsuits." lawsuits seeking to hold the firearms industry responsible for the criminal and unlawful use of its products are the attempts to accomplish through litigation what has not been achieved by legislation and the democratic process. As has been explained by one Federal judge, "The plaintiffs' attorneys simply want to eliminate handguns."

Under the currently unregulated tort system, personal injury lawyers are seeking to obtain through the courts stringent limits on the sale and distribution of firearms beyond the court's jurisdictional boundaries. Such a State lawsuit in a single county could destroy a national industry and deny citizens everywhere the right to keep and bear arms guaranteed by the Constitution.

Insofar as these lawsuits have the practical effect of burdening interstate commerce in firearms, Congress has the authority to act under the commerce clause of the Constitution. Such lawsuits also directly implicate core Federalism principles articulated by the Supreme Court which has made clear that, "One State's power to impose burdens on the interstate market is not only subordinate to the Federal power over interstate commerce, but it is also constrained by the need to respect the interests of other States."

If the judicial system is allowed to eliminate the firearms industry based on legal theories holding manufacturers liable for the misuse of their products, it is also likely that similar liability will be applied to an infinitely long list of other industries whose products are statistically associated with misuse.

Witness the recent litigation against the fast food industry. According to a recent article in the Fortune Magazine, "On August 3, 2000, the parity newspaper, The Onion, ran a joke article under the headline, 'Hersheys ordered to pay obese Americans \$135 billion'." some joke. Last summer New York City attorney Sam Hirsch filed a strikingly similar lawsuit against McDonalds. News of the lawsuit drew hoots of derision, but food industry executives aren't

laughing or shouldn't be. No matter what happens with Hirsch's suit, he has tapped into something very big." And that is all a quote.

Congress must begin to stem the slide down this slippery slope. It can do that by fulfilling its constitutional duty and exercising its authority under the commerce clause to prevent a few States from bankrupting the national firearms industry and denying all Americans their fundamental right to bear arms.

I now yield to Mr. Watt, the Ranking Member of the Subcommittee, for an opening statement.

Mr. WATT. Thank you, Mr. Chairman. I will be brief, I hope. I just want to make a couple of points. First of all, we didn't get the testimony of the witnesses until late last evening. So it is kind of hard for us to prepare for a hearing of this—and take it seriously if we start reading the witness' testimony and trying to think about what they are saying at 10 or 11 o'clock at night before the hearing takes place the following morning at 10 o'clock. I want to—

Mr. CANNON. Would the gentleman yield?

Mr. WATT. Yes.

Mr. CANNON. My understanding is that the witness was in trial and is apologetic, and we apologize on our side for the lateness of that testimony, but I don't—it was pretty much unavoidable. We appreciate your understanding on that.

Mr. WATT. Yes. And I am not going to belabor that point, but I just—I did want to point that out, that if we are going to take a matter such as this as a serious hearing, we really need to have the statements earlier. And I will let that go.

Second, I always wonder about the process by which things get done. I wondered how medical negligence ended up in the Subcommittee, and I wonder how this ends up in this Subcommittee. I guess my own personal feeling is that sometimes bills get sent to the Subcommittee as opposed to being dealt with at the full Committee, because they—it is kind of the minor league circuit. You send it out there and see how it resonates, and if it resonates and it does well, then maybe you make the big leagues, or maybe it is like a Broadway musical that you send out to one of these small cities to try out. If it is successful there, then it makes Broadway.

I can only hope that this bill stays in the minor leagues and doesn't make it to Broadway. I think it is unnecessary and if it is necessary, then I guess the Chairman has prepared us for the prospect that it will be followed soon by additional legislation that prohibits suits about obesity against McDonalds and fast food chains and other—in many other areas.

My sense is that if something is lawful and somebody files a lawsuit about it, ultimately that lawsuit is either going to be declared frivolous or it is going to be dismissed anyway, and for us to pass a bill that says that somebody is protected from doing something that is lawful, I think is really an unnecessary exercise.

But notwithstanding that, particularly for the two witness statements that I didn't get until this morning, I will be happy in waiting to hear their testimony, because I certainly haven't had a chance to read it. And I will be trying to keep an open mind as we go through this process. That is what hearings are for. We are here in sending up a trial balloon, I presume, and this is the place to

do it. So I am here, and I will try to be attentive and open minded about it.

Mr. CANNON. Would the gentleman yield?

Mr. WATT. Yes.

Mr. CANNON. I will tell you the gentleman is not one of the 247 cosponsors of this.

Mr. WATT. No. I am not one of the 247 cosponsors of this minor league bill. Right.

Mr. CANNON. I thank the gentleman, and the gentleman's time is expired.

I want to note that we have Mr. Delahunt from Massachusetts, Mr. Coble from South Carolina—North Carolina. My goodness, that is a sin. Nothing could be finer. We had Mr. Flake here, and I assume he will return, from Arizona. Mr. Carter from Texas. Mr. Chabot from Ohio.

Do any of the Members of the panel wish to make an opening statement?

Mr. COBLE. Very briefly, Mr. Chairman.

Mr. CANNON. Mr. Coble is recognized for 5 minutes.

Mr. COBLE. I won't take anywhere near 5 minutes.

This is a very important hearing, and I don't mean to speak for my friend from North Carolina, but when Mr. Watt said that—I want the Chairman to hear this. Mr. Chairman, when Mr. Watt said minor leagues, I—

Mr. WATT. I don't think the Chairman wants to hear what you are saying.

Mr. COBLE. I think he does. What I want to say is, I feel sure that my friend from North Carolina would agree with me that you are indeed a major league Chairman even though we may be in the minor leagues. But I won't make an opening statement. I look forward to hearing the testimony from the witnesses.

Mr. WATT. If the gentleman would yield, I will second that emotion. We have got a major league Chairman. Every once in a while you will get a—

Mr. CANNON. I expect some pretty good hitting from the bench today.

Mr. COBLE. And now my friend from Massachusetts will accuse me of sucking up to the Chairman.

Mr. DELAHUNT. We do have a major league Chairman. Maybe this is a minor league bill. I don't know but—

Mr. COBLE. Then I will yield back.

Mr. DELAHUNT. Okay. I will yield back then, too.

Mr. CANNON. Mr. Delahunt, you don't have an opening statement, then.

Does anyone else seek recognition?

Mr. Chabot.

Mr. CHABOT. Mr. Chairman, representing Cincinnati, the home of the Cincinnati Reds, the first major league baseball team. I just want to tell you whether it is minor league or major league, I just think it is an honor to be here today, and it is a bill that deserves consideration. Being one of those 247 cosponsors of the bill, we are glad you are taking it up today.

Many of us, as the Chairman knows, we have a markup in International Relations Committee. We also have a war briefing at

10:30. So many of us will be coming in and out and our absence is not because of the bill is—it is just a matter of we are being pulled in about three or four different directions here this morning at the same time.

So thank you for holding this hearing. Yield back.

Mr. CANNON. I thank the gentleman.

I also want to recognize Mr. Feeney, the Vice Chairman of this Committee from Florida. Welcome.

In addition to what you just said, Mr. Chabot, let me add that we have the Energy Bill Markup in the Resources Committee, and so we have a number of things going on, and as witnesses come and go, we understand and appreciate that. Let me just point out that we will use the 5-minute rule here today. So for the Members of the panel, if I tap the gavel, it is because your time has run. We would appreciate it if you would not just stop but finish up your thought and then draw a conclusion. We will do the same thing for questions, and if we could move the hearing expeditiously, that, I think, would be quite helpful given other constraints on everyone's time today.

Let me go ahead and introduce our witnesses. Our first witness is Mr. Carlton Chen, General Counsel of Colt Manufacturing Company, Inc. Mr. Chen has also been In-House Counsel for Olin Corporation, the Sara Lee Corporation and an attorney in private practice. He was a Root Tilden Scholar at the New York University School of Law and is an Eagle Scout.

Our second witness is Walter Olson, who has been described as perhaps America's leading authority in over litigation. He has written several books on the subject including the Rule of Lawyers which was published this year.

Mr. Olson is a senior fellow at the Manhattan Institute, a frequent contributor to magazines and newspapers, including the New York Times and the Wall Street Journal. His Web site, overlawyered.com, for those who might have an interest launched in 1999, is widely acclaimed for its regular commentary on the litigation explosion and the need for legal reform.

He will speak to the political dynamics of recent lawsuits against the firearms industry and its impact on the separation of powers.

Our next witness is David Lemongello.

In 1985, Mr. Lemongello entered the Police Academy and then served as a police officer for the Orange, New Jersey Police Department. A few years later he was promoted to detective. On January 12, 2001, Mr. Lemongello was injured by a gun that exchanged several hands before coming into the possession of a criminal. He is currently an Executive Manager for Security Services at Estee Lauder in New York.

Our final witness is Lawrence G. Keane. Mr. Keane is Vice President and General Counsel of the National Shooting Sports Foundation. The NSSF is the major trade association for the firearm and recreational shooting sports industry and has been named as a defendant in approximately half of the lawsuits filed against the firearm industry by various municipalities.

Mr. Keane also serves on the Board of Directors of the Firearms Safety Education Foundation, a nonprofit 501(c)(3) charitable orga-

nization dedicated to educating the public about firearms safety issues.

Mr. CANNON. Mr. Chen, we recognize you for 5 minutes.

**STATEMENT OF CARLTON CHEN, GENERAL COUNSEL,
COLT MANUFACTURING COMPANY, INC.**

Mr. CHEN. Good morning. Chairman Cannon, Members of the Committee, Ladies and Gentlemen—my name is Carlton Chen. I am Vice President, General Counsel and Secretary of Colt Manufacturing Company and its subsidiary Colt Defense.

Since 1836, the Colt companies, together with our predecessors, have been manufacturing small arms for military, law enforcement and commercial use. Today approximately 70 percent of our output at our Connecticut-based plant is devoted to supplying the M-16 rifle, the M-4 carbine and the M-203 grenade launcher to all of the branches of the United States Armed Forces.

We also supply similar small arms to many of our law enforcement agencies and our allies around the world. In our heyday, we employed over 1600 union workers. Organized by the UAW today, we now employ in West Hartford less than 400 members of Local 376 and for both companies employ under 500 union and nonunion personnel. Our combined annual sales revenue is less than \$100 million.

Since 1998, we at Colt have been defending ourselves against a multitude of lawsuits brought by Government entities, organizations and individuals seeking to blame the firearms industry, including Colt, for the criminal and wrongful misuse of firearms in the United States. To blame Colt for the criminal misuse of firearms that are lawfully manufactured and sold is unjust. It is also threatening to our very existence. For a company that emerged from bankruptcy in 1994, we have been fighting for our lives against these lawsuits, diverting time, money and other of our limited resources to defend ourselves.

As I walk through our plant, Colt workers stop me to ask how the war is going, and we post announcements about the successes and battles that we are fighting, but the war that our workers are asking or reading about is not the Iraqi war. It is the war we are fighting against these plaintiffs, spurred on by plaintiffs' trial lawyers. We and many others in the industry have been fighting now for 8 years, beginning with the *Hamilton* case in which the plaintiffs claim that we manufacturers negligently distribute our firearms.

While the jury in that case found some of the manufacturers liable, the verdicts were properly reversed on appeal.

The same plaintiff's lawyer decided to bring a similar case before the same trial judge. Ironically, they are beginning the 3rd day of trial this morning in the NAACP case based on similar theories already rejected by the U.S. Court of Appeals.

While we are resolved not to wear down, there is a cost to this war. This war is hindering companies like Colt from engaging in a legitimate business making a lawful product. The existence of these lawsuits are thwarting our ability to raise new capital, borrow money, establish credit, obtain insurance, attract new employees, retain valued employees, and invest in new machinery and

equipment in the same manner that companies in other industries are able to do without these attacks against their industry.

I come here today to ask you to please support H.R. 1036. This bill would protect legitimate businesses such as Colt that provide hundreds of thousands of jobs for our citizens from the assembler to the polisher, to the tool and die maker and from our cafeteria workers to the people who fill our snack vending machines, even our suppliers.

If enacted, this bill would restore the rule of law and protect manufacturers and sellers in the firearms and ammunition industries who act legally from being harassed by frivolous lawsuits.

With the terrorist attacks on 9/11 and now our involvement in the Iraqi war, Colt as a military defense contractor has been requested by the Department of Defense to provide DPAS assistance. This priority assistance of the U.S. Government under defense priorities and allocation means that we must give preference to the U.S. Government over all of our customers to fulfill the DOD orders for small arms and spares under the Defense Production Act. Unfortunately, we cannot drop our defense in these lawsuits while under DPAS.

We are dutifully helping to defend our country when attacked and in times of war. I ask that each of you help us in our time of war so that we can focus on making the best small arms available for our men and women in uniform.

In conclusion, without this Federal legislation, the survival of Colt, our firearms and ammunition industries and all the jobs, taxes and commerce that we contribute to the U.S. economy are threatened.

Before I end, I would like to make not only my written testimony part of the record but also a letter that was written by Mr. Russ See, the President of UAW Local 376 in support of this bill, as well as the Colt product catalogs a part of the record. Thank you.

Mr. CANNON. Thank you, Mr. Chen.

[The prepared statement of Mr. Chen follows:]

PREPARED STATEMENT OF CARLTON S. CHEN

Chairman Cannon, Members of the Committee, my name is Carlton Chen. I am Vice President, General Counsel and Secretary of Colt's Manufacturing Company, Inc. and its subsidiary Colt Defense LLC. The Colt companies together with our predecessors have been manufacturing small arms for the military, law enforcement and commercial use since 1836. Samuel Colt, an American industrialist who is credited with beginning the American Industrial Revolution, founded our firearms business in New Jersey and then moved it to Connecticut, which we call our home today.

As some of you will remember, Colt supplied the M1911 pistol as the standard sidearm to all branches of the U.S. Armed Forces during World War I, World War II, the Korean War and the Vietnam conflict. Today, approximately 70% of our output at our Connecticut-based manufacturing facility is devoted to supplying the M16 Rifle, the M4 Carbine and the M203 Grenade Launcher to all of the branches of the U.S. Armed Forces. We also supply similar small arms to many of our law enforcement agencies and our allies around the world. In addition, we manufacture small arms for the civilian market. Many of our handguns are collectible and replicas.

In our heyday, we employed over 1,600 union workers in Hartford, Connecticut. Organized by the UAW, today, we now employ in West Hartford almost 400 members of UAW Local No. 376, and, for both companies, employ under 500 union and non-union personnel. Our combined annual sales revenue is less than \$100 million.

Since 1998, we at Colt have been defending ourselves against a multitude of lawsuits brought by government entities, organizations and individuals seeking to

blame the firearms industry, including Colt, for the criminal and wrongful misuse of firearms in the United States. To blame Colt for the criminal misuse of firearms that is lawfully manufactured and sold is unjust. It also is threatening to our very existence. For a company that emerged from bankruptcy in 1994, we have been fighting for our lives against these lawsuits, diverting time, money and other of our limited resources to defend ourselves.

As I walk through our plant, Colt workers stop me to ask how the war is going. We post announcements about the successes in battles that we are fighting. But the war that our workers are asking or reading about is not the Iraqi War; it is the war we are fighting against these plaintiffs, spurred on by plaintiffs' trial lawyers.

We and many others in the industry have been fighting now for eight years, beginning with the *Hamilton v. Accu-tek* case, in which the plaintiffs claimed that we manufacturers negligently distributed our firearms. While the jury in that case found some of the manufacturers liable, the verdicts were properly reversed on appeal. The same plaintiffs lawyer decided to bring a similar case before that same trial judge. Ironically, they are beginning their third day of trial this morning in the *NAACP v. A.A. Arms, Inc.* case based on similar theories already rejected by the U.S. Court of Appeals. While we are resolved not to wear down, there is a cost to this war.

Beyond these lawsuits draining our already fragile national economy and littering our already over-burdened court system, this war is hindering companies like Colt from engaging in a legitimate business, making a lawful product. The existence of these lawsuits are thwarting our ability to raise new capital, borrow money, establish credit, obtain insurance, attract new employees, and retain valued employees in the same manner that companies in other industries are able to do without these attacks against their industry.

These lawsuits are dangerous not only to us but also to manufacturers of lawful products in other industries. Where will it end? Should General Motors be liable for an aggressive driver who crashes into another car? If the theory of these cases is widely applied, it could result in the bankruptcies of countless companies and the displacement of American workers.

I come here today to ask you to please support H.R. 1036. This Bill would protect legitimate businesses, such as Colt, that provide hundreds of thousands of jobs for our citizens, from the polisher to the tool and die maker or from our cafeteria workers to the people who fill our snack vending machines, even our suppliers.

If enacted into law, this Act would preempt state and local government entities and other parties from bringing aggregate liability lawsuits against the firearms industry as a way to circumvent our legislatures. It also would promote interstate and foreign commerce of small arms. A majority of the states—in fact, over 30 states—have passed legislation of some type that insulate the firearms industry from these types of suits. However, we need and therefore are seeking passage of a Federal law that would afford protection to the industry on a national level.

Let me emphasize that this legislation would not provide the sweeping immunity that many of its opponents suggest. This Bill would not protect gun manufacturers from liability claims. Instead, it would stop lawsuits against our industry that are based on the criminal misuse of lawfully distributed products and premised on theories such as public nuisance and market share liability.

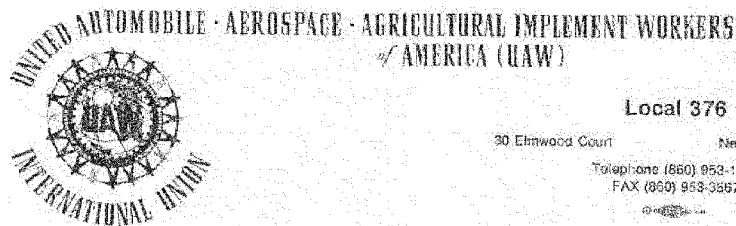
If passed, this Bill would help to set a much needed precedent that baseless suits like these should be stopped. If passed, it would prevent the usurpation of power by the judicial branch from the legislative branch. For it is the legislature that makes laws on how we should manufacture, design, and sell firearms, not the courts. If not stopped, these lawsuits clearly will threaten other legitimate and vital industries in America. This proposed Act would restore the rule of law and protect manufacturers and sellers in the firearms and ammunition industry who act legally from being harassed by frivolous lawsuits. However, the Bill ensures that if a seller provides a firearm and the seller knows or should have known that the firearm would be used negligently, that seller would be liable.

With the terrorist attacks on 9/11 and now our involvement in the Iraqi War, Colt as a military defense contractor has been requested by the Department of Defense to provide DPAS assistance. This is a priority assistance of the U.S. Government under the Code of Federal Regulations Part 700, Defense Priorities and Allocation System. This means that we at Colt must give preference to the U.S. Government over all other customers in order to fulfill the Department of Defense orders for small arms and spares under the Defense Production Act. Unfortunately, we cannot drop our defense of these lawsuits while under DPAS.

We are dutifully helping to defend our country when attacked and in times of war. I ask that each of you help us in our time of war so that we can focus on making the best small arms available for our men and women in uniform.

In conclusion, it makes no difference that Colt or other firearm manufacturers make high quality firearms that enjoy excellent records of safety. It makes no difference that we and our industry is committed to continuing our efforts, individually and together with others, to increase awareness of the issues related to the safe handling and storage of firearms and the criminal acquisition of firearms. These sham lawsuits are being brought to exert undue pressure on our industry to settle or cave under the massive weight of litigation. Without this Federal legislation, the survival of Colt, our firearms and ammunition industries, and all of the jobs, taxes, and commerce that we contribute to the U.S. economy are threatened.

[The material referred to follows:]



Local 376

30 Elmwood Court Newington, CT 06111

Telephone (860) 953-1346

FAX (860) 953-3867

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April 1, 2003

Chairman Chris Cannon
Chairman of the Subcommittee on
Commercial and Administrative Law

Dear Chairman Cannon:

I am President of Amalgamated Local No. 376 of the United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW. Our Local represents the organized workers of Colt's Manufacturing Company, Inc., and those of its subsidiary Colt Defense LLC located in a single plant operation in West Hartford, Connecticut.

Today, we have 383 members from the Colt workforce. By comparison, about five years ago, we had over 600 Colt workers who were members of our Local. Our members build the finest small arms in the world, including the M4 Carbine, the M16 Rifle, and the M203 Grenade Launcher, with many being shipped to the U.S. Military and law enforcement personnel to help defend our country and principles of democracy.

I am writing this letter in support of the passage of H.R. 1036, Protection of Lawful Commerce in Arms Act. If passed, this law would prevent the senseless lawsuits that have been brought across the country against Colt and other members of the firearms industry.

These lawsuits are unfair. They are not about Colt making defective guns. They are not about Colt failing to comply with the law. They accuse Colt and the entire firearms industry, from dealer to distributor to manufacturer to trade association, of being a public nuisance and negligently distributing our lawful products.

Colt has been fighting these types of lawsuits since 1995, with the filing of the lawsuit in the Hamilton v. Accu-tek case, and then the 38 lawsuits that were filed against Colt, beginning in late 1998. Many of these lawsuits are still pending.

Win, lose, or draw in court, and many have been won, Colt loses because of the enormous drain on its limited resources and its toll on its workers. If we lose this war against our industry, which industry is next--airplanes, automobiles, or what?

Please do everything possible to send HR. 1036 out of your Subcommittee and the House Judiciary Committee. Thank you.

Sincerely,



Russ See
President
Local 376 UAW

RS/pl
open376aff-cio

Colt Defense

Introduction

For the last 150 years, Colt has been a major world producer of Military equipment. This has included the Gatling Gun, the Colt .45 "Peacemaker", the Colt Browning .30 and .50 caliber machine guns, the Thompson submachine gun, the Colt .45 pistol and more recently the M16A4 Rifle and the M4 Carbine. More than 9,000,000 units from Colt's current "Family of Weapons" have been produced and sold throughout the world of which more than 90% remain in service. This represents more than 90% of all weapons produced in 5.56mm.

Colt's weapon systems are the most combat proven in 5.56mm. They have proven themselves under the most severe battle conditions – from the jungles of Vietnam to the deserts of the Middle East and the mountains of Afghanistan. Over this period of time, Colt weapons performance in the hands of their users has been carefully evaluated and evolutionary improvements have been incorporated culminating in the new world standard for 5.56mm weapons: the M4 Carbine. When introduced several years ago, senior U.S. Armed Forces officers called it "the finest assault weapon in the world". The M4 Carbine is based on simplicity of operation, maximum interchangeability of parts and ease of maintenance. This combination of favorable characteristics has contributed to a durable, high performance system with unusually low life cycle maintenance costs. Colt M4 Carbine is the weapon of choice for the 21st century soldier.

Colt M4 Carbine and M16 Rifle are the standard for all branches of the U.S. Armed Forces and are used in fifteen (15) NATO countries and more than 80 other countries worldwide. During the past decades throughout the world, all tests conducted for small arms selection have used Colt's M4 and M16 as the baseline weapon to which all others are compared. Additionally, most countries that produce a 5.56mm system for their military are also using Colt weapon systems for their Special Forces due to the excellent reputation for accuracy and quality gained by the Colt systems in numerous military operations worldwide. The quality and dependability of Colt products in the field have all contributed to this outstanding record of success. In a recent interview, a senior U.S. Military Officer said: "I am absolutely convinced that the M4 Carbine is the finest service 5.56mm weapon in the world – bar none! It will hit what you shoot at and do it both accurately and reliably".

Colt products have benefited from more than forty years of combat experience, state-of-the-art advancements recommended by and with the technical support of the United States Government, and other users throughout the world. As a result, Colt M4 Carbine is the most technologically advanced, hardened system in the world. Moreover, our "Family of Weapons" carries decades of Colt engineering and manufacturing know-how, patents, proprietary processes and research and development experience. At the same time ISO certification that Colt achieved in 2001 has helped us redefine quality in the world of small arms.

Today, Colt has a complete "Family of Weapons" to offer that features a rifle, a heavy barrel (HBAR) rifle, a carbine with sliding stock, a commando carbine, a light machine gun, a 9mm submachine gun, a 40mm grenade launching attachment and numerous accessories. Furthermore, Colt maintains a staff of professional engineers, armorers and experienced staff of operators who devote themselves to constant improvement of our weapon systems. It is through them that Colt continues to maintain the standard of excellence in small arms throughout the world.



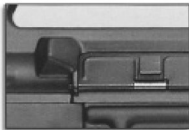
Selecting the weapon that will equip a country's Armed Forces is a crucial process with strong military and political implications. The best and most combat proven weapon in the world should therefore be chosen. The countless battlefields where our weapons have been successfully used, the U.S. Military and the Armies of more than 90 countries in the free world can confirm that only Colt is capable of offering a weapon that will have the capability to significantly increase the field readiness as well as the operational, tactical and strategic capabilities of a country's Armed Forces.

Colt M4 Carbine is designed to surpass all the requirements for today's overall modern warfare strategy of tactical rapid deployment, mobility and increased firepower.

Colt Defense	
	M4 Carbine 
CALIBER 5.56x45 NATO (.223 Rem) WEIGHT W/O MAG 5.9 lb (2.68 kg) EMPTY 30 ROUND MAG 0.25 lb (0.11 kg) LOADED 30 ROUND MAG 1.0 lb (0.45 kg) OVERALL LENGTH 33 in (84 cm) Stock Retr.: 29.8 in (76 cm) BARREL LENGTH 14.5 in (37 cm) BORE CHARACTERISTICS Hard Chrome Lined, 6 Lands & Groves, 1 Twist in 7" (178 mm), Right Hand METHOD OF OPERATION Gas; Direct System; Locking bolt MUZZLE VELOCITY 2900 ft/sec (884 m/sec) MUZZLE ENERGY 1645 Joule EFFECTIVE RANGE 600 m FRONT SIGHT Adjustable front REAR SIGHT M16A4 target style sight adjustable for windage and elevation to 600 m SIGHT RADIUS 14.5 in (37 cm) CYCLIC RATE OF FIRE 700-950 rpm FIRE CONTROL Safe - Semi - Full Auto UPPER RECEIVER Flat Top With Detachable Carrying Handle	 RO977 Colt M4 Carbine is a versatile weapon system with proven combat utility and performance providing the operator with the confidence required to accomplish any mission. Featuring a 14.5 in (37 cm) barrel it is designed for use wherever lightness, speed of action, mobility and fire power are required. It can be comfortably carried, yet be instantly available to provide the power, accuracy and range of a 5.56mm Rifle. Proven in military operations, it stands alone as a first-line weapon system. Colt M4 Carbine is today's weapon of choice; the weapon of the 21st century soldier. The M4 Carbine is an extremely accurate and effective weapon under all practical field applications. It is a favorite with both first line infantry operations as well as special forces, unit commanders and vehicle crews. Available with a Safe-Semi-Full Auto 3-position selector (model RO977) the M4 Carbine is today's weapon of choice. The M4 Carbine features a redesigned 4-position sliding buttstock allowing it to adapt to soldiers of different sizes and physical characteristics as well as various firing positions and clothing variations. Almost all mechanical components are interchangeable with those of the M16 rifle, ensuring quality, commonality of parts and reduced maintenance costs. The M4 Carbine barrel is designed to accept the M203 Grenade Launcher which can be easily assembled to the carbine offering the user both point and area firing capabilities. Also, all US and NATO rifle grenades can be fired without any supplementary equipment.
COLT DEFENSE LLC Combat Proven Weapon Systems	www.Colt.com

M4 5.56mm Carbine**Colt Defense****FEATURES**

Flat top receiver allows for removable carrying handle with built in target-style rear sights, and easy mounting of accessories



Cartridge case deflector for left handed shooting



Field strips easily without special tools



30 round magazine, cleaning kit and sling are included

- Unique direct gas operating system eliminates the conventional operating rod and results to fewer and lighter components.
- Accommodates the full range of 5.56mm ammunition, including the NATO M855/SS109 and U.S. M193, utilizing a rifling twist of 1 turn in 7" (178mm).
- Straight-line construction disperses recoil straight back to the shoulder, increasing handling capabilities, especially during auto fire.
- Target style rear sight features dual apertures (0-200m, 300-800m) and adjusts for both windage and elevation. Graduated elevation knob allows for adjustments from 300 to 600 meters without need to remember bullet drop.
- Cartridge case deflector allows easy operation in both right and left handed shooting positions for increased tactical applications.
- Muzzle compensator further reduces muzzle climb, and helps eliminate flash and dust signatures.
- Ejection port cover protects the chamber from dust and mud.
- Field strips easily without special tools for simple field user maintenance.
- Flat top receiver allows for removable carry handle and easy mounting of accessories.
- Barrel configuration allows launching of all standard rifle grenades, U.S and NATO, without supplemental attachments.
- M203 40mm Grenade Launcher mounts directly to the Carbine without modification.
- High strength materials add durability to the forearm, buttstock and pistol grip for greater comfort and effectiveness.



Models
 RO977: Flat top, Detachable handle, Safe-Semi-Full Auto
 RO979: Flat top, Detachable handle, Safe-Semi-Burst
 RO777: Fixed handle, Safe-Semi-Full Auto
 RO779: Fixed handle, Safe-Semi-Burst

M203 40mm Grenade Launcher mounts directly to the Carbine without modification

COLT®**M4 5.56mm Carbine**www.Colt.com**COLT DEFENSE LLC***Combat Proven Weapon Systems*

Colt Defense	
	M16 Rifle 
CALIBER 5.56x45 NATO (.223 Rem) WEIGHT W/O MAG 7.5 lb (3.4 kg) EMPTY 30 ROUND MAG 0.25 lb (0.11 kg) LOADED 30 ROUND MAG 1.0 lb (0.45 kg) OVERALL LENGTH 39.6 in (1.0 m) BARREL LENGTH 20 in (51 cm) BORE CHARACTERISTICS Hard Chrome Lined, 6 Lands & Grooves, 1 Twist in 7" (178 mm), Right Hand METHOD OF OPERATION Gas; Direct System; Locking bolt MUZZLE VELOCITY 3110 ft/sec (948 m/sec) MUZZLE ENERGY 1765 Joule EFFECTIVE RANGE 600 m FRONT SIGHT Adjustable front REAR SIGHT Target sight adjustable for windage and elevation to 600m SIGHT RADIUS 19.75 in (50 cm) CYCLIC RATE OF FIRE 700-950 rpm FIRE CONTROL Safe, Semi, Full Auto UPPER RECEIVER Flat Top With Detachable Carrying Handle	 RO901 Colt M16A4 Rifle is the fourth generation of the M16 weapon system. The M16A4 Rifle still represents the world standard by which all other weapons of this class are judged. Its combat proven performance is verified by the fact that over 8 million M16 weapon systems have been produced and placed in military service throughout the world. With a record that is unmatched by any other weapon system, it is no wonder that the U.S. Marine Corps considers there to be "... no finer service rifle in the world today". Colt M16A4 Rifle, now in production, features a performance identical to the M16A2. Physical differences between the two weapons include a removable carrying handle with an integral rail-mounting system on the M16A4. When the carrying handle is removed, any accessory device with a rail grabber, such as an optical sight, can be mounted on the weapon. The M16 Rifle barrel is designed to accept the M203 Grenade Launcher which can easily be assembled to the rifle offering the user both point and area firing capabilities. Also, all US and NATO rifle grenades can be fired without any supplementary equipment. The new concepts of rapid deployment, mobility and increased firepower play a major part in the overall strategy of modern warfare. Increased emphasis is now put on small tactical units that are able to "get in and out" fast. Increased need for a lightweight, highly dependable, accurate service rifle with added fire power therefore exists. Colt M16A4 is the ultimate rifle in 5.56mm.
COLT DEFENSE LLC Combat Proven Weapon Systems	www.Colt.com

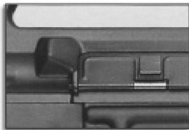
M16 5.56mm Rifle

Colt Defense

FEATURES



Flat top receiver allows for removable carrying handle with built in target-style rear sights, and easy mounting of accessories



Cartridge case deflector for left handed shooting



Field strips easily without special tools



30 round magazine, cleaning kit and sling are included

- Unique direct gas operating system eliminates the conventional operating rod and results to fewer and lighter components.
- Accommodates the full range of 5.56mm ammunition, including the NATO M855/SS109 and U.S. M193, utilizing a rifling twist of 1 turn in 7" (178mm).
- Straight-line construction disperses recoil straight back to the shoulder, increasing handling capabilities, especially during auto fire.
- Target style rear sight features dual apertures (0-200m, 300-600m) and adjusts for both windage and elevation. Graduated elevation knob allows for adjustments from 300 to 600m without need to remember bullet drop.
- Cartridge case deflector allows easy operation in both right and left handed shooting positions for increased tactical applications.
- Muzzle compensator further reduces muzzle climb, and helps eliminate flash and dust signatures.
- Ejection port cover protects the chamber from dust and mud.
- Field strips easily without special tools for simple field user maintenance.
- Flat top receiver allows for removable carry handle and easy mounting of accessories.
- Barrel configuration allows launching of all standard rifle grenades, U.S and NATO, without supplemental attachments.
- M203 40mm Grenade Launcher mounts directly to the Rifle without modification.
- High strength materials add durability to the forearm, buttstock and pistol grip for greater comfort and effectiveness.

Models
 RO901: Flat top, Detachable handle, Safe-Semi-Full Auto
 RO905: Flat top, Detachable handle, Safe-Semi-Burst
 RO701: Fixed handle, Safe-Semi-Full Auto
 RO705: Fixed handle, Safe-Semi-Burst

M203 40mm Grenade Launcher mounts directly to the Rifle



COLT®

M16 5.56mm Rifle

www.Colt.com

COLT DEFENSE LLC
 Combat Proven Weapon Systems



M203 Grenade Launcher

Colt Defense



CALIBER	40mm
WEIGHT (UNLOADED)	3.0 lb (1.36 kg)
WEIGHT (LOADED)	3.6 lb (1.63 kg)
LENGTH	15 in (38 cm)
BARREL LENGTH	12 in (30 cm)
HEIGHT (BELOW RIFLE BARREL C/L)	3.3 in (8 cm)
WIDTH (MAX)	3.3 in (8 cm)
VELOCITY (W/M406 CTG)	245 ft/sec (74.7 m/sec)
MAXIMUM RANGE	400 m
TYPE OF AMMUNITION	M406 High Explosive M433 HE Armor Piercing M576 Buckshot M407 Practice M781 Practice and Most other specialized 40mm ammunition

Colt M203 Grenade Launcher is a lightweight single shot breech loaded 40mm weapon designed especially for attachment to the M4 Carbine and the M16A2/A4 Rifle. It creates a versatile combination weapon system capable of firing both 5.56mm rifle ammunition as well as the complete range of 40mm high explosive and special purpose ammunition. The most commonly used ammunition for the M203 is the M406 antipersonnel round, which has a lethal radius of 16 ft (5 m), and the M433 multi-purpose round which, in addition to having fragmentation effects, will penetrate up to 3 in (7.6 cm) of armor plate. Many other types of ammunition are available, such as buckshot, tear gas, and various signal rounds, which greatly increase the versatility of this outstanding weapon.

The receiver of the M203 is made of high strength forged aluminum alloy, which offers it extreme ruggedness, yet keeps weight to a minimum. A complete self-cocking firing mechanism, including barrel latch, trigger and positive safety lever is included in the receiver, allowing the M203 to be operated as a completely independent weapon, even though attached to the M4 Carbine or the M16A2/A4 Rifle. The barrel, which is also made of a high strength aluminum alloy, slides forward in the receiver to accept a round of ammunition, and slides rearward to automatically lock in the closed position, ready to fire.

The new concepts of rapid deployment, mobility and increased firepower now play a major part in the overall strategy of modern warfare. Providing M4 Carbine and M16A2/A4 Rifle with area firing capabilities, Colt M203 Grenade Launcher is an essential tool of every modern army.

COLT DEFENSE LLC
Combat Proven Weapon Systems

www.Colt.com

M203 40mm Grenade Launcher**Colt Defense****F E A T U R E S**

The M203 is furnished with a battle sight mounted on the handguard graduated for 50-250 meters. A quadrant sight graduated for 50-400 meters mounts on the upper receiver



The barrel slides forward in the receiver to accept a round of ammunition, and slides rearward to automatically lock in the closed position, ready to fire

- Each M203 is furnished with a battle sight mounted on the handguard adjustable for ranges of 50 to 250 meters. A quadrant sight, which mounts on the carrying handle and is adjustable for 50 to 400 meters, is also furnished with each launcher.
- The M203 attaches directly to any standard Colt M16A2/A4 Rifle or M4 Carbine providing the grenadier with a combined launcher and individual weapon. Mounting can be accomplished by utilizing either two screws or an optional quick attach / detach mechanism and without any modification to the weapon.
- Installation can be accomplished very quickly without using any special tools.
- The M203 will fire a wide variety of ammunition, such as high explosive antipersonnel and armor piercing dual purpose rounds. Colt's M203 Grenade Launcher also is being used as the delivery system for a growing array of less-than-lethal munitions.
- Complete self-cocking firing mechanism is included in the receiver, allowing the M203 to be operated as an independent weapon, even though attached to the Colt M4 Carbine or M16A2/A4 Rifle.

**M203 40mm Grenade Launcher**

Mr. CANNON. In fact, the record will be open for 5 days if any of the panel or any of the Members wish to submit statements for the record or other items for the record. Thank you. I appreciate your testimony.

Mr. Olson.

**STATEMENT OF WALTER OLSON, SENIOR FELLOW,
THE MANHATTAN INSTITUTE**

Mr. OLSON. Thank you, Mr. Chairman.

As you mentioned, I recently published a book called *The Rule of Lawyers* which discusses at considerable length the origins and the objectives of the antigun litigation. I conclude the following: The gun suits are at best an assault on sound principles of individual responsibility, since criminals are the ones that we should blame for crime. At worst, they are a serious abuse of the legal system, as I will try to demonstrate in a moment.

They show how a pressure group can employ litigation to attempt an end-run around our democratic process in search of victories in the courtroom that they have been unable to obtain at the ballot box.

The idea of a litigation campaign against gun makers reached its greatest impetus after the 1994 national elections which swept out of office many Members of Congress associated with the cause of gun control.

After that humiliating route, many gun control advocates concluded that the democratic process was not any time soon going to grant them the kinds of gun control they wanted. What was the alternative? As the lawyer who filed New York's *Hamilton v. Accu-Tek* put it, "You don't need a legislative majority to file a lawsuit."

The result has been a coordinated campaign, highly coordinated and of national scope, operating recently across State lines and drawing on lawyers and courts in many States as a common enterprise.

As another leading antigun lawyer put it, "What you really want is a diversity of cases in lots of different regions, lots of different courts, to create the greatest threat of liability."

The objectives of this campaign, according to the organizers themselves, include the following: Sweeping nationwide changes in the design, manufacture and distribution of guns, new paperwork burdens and sacrifices of privacy for gun owners and for gun dealers.

What most of these measures have in common is the following: They have been considered and they have been rejected by this body and by most, if not all, State legislators. That is not by coincidence.

The antigun litigation movement did not have a strong case under the principles that have come down to us through common law over hundreds of years. I think that has been demonstrated by the dismissal of most of the cases that we have seen so far.

What then were they counting on? Three things, I believe. First they were counting on finding some judges who were willing to engage in judicial activism, as it is called, who believe that for reasons of social progress they can change the common law tradition and introduce new causes of action.

Secondly, they realized that for these defendants in particular, the lawsuits were often going to be the company actions, as they are called, actions in which even if you win, you get to roll the dice again as a defendant. If you lose, that may be it for your company. And in any litigation there is a high random factor by necessity. As a defendant in these gun cases, you may win 98 or 99 percent of them. That may not be good enough.

Finally, and connected with the second point, these are not large companies. This is the exact opposite really of the tobacco litigation in which you have some of the largest and most sophisticated enterprises in the world being sued. The gun industry is mostly small and medium-sized companies, often family owned. As you said in your opening statement, Mr. Chairman, the spokesmen for the municipal gun suits told a newspaper, "The legal fees alone are enough to bankrupt the industry."

And we know that the deliberate use of cost infliction as a tactic in litigation has been disapproved by principles of legal ethics, more or less forever. It is considered a very serious breach of legal ethics. Yet, I think the record shows and numerous journalistic sources will document that more than a few of the lawyers filing these suits have made it a knowing and conscious part of their strategy to inflict legal costs on the defense. That is, to put it mildly, not an appropriate use to which the legal system should be put.

Let me conclude with a word about federalism and the appropriate role of Congress. You will probably be told by some opponents of the bill that Congress should leave the States alone to work this out by going their own separate ways. But the objective of the antigun litigation campaign is not to let the States go their separate ways. It is to obtain a nationwide coordinated system of gun control through coordinated interstate litigation. Most of the States will not be left with any choice in the matter any more than gun owners or dealers will be left with any choice in the matter. Congress has the full power and right to act in the national interest. It should do so. Thank you.

Mr. CANNON. Thank you, Mr. Olson. That was very enlightening. [The prepared statement of Mr. Olson follows:]

PREPARED STATEMENT OF WALTER K. OLSON

Good morning. My name is Walter Olson. I am a senior fellow at the Manhattan Institute, with which I have been associated since 1985, and am the author of three books on the American civil justice system. My most recent book, *The Rule of Lawyers* (St. Martin's, 2003), published in January, includes a chapter exploring the origins and objectives of the movement seeking to make makers and distributors of guns pay for criminals' misuse of their wares. I conclude that the gun suits are at best an assault on sound tenets of individual responsibility, and at worst a serious abuse of legal process. Even more ominously, the suits demonstrate how a pressure group can employ litigation to attempt an end run around democracy, in search of victories in court that it has been unable to obtain at the ballot box. Finally, I argue that strong Congressional action to restrict litigation of this type is not only consistent with a due regard for federalism and state autonomy, but is in fact required by it.

Point by point:

1. Litigation against gunmakers today takes the form of a highly coordinated campaign of nationwide scope, in which a few very active attorneys and anti-gun groups turn up again and again on the plaintiff's side, and in which the allegations advanced in particular lawsuits are frequently crafted to advance a wider legal strategy against the target industry. As Brady Campaign attor-

ney Dennis Henigan has put it: “What you really want is a diversity of cases in lots of different regions, lots of different courts to create the greatest threat of liability.”

2. Organizers of this campaign intend to use litigation as leverage to obtain sweeping nationwide changes in the manufacture and distribution of guns, including the *de facto* banning of some models, compulsory changes in gun design, and major new paperwork burdens and privacy sacrifices for gun owners and dealers. Most of these changes if obtained are likely to be highly unwelcome to large numbers of law-abiding gun purchasers.
3. The idea of a litigation campaign against guns received its greatest impetus after the 1994 national elections, which swept from office many members of Congress identified with the cause of gun control. After that rout, some leading gun-control advocates concluded that the democratic process was not soon going to grant them the kinds of restrictions on gun distribution they sought any time soon. The alternative? As the lawyer who argued New York’s *Hamilton v. Accu-Tek* put it, “You don’t need a legislative majority to file a lawsuit”.
4. Anti-gun litigators were aware that they had little case under the principles that had prevailed over hundreds of years of common law. But they knew that some courts are tempted by the lure of judicial activism: if persuaded that it will serve the cause of social progress to invent new law out of whole cloth, that is what they will do. In addition, when many different actions are pressed in many different courts, the random factor present in any litigation begins to play a large role: even if defendants can fend off 98 percent of the cases, somebody somewhere is likely to break through, to the ruin of a given defendant or the entire industry. Given the lack of a loser-pays principle in American courts, there is little to discourage the filing of such speculative, long-shot litigation.
5. As industries go, America’s gun industry generally consists of small and modest-sized companies, often family-owned: firearms scholar David Kopel has written that the nation’s gun manufacturers would not be big enough to qualify for the Fortune 500 even if you combined them all into one company. As many journalistic accounts have made clear, anti-gun litigators were not only aware that the expense of legal fees might grind down the resources of the target businesses, but actually made such infliction of costs a conscious strategy. “As in the war against tobacco, winning in court isn’t necessarily the objective of the lawyers,” observed the *New Yorker*’s Peter Boyer in an article on the strategy behind the gun suits. Defending against just twenty municipal suits, “according to some estimates, could cost the gun manufacturers as much as a million dollars a day.” (The lawyers soon had thirty such suits going.) “The legal fees alone are enough to bankrupt the industry,” boasted John Coale, a key lawyer in the municipal suits. Although the deliberate infliction of costs in order to compel settlement was once considered a gross breach of legal ethics, many partisans of the gun litigation appeared if anything to admire its use in this case. Thus the editorialists of the *Atlanta Journal-Constitution* approvingly noted that the suits “have already forced some gun makers to the bargaining table” because they “can’t afford lengthy courtroom battles”.
6. The sums of money being demanded in the municipal gun litigation are more than enough to drive every major gunmaker into bankruptcy many times over—a prospect that would presumably entail serious disruptions in interstate commerce as well as in the assured supply of new guns to such purchasers as the U.S. military. However, many supporters of the municipal litigation have indicated that it is not actually intended to be tried to a final conclusion; the idea is instead to settle it as part of a “deal” in which the gun industry agrees to abide by various (unlegislated) gun controls. But such a settlement prospect poses distinctive dangers of its own. To begin with, other affected parties (including gun purchasers and dealers) will not be present in the settlement room, and their interests are likely to go unrepresented. Moreover, defendants can be arm-twisted in such a settlement into agreeing to adopt measures that go beyond what any court would have ordered, and it will subsequently be argued that gun purchasers, dealers and other “outsiders” lack standing to challenge the terms of a settlement, no matter how detrimental it may be to their interests, perhaps including the exercise of Constitutionally recognized liberties.

7. The gun suits are probably the boldest effort presently underway to employ liability litigation to usurp Congress's Constitutionally specified role in law-making. Thus *The American Lawyer* reported that one of the municipal suits' prime movers, the late Wendell Gauthier, recruited trial lawyer colleagues into the action because it "fit with Gauthier's notion of the plaintiffs bar as a de facto fourth branch of government, one that achieved regulation through litigation where legislation failed." Remarkably, many of Gauthier's colleagues are equally outspoken. Attorney John Coale, spokesman for the municipal suits, has argued that "What has happened is that the legislatures . . . have failed," and: "Congress is not doing its job [and] lawyers are taking up the slack." "The failure of Congress to address social problems in any meaningful way had left a void," said Daniel Abel of Florida's Levin Papantonio, active in both the gun and tobacco rounds. "Why was it important for trial lawyers to become this new arm of government?" asked Michael Papantonio of the same firm. "Because the new arm takes the place of an arm that's not working anymore." These quotes reveal an astounding contempt for the democratic process and for the lawmakers of this body.
 8. By design and by necessity, the antigun litigation campaign is interstate in its anticipated effects. Its suits in state courts demand damages from out-of-state defendants on a scale certain to impair the workings of interstate commerce, as well as the assessment of punitive damages against gun-industry actors based on their nationwide (as opposed to intrastate) courses of conduct. Indeed, gun lawsuits have repeatedly asserted a right to apply the law of one state or jurisdiction (such as New York) to gun sales which took place in *other* jurisdictions (such as South Carolina and Virginia), on the grounds that the firearms in question were later smuggled or otherwise taken into the state in which the lawsuit is going forward. The intended and expected effect is to identify isolated state courts that are amenable to the advocates' arguments, and then project the power of those courts so as to restrict gun freedoms in all 50 states, including states that would prefer to preserve for their citizens relatively liberal access to the means of self-defense. It is important that proponents of the gun-suit campaign not be allowed to hide behind the skirts of federalism. They are not, in fact, defending states' "right to govern themselves", but instead attempting to use litigation in the courts of some states to govern the citizens of other states.
- As you are aware, H.R. 1036, the Protection of Lawful Commerce in Arms Act, would "prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others." In view of the history thus far of the gun litigation, I can only say: it's about time.
- Thank you very much.

ATTACHMENT

Reason magazine -- May 1999

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REASON * May 1999

Firing Squad

In the gun litigation wars, who really speaks for federalism?

By Walter Olson

The year is 2003, and you finally decide to exercise your American right to own a firearm. You check listings for a store near you ("gun shows," you vaguely recall, were suppressed back in the Clinton administration) and find a few still in business on shabby side streets. The merchandise has tripled in price, the selection is poor, and there's a four-month wait for the model you want. The worst part is that you have to enter all sorts of personal information on a long questionnaire, and the paperwork alone will take weeks to clear--leaving you to wonder who'll have access to your private data once it's in some central digitized registry of gun buyers.

How was it, you wonder, that handgun registration made it through our reputedly Republican Congress? Did some Brady Bill XVII slip by while you weren't looking? The dealer says no: Congress never voted on the new rules one way or the other. They came in as part of the big compromise deal in 2001 settling lawsuits against gun makers--settling some of the lawsuits, at least. Half the makers had already been bankrupted by the litigation, and the rest agreed "voluntarily"--ho ho ho--to what were termed marketing restrictions, aimed at keeping anyone from buying a gun in a state like yours unless they can show they're not planning to transship it to a friend in some place with a stricter gun control law.

Appalled, you complain to your legislators, who reply in chorus: Don't blame us! These suits were carried out under state law, but not *our* state's; in fact none of these legal actions made it past first base in this part of the country. The whole operation from start to finish has been carried out in states where you don't vote, before judges you didn't help pick, by lawyers you don't know, representing mayors of cities where you don't live. Back in the '90s, there was some talk of nationwide

action to cut off excessive litigation against product manufacturers. But that idea never got anywhere because critics viewed it as insufficiently respectful of federalism--of the idea that localities should, by and large, be allowed to run their own legal affairs.

What's wrong with this picture? And which side more deserves to wrap itself in the historic mantle of federalism: the trial lawyers who've launched a coordinated nationwide assault on one industry after another, or the gun owners who'd like to preserve at least a local option of firearms freedom?

In recent years, discarding time-honored constraints on their power, state lawmakers and state courts have put forth one unprecedented assertion of authority after another. They've ditched old common law rules so as to charge deep-pocket defendants with harms that were once considered other people's fault, thus making it thinkable to mulct automakers for the costs of drunk drivers' crashes, tobacco companies for the costs of smokers' indulgence in the weed, and now gun makers for the damage caused when their wares are used in crimes. They've discarded old scruples about the unfairness of inflicting such legal changes retroactively, which leaves them willing to punish the 1974 or 1985 behavior of tobacco or gun purveyors because it transgresses legal principles that creative contingency-fee lawyers came up with 15 minutes ago. (See "Retro Style," August 1997.) And--our topic this month --they've also wriggled out of a series of old rules which used to limit the extent to which they could project their power onto the territory of other states. The doings of state courts and state lawmakers, once regarded as a bulwark of local autonomy, have now paradoxically emerged as a threat to genuine federalism.

Here's how the limits worked until not that long ago. Historic rules of jurisdiction provided that courts could hear suits only over persons and businesses that were present on their own territory, while rules governing "choice of law" or "conflict of law" provided, roughly, that they could try defendants only under the law of the place where those defendants had acted. Suppose the mayor of Newark, New Jersey, felt his city legally aggrieved by a Georgia merchant's sale in South Carolina of some items which eventually made their way north as contraband. Under the old jurisdiction rules, as they operated through approximately the 1950s, the mayor would have had to send lawyers down south to sue, rather than conscript the Georgia merchant up to face suit in New Jersey, a state in which he might never have previously set foot. Even if the merchant agreed for some reason to submit to the New Jersey court's jurisdiction, the old choice of law rules provided that his sale would have to be judged in that court under the law of South Carolina, where it had taken place, and not under that of the Garden State.

These geographic constraints on litigation were taken very seriously indeed; in fact, they were accorded constitutional status. Back in the

19th century, the U.S. Supreme Court had declared that the Due Process Clause protected defendants in lawsuits from being subjected either to the jurisdiction of an inappropriate state or to the application of an inappropriate state's law.

Principles like this worked to discourage obscure local courts from entertaining nationally ambitious litigation. Not only was it difficult to corral an entire class of national defendants into a single local court, but complainants could not routinely seek home court advantage--the sort of danger that Alexander Hamilton had in mind in *Federalist* 81 when he predicted that "the prevalency of a local spirit" might be found to "disqualify the local [i.e., state] tribunals for the jurisdiction of national causes."

As the century proceeded, however, the old rules increasingly came under fire from litigation-happy reformers. Weren't the constitutional protections for civil defendants mere historical impediments to the rightful emergence of the state courts and legislatures as vigorous policers of the national economy? With little real resistance, such arguments carried the day. In a series of decisions starting in 1945, the Supreme Court pulled back most of the constitutional protection it had formerly accorded defendants against being dragged to an unfamiliar state to be sued. Rules of "long-arm jurisdiction" quickly proliferated, allowing state courts to reach out and put the touch on distant businesses so long as it was deemed reasonably foreseeable that their actions might lead to their being sued in the state --a standard that is, like an underwear waistband, both elastic and circular.

Suddenly it was possible to try suing more or less anyone, more or less anywhere. Some years previously, the court had relaxed the old due process rules against the application of a distant state's law, and the 1960s saw a proliferation of strained theories allowing distant states to apply their own pro-plaintiff laws.

One result was an enormous rise in "forum shopping"--searching out that one local judge or juror pool most favorable to one's claim or hostile to one's opponent. A wide variety of lawsuits that would be of modest value or none at all in Maine, Iowa, or Oregon can now be taken to certain plaintiff-friendly counties in Alabama, Texas, or Tennessee, where they magically acquire very rich settlement value. The pioneering lawsuit seeking compensation for tobacco-related Medicaid expenses just happened to be filed in chancery court in Pascagoula, Mississippi, ensuring what the lawyer filing the case (who is now a jillionaire) called "home cooking."

Once states start perceiving liability law as a way to redistribute money from (mostly) out-of-state defendants to (mostly) in-state plaintiffs, a public-choice dynamic sets in: Why hold back on the sidelines while other states empty the piñata? Thus even reputedly conservative state attorneys general came to join the tobacco litigation, fearful perhaps of

being blamed should a settlement enrich other states while they twiddled their thumbs.

The kicker is that lawyers on the attack don't have to win all, most, or even a sizable minority of the cases they file. They can in fact lose 15 in a row, and when they finally get lucky on the 16th they can demand a fortune in punitive damages based on the defendant's entire national course of conduct--never mind that the 15 earlier juries may have found that same course of conduct justifiable. In the famous McDonald's coffee burn case, a New Mexico jury awarded millions in punitive damages against the fast food chain in part to punish the company for its insensitivity in disputing numerous earlier claims of java-related injuries--though a major reason for its resistance was the prevailing sense among lawyers that juries were unlikely to assign liability for keeping takeout coffee hot.

In effect, our liability system has emerged as a kind of firing squad, in which the great majority of juries may aim their rounds harmlessly into the air, declining to view the defendants as worthy of execution, but which is fatal all the same if just one or two of the sharpshooters point as they're told. One result of firing squad liability is utterly to foil the policy of states that would have preferred to be more lenient on an issue. I'm writing these words on a frigid March day in New England, where many of us would be glad to assume the risks of hot takeout coffee, knowing how tepid it can get by the time we consume it after a drive to our destination. But that's not a matter we get to decide for ourselves any more; a New Mexico jury has decided for the whole country.

In much the same way, the gun suits invite Northeastern juries to punish gun makers for not imposing on sales in South Carolina a range of vague requirements that would be found quite unpalatable there, including an anti-smuggling equivalent of "know your customer" rules (to borrow a term from the recent banking controversy) and a completely new requirement that gun makers somehow refrain from fulfilling orders from the Palmetto State if doing so would result in "oversupplying" local buyers, the alternative presumably being to put dealers on allocation even if it leaves their shelves bare by July.

Thus can a few local legal cultures run roughshod over the rest of the country's right to local autonomy. In a rational world, attempts to invoke State A's law to ban gun sales in State B would be greeted by the same astonishment as an attempt by Mississippi legislators to regulate the closing hours of Louisiana saloons, or a resolution by the legislature of Uruguay decreeing the abolition of the British monarchy. Gun control advocates would be forced to get in line with the rest of us who have to actually petition the U.S. Congress when we want a new law passed controlling what people do in other states.

What can be done at this late stage? Presumably the Supreme Court

could awaken from its slumber and begin reasserting defendants' old due process rights, but no one expects that any time soon. Some libertarians talk as if the U.S. Congress lacks much rightful authority to regulate the doings of state courts. Yet Article IV, Section 1 of the U.S. Constitution grants exactly such a broad-ranging power: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, *and the effect thereof*." (Emphasis added.) In other words, the Framers gave Congress explicit authority to stipulate the manner in which states must accord due effect to other states' legislation, including in this case the legislative policy of states which choose to provide relatively liberal access to the means of self-defense.

So before the next Brooklyn jury punishes the next gun maker for its sales in some Southern state, it would seem completely in accord with the Framers' intent for Congress to lay down a few ground rules aimed at ensuring that some jurisdictions' laws do not slight the legitimate operation of others'. One promising idea was sketched a decade ago by law professor Michael McConnell, now at the University of Utah: a federal statute generally requiring state courts, when they rule on lawsuits arising from product sales elsewhere, to apply the law of the state where the sale took place. (The essay appears in a 1988 book I edited, *New Directions in Liability Law*, published by the Academy of Political Science.)

In the meantime, the spokesmen for the litigation lobby will be doing their best to keep up their absurd pose as guardians of federalism. There's no reason for us to let them.

Contributing Editor Walter Olson is a senior fellow at the Manhattan Institute, wrote at length about the problems of jurisdiction and choice of law in The Litigation Explosion (Plume).

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(LEGAL)



REASON * October 1999

Big Guns

Plaintiffs' lawyers declare themselves the "fourth branch of government" and go after firearms

By Walter Olson

You don't need to be a big Second Amendment booster to be appalled by the newest round of litigation against gun makers. All you have to do is take a look at some of the coverage that has appeared recently in press outlets that are basically sympathetic to gun control, like *Salon*, the *American Lawyer*, the *National Law Journal*, and *The New Yorker*.

Perhaps you've heard that big-city mayors had to sue because they've been losing sleep over how freely guns are bought and sold in this country. Well, it's funny about that. According to Jake Tapper in the July 13 *Salon*, many of the cities suing gun makers are themselves major distributors of guns, police surplus and otherwise, to the used market. Disposing of firearms in "gun swaps," generally with no questions asked, has been a handy way for localities like Boston, Detroit, and Alameda County, California, to defray the cost of new police weapons. Boston, for example, attached no strings to resale when it recently got rid of more than 3,000 .38s, even though it has now endorsed a new legal theory that private vendors should be liable because they displayed "willful blindness" to what happened after guns left their hands.

For hypocrisy, it's hard to top that. Not impossible, though. New Orleans was the first city to jump on the gun lawsuit train: "We have been so focused here in New Orleans on getting guns off the street and protecting our citizens," Mayor Marc Morial declared at the press conference. Yet New Orleans recently scored what may be the biggest deal of its kind ever in the U.S. when it recycled to street use through an Indiana broker some 7,300 guns, most of which it had confiscated from lawbreakers. These included TEC-9s and various other semiautomatics whose importation and manufacture Congress banned in 1994.

The municipal gun suits demand that manufacturers equip their wares with safety locks, but New Orleans officials attached no such condition to the resale of the guns in their own inventory, only two of which had locks among the thousands they shipped. Nor did they require that the guns be resold only to other police departments, a financially unwelcome stipulation since weapons may fetch only half as much on the market when that particular condition is attached.

Another of the novel legal theories holds it unconscionable for manufacturers to cater to the full demand of shops located in gun-friendly states and suburbs if they can reasonably figure that a certain percentage of the merchandise will wind up in the hands of city residents. But the Big Easy--which merely stipulated that the weapons not be immediately resold in Louisiana ("not in my bayou," as *Salon's* Tapper puts it)--could easily have predicted what would happen soon after some of the guns in the deal were initially shipped to Texas: They began showing up at New Orleans shops.

With this sort of embarrassment in the wings, whatever possessed the mayors to dream up these suits? They weren't the ones who dreamed them up. As the June *American Lawyer* recounts in detail, the gun litigation got under way when a bunch of the nation's richest trial lawyers began looking for new worlds to conquer after the successful mugging of the tobacco industry. Following a December pow-wow in Chicago to get their story straight, they began flying around the country to "pitch their services to mayors and city attorneys." Under the terms of contingency fee agreements with the cities, they stand to pocket as much as 30 percent of any trial winnings.

These lawyers are not really interested in law, if by that you mean the old-fashioned idea of a rule that's announced in advance so people covered by it know what's expected of them. Instead, they are quite openly spinning out new liability theories as fast as they can dream them up, asking the courts to penalize the gun companies for not preemptively anticipating and complying with those theories in the past. No one seems to care about the dangers of this approach. The retroactive application of new liability theories to tobacco companies was met with almost unanimous approval from the press and scarcely a peep of protest from the business community (see "Retro Style," August/September 1997). Even now that it's clear the principle will be applied to plunder one industry after another, it's hard to get the business community to offer any resistance in principle, or to detect any real solidarity between people in different industries.

How worried are the plaintiffs' lawyers about going to trial and losing? "As in the war against tobacco, winning in court isn't necessarily the objective of the lawyers," observes Peter J. Boyer in a fascinating article about the origins of these cases in the May 17 *New Yorker*. "If twenty cities do bring suits, defending against them, according to some estimates, could cost the gun manufacturers as much as a million

dollars a day." That would force gun makers to the negotiating table as the only alternative to bankruptcy.

"Judge shopping" also plays a role in the strategy, again in line with the tobacco precedent. (See "Firing Squad," May 1999.) Some friendly state judges are willing to dispense "home cooking" to locally influential counsel. On the federal side, according to the July 19 *National Law Journal*, the NAACP is desperately angling to get its new suit against gun makers heard by Brooklyn's extremely liberal senior-status judge Jack Weinstein, because the underlying theories "might not succeed in any other courtroom in America"—a truly damning commentary on how weak the case is. Weinstein, you may recall, presided over *Hamilton v. Accu-Tek*, the only case so far in which a jury has bought the idea of holding manufacturers responsible for gun violence because they should have known that some of their products would end up in the hands of criminals. The jurors did not accept this theory easily: During six days of deliberations, they repeatedly told Weinstein they could not reach agreement; he refused to accept a deadlock.

Judges like Weinstein may well be reversed on appeal, but in the meantime the idea is to create as much uncertainty as possible, capitalizing on the difficulty of defending against many different theories in many different places at once, all this aside from the irreducible random factor in all litigation. "[We] have the resources to start a war instead of taking little potshots," trial lawyer John Coale told *The New Yorker's* Boyer. "Well, we've started a war." Attorney Dennis Henigan of the Center to Prevent Handgun Violence said what he's after is to create a "credible threat of liability....The more cities that file, the greater is the threat. So what you really want is a diversity of cases in lots of different regions, lots of different courts to create the greatest threat of liability." You might call this a "spaghetti strategy": Throw a potful against the wall and see if any strands stick. You might also compare it with what the Irish Republican Army said after its Brighton hotel bombing failed to assassinate Margaret Thatcher: "We only have to be lucky once. You have to be lucky every time."

Polls show the gun suits are unpopular even among voters who are willing to entertain other gun control proposals. Yet it's hard to say when or if the press will turn critical. *The New Yorker's* account depicts attorney Coale openly chortling over the success of the tobacco lawyers in getting the media to sing in unison out of their songbook. "With Coale directing the political and media ends of the case," as Boyer tells it, "the plaintiffs' lawyers became the prime creators and marketers of a national narrative entitled 'Big Tobacco.' 'Oh, hee-hee-hee, we just started in on Big Tobacco,' says Coale, delighting in the memory. 'You know, it was 'let's just refer to 'em as Big Tobacco,' Big Tobacco, Big Tobacco, Big Tobacco! Pretty soon, everybody's talking Big Tobacco.'"

You'd think the press, if only from a residuum of professional pride, would at some point revolt against a campaign of manipulation so thorough and profitable that its practitioners can gloat about it in the pages of mass-circulation weeklies. But no: Many at major networks and newspapers are apparently content to get suckered the same way in this round too. According to Boyer, the "most important lessons" Henigan brought to the group of trial lawyers for whom Coale is a spokesman "had nothing to do with litigation" but instead related to manipulating public opinion. "Henigan believes that it is imperative to steer the argument about guns away from the problematic area of criminal use, with its inconvenient focus on criminals" and instead recast the gun debate "as a health issue...guns should be thought of as pathogens, and gun ownership, perhaps, as a disease." Once again, the tobacco episode will serve as precedent, this time by reference to the invaluable help Dr. David Kessler gave the litigators when, from his perch at the Food and Drug Administration, he declared that smoking was a "pediatric disease."

In keeping the tobacco companies pinned down and under constant public fire, *The New Yorker's* Boyer comments, "Kessler proved a particularly valuable ally" to the lawyers. "We were in touch with people at the F.D.A. all the time," Coale says. "There were a lot of faxes, phone calls, and other forms of communication being exchanged." At the time, those who suspected the FDA of playing footsie with the trial lawyers were assailed as demeaning the integrity of a group of independent-minded public servants. Now we learn better.

Boyer notes other political connections that helped the trial lawyers. "When Hugh Rodham, a Florida lawyer who had no experience with product liability, was brought into the group as a 'lead litigator,' few supposed that it was for any reason other than that he was Hillary Clinton's brother," he explains. "The move proved fruitful when, over Thanksgiving with the first family in 1996, Rodham suggested to his brother-in-law the President that the White House might want to get involved in settlement talks." Clinton agreed and "put his most trusted aide, Bruce Lindsey, on the issue." By now, Boyer concludes, given their power to decide which suits to file next and how to prosecute them, "Coale and his colleagues are guiding the national agenda--a new means of public-policy making that can't be found in any civics book."

The reason it can't be found in any civics book is probably that it's so alien to the form of government the Founders thought they were giving us. The June *American Lawyer*, in its article recounting the origins of the firearms litigation, reports that prominent New Orleans trial lawyer Wendell Gauthier was the first to talk his colleagues into suing gun makers, even though their pockets weren't all that deep. The suit "fit with Gauthier's notion of the plaintiffs bar as a *de facto* fourth branch of government, one that achieved regulation through litigation where legislation failed."

Remember, it's not *our* side that's decided to call the trial lawyers a de facto fourth branch of government: That's *their* view of the matter, in the words of the *American Lawyer*. Of course, there remain a few differences between this new Fourth Branch and the three original branches the Founders had in mind. For one thing, those who labor in the other three branches of government aren't supposed to use their coercive powers to turn themselves into billionaires.

For another, they have to submit to a great deal of public scrutiny, nowadays including sunshine laws, extensive financial disclosures and blind trusts, freedom of information statutes, and much more, whereas the back rooms where the Fourth Branch does its work of recruiting governmental clients and negotiating settlements remain off-limits to public scrutiny. And then there's a difference which some consider even more important, namely that the Fourth Branch doesn't risk getting slowed down by that anachronistic holdover of an earlier system of governance known as "elections."

Contributing Editor Walter Olson, a senior fellow at the Manhattan Institute, edits the new Web site Overlawyered.com.

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([FIREARMS](#), [LEGAL](#))

Mr. CANNON. Mr. Lemongello, before you begin, before we set the clock, I am just going to inform that we are going to have a vote called in about 10:45. It is the intention of the Chair to go an extra 10 minutes into that vote and hopefully wrap this hearing up by that time. So if—plan accordingly on questions, and then, Mr. Lemongello, you are recognized for 5 minutes.

STATEMENT OF DAVID LEMONGELLO, NUTLEY, NJ

Mr. LEMONGELLO. First, I would like to thank Chairman Cannon, Representative Watt and the rest of the Committee for allowing me to testify here today.

I would also like to introduce Mike McGuire who is with me today. Mike's brother, Ken McGuire, was a police officer who was shot along with me in January 2001. Mike is a sheriff's deputy in Essex County, NJ.

I would also like to introduce my counsel, Dennis Henigan. Mr. Henigan is with me because I have a pending lawsuit, and it may be necessary for him to address questions about the lawsuit.

Good morning. My name is David Lemongello. I used to be a police detective for the City of Orange in New Jersey. I graduated from the Academy with the dream that I would help protect people and do all I can to stop crime, but that dream was cut short 2 years ago by a criminal who should never have had a gun and a gun dealer who was all too happy to profit from supplying guns to the criminal market.

On January 12, 2001, I was shot three times by a violent criminal. My fellow officer, Ken McGuire, was shot two times in the same incident. Our careers and livelihoods were abruptly cut short that horrific night. I am here because I am outraged that Congress is considering passing a bill that would protect the irresponsible dealer and would deny me my legal rights as an American.

On January 12, 2001, Ken McGuire and I were police officers with the Orange Police Department, New Jersey. I was on a stake-out when I saw a suspect who matched the description of someone who had been doing several armed robberies at a gas station. I got out of my car to stop him, and I was immediately shot. The man who shot me was Shuntez Everett, who was wanted for attempted murder. Because Mr. Everett had been previously convicted of weapons-related charges, he could never have legally purchased a handgun.

Because of the injuries I suffered from that shooting, I will never be a police officer again. Months after January 12, 2001, Ken and I received some disturbing news. The gun used to shoot me reached the criminal's hands because of an irresponsible gun dealer. The gun used in the shooting was one of 12 guns purchased by two individuals on a single day from Will Jewelry & Loan, a gun dealership in West Virginia. One of the individuals was a felon, Mr. James Gray. He used a woman with a clean record to purchase all 12 guns at once with cold cash. Don't you think if a man and a woman come into your gun shop with thousands of dollars and a man starts pointing out guns that he wants and then has a woman purchase them, it should be an automatic red flag that something isn't right? Where did the gun dealer think those guns were headed besides the streets?

Even more disturbing was that the gun dealer knew this was a dirty deal. After he sold all 12 guns to these individuals and took their cash, he called the ATF because he felt something wasn't right. If that was the case, why didn't he call the ATF before he took their money and sold the 12 guns? Because those who sold this gun did not act responsibly, Ken and I filed suit against them.

These gun sellers did not even follow the sales guidelines recommended by the gun industry's own trade association, the National Shooting Sports Foundation. The NSSF says that gun dealers should ask customers who may be straw purchasers a number of questions, and if the dealer has any doubt about the sale, he should not sell the gun. The manufacturer of this gun, Sturm, Ruger, is a member of NSSF, yet it does nothing to make sure that its dealers are even aware of these guidelines.

Had this gun dealer followed the NSSF guidelines, the gun used to shoot me would never have been on the streets in criminal hands. The next disturbing news I heard was that some people in Congress wanted to take away my right to present my case in court and wanted to give that irresponsible gun dealer special protection from the legal rules that apply to all other businesses in this country.

Other businesses have to use responsible care, reasonable care and may be liable for the consequences if they don't. Those who sell lethal weapons that are highly valued by criminals should have at least the same duty to use reasonable care as businesses who sell BB guns or any other product.

Our case is not frivolous. Far from it. The West Virginia gun dealer and the manufacturer of the gun, Sturm, Ruger, recently asked a judge in West Virginia to dismiss our case. She heard the gun seller's legal arguments and rejected every single one of them. This judge, Judge Irene Berger of Kanawha County, applied the general rules of West Virginia law to allow our case to proceed. By establishing a different set of rules applicable only to the gun industry, H.R. 1036 would override her decision and deny us our day in court.

As a police officer, a former police officer, I understand all too well the importance of enforcing criminal law against gun dealers, gun traffickers and criminals who use guns. I do not need to be lectured by the gun lobby about the importance of enforcing the laws on the books, but that is not enough. For one, the damage is usually already done when the criminal law steps in. Gun sellers have to be more responsible when they sell guns to prevent guns from getting into criminal's hands before they do their damage. What happened to Ken and me is an example of what could happen when gun sellers are irresponsible.

Right now, a gun dealer sees only potential profit when someone comes in and wants to buy 12 or even 112 guns. The dealer should also recognize that there are costs to engaging in such sales, and people like Ken McGuire and I bear the cost for the rest of our lives.

That is why lawsuits like ours are important. Gun dealers need to be held accountable. If it weren't for our strength and will to live, we both would have died that horrific night, January 12, 2001. We are both very lucky to be here today. Kenny is the youngest of

12 brothers and sisters. As for me, I was newly married 2 months prior to January 12, 2001. I can't even imagine what our family has gone through. The physical and mental scars are something Kenny and I have to deal with every minute of every day, and the damage that was done is irreversible.

Ken and I are not asking for the law that says we are entitled to compensation for our injuries. We are not asking for the law that says we must win our case, and we do not claim that gun seller and gun manufacturers should be found liable simply because they sold guns that were used in a crime. All we ask is for our day in court so we can prove to the judge and jury that these gun sellers acted irresponsibly and that they should be accountable under the principles of law that apply to everyone. This is our right as Americans, and on behalf of Ken and myself and other victims of gun violence, I ask that you do not take that right away. Thank you.

Mr. CANNON. Thank you, Mr. Lemongello. We appreciate the horrific experience you have been through and appreciate you being here to share that with us.

[The prepared statement of Mr. Lemongello follows:]

PREPARED STATEMENT OF DAVID LEMONGELLO

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Because those who sold this gun did not act responsibly, Ken and I filed suit against them. These gun sellers did not even follow the sales guidelines recommended by the gun industry's own trade association—the National Shooting Sports Foundation. The NSSF says that gun dealers should ask customers who may be straw purchasers a number of questions, and if the dealer has any doubt about the sale, he should not sell the gun. The manufacturer of this gun, Sturm, Ruger, is a member of NSSF, yet it does nothing to make sure that its dealers are even

aware of these guidelines. Had this gun dealer followed the NSSF guidelines, the gun used to shoot me would never have been on the streets, in criminal hands.

The next disturbing news I heard was that some people in Congress wanted to take away my right to present my case in court, and wanted to give that irresponsible gun dealer special protection from the legal rules that apply to all other businesses in this country. Other businesses have to use reasonable care and may be liable for the consequences if they don't. Those who sell lethal weapons that are highly valued by criminals should have at least the same duty to use reasonable care as businesses who sell BB guns, or any other product.

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As a police officer—a former police officer—I understand all too well the importance of enforcing the criminal laws against gun dealers, gun traffickers, and criminals who use guns. I do not need to be lectured by the gun lobby about the importance of enforcing the laws on the books. But that is not enough. For one, the damage is usually already done when the criminal law steps in. Gun sellers have to be more responsible when they sell guns to prevent guns from getting into criminals' hands, before they do their damage. What happened to Ken and me is an example of what happens when gun sellers are irresponsible. Right now, a gun dealer sees only potential profit when someone comes in and wants to buy twelve—or one hundred and twelve—guns. The dealer should also recognize that there are costs to engaging in such sales, and people like Ken McGuire and I bear those costs the rest of our lives. That is why lawsuits like ours are important. Gun dealers need to be held accountable.

If it weren't for our strength and will to live, we both would have died that horrific night on January 12, 2001. We are both very lucky to be here today. Kenny is the youngest of twelve brothers and sisters. As for me, I was newly married two months prior to January 12, 2001. I can't even imagine what our families have gone through. The physical and mental scars are something Ken and I have to deal with every minute of every day. And the damage that was done is irreversible.

Ken and I are not asking for a law that says we are entitled to compensation for our injuries. We are not asking for a law that says we must win our case. And we do not claim that gun sellers and gun manufacturers should be found liable simply because they sold a gun that was used in crime. All we ask for is our day in court, so we can prove to a judge and jury that these gun sellers acted irresponsibly and that they should be accountable under the principles of law that apply to everyone. This is our right as Americans. On behalf of Ken, myself and other victims of gun violence, I ask that you not take that right away. Thank you.

Mr. CANNON. Mr. Keane, you are now recognized for 5 minutes.

**STATEMENT OF LAWRENCE G. KEANE, VICE PRESIDENT AND
GENERAL COUNSEL OF THE NATIONAL SHOOTING SPORT
FOUNDATION**

Mr. KEANE. Chairman Cannon, distinguished Members of the Subcommittee, my name is Lawrence Keane. I am the Vice President and General Counsel of the National Shooting Sports Foundation.

The NSSF appreciates the opportunity to appear before the Committee this morning to offer testimony in support of H.R. 1036, the common sense legal reform that will restore integrity and fairness to our Nation's judicial system.

We call upon Congress to follow the lead of over 30 States that have already enacted similar legislation to stop reckless lawsuits that seek to destroy and bankrupt a responsible American industry by blaming firearms manufacturers for the actions of criminals. Formed in 1961, the NSSF is the trade association for the firearms and recreational shooting sports industry.

We are proud of our industry's cooperative relationship with law enforcement, as exemplified by the joint NSSF-ATF partnership program called Don't Lie for the Other Guy that assists ATF in educating federally licensed firearms dealers on how to detect and deter illegal straw purchasers of firearms.

Beginning in 1998, a group of approximately 40 urban politicians aligned with contingency fee trial lawyers and antigun activists have flooded our Nation's courts with lawsuits filed against law-abiding federally licensed firearms manufacturers, wholesale distributors and retailers.

The plaintiffs do not allege that members of the industry have broken any of our Nation's over 20,000 firearm laws. Instead they allege that the sale of a legal product in accordance with an extensive regulatory system somehow causes crime and the industry is subverting the law to funnel firearms to the so-called criminal market. These allegations are highly offensive and patently false.

This well-funded, coordinated onslaught of reckless lawsuits against members of our industry continues unabated. Recently the cities of New York, Jersey City and Camden, New Jersey were permitted to attempt to prove their despicable allegation that the industry knowingly and willingly sells guns to criminals. Several cases are currently pending at the trial court level.

In addition, several more cases are currently at various stages of appeal and could be returned to the trial court for costly and time-consuming discovery. Just one \$100 million dollar verdict will bankrupt virtually the entire industry.

Just this Monday, the NAACP's lawsuit against members of the industry began in Brooklyn Federal Court before Judge Weinstein, who tried the Hamilton case and is well known in legal circuits as an activist jurist. Courts have recognized that these suits against the industry are an improper attempt to use litigation to regulate the industry, thereby circumventing the democratic and constitutionally prescribed legislative process, usurping the role of Congress and the State legislatures.

At his opening on Monday, Dennis Hayes, the General Counsel of the NAACP, said he was asking, "to usher in an equitable code of conduct and would change the way business is done and that the case was about asking a Federal court," not Congress, to, "step in and regulate, the firearms industry."

In upholding the dismissal of a similar suit, a Florida appellate court said that, "Miami-Dade County's request to the trial court to use injunctive powers to declare the business methods create a public nuisance is in an attempt to regulate the firearms and ammunition industry through the medium of the judiciary and that the judiciary is not empowered to enact regulatory schemes in the guise of injunctive relief. The power to regulate belongs not to the judicial branch of Government but to the legislative branch."

Winning on the merits is not necessary in order for these politicians and antigun activists to impose through litigation a gun control agenda rejected repeatedly by Congress and not supported by the American public.

At the time he filed his suit, Chicago Mayor Daly said, "We are going to hit them where it hurts, in their bank accounts."

Andrew Cuomo, then HUD Secretary, threatened firearms manufacturers with, "Death by a thousand cuts."

NAACP President Mfume said his lawsuit was an effort to "break the backs of industry members."

Antigun plaintiffs can implement their gun control policies through the entire Nation if the coercive effect resulting from the staggering financial cost to defend these baseless suits forces industry members into a Hobson's choice of either capitulation or bankruptcy. Companies have gone out of business vindicating themselves against baseless lawsuits. Just ask Dow Corning.

The collective industry cost to defend these ill-conceived politically motivated suits has been truly staggering. I believe a conservative estimate for the total industry-wide cost of defense to date now exceeds \$100 million, a staggering sum for a small industry like ours, that, taken together, would not equal a Fortune 500 company. The cost of litigation is borne almost exclusively by the companies, because insurance carriers have denied coverage.

Plaintiffs have carefully drafted their complaints to take them outside of liability insurance coverage in order to apply maximum financial pressure on the defendant manufacturers.

Firearms industry members now confront skyrocketing premiums. These lawsuits threaten the very existence of manufacturers that produce the tools our military and law enforcement agencies use every day to protect the American public, and our freedoms both here and abroad.

If these companies are driven out of business, from whom will our military and law enforcement purchase their firearms? The legislation today is as important for what it does not do as what it does do.

It does not, as antigun interest groups have falsely alleged, close the courthouse doors to those that have been injured by firearms that have been illegally sold, supplied to one likely to use the firearm in a manner involving an unreasonable risk of injury or defectively designed or manufactured products.

The bill expressly provides that injured parties are still able to assert well-recognized tort claims against manufacturers and sellers of firearms. The loudest voices arrayed in opposition to this legislation are the same antigun interest groups that are orchestrating and financing the litigation assault to regulate the firearms industry in ways Congress has rejected.

Let me conclude my remarks where I began them. Over 30 States have already enacted similar laws to stop these junk lawsuits designed to destroy the industry and to achieve gun control regulation through litigation.

Within the week, West Virginia Governor, Bob Wise, signed legislation to prevent such suits. The time has come for Congress to enact common sense legal reform to restore integrity and fairness to our judicial system, protect American jobs and industry and prevent an unconstitutional attempt to circumvent Congress and the State legislators.

The National Shooting Sports Foundation urges Congress to pass this legislation.

Mr. CANNON. Thank you, Mr. Keane.

[The prepared statement of Mr. Keane follows:]

PREPARED STATEMENT OF LAWRENCE G. KEANE

Chairman Cannon and distinguished members of the Subcommittee, my name is Lawrence G. Keane. I am the vice president and general counsel of the National Shooting Sports Foundation, Inc. ("NSSF"). The National Shooting Sports Foundation appreciates the opportunity to appear before the Subcommittee this morning to offer testimony in support of the "Protection of Lawful Commerce in Arms Act." (H.R. 1036). We strongly support this important piece of common sense legal reform because it will restore integrity and fairness to our nation's judicial system. We call upon Congress to follow the lead of over thirty states that have already enacted similar legislation to stop reckless lawsuits that seek to destroy and bankrupt a responsible American industry by blaming firearm manufactures for the actions of criminals. Nothing less is at stake than the future of one of America's oldest, most important industries and the loss of thousands of American jobs that are vital to the wealth of our economy.

Formed in 1961, the NSSF, with approximately 2,600 members, is the trade association for the firearms and recreational shooting sports industry. We are proud of our industry's cooperative relationship with law enforcement, as exemplified by the joint NSSF—Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) partnership program called "Don't Lie for the Other Guy" that assists ATF in educating federally licensed firearms dealers on how to detect and deter illegal straw purchases of firearms. The American Society of Association Executives recently named the "Don't Lie" program to its Advance America Honor Roll. NSSF's commitment to promoting the safe and responsible use of firearms is typified by our federally funded *Project ChildSafe* and *Project HomeSafe* programs in which NSSF, in partnership with state and local governments, has provided millions of firearm safety education kits including a free firearm locking device to the public throughout the United States.

Beginning in 1998, a group of approximately forty urban politicians, aligned with contingency-fee trial lawyers and anti-gun activists, have flooded our nation's courts with lawsuits filed against law-abiding federally licensed firearms manufacturers, wholesale distributors and retailers. These suits seek to destroy and bankrupt a responsible American industry by blaming firearm manufactures for the actions of criminals. The plaintiffs in these cases do not allege that member of the firearms industry have broken any of our nation's over 20,000 firearm laws. Instead, they allege that the sale of a legal product in accordance with an extensive regulatory system somehow causes crime and that the industry is subverting the law to funnel firearms to the so-called "criminal market." These allegations are both highly offensive and patently false.

Despite some success in the courts, this well-funded, coordinated onslaught of reckless lawsuits against members of our industry continues unabated. Recently, the cities of Newark, Jersey City and Camden, New Jersey were permitted to attempt to prove their despicable allegation that the firearms industry knowingly and willingly sells guns to criminals. Several more cases are currently at various stages of appeal and could be returned to trial courts for costly and time-consuming discovery.

Just this Monday the trial of the National Associations for the Advancement of Colored People (NAACP) lawsuit against over 80 members of the firearms industry began in a Brooklyn federal court before Judge Jack B. Weinstein, well known in legal circles as an activist jurist. As other courts have recognized, these suits against the firearms industry are an improper attempt to use litigation to regulate the design, manufacturer, marketing, distribution and sale of firearms, thereby circumventing the democratic and constitutionally prescribed legislative process and usurping the role of Congress and the state legislatures. For proof of this, you need look no farther than Monday's opening statement by Dennis Hayes, the NAACP's general counsel. He said the NAACP was, "asking that the court usher in an equitable code of conduct that changes the way business is done," and that the case was about asking a federal court "to step in and regulate" the firearms industry.

In upholding the dismissal of similar suit by Miami-Dade County a Florida appellate court wrote, "The County's request that the trial court use its injunctive powers to mandate redesign of firearms and declare that the [firearms manufacturers'] business methods create a public nuisance, is an attempt to regulate firearms and ammunition through the medium of the judiciary. . . . The judiciary is not empowered to 'enact' regulatory measures in the guise of injunctive relief. The power to legislate belongs not to the judicial branch of government but to the legislative branch."

Winning on the merits is not necessary in order for these politicians and antigun activists to impose through litigation a gun control agenda repeatedly rejected by

Congress and not supported by the American public. At the time he filed his suit, Chicago Mayor Richard Dailey said, "We're going to hit them where it hurts—in their bank accounts . . ." Andrew Cuomo, then Housing and Urban Development Secretary, threatened firearms manufacturers with "death by a thousand cuts." NAACP president Kweisi Mfume said its lawsuit was "an effort to break the backs" of industry members. These antigun plaintiffs can implement their gun control policies throughout the entire nation if the coercive effect resulting from the staggering financial cost to defend these baseless suits forces industry members into a Hobson's choice of either capitulation or bankruptcy. Companies have gone bankrupt vindicating themselves against baseless lawsuits.

The collective, industry-wide cost to defend these ill-conceived, politically motivated suits has been truly staggering. Exact figures are unavailable because the defendants are competitors and each considers its defense costs to be confidential business information. However, based on discussions with insurance industry executives, manufacturers' corporate counsel, reading cost estimates in various publications and NSSF's own experience as a defendant in these cases, I believe a conservative estimate for the total, industry-wide cost of defense to date now exceeds \$100 million dollars. This is a huge sum of money for a small industry like ours. The firearms industry taken together would not equal a Fortune 100 company. The cost of litigation is borne almost exclusively by the companies themselves. With few exceptions, insurance carriers have denied coverage. Because of these lawsuits, firearms industry members now confront skyrocketing premium increases when renewing their insurance policies. In addition, insurance policies now universally excluded coverage for these types of suits. This has resulted in large, across-the-board, price increases for consumers. In addition, in these trying economic times, taxpayers of the cities that have chosen to pursue the utterly discredited notion that manufacturers are responsible for the acts of criminals are forced to shoulder their city's cost of pursuing such a lawsuit, money that could have been better spent on things like hiring more police officers.

Mr. CANNON. The Chair notes that we have been joined by several other Members.

First of all, the Ranking Member of the full Committee, Mr. Conyers from Michigan, Mr. Scott from Virginia is also with us and Mrs. Blackburn from Tennessee. I think we have now gotten everyone.

Does the gentleman from North Carolina seek recognition? For questioning?

Mr. COBLE. I do indeed.

Mr. CANNON. The gentleman is recognized for 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman. I will be brief.

Thank you, gentlemen, for being with us. We have the 5-minute rule against us, so let me move along quickly. Let me address this to the industry reps. Describe in detail, if you will, the type of safety initiatives the industry has engaged on its own, A, and, B, are these safety initiatives mandatory, or has the industry voluntarily implemented them? Anybody, any of the reps.

Mr. KEANE. I will address that question.

The National Shooting Sports Foundation was formed in 1961. Throughout its history it has promoted the safe and responsible use and handling of firearms.

It has a number of programs and has distributed thousands of pieces of safety literature voluntarily throughout the United States. It has a program that is now funded by the Federal Government called Project ChildSafe in which we distribute firearm safety education kits, including a free locking device. Throughout the United States we have distributed millions of those safety kits.

Mr. COBLE. And manufacturers are actively involved in this?

Mr. KEANE. The manufacturers such as Colt are members of the National Shooting Sports Foundation and support the programs and initiatives. That is on the safety side.

In cooperation with law enforcement, as I indicated in my remarks, we are very proud of our cooperation with law enforcement, and it is exemplified and typified by our voluntary joint cooperative program with the ATF called Don't Lie for the Other Guy in which we distribute—we have distributed tens of thousands of these kits to dealers all throughout the United States that help to educate these retail dealers on how to identify and deter straw purchases of firearms. It includes counter cards, placards and videos. All of that is at our expense. All of that is totally voluntary, and we—

Mr. COBLE. Thank you, Mr. Keane. I appreciate the answer.

Some of the litigation suggests that the industry itself should be required to monitor dealers and perform I guess basically what would be law enforcement. Anybody want to respond to that about the dealers—I mean, about the manufacturers monitoring the sales that would appear to be onerous, but what say you about that?

Mr. KEANE. I think it is an impractical suggestion. It amounts to asking a brewery to stand at the counter and monitor the sales of alcohol beverages to consumers or for a car manufacturer to stand at a dealership and—

Mr. COBLE. I hate to keep cutting you off, but the clock is running on me. What kind of initiatives, if any, has the industry undertaken to stop or curtail illegal gun sales? From any of the other two reps. Mr. Olson, or Mr. Keane if you—Mr. Keane, if you want to respond.

Mr. KEANE. I would point again to another program that we have, a cooperative effort with ATF called the Partnership for Progress Seminars in which we hold, voluntarily hold, seminars throughout the United States in which ATF and the industry invites dealers to come for continuing education programs. ATF speaks at our trade show every year on issues such as straw purchasing and the theft of firearms, inventory control issues and things along those lines to prevent firearms from falling into the hands of criminals and being used in tragic situations.

Mr. COBLE. Thank you, sir.

Mr. Lemongello, in your case, Mr. Lemongello, as you pointed out, the dealer belatedly contacted ATF. I guess it is our contention he should have done that before he did it. But at least he did do it after the fact, unfortunately, perhaps. But do you—

Mr. LEMONGELLO. After he took the money.

Mr. COBLE. Do you know, Mr. Lemongello, whether or not the ATF subsequently conducted an investigation against the dealer, and if so, were there allegations that the dealer had engaged in an illegal sale? Do you know one way or the other about that?

Mr. LEMONGELLO. I don't think there was any investigation toward the gun dealer, no. I don't think there was.

Mr. COBLE. Okay. I was just curious to know if in fact there was evidence of wrongdoing there.

Well, that is very unfortunate about you and your partner, Mr. Lemongello, but—

Mr. LEMONGELLO. Let me just add that one of the 12 that was—the one that ultimately I was involved with, that wasn't the only

one that was taken off the street in my small city that I worked in. There was one other from that 12, that batch of 12 that was bought from that store, that ended up being taken off the street months prior to that from Kenny McGuire, who took it off the street and was ultimately shot with me that day. So it was 2 of the 12 that were ultimately found in the small city in Jersey.

Mr. COBLE. Thank you, sir. Mr. Chairman, I hope you will note that I beat the red light and I yield back.

Mr. CANNON. I will also note that the gentleman is one of the few that regularly beats the red light, and I appreciate that. Thank you.

Mr. Watt, would you like to be recognized? The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I will try to beat the red light too, because I know we are against time constraints here.

I just want to make one comment to Mr. Keane. After hearing your testimony, I am glad I didn't get it last—in time to read it, because I would just say I am extremely offended by the notion that you would try to make us a party to—in a rhetorical way even to a dispute between the NRA and the NAACP. It just—I am offended by it. So—and I will just go on from there.

Mr. Chen, I am holding in my hand a recall notice from Colt where you recalled a gun that was susceptible to accidental discharge if improperly carried with a round in the chamber and dropped or otherwise carelessly handled. And then further down in the notice, you say, if you own one of these pistols, please notify Colt in writing, but do not return the pistol at this time. You will be given further details and instructions as to when and how to ship your firearm to Colt.

Now, assuming somebody accidentally dropped this gun after you gave them the notice and told them not to return it to you, as I read the provisions of this bill, that would not be used as intended. So you would be exempt from liability even for that kind of negligent design, as I read the bill. Is that what you intend?

Mr. CHEN. That is not my understanding. My understanding is that this so-called sweeping immunity that the certain proponents against this bill would have you believe is absolutely untrue.

Mr. WATT. Well, I can read, Mr. Chen. My thinking says an action—you are exempted unless there is an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product when used as intended.

Now, I don't know anybody who walks around dropping a gun accidentally in using it as intended. So the wording of this bill as it now is worded would exempt Colt, even after you notified somebody and told them that there was a defect and told them not to send the gun back to you.

Mr. CHEN. That is not true, sir. The——

Mr. WATT. Are you saying I can't read?

Mr. CHEN. No. I think you are mistaken.

Mr. CANNON. Would the gentleman yield?

Mr. WATT. It is just subject to interpretation, and I am sure you are going to say you didn't intend that. I am sure the Chairman is going to say he didn't intend it, but if you are going to do this, at least clean the bill up and get to the things that you are talking

about. And certainly don't get to the seller and dealer who is responsible in the way that resulted in the shooting of police officers like the one that we have here testifying today.

With that, Mr. Chairman, I will yield to you, if you want me to yield, but I am prepared to yield back my time if—in the interest of getting other—

Mr. CANNON. The gentleman yielded back.

Mr. WATT. I will yield to you if you want me to yield to you.

Mr. CANNON. That is fine.

Mr. WATT. Okay. I will yield back then.

Mr. CANNON. Mr. Carter, do you seek recognition?

Mr. Feeney? Mrs. Blackburn?

Mr. CANNON. Thank you. Mr. Delahunt. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I thank the Chair. Your testimony, Mr. Lemongello, I thought was rather powerful. I guess I would ask Mr. Keane, given what you heard and accepting the facts as recited by Mr. Lemongello, you wouldn't want to deny him a right of access to the courts, would you?

Mr. KEANE. Well, I don't know that I would accept all of the representation of what the facts are.

Mr. DELAHUNT. I understand, but let's—

Mr. KEANE. My understanding is that not only did the dealer—you have asked the question. If I would be permitted to answer it.

Mr. DELAHUNT. Here is what I am saying. Okay? This is how it works here. I ask the questions and you give the answers. All right?

Mr. KEANE. I will be happy to answer the question.

Mr. DELAHUNT. We understand that. Accept the facts as recited by Mr. Lemongello. Now, if you accept those facts, the question that I am posing is, would you deny him an opportunity to prove his case in a court of law?

Mr. KEANE. If there is evidence that the dealer had in any way violated any of the laws, he would be—

Mr. DELAHUNT. Any of the laws could mean—

Mr. KEANE. You have asked the question. Could I be permitted to—

Mr. CANNON. Pardon me. Let me remind the panel that the gentleman on the dais controls the time and has the right to stop a question or—we will add a couple seconds to your—

Mr. DELAHUNT. I thank the Chair, and go ahead, Mr.—

Mr. KEANE. And I appreciate your interest in this legislation and your obvious enthusiasm. If the dealer—

Mr. DELAHUNT. I am getting more enthused as you speak, by the way.

Mr. KEANE. If the dealer violated any laws, this bill does not protect or provide any immunity from litigation against that dealer. If the dealer complied with the law and it was a lawful sale and they have done nothing illegal, then they are not responsible for the actions—

Mr. DELAHUNT. I guess what I am saying is under the course of common law, the precedent that is established over the history of American jurisprudence, if Mr. Lemongello could prove negligence, a wanton and willful misconduct or gross negligence or some sort

of liability theory, absent statutory language, you wouldn't want to deny him access to court, would you?

Mr. KEANE. He is not denied access to court, and in fact if a dealer knowingly—

Mr. DELAHUNT. Okay. Then you have clarified for me your position. Okay. That is all I am asking.

Now, I guess it was maybe Mr. Chen could—I just want to get my hands around the dimensions of the problem here. What, in the aggregate, is the dollar amount of verdicts that have been returned in these kind of cases?

Mr. CHEN. Against?

Mr. DELAHUNT. Against—

Mr. CHEN. Against Colt?

Mr. DELAHUNT. Well, no, not against Colt. Against dealers. I mean, I presume that—maybe Mr. Keane you can answer that question.

Mr. KEANE. Well, I am not sure what your definition of these cases is. The cases that Hamilton—

Mr. DELAHUNT. Cases that would be prohibited under the aegis of the statute.

Mr. KEANE. In the Hamilton case the verdict was for \$4 million—

Mr. DELAHUNT. Do you have an aggregate figure?

Mr. KEANE. That is the only verdict of this—well, in the similar case against the distributor in Florida, the verdict was for—

Mr. DELAHUNT. Do you have an aggregate number?

Mr. KEANE. I do not have an aggregate number.

[11 a.m.]

Mr. DELAHUNT. Okay. I would hope that the representatives of the industry would provide to the panel the aggregate number in terms of jury verdicts or verdicts that have been rendered in these kind of cases, cases that would be prohibited under statute. We want to know what the dimension and magnitude of the problem is.

Mr. CANNON. Will the gentleman yield?

Mr. DELAHUNT. I yield.

Mr. CANNON. You can either take that as a question, Mr. Keane, to provide information back, or you are welcome to submit questions that we will ask of the panel in writing so that they will be included in the Record.

Mr. DELAHUNT. I thank the Chair. What we are trying to do here is define what the problem is and the magnitude of the problem.

Now, I heard the figure 100 million. I don't know where that came from. Was that you, Mr. Chen?

Mr. CHEN. That is \$100 million in annual sales revenue. Less than 100 million between our two companies at Colt.

Mr. DELAHUNT. That was just sales. But was there something about the cost of litigation amounting to \$100 million.

Mr. KEANE. It is my best estimate that the cost—

Mr. DELAHUNT. What do you base that estimate on, Mr. Keane?

Mr. KEANE. I base that on conversations with gentlemen like Mr. Chen, conversations with insurance representatives and our own experiences, and reading cost estimates in various insurance publications.

Mr. DELAHUNT. Well, could you give us that in writing, then?

Mr. KEANE. I can't give that to you, because I'm sure Mr. Chen would agree, those dollar figures for each company is confidential business information.

Mr. DELAHUNT. Well, then what I would respectfully suggest is for you to pull the number of \$100 million without having any empirical data is a best guess by Mr. Keane, and I think that is what we should accept in terms of the cost of the problems. Again, I am trying to define the problem to the industry. And I am hearing \$100 million. And if I did not ask you the questions, Mr. Keane, we would be sitting here accepting them. And it appears to me that there is very little basis in reality for that \$100 million figure. With that I yield back.

Mr. CANNON. The time of the gentleman has expired.

Mr. FEENEY. Mr. Chairman?

Mr. CANNON. Mr. Feeney is recognized for 5 minutes.

Mr. FEENEY. If I may, as we have not been called yet, I will take the Chairman up on his offer and I appreciate the panelists being here.

Mr. OLSON. There was a suggestion that American jurisprudence is being implicated by this bill. Is it the history of the first, say, 200 years of the United States that manufacturers and sellers of arms are basically held to some standard of strict liability or accountability for anything that some subsequent purchaser does with those arms?

Mr. OLSON. The answer is no. That was the not the rule. The courts would have never entertained litigation of that sort. And it is generally true, although the litigation that we are talking about today rests on many different theories, but those theories tend to have in common, they are either completely novel or have historical roots that are more like 10 years old, than 200 years old.

Mr. FEENEY. Given the activist and evolving judicial jurisprudence in this area, I would to ask a historical question. The colonies adopted the Constitution only based upon the Bill of Rights, which include the second amendment. And could it have been that the Founders and the people who ratified the Constitution based only on the attachment of the Bill of Rights, could have wanted to preserve the theoretical right to bear arms while allowing judicial activism to effectively eliminate the production and the sale of what the Founders insisted be part of our individual rights?

Mr. OLSON. I think the drafters of the second amendment and its parallel amendments in State constitutions would be spinning in their graves with the speed of jet turbines if they knew that the development of jurisprudence would have brought things to that sort of pass. There is a dispute, as we know, on whether or not the individual rights theory of the second amendment is good law. Certainly, if you believe that there is any individual right whatsoever conveyed by the second amendment, we have an answer to the Ranking minority Member's question of "why guns"? It is because the Constitution does not mention the right to eat cheeseburgers and does mention as a very important individual right the right to bear arms.

Mr. FEENEY. And with respect to the other nine amendments, can you give me any examples where those amendments' general thrust is toward collective rather than individual rights?

Mr. OLSON. I think you make a very good point there. And while on the topic of other amendments, there is a parallel with the first amendment and the freedom of speech. In order to protect speakers from chilling effects, the Supreme Court has given us *New York Times vs. Sullivan*, which curtails State tort litigation in order to make sure that one State cannot haul in a national newspaper under overly light grounds and bankrupt that newspaper by a jury verdict. Tort jurisprudence is not allowed completely free reign when it comes up against constitutional values, like speech or potentially the Second Amendment.

Mr. FEENEY. Finally, Mr. Olson, you have not advocated that manufacturers or sellers of weapons who are negligent in their own right be defended by congressional legislation, have you?

Mr. OLSON. This law, in some respects, actually does not go as far as, I think, Congress would be justified in going. As I understand it, this law does not try to wipe out all the different grounds for suing manufacturers and dealers, but to target the ones that are considered the most abusive, and I think it is quite justified in doing that.

Mr. FEENEY. Thank you, I yield back the balance of my time.

Mr. CANNON. I am impressed. If I have been keeping track correctly, three times we have had the time yielded back before we had the light turn red. Thank you, Mr. Feeney. Would you like to yield some time, Mr. Feeney, or would you like 5 minutes, Mr. Carter? I think we will go to the other side first then. Thank you.

Mr. Watt, did you seek recognition? What is your name again? Mr. Scott? What a day. Two handsomest guys in Congress. Mr. Scott, did you seek recognition?

Mr. SCOTT. I will take Mr. Watt's time.

Mr. CANNON. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you. In the finding, Mr. Keane, on the finding number one, citizens have a right protected by the second amendment to the United States Constitution to keep and bear arms, I notice it says "citizens" and not "a citizen." there is no individual right in the Constitution to bear arms, is there?

Mr. KEANE. I would wholeheartedly disagree with you.

Mr. SCOTT. Could you name a Supreme Court case that has found an individual right to bear arms in the Constitution?

Mr. KEANE. There is no Supreme Court decision on that point. There is a—

Mr. SCOTT. Thank you. Are there Supreme Court cases that rules to contrary?

Mr. KEANE. Not to my knowledge. But there is writing by the Supreme Court in dicta recognizing an individual right, yes.

Mr. SCOTT. On final judgment?

Mr. KEANE. I said in dicta. There is writings by the Supreme Court recognizing individual right, and I would be happy to provide that.

Mr. SCOTT. Let me get it straight. Can you name a case where the court ruled an individual right to bear arms? Can you name a case?

Mr. KEANE. As I have indicated, I don't believe the Supreme Court has ever definitively ruled on that issue; however, there is dicta in Supreme Court decisions recognizing an individual right. I would be happy to provide the cases that the court discusses it in dicta.

Mr. SCOTT. But you cannot name——

Mr. KEANE. As I sit here now, no. I cannot.

Mr. SCOTT. The president of the NRA was asked the same question, and he could not come up with a case either last time we had a hearing on gun control.

Can somebody give me a kind of case that can win today that will not be able to win under this bill? You have exempted intention and criminal acts in transferring. You have exempted breach of contract. You have exempted defect in design when used as intended. What kind of case can be brought today that cannot be brought under this bill?

Mr. LEMONGELLO. That would be mine, sir.

Mr. SCOTT. And how can you win today and can't win under the bill? What part of the bill kills your case?

Mr. LEMONGELLO. I would like to address that to my lawyer to answer that question.

Mr. CANNON. The Chair is willing to have the gentleman step forward and answer the question if he would like. If you would announce your name for the record.

Mr. HENIGAN. Thank you, Mr. Chairman. My name is Dennis Henigan, and I am an attorney with the Brady Center to Prevent Gun Violence, and very honored to represent Detective Lemongello and Detective McGuire in their lawsuit against this gun seller and gun manufacturer.

Their lawsuit is an excellent illustration of the kind of case that is highly meritorious, and yet would be barred by this bill, because it involves clearly negligent conduct by a gun seller. But there have been, as Detective Lemongello said, no criminal charges brought against that gun seller, no finding that that gun seller violated any statute, and yet it was clearly irresponsible conduct.

Most negligence cases that are brought in courts do not involve illegal conduct. They involve irresponsible conduct. And yet this statute would not only require that the conduct be illegal, but that it would be willfully illegal, which is extremely difficult to prove. So it is an excellent example of the kind of case brought by an individual who was victimized by gun industry irresponsibility that would be barred—unfairly in our judgment—by this legislation.

And I might add, a judge in West Virginia has already held that under the generally applicable principles of West Virginia law, this is a valid case and should go forward toward trial. This bill, if it passed into law, would override that judge's decision in the service of preferential treatment for a single industry.

Mr. SCOTT. Do you do products liability cases?

Mr. HENIGAN. Yes, I do, Congressman.

Mr. SCOTT. Defect in design is exempted when used as intended. Does "when used as intended" change the product liability standard?

Mr. HENIGAN. Quite radically, Congressman Scott. Actually there are many cases involving many kinds of dangerous products in

which manufacturers of those products are held strictly liable in product liability because they failed to install a feasible safety feature that would reduce the risk of injury from unintended use of a product. For example, automobiles. Most automobile accidents are caused by some kind of unintended use of the car. Not intended at all by the manufacturer. Sometimes it is illegal use of the car. Speeding for example. And yet our jurisprudence would hold those manufacturers of automobiles to a responsibility to make cars crashworthy. We do not let them off the hook because the use is unintended.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CANNON. You are welcome to stay at the table if you wish. And now the Chair recognizes the gentleman from Texas for 5 minutes, Mr. Carter.

Mr. CARTER. Mr. Chen, a question was asked earlier, and I don't understand the answer. Maybe you can help me. As I understand this bill, this is designed—it is defined by the term “unlawful activity.” and it is to prevent someone from suing for the unlawful use of a firearm. The exemption that has been talked about is used as intended, the intentional use of a firearm, and that term could be a term that could be submitted to a jury to find out if really you intend to use a gun by dropping it is an intended use of a gun. So that would not necessarily exempt you from manufacturer's liability. Would it? Is that the way you read this?

Mr. CHEN. That is not the way that I read it. The fact of the matter is that we as a manufacturer would be liable, under traditional product liability theory, meaning that if the gun were defectively designed or manufactured, or there was a failure to warn, we would still be on the hook. This bill would not make that case immune from the plaintiffs pursuing their rights against the seller.

Mr. CARTER. A jury could common sensically say just setting a gun on a shelf is using it as intended. Accidentally dropping the gun on the floor is using it as intended?

Mr. CHEN. That is correct. That is correct. But what Mr. Lemongello is arguing is that here is a situation where the manufacturer should be liable for the misuse of that firearm. There are many links of the chain between the manufacturer and the person who pulled the trigger, the one who was responsible for causing the injury to Mr. Lemongello. What we are saying is that if there is no causation, the manufacturer, for that matter, the entire industry, should not be responsible.

In the NAACP case here that we are talking about, or had talked about earlier, the plaintiff's attorney is trying to find the entire industry liable, even though the incident did not even involve their brand of firearm. This is almost like a speeding car—somebody drives a speeding car recklessly and crashes into somebody and kills them, and that speeding car were a Chrysler, it is like the plaintiff's lawyer saying well, GM and Ford and everybody else should be a codefendant as well. This is what we are trying to stop, these type of abusive practices.

Mr. CARTER. It strictly goes to the intended use. I tried a case where a man sharpened a toothbrush in a jail cell and threatened a jailer with it and got 20 years in prison for threatening a jailer with that sharpened toothbrush. And a jury found that toothbrush

was a deadly weapon. That jury finding is established law and has been appealed and held up.

So would we have to worry about looking at the liability of the toothbrush industry? Sometime you have to look at the intended use of the product. That is what you are arguing?

Mr. CHEN. Yes, sir.

Mr. WATT. Will the gentleman yield before he yields back?

Mr. CARTER. Yes.

Mr. WATT. I just wanted to direct the gentleman's attention to the language at the top of page 8 of this bill that deals not only with manufacturers, but deals with sellers. And that is where Mr. Lemongello—Detective Lemongello is directing here. He is not bringing any action against the whole industry. He is talking about this seller. And this bill is so broad that it would eliminate that kind of action against the seller, whether or not the manufacturer was add as a defendant or not. So you just need to look at the language.

Mr. CARTER. Will you yield back?

Mr. WATT. Yes.

Mr. CARTER. It was my understanding from the testimony that we heard, no one has sought any remedies or sought to find that this seller had illegally sold these weapons or sold in violation of the rules. According to what the testimony was from Mr. Lemongello, nobody has pursued that route. If it has not been pursued, then the lawsuit was going to be valid under this law.

Mr. WATT. Will the gentleman yield? It hadn't been pursued criminally, but the question is whether Mr. Lemongello is going to be able to pursue it civilly without some criminal pursuit of this.

Mr. CARTER. I understand that, but there is a route to get to the civil lawsuit. If it was an illegal sale of a weapon, then the illegality sets aside the terms of this Act that we are passing here and allows him to go to court based upon the illegal activity.

Mr. FEENEY. Will the gentleman from Texas yield?

Mr. CARTER. I yield.

Mr. FEENEY. On the same page 8—

Mr. CANNON. The gentleman's time has expired. Mr. Delahunt is asking for unanimous consent that we extend the time by 2 minutes. Objection not being heard, the gentleman is recognized for 2 minutes. And Mr. Carter it is your time.

Mr. CARTER. I yield.

Mr. FEENEY. I thank my colleagues, and all of my colleagues. Actually the subprovision, the second exclusion from the effects of this bill deals with any action brought against a seller for negligent entrustment or negligence per se. The sellers are still going to be held accountable for negligence per se at a minimum if this bill is passed. And I think Mr. Lemongello will get his day in court. He may or may not have a more difficult burden because the strict liability theories are presumably tossed out if this bill takes effect.

Mr. CANNON. Will the gentleman from Texas yield?

Mr. CARTER. I yield.

Mr. CANNON. I, perhaps Mr. Lemongello or Mr. Henigan, your counsel, you could clarify for us. Are you suing the industry? How many manufacturers in the industry? And are you claiming negligent entrustment or the violation of any State or Federal laws?

Mr. HENIGAN. I would be happy to clarify that, Mr. Chairman. This lawsuit is against a single gun seller, a gun dealer, and a single gun manufacturer who failed to establish minimum requirements for its dealers that are even consonant with what Mr. Keane's organization recommends. So it is one seller and one dealer.

Mr. CANNON. Are the facts that you just stated, is that essentially the context for a negligent entrustment claim?

Mr. HENIGAN. Let me explain why the negligent entrustment exception, as defined by this statute—because that is the important thing—what this statute defines as negligent entrustment would not apply to Mr. Lemongello's lawsuit. It would not apply because it requires the direct sale of a gun to the person who then misuses the gun. Whereas, in fact, this was a sale to a straw buyer for a gun trafficker. Neither of those people fired the gun. Then it went into the hands of the criminal who did fire the gun. So negligent entrustment does not help this case. This is a case of simple negligence.

Secondly, the doctrine of negligence per se does not even apply under West Virginia law. There is specific case law in West Virginia that that doctrine does not each apply under West Virginia law. So neither of those exceptions would help this case.

Mr. CANNON. Are you alleging any violation of Federal or State law on the part of the defendants in your lawsuit?

Mr. HENIGAN. No, we are not, your Honor. It is like most negligence cases, it does not allege a violation of a statute, it alleges irresponsibility. And that is the special preference that is given the gun industry, one of them, in this statute. Because this statute seems to require not only a violation of the law to bring a negligence case, but a willful violation. That even is beyond what is required in many criminal cases, Mr. Chairman.

Mr. CANNON. Not to argue, but the question is going back to the purchase. In other words, you have to have a link back to the seller or the manufacturer and we do have a long history of law there. But I see that the gentleman's time has expired. I yield back my time. The gentleman's time having expired, Mr. Conyers, do you seek recognition?

Mr. CONYERS. I guess I will take 5 minutes.

Mr. CANNON. The Chair recognizes the distinguished Ranking Member of the full Committee, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, sir. Mr. Chairman, before I begin my time, is there any contemplation of a second round of questions?

Mr. CANNON. Many of the Members who are here have other commitments, including me with the Resources Committee in an area where I am one of the few people who have expertise, and so I am not, at this point, contemplating a second round.

Mr. CONYERS. Well, could you leave someone else to try to carry on as acting Chair in your stead if you left?

Mr. CANNON. That is possible. May I just poll the panel. How many people would like another round of questioning?

Mr. CONYERS. I might. I don't know where this questioning is going to go.

Mr. CANNON. Anybody else on the minority? Anybody on the majority side like a second round? Mr. Ranking Member, I am anxious

that you have as much time as you need, and at the end of your 5 minutes, if you feel like you need more, we would certainly entertain a unanimous consent request.

Mr. CONYERS. That is very generous. I thank you for that.

Mr. CANNON. The gentleman is recognized for 5 minutes.

Mr. CONYERS. Thank you, sir. I wanted to begin by welcoming Chuck Cunningham from the NRA. Good to see you again, Chuck. I hope you will stop by my office and talk to me a little bit this time. I am trying to look at this thing as fairly as I can.

I wanted to ask, C-SPAN is here. Who is the other cameraman here? Who are you, sir? You can answer.

The CAMERAMAN. Impact Imaging.

Mr. CONYERS. And who brought you here?

The CAMERAMAN. I was called on the phone.

Mr. CONYERS. By whom?

The CAMERAMAN. Impact Imaging.

Mr. CONYERS. And who are they working for?

The CAMERAMAN. I have no idea.

Mr. CANNON. Does anyone in the audience know who hired—

Mr. CONYERS. Wait a minute. Thanks for your help, Mr. Chairman.

Mr. CANNON. I just want the gentleman to know that on both sides we care about these issues.

Mr. CONYERS. I know. I noticed. Chuck, you did not have anything to do with him coming here did you? Chuck Cunningham?

Mr. CUNNINGHAM. Yes, sir?

Mr. CONYERS. Did NRA—did you have anything to do with them coming here?

Mr. CUNNINGHAM. Nope.

Mr. CONYERS. Just asking, guys. No harm intended.

I want to welcome Mr. Walter Olson of the Manhattan Institute. But you are located in D.C.; right?

Mr. OLSON. No, in Manhattan. There may be a Washington office of it, but I am in Manhattan.

Mr. CONYERS. Your office is in New York?

Mr. OLSON. New York.

Mr. CONYERS. You do not have to answer this if you do not want to, but are you a person of libertarian persuasion?

Mr. OLSON. I am often accused of that.

Mr. CONYERS. Yes, but is it true?

Mr. OLSON. I think it is pretty true, yes.

Mr. CONYERS. It is? Okay. Some of my best friends are libertarians.

Mr. OLSON. It is pretty true. Yes.

Mr. CONYERS. Just asking. Just setting a foundation for a few questions. Okay. Now that we have got all of this cleared up. Mysterious cameraman, witness accused of libertarianism, which it turns out is true, nobody knows where the camera came from.

Okay, now I turn to my good friend, Mr. Chen, who I have previously had delivered to him the Consumer Federation of America one-pager. And I hope you have had a chance to look at it. There are only three questions there. Could you go through these with me, Mr. Chen, to point out where you agree and where you may

take issue with the Consumer Federation of America on this subject matter?

Mr. CHEN. Most certainly.

Mr. CONYERS. All right. Go ahead.

Mr. CHEN. Well, the first point is proposed legislation would block suits filed by individual consumers seeking to hold the gun industry accountable for irresponsible manufacturing or selling of guns.

That certainly would not be true. You know, we manufacturers would still be responsible for, as I said before, negligent design or manufacture of guns or failure to warn or other product liability cases or violation of warranty law or under contract. So that is not true.

Federal immunity would also give manufacturers and sellers special protection from the law. I don't know of what special protection they are talking about. They do mention about Mr. Lemongello's case. What we are trying to do here is to provide a preemption from the types of suits that would put an entire industry at task where there is a failure of causation, there is a lack of causation in order to prove one of the members of our industry to be liable in the traditional tort sense.

When I went to NYU Law School, I never learned about these types of cases where you can bring an entire industry to court and then try to seek market share liability.

Third is in the absence of Federal health and safety regulation our civil justice system is the only way to make the gun industry accountable when its negligent conduct harms consumers.

Our company—

Mr. WATT. I ask unanimous consent for an additional 5 minutes for Mr. Conyers.

Mr. CANNON. Hearing no objection, so ordered.

Mr. WATT. Will the gentleman yield?

Mr. CONYERS. Yes, sir.

Mr. WATT. Because I wanted to go back to the first point: The proposed legislation would block suits filed by individual consumers. Under that point, the point is made that law enforcement officials are prosecuting the alleged Washington, DC area snipers for their crimes. The families who lost relatives in the attacks have also filed a civil lawsuit to ensure that those responsible for arming the snipers are held accountable. I am wondering—and includes the Bulls Eye Shooters Supply, the gun store that claims it lost the assault rifle used by the alleged snipers along with many other guns in recent years.

I am wondering whether Mr. Chen has any reaction to that while you are at it. I yield back to the gentleman. I just did not want to gloss over that one point just by looking at the bold print.

Mr. CHEN. Congressman Watt, my response to that is really two words: proximate cause. That is one of the elements that you have to prove. If there was a link between the shooter and Bulls Eye Shooters Supply, that would be proximate cause that would implicate this particular retailer. Then this proposed legislation, as I understand it, would not exclude those types of suits from being brought.

Mr. WATT. I yield back to the gentleman.

Mr. CONYERS. I yield to the gentleman from Massachusetts.

Mr. DELAHUNT. Yes, I thank the Ranking Member for yielding. I have to disagree, Mr. Chen, with your interpretation, because my reading of the statute—and I appreciate your using the common law terms like proximate cause. I think those are principles I would hope that you would agree, and I am sure you learned them at NYU, that they are embedded in our jurisprudence, and that we do not want to abrogate these principles that have really guided our rule of law, are the basis for our rule of law.

But having said that, I understand, Mr. Chairman, there is a markup tomorrow on this particular proposal?

Mr. CANNON. The gentleman is correct.

Mr. DELAHUNT. You know, we are really rushing this fast. And I understand, there is a sense of urgency. But I did pose a question, I think, to Mr. Keane in terms of getting my data, in terms of defining what the problem is. I did not realize Mr. Cunningham out there was with the NRA, but if they could provide us that information, so that at least we could have a reasonable intelligent markup, it would help to define what the magnitude is. Mr. Keane, you look like you want to say something.

Mr. KEANE. The piece of information you were asking for was some sort of documentation of the total industry wide cost of defending this litigation. As I indicated, there is no place where that information is collected and you are accurate, that is my best educated guess.

Mr. DELAHUNT. If you could give me the aggregate and I am sure it is available somewhere, maybe Mr. Cunningham has it in terms of jury verdicts that have been returned.

Mr. KEANE. I don't know what the aggregate is. I know what the Hamilton verdict was \$4 million.

Mr. DELAHUNT. Let me ask about the Hamilton verdict.

Mr. WATT. Will the gentleman yield?

Mr. CONYERS. Yes, I yield.

Mr. WATT. I appreciate it. There is some suggestion that there is a proximate cause between the markup of this bill tomorrow and the pending NRA convention 2 weeks later.

Mr. DELAHUNT. I respect that proximate cause.

Mr. WATT. I wanted the gentleman to be aware of that.

Mr. CANNON. If the gentleman would yield, proximity in time is not necessarily proximity in cause, without denying any proximity in cause.

Mr. DELAHUNT. The Hamilton case, was that \$4 million actually paid?

Mr. KEANE. It was never paid because the case was reversed by a unanimous court of appeals ruling in New York.

Mr. DELAHUNT. Mr. Keane, please, that is disingenuous to say in front of this Committee there was a \$4 million verdict, when, in fact, the case was overturned. With that, I yield back to Mr. Conyers the remaining time.

Mr. CONYERS. Well, Mr. Chen, you were saying? You were saying—you were going through these three items and you were on the third item.

Mr. CANNON. If you would like to go through the third item. There are three or four items, Mr. Conyers?

Mr. CONYERS. Three.

Mr. CANNON. If you would like to go through the remaining items, that would be fine and then time will expire.

Mr. CHEN. Thank you. Just to repeat it: In the absence of Federal health and safety regulation, our civil justice system is the only way to make the gun industry accountable when its negligent conduct harms consumers.

We have at Colt a very excellent record of safety regarding our products. We have our ISO 9000 first class gun line that has been recognized, in fact, by the U.S. military as part of the quality certification program. We have rigorous procedures that we follow in order to make the highest quality, most reliable, reasonably safe product that we possibly can do. Indeed we have been making these firearms for, well, almost 2 centuries.

And so we are constantly improving our processes. And to the extent that any of our firearms are defective, well, we will have to answer to that in the marketplace and also in the courtroom. And this bill will not make us immune from addressing defective products of Colt.

Mr. CONYERS. So, you do not agree with any of the three points that the Consumer Federation of America have made about this legislation?

Mr. CHEN. That is correct.

Mr. CANNON. The gentleman's time has expired.

Mr. CONYERS. Just a moment, Mr. Chairman. Can I seek an additional 1 minute?

Mr. CANNON. Certainly, without objection, so ordered.

Mr. CONYERS. All right. I thank you for your generosity. Could you read for me at page 9, parenthesis 5 in the bill.

Mr. CHEN. I'm sorry; I do not have the bill.

Mr. CONYERS. We can get a copy for you.

Mr. CANNON. Do we have a copy moving down to the witness? Does this gentleman have a copy of the bill, Mr. Conyers?

Mr. CONYERS. I don't know if he does or not. He is looking. He is looking very carefully.

Mr. CANNON. While the bill is going down, let me point out that I have not yet taken my 5 minutes and would like to do it, so if we could move this expeditiously, but whatever time you need to answer this, Mr. Conyers.

Mr. CONYERS. All right.

Mr. CANNON. Would you repeat for the witness?

Mr. CONYERS. Page 9, top of the page, parenthesis 5.

Mr. CHEN. And in the context of this subparagraph, this would—

Mr. CONYERS. You can just read that. You do not have to explain anything.

Mr. CHEN. An action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product when used as intended.

Mr. CONYERS. All right. Now, "when used as intended" is the phrase that is pretty interesting, isn't it? Does this block product liability type cases? Or could it be interpreted to do so?

Mr. CHEN. You mean focusing on "when used as intended"? Those four words?

Mr. CONYERS. No, let's take the whole thing, 5. Paren 5, what you just read. Come on, you have gone to New York University, a top ranked law school. This is elementary.

Mr. CHEN. If I put a gun in my mouth and I pull the trigger and it was loaded and it killed me, that is not using a gun as intended, sir.

Mr. CANNON. The gentleman's time has expired.

Mr. CONYERS. Just a moment, he did not——

Mr. CANNON. We have explored the issue, Mr. Conyers, to some length.

Mr. CONYERS. You explored it, Mr. Chairman. Could I get an additional minute, sir? I hate to inconvenience the Chair. This will be my last 1 minute.

Mr. CANNON. I can't imagine the gentleman actually inconveniencing me. I do have a problem. I have some questions I would like to ask, and I have a Resources Committee markup on a bill dealing with technical issues dealing with coal leasing, which I am the only Member that really has much experience. So I would like to get over there.

Mr. CONYERS. The last 1 minute. If you feel I do not deserve it, you can deny me, Mr. Chairman.

Mr. CANNON. I am trying to work through the actual timing. I could turn the Chair over to someone else if it is going to be more than 1 minute. If it is truly 1 minute. Hearing no objection, the gentleman is recognized for another minute.

Mr. CONYERS. I thank you again for your generosity. Does—could 5 be interpreted as blocking product liability type cases? Mr. Chen?

Mr. CHEN. No, not in my mind. When you say "when used as intended," you have to refer to the safety and instruction manual, okay? And there are a lot of basic safety rules that one must follow. There is a responsibility when you have a firearm and it is very important that you follow the instructions, and you be certified and you be trained and you be a responsible user of that firearm. And then when you are finished with using that firearm, you safeguard so that it cannot get into the hands of others.

Mr. CONYERS. What the heck do you think 5 means then, if it does not block product liability?

Mr. CHEN. No, I think it does block—I do not think it blocks product liability in the traditional sense.

Mr. CONYERS. Are you sure of that?

Mr. CHEN. Yes, I am, sir.

Mr. CANNON. The gentleman's time has expired. The Chair recognizes himself for 5 minutes.

Mr. FEENEY. Mr. Chairman? If I might?

Mr. CANNON. The Chair recognizes himself for 5 minutes and yields time to the gentleman from Florida.

Mr. FEENEY. I am very grateful to the Chair. Mr. Lemongello's counsel, is your name—can you state your name again?

Mr. HENIGAN. Yes, Dennis Henigan.

Mr. FEENEY. Mr. Henigan, did you give an interview with Peter Boyer to the *New Yorker Magazine* on May 17, 1999? Roughly?

Mr. HENIGAN. I believe that is when the magazine was published, Congressman, but yes, I was interviewed by Mr. Boyer.

Mr. FEENEY. Is it your position that George Washington and the Founding Fathers had some sort of pathological mental disease?

Mr. HENIGAN. No it is not, nor did I ever say anything like that to Mr. Boyer, nor does he claim that I said anything like that.

Mr. FEENEY. You were quoted as saying, and I am quoting you from that article, I believe: It is important to steer the argument about guns away from the problematic area of criminal use with its inconvenient focus on criminals—and you continued that, in quotes—guns should be thought of as pathogens and gun ownership, perhaps, as a disease.

Is that a misquote?

Mr. HENIGAN. Congressman, I think if you will look at that more carefully, there are not quote marks around that. What the author of the article was doing is he was giving his interpretation of what he thought was the public health approach to gun violence. I don't think that is a fair characterization of the public health approach to gun violence at all, but I did not say that. He does not actually quote me as saying that. He is characterizing a particular point of view with which I do not endorse.

Mr. CANNON. Reclaiming my time, does the gentleman have further questions?

Mr. FEENEY. No. Do you believe that gun manufacturers should be held strictly liable for the use of their products?

Mr. HENIGAN. Not simply for use of their product. They should be held strictly liable if their products are defective in design or manufacture. They should be held liable in negligence if they act irresponsibly.

And in that connection, Mr. Chairman, there was a point made earlier, there was some questioning about the case brought by the D.C. area sniper victims. I am also counsel in that case and there was an assertion made that there was no—there could be no showing of, quote, proximate cause in that case. There could be no showing of a link between Bulls Eye Shooter supply and the sniper shooting. But in point in fact, Mr. Chairman, the link is quite strong because that very rifle that was confiscated from the sniper suspects was in the inventory of Bulls Eye Shooter Supply barely 2 months before it started to be used in the sniper shootings.

One of the snipers was in that gun shop at one point. We know that. And, in fact, that gun dealer cannot account for the disappearance of that gun, did not report it missing or stolen until after it was confiscated from the snipers.

So it is a strong case of negligence. There has been no criminal action brought against that dealer and it is a strong causal link between that dealer's conduct and the shooting that victimized those sniper victims.

Mr. CANNON. Thank you, Mr. Henigan. I might point out this is not a jury for the purposes of trying that case. We appreciate your clarification on the article and the quote, and that information.

Now, I just have a couple of things I would like to do. One, I would like to read a quote from the City of Boston which has already dismissed its lawsuit against the firearms industry stating that during the litigation, the city has learned that members of the firearm industry have a long-standing commitment to reducing firearm accidents and reducing criminal misuse of firearms and

stating the city and the industry have now concluded that their common goals can best be achieved through mutual cooperation and communication, rather than litigation, which has been expensive to both industry and taxpayers, time consuming, and distracting at a time of national crisis.

Mr. Chen, you talked a little bit very early in your first presentation about what the effect of these lawsuits is. It seems to me that among other things, these lawsuits and the costs of lawsuits and the cost of defending the lawsuits is going to have a chilling effect on the industry's ability to invest in new technologies to make firearms safer. Is that not true?

Mr. CHEN. Well, that is very true. In fact, it is ironic that Colt was one of the companies that is looking at smart gun technology, and we had spent millions of dollars in trying to develop a product that might be usable by law enforcement. But we were stymied by all of this gun litigation and as a result, all of our money is being diverted to defend ourselves in these lawsuits. And we have had to slow down in our smart gun technology.

Mr. CANNON. Thank you. Let me point out, I think that the whole panel here agrees that we need to do things to make guns safer. And we recognize that is a complicated process and it is going to take some significant technological improvements before we get to a point where an officer loses his gun and is injured with it, before that safety element can take place.

We appreciate the industry's work on that and hope you will continue and hope you have the resources to do that.

Mr. Olson, you talked about the antigun forces who decided that the democratic process doesn't work, and so they are taking these issues to the judiciary. What some have recently called the imperial judiciary. We are trying to change the law on product liability. Are there other things that Congress can do to help reign in the imperial judiciary or those two, or two judges around the country who can transform the law by taking the interpretation thereof into their own hands?

Mr. OLSON. I think the controversy we have been talking about this morning is deeply symbolic, including to a lot of people do not feel a direct stake in the gun debate, who do not believe in an individual right or the second amendment. I notice that the National Association of Manufacturers, as part of its commitment to a common sense legal system has endorsed preemption, at least at the State level. This case is the most flagrant as far as an end run around Congress' own rulings. This is the case that has produced the wildest statements by lawyers involved on the plaintiff's side such as John Cole: What has happened is the legislatures have failed. Congress is not doing its job. Lawyers are taking up the slack. So says Cole.

Wendell Gautier, who organized the municipal suits, Gautier's notion is that the plaintiff's bar is a de facto fourth branch of Government. That is the American Lawyer describing it.

There is a flagrancy about what they are trying to do in this case, which has implications for all the other ways in which people might try to avoid the authority of this body, Congress.

Mr. CANNON. It is flagrant and the amazing thing is how obvious these people are in how they are taking their case.

Mr. Keane, is there anything you would like to add before we close this hearing?

Mr. KEANE. To Mr. Delahunt's point as to the size of verdicts, the problem here is twofold. One, a single multi-hundred million dollar verdict against the industry will destroy it and bankrupt it, and that is exactly what Mr. Henigan is pursuing in these cases. Mr. Henigan, by the way, represented the City of Boston, whose statement you just read.

Secondly, as Mr. Olson pointed out, is that these cases that seek injunctive relief, like the current NAACP trial before Judge Weinstein, seek to circumvent the legislative branch by having one judge issue injunctive orders that would apply throughout the United States. And in fact, this legislation protects the right of individual States to decide how—what the law should be with respect to how firearms are sold in their States, not one unelected judge sitting in a courtroom in Brooklyn.

Mr. HENIGAN. Mr. Chairman?

Mr. CANNON. Actually, I was going to say something very nice about you, Mr. Henigan.

Mr. HENIGAN. Do not let me interrupt you.

Mr. CANNON. We appreciate the rational process involved here and your work with the city of Boston. I want to thank the panel for its patience in this regard, and for the Members of the Committee who have spent a great deal of time here today on this issue. Let me just remind the panel Members, the Members of the Committee, if they have any questions, we are happy to get those to the panel. We will leave the record open for 5 days.

Mr. WATT. Could I ask the Chairman a question?

Mr. CANNON. Certainly.

Mr. WATT. Just about the bill. I am looking at the top of page 8, and this seems to block suits for damages. I am wondering whether the bill even deals with the injunctive situation that Mr. Keane keeps referring to with the NAACP. As I understand, the NAACP is not even seeking damages; they are seeking an injunction. And I am wondering whether you intend the bill to relate to that, because it does not seem to. And maybe you want to look at that between now and tomorrow. Maybe you will broaden the bill. I don't know.

Mr. CANNON. I suspect not, and I think the gentleman has probably made a correction on the record that is worthwhile. Anything else?

Mr. WATT. That is all.

Mr. CANNON. Pardon me. I actually have to go. And so we will draw the hearing to a close. And I wanted to thank everyone for their help and would ask the panel members to respond to any questions fairly quickly so that we can get them in the record. And this hearing is adjourned.

Mr. CONYERS. Mr. Chairman before you adjourn, is there some reason that we can put on the record for why the hearing is today and the markup is tomorrow?

Mr. CANNON. The hearing is actually adjourned, but I think we can keep the record open for a moment just to say that I am not sure why we are moving it so quickly. We are happy to have the hearing and do our Committee work. And the full Committee will

take it up tomorrow, and that is probably a question for the full Committee. If nothing further, the hearing is actually adjourned at this point.]

[Whereupon, at 11:50 a.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

CARLTON S. CHEN
VICE PRESIDENT, GENERAL COUNSEL
AND CORPORATE SECRETARY

(860) 244-1315 office
(860) 244-1475 facsimile
cchen@cscft.com e-mail

May 7, 2003

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
B-353 Rayburn House Office Building
Washington, DC 20515

Attention: Ms. Christine Baldwin

Re: H.R. 1036, The "Protection of Lawful Commerce in Arms Act"
Wednesday, April 2, 2003, House of Representatives,
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary, Washington, D.C.

Dear Ms. Baldwin:

This letter and enclosures are being submitted to you at the request of The Honorable Chris Cannon, Chairman of the Subcommittee on Commercial and Administrative Law, by way of his April 25, 2003 letter addressed to me. For your reference, I am enclosing a copy of Chairman Cannon's letter.

In response, I am returning a copy of an official transcript of the April 2, 2003 hearing referenced above, together with an errata sheet concerning my testimony. Also enclosed are my answers to the Minority members' questions, for inclusion in the record.

If you have any questions, please let me know.

Sincerely,



enclosures

April 25, 2003

Carlton S. Chen, Esq.
Vice President, General Counsel & Secretary
Colt's Manufacturing Company, Inc.
P.O. Box 1868
Hartford, CT 06144-1868

Dear Mr. Chen:

As a follow-up to our recent hearing on H.R. 1036, the "Protection of Lawful Commerce in Arms Act," we have enclosed for your review a copy of the official transcript of this hearing.

The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Additionally, attached are questions posed by Minority members. We would appreciate your response submitted with the corrected version of the transcript.

Please return your answers and any corrections on the transcripts to the Subcommittee on Commercial and Administrative Law, B-353 Rayburn House Office Building, Washington, D.C. 20515 to the attention of Christine Baldwin by May 9, 2003. If you have any questions, you may contact Paul Taylor of my staff at (202) 226-7680 for assistance.

Sincerely,

CHRIS CANNON
Chairman, Subcommittee on
Commercial and Administrative Law

Enclosure
CC: cmb

**ANSWERS OF CARLTON S. CHEN
GENERAL COUNSEL, COLT MANUFACTURING COMPANY
TO QUESTIONS POSED BY MINORITY MEMBERS OF THE
HOUSE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW**

1. *You testified that the Colt Manufacturing Co. ("Colt") has been defending itself against a multitude of lawsuits for the criminal and wrongful misuse of firearms in the United States since 1998. Please identify each lawsuit by official caption or citation, including any appeals, and disposition. For those suits that were successful, please include both the amount awarded and any amounts actually paid. Finally, please indicate for each lawsuit whether the facts were based upon criminal misuse of a weapon or upon accidental discharge.*

ANSWER TO QUESTION #1:

See Attachment 1, annexed hereto.

2. *Please describe the circumstances leading to Colt's petition for bankruptcy prior to the commencement of the lawsuits referenced in your testimony. Include in your response the date of the petition, the nature of the reorganization plan, and any documentary support concerning Colt's bankruptcy. In addition, please indicate whether, and under what circumstances if so, Colt has filed for bankruptcy previously.*

ANSWER TO QUESTION #2:

On March 18, 1992, CF Holding Corp. and Colt's Manufacturing Company, Inc. each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The case was filed in U.S. Bankruptcy Court, District of Connecticut, and is referenced as In re: CF Holding Corp. and Colt's Manufacturing Company, Inc., Debtors, Case Nos. 92 B 21038 and 92 B 21039 (Jointly Administered). On September 16, 1994, Chief Bankruptcy Judge Robert L. Krechevsky issued an Order Confirming the Fifth Amended and Restated Joint Plan of Reorganization. Attachment 2, annexed hereto, is a copy of the Order and the Fifth Amended and Restated Joint Plan of Reorganization. To the best of my knowledge, Colt had not previously filed for bankruptcy.

The circumstances leading to Colt's bankruptcy began during the Cold War of the 1980's, with intense competition for U. S. Government military contracts. A number of

competitors for these contracts were subsidized by foreign governments and, without incurring long-term costs in research and development as did Colt, they succeeded in winning contracts by bidding extremely low prices. The result was that Colt, an American company, lost multi-year U. S. government contracts, resulting in serious cash-flow and other economic issues.

In 1990, the Debtors acquired the assets of the Firearms Division of Coltec Industries, Inc. and tried to rebuild Colt. Unfortunately, new management could not stop the continuing operating losses stemming from the loss of the U.S. Government contracts. Therefore, in 1992, Debtors sought protection under the bankruptcy laws to reorganize and halt a deteriorating financial situation.

On September 28, 1994, Colt emerged from bankruptcy, only to be beset by the Hamilton v. Accu-Tek case filed on December 14, 1994. Hamilton was rapidly followed by the onslaught of municipal firearms lawsuits, commencing with Morial and City of New Orleans v. Smith & Wesson filed on October 30, 1998. These lawsuits are listed in the answer to Question #1 and are currently besieging Colt and other firearms manufacturers.

3. *Please provide a detailed account of the costs of each lawsuit described in question #1. How much of this cost is paid directly by the company? How much is paid by insurance.*

ANSWER TO QUESTION #3:

Information regarding attorney's fees and expenses incurred by Colt in defense of the lawsuits listed in the answer to Question #1 is privileged. However, it is a matter of public knowledge that attorney's fees and other litigation costs generally are very high, and a company of Colt's size and revenue is severely pressed to afford those. These costs have been significantly magnified by the fact that Colt's counsel has been defending many lawsuits around the nation. Additionally, the indirect, non-monetary costs borne by Colt, including the amount of time and effort Colt employees must spend assisting with Colt's defense of the lawsuits, are enormous.

4. *In the last ten years, how many weapons or ammunition products have been recalled by Colt? Please provide copies of all recalls during that period. How many people nationwide would you estimate have been injured by products recalled by Colt during that time period? How many people nationwide would you estimate have been injured by defective products manufactured by Colt that were not subject to a recall at the time of the injury?*

ANSWER TO QUESTION #4:

Colt has an enviable record of product quality and commitment to excellence. Over the last ten years, only one Colt product was recalled, and that was in 1994. That recall involved the Colt All-American Double Action 9mm Pistols. Another product distributed by Colt but made by its affiliate company, Colt Rifles Inc., also was recalled. That recall was in 2000, and involved some Colt Light Rifles.

Both recall campaigns involved a well-publicized advertising campaign, a repair or replacement program, and the cooperation of Colt's distributors, which resulted in a highly successful effort. Attachment 3 consists of copies of the two recall announcements. So far as known, during this period, no one was injured by the products that Colt recalled.

From time to time, I have become aware of people who have been injured due to the improper use of Colt products, as with the improper use of many other products. However, I am not aware of any situation during the almost seven years that I have been with Colt where a person was injured by a Colt product proven to be defective.

5. *Does Colt maintain a statistical database of reported injuries caused or allegedly caused as a result of a defect in its products? If so, please provide. If not, please explain why not.*

ANSWER TO QUESTION #5:

Colt, like any responsible company, provides customer service, product service, and product engineering departments to support its products. Appropriate records are

maintained by these departments. Colt also maintains repair order records for each firearm that is shipped to our product service department. These records are maintained to help Colt continuously improve its products. To assure that a customer's Colt firearm is always reasonably safe to use, Colt provides a Free Lifetime Service Agreement with every Colt firearm. For further details concerning this free service, go to www.colt.com.

6. *How many lawsuits that would survive passage of H.R. 1036 has Colt defended since 1998? Please identify each lawsuit by official caption or citation, including any appeals, and disposition. For those suits that were successful, please include both the amount awarded and any amounts actually paid. Include in your answer any non-confidential settlements paid without court action. Finally, please indicate for each lawsuit under which exemption in H.R. 1036 the case falls.*

ANSWER TO QUESTION #6:

Due to the high quality and reliability of Colt's products, Colt has, since 1998, defended only two product liability lawsuits that would survive passage of HR. 1036/S. 659, to the best of my recollection. Both settled for a nominal amount. The first lawsuit would have been exempt under exception (ii), and the second one would have been exempt under exception (v), to the definition of "Qualified Civil Liability Action" in section 4, paragraph (5), subparagraph (A) of HR. 1036.

7. *Is an automobile manufacturer liable if a defect in a car causes the brakes to fail when the car reaches speeds in excess of 70 miles per hour? If one is injured by a car traveling at 72 miles per hour in a 70 miles per hour speed zone because the brakes fail, is the automobile manufacturer immune from suit? Does H.R. 1036 provide specialized immunity for the gun industry in analogous situations?*

ANSWER TO QUESTION #7:

The questions concerning the liability of the automobile manufacturer require complex factual and legal analysis, and their resolution depends on several unknown facts and issues, including, among others, the cause(s) of the defect, the governing rules of law, whether the driver/owner of the vehicle was aware of the defect or malfunction but failed to take prompt corrective action, whether a recall had been attempted, principles of

comparative responsibility, any legislation unique to the jurisdiction in which a lawsuit might be brought, and the technological "state of the art" at the time the vehicle was manufactured.

In any event, the situation posed by the automobile questions is not comparable to the provisions of HR. 1036/S. 659. These bills are much needed and considered legislation. Contrary to claims of the Brady Center and others, and contrary to the implications of the automobile examples above, the proposed Congressional legislation does not improperly insulate firearms manufacturers from potential lawsuits.

Congress is NOT shutting down or preempting the rights of parties injured by the abuse of firearms to pursue legal redress. Instead, Congress is acting to stop wasteful, expensive lawsuits brought under widely disproved legal theories that improperly seek to assign liability not to abusers of firearms, but rather to those who merely make or legally sell them.

Indeed, HR. 1036/S. 659 specifically preserves the rights of plaintiffs to pursue traditional legal remedies against wrongdoers, by providing plaintiffs with five broad exceptions on which to bring a lawsuit seeking redress for firearms abuse. They are:

- (i) an action brought against a transferor convicted under the Gun Control Act or its State equivalent;
- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) an action in which a manufacturer or seller of a firearm or ammunition who knowingly and willfully violates a State or Federal statute related to sales or marketing of the product and the violation is a proximate cause of the harm for which relief is being sought;
- (iv) an action for breach of contract or warranty in connection with the purchase of the product; and

- (v) an action for physical injuries or property damage resulting from a defect in design or manufacture of the product, when used as intended.

The Brady Center gives the following examples of cases that it contends would be barred by HR.1036/S.659. The Brady Center is, however, plainly wrong about how the legislation would impact these cases.

Conrad Johnson, et. al v. Bull's Eye Shooter Supply, et. al, (Tacoma, Washington)

- In September and October 2002, two snipers with a Bushmaster rifle terrorized the nation with a string of random shootings. The victims' families brought suit against the manufacturer (Bushmaster) and retailer (Bull's Eye Shooting Supply) of the gun.
- Under HR. 1036/S. 659, plaintiffs could pursue their claims against the snipers. They also could pursue claims against Bull's Eye and Bushmaster under exception (iii), if either party violated the Gun Control Act or its state equivalent, and the violation is determined to be a proximate cause of the injuries of the victims.

Anderson v. Bryco Arms Corp. (Chicago, Illinois)

- On the weekend of July 4, 1999, Benjamin Smith randomly targeted African-Americans, Asian-Americans and Jews, leaving two persons dead and nine wounded. Smith attempted to purchase guns from a licensed gun dealer, but was turned down. Smith eventually allegedly purchased guns from a trafficker, Donald Fiessinger, who was apparently supplied by Old Prairie Trading Post in Pekin, Illinois. A number of victims sued the dealer, distributor and manufacturer in public nuisance and negligence.
- Plaintiffs would not be denied their day in court due to HR. 1036/S. 659. Indeed, they would be able to pursue claims against Fiessinger, the trafficker, and Smith, the shooter. Furthermore, if the dealer, distributor, or manufacturer violated the

Gun Control Act or its state equivalent, and the violation is determined to be a proximate cause of the injuries of the victims, plaintiffs could sue them under exception (iii).

Guzman v. Kahr Arms (Worcester, Massachusetts)

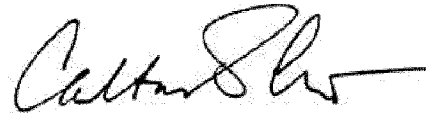
- Twenty six year old Danny Guzman was killed with a 9-mm gun stolen from the Kahr Arms factory. The gun allegedly was one of several stolen by Kahr Arms employees, who had criminal records, before serial numbers had been stamped on them and then were resold to criminals in exchange for money and drugs. Plaintiff argues that had Kahr Arms performed drug tests or background checks on their prospective employees or secured their facility to prevent thefts, Guzman would not have been killed.
- Plaintiffs would not be denied their day in court due to HR. 1036/S. 659. They would be able to directly pursue their claims against the criminal perpetrators. If the manufacturer violated the Gun Control Act or its state equivalent, and the violation is determined to be a proximate cause of Mr. Guzman's death, plaintiffs also would be able to sue it under exception (iii).

Dix v. Beretta (Oakland, California)

- A fifteen year old boy, Kenzo Dix, was unintentionally shot and killed by a fourteen year old friend. Plaintiffs claim that, had the gun been equipped with a loaded chamber indicator, the 14 year old boy would have realized that the gun had a round in the chamber and not fired it or, in the alternative, had the gun been equipped with an integral lock, the gun would not have fired. They argue that in either case the victim Kenzo would not have been killed. Kenzo's parents' case against the gun maker is set for retrial, after jury misconduct was found in the original verdict.

Plaintiffs would not be denied their day in court due to HR. 1036/S. 659. They would be able to directly pursue their claims against the owner of the gun, in this case, the 14-year old shooter's father. If Kenzo's death resulted from a defect in the design of the pistol and the product was used as intended, plaintiffs would be able to sue the manufacturer under exception (v).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carlton S. Chen", with a horizontal line extending to the right.

Carlton S. Chen

Dated: May 6, 2003

Attachments:

- Attachment 1: List of Lawsuits
- Attachment 2: Order and Fifth Amended and Restated Joint Plan of Reorganization
- Attachment 3A: Colt All-American Double Action 9mm Pistol Recall
- Attachment 3B: Colt Light Rifle Recall

ATTACHMENT 1

List of Lawsuits

1. *Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp., et al.*, 123 F. Supp. 2d 245 (D.N.J. 2000) (plaintiffs' claims dismissed); dismissal affirmed by U.S. Circuit Court of Appeals at 273 F. 3d 536 (3d Cir. 2001).
2. *City of Philadelphia, et al. v. Beretta U.S.A. Corp., et al.*, 126 F. Supp. 2d 882 (E.D. Pa. 2000) (plaintiffs' claims dismissed); dismissal affirmed by U.S. Circuit Court of Appeals at 277 F.3d 415 (3d Cir. 2002).
3. *Mayor Joseph P. Ganim, et al. v. Smith & Wesson Corp., et al.*, Civil Action No. CV-990361279, Superior Court, Judicial District of Fairfield at Bridgeport (plaintiffs' claims dismissed); dismissal affirmed by Connecticut Supreme Court on October 1, 2001 at 780 A.2d 98 (Conn. 2001).
4. *The City of Atlanta v. Smith & Wesson Corp., et al.*, Civil Action No. 99VS0149217J, State Court of Fulton County, State of Georgia; Georgia intermediate appellate court dismissed plaintiffs' claims on February 13, 2002 at 560 S.E.2d 525 (Ga. App. 2002). The City did not appeal.
5. *Alex Penelas, et al. v. Arms Technology, Inc., et al.*, Case No. 99-01941, Circuit Court, Eleventh Judicial Circuit, Miami-Dade County, Florida (plaintiffs' claims dismissed); dismissal affirmed at 778 So.2d 1042 (Fla. App.). The Florida Supreme Court denied further review on October 24, 2001 at 799 So.2d 218 (Fla. 2001).
6. *Mayor Marc H. Morial, et al. v. Smith & Wesson Corp., et al.*, Civil Action No. 98-18578, Civil District Court, Parish of Orleans; on April 3, 2001, the Louisiana Supreme Court at 785 So.2d 1 (La. 2001) held that the City's suit was barred. The U.S. Supreme Court, on October 9, 2001, denied the City's petition for a writ of certiorari. U.S. _____, 122 S.Ct. 346 (2001).
7. *People of the State of New York, et al. v. Sturm, Ruger & Company, Inc., et al.*, Case No. 402586/2000, New York State Supreme Court, County of New York (plaintiffs' claims dismissed); plaintiffs appealed to the Supreme Court of the State of New York, Appellate Division: First Department, Index No. 402586-2000. Appellate oral argument was May 10, 2002.
8. *The City of New York, et al. v. Arms Technology, Inc., et al.*, Case No. CV 00 3641, United States District Court, Eastern District of New York (case stayed).
9. *The City of Boston, et al. v. Smith & Wesson Corp., et al.*, Civil Action No. 99-2590C, Commonwealth of Massachusetts, Suffolk County Superior Court; (plaintiffs abandoned their claims after taking many depositions and reviewing hundreds of thousands of pages of documents produced by defendants, as they "learned that members of the firearm industry have a longstanding commitment to reducing firearm accidents and to reducing criminal misuse of firearms.") Attachment to "Plaintiffs", the City of Boston and the Boston Public Health Commission, Unopposed Motion to Dismiss Pursuant to Mass. R. Civ. P. 41(a)" filed in *City of Boston v. Smith & Wesson Corp.*, No. 99-02590-C (Suffolk County Sup. Ct. March 27, 2002).
10. *Mayor James H. Sills, Jr., et al. v. Smith & Wesson Corp., et al.*, CA No. 99C-09-283FSS, Superior Court, State of Delaware, New Castle County (plaintiffs' claims dismissed and city chose not to appeal).
11. *City of Gary, Indiana, by its Mayor, Scott L. King, v. Smith & Wesson Corp., et al.*, Cause No. 45D029908CT 0355, Lake Superior Court, Civil Division, East Chicago, Indiana (plaintiffs' claims dismissed); plaintiffs appealed to Indiana Court of Appeals, Appeal No. 45A03-0105-CY-155 (affirmed dismissal of claims). Plaintiffs are seeking to appeal to Indiana Supreme Court.
12. *City of Chicago, et al. v. Beretta U.S.A. Corp., et al.*, No. 98CH015596, Circuit Court of Cook County, Illinois, County Department, Chancery Division (plaintiffs' claims dismissed); appealed by City to intermediate appellate court, *City of Chicago, et al. v. Beretta U.S.A. Corp., et al.*, No. 00-3541, Appellate Court of Illinois, First Judicial District (dismissal of plaintiffs' claims overturned); appealed by defendants to Illinois Supreme Court, *City of Chicago, et al. v. Beretta U.S.A. Corp., et al.*, No. 95253, in the Supreme Court of the State of Illinois (appeal pending).
13. *Dennis W. Archer, Mayor of the City of Detroit, et al. v. Arms Technology, Inc., et al.*, Case No. 99-912658, State of Michigan, Circuit Court, County of Wayne (partial dismissal of plaintiffs' claims); defendants appealed to intermediate appellate court, *Edward H. McNamara, et al. and Dennis W. Archer v. Arms Tech-*

- nology, Inc., et al., COA Case No. 227669, State of Michigan, Court of Appeals (appeal pending).
14. *Edward H. McNamara, Wayne County Executive, et al. v. Arms Technology, Inc., et al.*, Case No. 99-912662, State of Michigan, Circuit Court, County of Wayne (partial dismissal of plaintiffs' claims); defendants appealed to intermediate appellate court, *Edward H. McNamara, et al. and Dennis W. Archer v. Arms Technology, Inc., et al.*, COA Case No. 227669, State of Michigan, Court of Appeals (appeal pending).
 15. *District of Columbia, et al. v. Beretta U.S.A. Corp., et al.*, Case No. 00CA000428, Superior Court, District of Columbia, Civil Division (plaintiffs' claims dismissed on December 16, 2002, 2002 WL 31811717; plaintiffs have given notice of appeal).
 16. *James Foster-el, et al. v. Beretta U.S.A. Corp., et al.*, Case No. 0004700-00, Superior Court, District of Columbia, Civil Division (plaintiffs' claims dismissed on December 16, 2002, 2002 WL 31811717; plaintiffs have given notice of appeal).
 17. *Patrick H. Mahoney, et al. v. Beretta U.S.A. Corp., et al.*, Case No. 00-005064, Superior Court, District of Columbia, Civil Division (plaintiffs' claims dismissed on December 16, 2002, 2002 WL 31811717; plaintiffs have given notice of appeal).
 18. *Bryant Lawson v. Beretta U.S.A. Corp., et al.*, Case No. 00-0000428, Superior Court, District of Columbia, Civil Division (plaintiff's claims dismissed on December 16, 2002, 2002 WL 31811717; plaintiff has given notice of appeal).
 19. *Laura Wallace et al., v. Beretta U.S.A. Corp., et al.*, Case No. 01-001111, Superior Court, District of Columbia, Civil Division (plaintiffs' claims dismissed on December 16, 2002; 2002 WL 31811717; plaintiffs have given notice of appeal).
 20. *City of Cincinnati v. Beretta U.S.A. Corp., et al.*, Case No. A9902369, Court of Common Pleas, Hamilton County, Ohio, Civil Division (plaintiffs' claims dismissed on October 7, 1999); plaintiff appealed to intermediate appellate court, *City of Cincinnati v. Beretta U.S.A. Corp., et al.*, Appeal No. C-99-729, First District Court of Appeals, Hamilton County, Ohio (affirmed dismissal of plaintiff's claims); plaintiffs appealed to Ohio Supreme Court, *City of Cincinnati v. Beretta U.S.A. Corp., et al.*, Case No. 00-1705, Supreme Court of Ohio (9/22/00) (reversed dismissal and remanded case to trial court). Plaintiff City Council recently voted to dismiss lawsuit and its lawyers will file a motion to dismiss soon.
 21. *Mayor Michael R. White and The City of Cleveland v. Hi-Point Firearms, et al., No. 1:99V1134, U.S. District Court, N.D. Ohio (defendants' motion to dismiss denied); no appeal taken.*
 22. *Mayor Sharpe James and The City of Newark, New Jersey v. Arcadia Machine & Tool, et al.*, Civil Action No. L-6059-99, Superior Court of New Jersey, Law Division: Essex County (denied, in part, defendants' motion to dismiss); defendants appealed to Appellate Division, Case No. A-3098-01T3; (on March 11, 2003, appellate court affirmed trial court ruling).
 23. *City of Jersey City v. Smith & Wesson Corp., et al.*, Case No. L2567-02, Superior Court of New Jersey, Hudson County (case filed April 17, 2002).
 24. *City of Camden v. Beretta U.S.A. Corp., et al.*, Civil Action No. L-451099, Superior Court of New Jersey, Law Division: Camden County (case stayed until recently).
 25. *City of St. Louis, Missouri v. Henry J. Cernicek, et al.*, Cause No. 992-01209, Circuit Court, City of St. Louis, Missouri, 22nd Judicial Circuit (defendants' motion to dismiss argued on February 28, 2003).
 26. *National Association for the Advancement of Colored People v. A.A. Arms, Inc., et al.*, CA No. CV-99-3999, United States District Court, Eastern District of New York (currently in trial).
 27. *City of Los Angeles, City of Compton, City of Inglewood, and City of West Hollywood v. Arcadia Machine & Tool, et al.*, Case No. BC 210894, Superior Court, State of California; subsequently docketed as *Firearms Cases*, Judicial Council Coordination Proceeding, No. 4095, Superior Court, State of California, County of San Diego (defendants' motion for summary judgment granted March 7, 2003).
 28. *County of Los Angeles v. Arcadia Machine & Tool, et al.*, Case No. BC 214794, Superior Court, State of California, subsequently docketed as *Firearms Cases*, Judicial Council Coordination Proceeding, No. 4095, Superior Court, State of

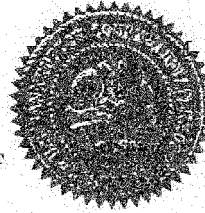
- California, County of San Diego (defendants' motion for summary judgment granted March 7, 2003).
29. *City of San Francisco, City of Berkeley, City of Sacramento, City of San Mateo, and County of Alameda v. Arcadia Machine & Tool, et al.*, Case No. 303753, Superior Court, State of California, subsequently docketed as Firearms Cases, Judicial Council Coordination Proceeding, No. 4095, Superior Court, State of California, County of San Diego (defendants' motion for summary judgment granted March 7, 2003).
 30. *William L. Campbell v. Village of Dobbs Ferry, et al.*, Civil Action No. 97 CV 7351, United States District Court (S.D.N.Y.) (Colt's motion to dismiss granted).
 31. *Stephen Young v. Bryco Arms, et al.*; No. 98L6684, Circuit Court, Cook County, Illinois (Colt dismissed on December 21, 2001, but some manufacturers not dismissed); consolidated for appeal with *Anthony Ceriale v. Smith & Wesson Corp., et al.*; and *Obriela Smith v. Navegar, et al.*, and appealed to 1st Appellate Division. Presently consolidated on appeal to Illinois Supreme Court as Nos. 93678, 93685 and 93728.
 32. *Anthony Ceriale v. Smith & Wesson Corp., et al.*, No. 99L5628, Circuit Court, Cook County, Illinois (Colt dismissed on December 21, 2001, but some manufacturers not dismissed); consolidated for appeal with *Stephen Young v. Bryco Arms, et al.* and *Obriela Smith v. Navegar, et al.*, and appealed to 1st Appellate Division. Presently consolidated on appeal to Illinois Supreme Court as Nos. 93678, 93685 and 93728.
 33. *Obriela Smith v. Navegar, et al.*, No. 98L13465, Circuit Court, Cook County, Illinois (Colt dismissed on December 21, 2001, but some manufacturers not dismissed); consolidated for appeal with *Stephen Young v. Bryco Arms, et al.* and *Anthony Ceriale v. Smith & Wesson, et al.*, and appealed to 1st Appellate Division. Presently consolidated on appeal to Illinois Supreme Court as Nos. 93678, 93685 and 93728.
 34. *Thomas Johnson, Sr. v. Beemiller Inc., et al.*, Civil Action No. CV 03 0066, United States District Court (E.D.N.Y.) (lawsuit recently filed).
 35. *Iris Prosper v. Accu-Tek, et al.*, Civil Action No. CV 97 2730, United States District Court (E.D.N.Y.) (Colt's dismissed).
 36. *Gladys Gerena, et al. v. Accu-Tek et al.*, Civil Action No. CV 97 3935, United States District Court (E.D.N.Y.) (Colt's dismissed).
 37. *Janice Sweeting v. A.A.Arms, et al.*, Civil Action No. CV 99 1461, United States District Court (E.D.N.Y.) (Colt's dismissed).
 38. *Monalisa Harris v. Accu-Tek, et al.*, Civil Action No. CV 98 5026, United States District Court (E.D.N.Y.) (Colt's dismissed).

ATTACHMENT 2

Order and Fifth Amended and Restated Joint Plan of Reorganization

I certify that this is a true copy.
 Attest: *[Signature]*
 Assistant Clerk

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF CONNECTICUT



In re:	:	Case Nos. 92-21038
CF HOLDING CORP. and	:	92-21039
COLT'S MANUFACTURING COMPANY,	:	(Jointly Administered)
INC.,	:	(Chapter 11)
Debtors.	:	

ORDER CONFIRMING
 FIFTH AMENDED AND RESTATED
 JOINT PLAN OF REORGANIZATION

The Fifth Amended and Restated Joint Chapter 11 Plan of Reorganization, dated August 19, 1994 (the "Plan") proposed by CF Holding Corp., Colt's Manufacturing Company, Inc. ("Colt's") (collectively the "Debtors") and the Connecticut Development Authority ("CDA") (together with the Debtors, referred to herein as the "Proponents") having been filed with this Court on August 19, 1994 (all undefined capitalized terms used herein shall have the meaning ascribed to them in the Plan); and the Proponents' Disclosure Statement pursuant to § 1125 of the Bankruptcy Code, dated August 19, 1994 (the "Disclosure Statement") having been approved by this Court, and transmitted to the Debtors' creditors, the equity security holders, the United States Trustee, and all other parties entitled to notice in accordance with § 1125 of the Bankruptcy Code and Federal

#1255

Rule of Bankruptcy Procedure 3017; and September 16, 1994 at 10:00 a.m. having been fixed as the date and time of a hearing (the "Confirmation Hearing") pursuant to §§ 1128 and 1129 of the Bankruptcy Code to consider confirmation of the Plan; and due notice of the Confirmation Hearing having been given to all creditors of the Debtors and other parties in interest in accordance with the terms and provisions of the Bankruptcy Code; and a Confirmation Hearing having been held on September 16, 1994; and the Court having considered and overruled all objections to the confirmation of the Plan; and upon all of the evidence adduced and arguments of counsel made at the Confirmation Hearing; and after due deliberation; the Court hereby

FINDS THAT:

1. The Plan complies with the applicable provisions of the Bankruptcy Code, pursuant to Bankruptcy Code § 1129(a)(1).
2. The Proponents of the Plan have complied with the applicable provisions of Chapter 11 of the Bankruptcy Code, pursuant to Bankruptcy Code § 1129(a)(2).
3. The Plan has been proposed in good faith and not by any means forbidden by law, pursuant to Bankruptcy Code § 1129(a)(3).
4. All payments made or to be made by the Debtors for services or for costs and expenses in or in connection with this case, or in connection with the Plan and incident to this

case, have been approved by, or are subject to the approval of, the Court as reasonable, pursuant to Bankruptcy Code § 1129(a)(4).

5. In accordance with § 1129(a)(5)(A), the Proponents of the Plan have disclosed the identity and affiliation of the individuals proposed to serve as a director or officer of the reorganized debtor and the appointment to such office is consistent with the interests of creditors and equity security holders and with public policy.

6. In accordance with § 1129(a)(5)(B), the Proponents of the Plan have disclosed the identity of all insiders that will be employed or retained by the reorganized debtor and the nature of any compensation for such insiders.

7. The provisions of Bankruptcy § 1129(a)(6) are not applicable to the Plan.

8. With respect to each impaired class of claims, each holder of a claim of such class has accepted the Plan or will receive or retain under the Plan on account of such claim property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date, pursuant to Bankruptcy Code § 1129(a)(7).

9. Pursuant to Bankruptcy Code § 1129(a)(8), the Plan specifies the classes of claims and interests that are impaired under the Plan. Class 1 is not impaired under the Plan and,

accordingly, is conclusively presumed to have accepted the Plan. Classes 2, 3, 4A, 4B, 5, 6, 7, 8, 9, 13 and 14 are impaired and have accepted the Plan.

10. Pursuant to § 1129(a)(9)(A), the Plan provides that, with respect to a claim of a kind specified in section 507(a)(1), on the Effective Date of the Plan, the holders of such claims will receive on account of such claims cash equal to the allowed amount of such claims.

11. Pursuant to Bankruptcy Code § 1129(a)(9)(C), the holders of allowed priority tax claims and allowed non-tax priority claims shall receive, on account of such claims, deferred cash payments, over a period not exceeding six years after the date of assessment of such claims, of a value, as of the Effective Date, equal to the allowed amount of such claims.

12. Classes 2, 3, 4A, 4B, 5, 6, 7, 8, 9, 13 and 14, which are impaired under the Plan and do not contain any insiders of the Debtors, have accepted the Plan in accordance with Bankruptcy Code § 1129(a)(10).

13. The compromises of potential Claims that could be asserted on behalf of the Debtors which are provided for in the Plan and the Multi-Party Release are fair and equitable and in the best interests of the Debtors, creditors and equity security holders, considering the complexity, uncertainty, expense and delay of any litigation to prosecute such Claims and are essential to the reorganization of the Debtors.

14. The Multi-Party Release and the injunctions provided in the Plan are an integral part of the compromises and settlements incorporated in the Plan.

15. The Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors, pursuant to Bankruptcy Code § 1129(a)(11).

16. All fees payable under § 1930 of Title 28 of the United States Code have been paid or will be paid on or prior to the Effective Date of the Plan, pursuant to Bankruptcy Code § 1129(a)(12).

17. The Plan provides for the continuation after the Effective Date of the payment of all retired benefits, pursuant to Bankruptcy Code § 1125(a)(13).

18. Each of the statutory provisions of Bankruptcy Code § 1129(a) in respect of confirmation of the Plan have been satisfied.

NOW, THEREFORE, it is hereby ORDERED that:

a. The Fifth Amended and Restated Joint Chapter 11 Plan of Reorganization dated August 19, 1994, and the reorganization described therein, is hereby confirmed and approved in all respects.

b. The Definitive Agreement and the Debtors' consummation of the various agreements appended to the Definitive Agreement are approved in all respects and the

Debtors are authorized to take all actions necessary to effectuate its provisions.

c. The transfers of property by Debtors to Reorganized Colt (i) are or will be legal, valid and effective transfers of property; (ii) vest or will vest in Reorganized Colt good title to such property free and clear of all liens, charges, claims, encumbrances, or interests, except as expressly provided in the Plan; (iii) do not and will not constitute fraudulent transfers or conveyances under the Code or under the laws of the United States, any State, territory, possession or the District of Columbia; and (iv) do not and will not subject the Reorganized Colt, New Colt Holding Corp. or New Colt Acquisition Corporation to any liability by reason of such transfer under the laws of the United States, any State, territory or possession thereof or the District of Columbia based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability.

d. The Debtors and Reorganized Colt are hereby authorized, empowered and ordered to issue, execute, deliver, file, and record any documents or court papers or pleadings, and to take any and all actions, that are reasonably necessary to implement, effectuate and consummate the transactions contemplated by the Plan, whether or not specifically referred

to in the Plan (or related documents) and without further application to or order of this Court.

e. Unless otherwise specifically provided in the Plan as of the Effective Date, Colt's is discharged from any claim and any "debt" (as that term is defined in Section 101(12) of the Code), ("claims") and, Colt's liability in respect thereof is extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of Colt's entered into or obligation of Colt's incurred before the Confirmation Date, or from any conduct of Colt's prior to the Confirmation Date, or that otherwise arose before the Confirmation Date, including, without limitation, all interest, if any, on any such debts, whether such interest accrued before or after the date of commencement of the case, and from any liability of a kind specified in Sections 502(g), 502(h) and 502(i) of the Code, whether or not a proof of claim is filed or deemed filed under Section 501 of the Code, such claim is allowed under Section 502 of the Code, or the holder of such claim has accepted the Plan; provided, however, that nothing herein shall relieve Colt's of the obligation to make payments required to be made pursuant to the Plan or the Plan Documents.

f. CF Holding Corp. is hereby authorized to dissolve under corporate law and wind up its affairs pursuant to the Plan. CF Holding Corp. does not receive a discharge pursuant to Section 1141(d) of the Code.

g. Debtors liability for all such Claims and debts described above, is limited to the amounts that it is paying or causing to be paid pursuant to the Plan.

h. Upon the entry of this Order, and except as otherwise expressly provided in the Plan, (a) all persons who have held, hold or may hold Claims as defined pursuant to 11 U.S.C. § 101(5) of the Code against the Debtors are hereby enjoined on and after the Effective Date (A) from commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim against the Debtors, its shareholders, the Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation, or any other Person or the property of the Debtors, the Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation, or of any other Person, (B) from the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtors, Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation, or any other Person or the property of the Debtors, Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation, or any other Person with respect to any such Claim, (C) from

creating, perfecting or enforcing any encumbrance of any kind against the Debtors, their shareholders, Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation thereof, or any other Person or against the property of the Debtors, their shareholders, Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation, or any other Person with respect to any such Claim, or (D) from asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtors, or against the property of the Debtors, Reorganized Colt, New Colt Holding Corp. and New Colt Acquisition Corporation, with respect to any such Claim.

i. The execution, delivery and provisions of the Multi-Party Release are hereby approved in all respects. Upon the occurrence of the Effective Date of the Plan, the releases provided for in the Multi-Party Release shall take effect, and the Claims released therein (as defined therein) shall be barred, subject to the terms and provisions thereof.

j. Pursuant to § 1141(d) of the Bankruptcy Code and in accordance with and to the extent provided in Article X of the Plan, on the Effective Date, all Creditors, all holders of Interests, Reorganized Colt, New Colt Holding Corp. and its shareholders, and all other parties in interest in the Reorganization Cases shall be permanently enjoined from the commencement or continuation of, and all referenced Released Parties shall be permanently discharged from, any action or

proceeding at law or in equity (including without limitation any action or proceeding seeking indemnification or contribution) relating to (a) with respect to the Bank Released Parties and the CDA Released Parties (as such terms are defined in the Multi-Party Release), any and all claims (as such term is defined in the Multi-Party Release) arising from, and any and all transactions, relationships, negotiations, or dealings relating in any way, directly or indirectly, to any and all loans, credit accommodations, services, or uses of the foregoing under and including the Credit Agreement and the Postpetition Credit Agreement, any other agreements entered into, or notes, or other documents executed in connection therewith or as an adjunct or supplement thereto or required thereby, and any prior agreements under which the Bank (or any of its predecessors or successors) made loans or extended credit or any service or accommodation of any type or kind whatsoever to or on behalf of the Debtors; (b) with respect to the Bank Released Parties, the CDA Released Parties, Coltec Released Parties and the Name Partnership Released parties (as such terms are defined in the Multi-Party Release), any and all claims asserted in, or which relate in any way, directly or indirectly, to claims asserted in connection with (i) the Colt Acquisition, (ii) the Name Partnership Litigation, (iii) the Acquisition Litigation and (iv) the Name Partnership Note; (c) with respect to the Bank Released Parties, Coltec Released

Parties and the Name Partnership Released Parties, any and all claims that have been or could have been asserted in avoidance actions, or other proceedings relative to the Debtors, Debtors-in-Possession or the Estates, in any way connected, directly or indirectly, to any payment or transfer made or any lien, security interest or other encumbrance granted to, or for the benefit of, any of the Bank Released Parties, the Coltec Released Parties, or the Name Partnership Released Parties (as such terms are defined in the Multi-Party Release); (d) with respect to all Released Parties, any and all claims arising from or relating in anyway, directly or indirectly, to the formulation, negotiation, implementation, confirmation or consummation of the Plan (or any other plan of reorganization proposed in the Case) or Disclosure Statement, or any other contract, instrument, release, or other agreement or document created in connection with the Plan (or any other plan of reorganization proposed in the Case); and (e) any and all claims arising from or relating in any way, directly or indirectly, to the Merger pursuant to the Definitive Agreement as contemplated by the Plan.

Notwithstanding the foregoing, nothing in this injunction shall in any way enjoin any party from enforcing an obligation of another party with respect to the Plan or any Plan Document, as defined in the Multi-Party Release. Without limiting the foregoing, nothing herein shall enjoin (x) any Name Partnership

Released Party from seeking to enforce a claim against any other Name Partnership Released Party or (y) any party from seeking to enforce a claim pursuant to (i) that certain Purchase and Sales Agreement dated as of August 19, 1994 among the Name Partnership, the CDA and New Colt Holding Corp.; (ii) that certain Settlement Agreement dated as of August 16, 1994 among Coltec, New Colt, and the Debtors; and (iii) that certain Settlement Agreement dated as of August 16, 1994 among Coltec, Water + Way, the Debtors and New Colt.

k. Upon consummation of the Merger, all executory contracts (including, without limitation, product, patent, trademark, and know-how licenses) and unexpired leases assumed by Colt's pursuant to an order of this Court during the Case or under the Plan shall be assigned and transferred to, and remain in full force and effect for the benefit of, Reorganized Colt notwithstanding any provision in such contracts or leases (including those described in Section 365(b)(2) and (F) of the Code) that prohibits such assignment or transfer or that enables or requires termination of such contracts or leases based on the Merger.

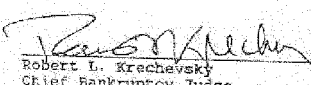
l. Effective on the Effective Date, and provided that distribution to Class 5 claimants pursuant to the Plan shall have occurred, the duties of the Official Committee of Unsecured Creditors shall terminate, except with respect to applications for professional fees of any professional,

objections to claims of Class 5 creditors; matters relating to any proposed modification of the Plan and matters relating to any appeal of any order in the Reorganization Cases, including, without limitation, the defense of an appeal and the prosecution of a cross-appeal with respect to the Bankruptcy Court's order dated February 17, 1994, with respect to the final fee application of Zolfo, Cooper & Co., which appeal and cross-appeal shall survive consummation of the Plan, insofar as it relates to the parties thereto, notwithstanding entry of this Order, the occurrence of the Effective Date and the execution and delivery of the Multi-Party Release.

m. This court shall retain jurisdiction in accordance with the terms of the Plan, the other provisions of this Order, and Section 1142 of the Code.

n. The Debtors will file a final decree in their respective cases on or before December 31, 1994 unless such time is extended by the court.

Dated at Hartford, Connecticut, this 16 day of September, 1994.


Robert L. Krachevsky
Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re : Chapter 11 Case Nos.
: 92 B 21038 and
CF HOLDING CORP. and : 92 B 21039
COLT'S MANUFACTURING : (Jointly Administered)
COMPANY, INC., :
Debtors. :
: AUGUST 19, 1994

FIFTH AMENDED AND RESTATED JOINT PLAN OF REORGANIZATION
FOR CF HOLDING CORP. AND
COLT'S MANUFACTURING COMPANY, INC.
PROPOSED BY THE DEBTORS AND
THE CONNECTICUT DEVELOPMENT AUTHORITY

Colt's Manufacturing Company, Inc., and CF Holding Corp., both Delaware corporations, as Debtors and Debtors-in-Possession, and the Connecticut Development Authority, as a creditor and party in interest (collectively, the "Proponents"), hereby propose the following Fifth Amended and Restated Plan of Reorganization for the resolution of the outstanding claims and equity interests. The foregoing parties are the proponents of the Plan within the meaning Section 1129 of the Bankruptcy Code.

I.

DEFINITIONS

A. Defined Terms

As used herein, the following terms shall have the respective meanings specified below, unless the context otherwise requires (such meanings to be equally applicable to both the singular and plural, and masculine and feminine, forms of the terms defined).

1. "Acquisition Litigation" shall mean the adversary proceeding pending in the Bankruptcy Court, No. Adv. 93-2020, commenced by the Committee, on behalf of the Estate, against several defendants.

2. "Administrative Creditor" means any Creditor entitled to payment of an Administrative Claim.

I certify that this is a true copy.
Attest: *[Signature]*
Assistant Clerk
#1113

3. "Administrative Claim" means a Claim for payment of costs or expenses of administration specified in Sections 503(b) and 507(a)(1) of the Bankruptcy Code, including without limitation: (a) the actual, necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (b) compensation for legal and other services and reimbursement of expenses awarded pursuant to Section 330(a) or 331 of the Bankruptcy Code; and (c) all fees and charges assessed against the Estates pursuant to Section 1930 of Title 28 of the United States Code.

4. "Agreed Wage and Work Rule Changes" means the concessions agreed to by the UAW and Colt, on terms acceptable to New Colt Acquisition Corporation, that are contained in the Collective Bargaining Agreement, as modified, which will be effective as of the Effective Date.

5. "Allowed Claim" means a claim that (a) has been allowed by a Final Order or (b) either: (i) is scheduled by either of the Debtors pursuant to the Bankruptcy Code and Bankruptcy Rules in a liquidated amount and is not listed as contingent, unliquidated or disputed; or (ii) the proof of which has been deemed timely filed under applicable law or order of the Bankruptcy Court, with the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules and any applicable orders of the Court, or filed with the Bankruptcy Court with leave after notice and a hearing; and in each case either (A) no objection has been filed within the period fixed by the Bankruptcy Code, the Bankruptcy Rules and any Final Order of the Bankruptcy Court or (B) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order. An Allowed Claim (a) includes a Disputed Claim to the extent such Disputed Claim becomes allowed after the Effective Date when the context so requires; and (b) shall be net of any related offset.

6. "Archive Gun Collection" means that certain collection of firearms of historical relevance and general interest maintained at Colt's facility in Hartford, Connecticut and at Colt's facility in West Hartford, Connecticut as well as at any other location where all or part of such collection may be maintained from time to time.

7. "Assessment Date" means the date on which a Priority Tax Claim is assessed under applicable state or federal law.

8. "Ballot" means the form or forms distributed to holders of impaired claims or interests on which is to be indicated such holder's acceptance or rejection of the Plan.

9. "Bank" means Creditanstalt-Bankverein.
10. "Bank Claim Against Colt" means the Allowed Claim of the Bank arising under the Credit Agreement and the Postpetition Credit Agreement.
11. "Bank Claim Against Holding" means the Claim of the Bank arising under the Parent Pledge Agreement (as defined in the Credit Agreement) and the Amended Parent Pledge Agreement (as defined in the Postpetition Credit Agreement).
12. "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended, and as codified in Title 11, United States Code, as applicable to the Reorganization Cases.
13. "Bankruptcy Court" means the United States District Court for the District of Connecticut having jurisdiction over the Reorganization Cases and, to the extent of any reference made pursuant to Section 197 of Title 28 of the United States Code, the unit of such District Court constituted pursuant to Section 151, Title 28 of the United States Code.
14. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as amended, as applicable to the Reorganization Case, including the Local Rules of the Bankruptcy Court.
15. "Business Day" means any day except a Saturday, Sunday or "legal holiday" as such term is defined in Bankruptcy Rule 9006(a).
16. "Capital Leases" means (a) the capital lease, dated February 21, 1991, for manufacturing equipment entered into between Colt and General Electric Capital Corporation, (b) the capital leases, dated November 15, 1990, December 15, 1990 and October 29, 1991, for manufacturing equipment entered into between Colt and SNET Credit Inc., and (c) the capital lease, dated January 8, 1992, for certain computer equipment and associated software entered into between Colt and B. & R. Financial Group.
17. "Cash" means the lawful currency of the United States of America.
18. "CDA" means the Connecticut Development Authority.
19. "CFIPC" means CF Intellectual Property Corp., a Delaware corporation, which is the general partner of and which holds a 1% interest in the Name Partnership.

20. "Claim" means any right to payment from the Debtors jointly, or each individually, whether or not such right is reduced to judgment, liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Debtors, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

21. "Class" means a group of Claims or Interests substantially similar to each other as classified under this Plan.

22. "CLLP" means Colt's Licensing Limited Partnership, a Delaware limited partnership.

23. "Collective Bargaining Agreement" means the Collective Bargaining Agreement, dated March 23, 1990, between Colt and the UAW, as modified.

24. "Colt" means Colt's Manufacturing Company, Inc., a Delaware corporation which is the wholly-owned subsidiary of Holding.

25. "Colt Acquisition" means the March 22, 1990 purchase by the Debtors of the Firearms Division of Colt Industries, Inc.

26. "Colt Administrative Claim" means an Administrative Claim asserted against Colt.

27. "Colt General Unsecured Claim" means any Claim against Colt which arose or which is deemed by the Bankruptcy Code to have arisen prior to the Petition Date, and which is not otherwise classified herein; provided that Colt General Unsecured Claim shall not include any Claim held by or through Water + Way, Coltec or the Bank.

28. "Colt Intercompany Claim" means any Claim of Colt against Holding.

29. "Colt Trade Name" means all of the following: (i) all trademarks (including service marks and trade names, whether registered or at common law), registrations and applications therefor, and the entire product lines and goodwill connected therewith and symbolized thereby associated with "Colt", (ii) all renewals thereof, (iii) all income, royalties, damages and payments now and hereafter due or payable or both with respect thereof, including, without limitation, damages and payments for past, present

or future infringements or misappropriations thereof, (iv) all rights to sue for past, present and future infringements or misappropriations thereof, and (v) all other rights corresponding thereto throughout the world.

30. "Coltec" means Coltec Industries, Inc., a Pennsylvania corporation, formerly known as Colt Industries, Inc., CII Holdings, Inc., a Delaware corporation, and CFPI Inc., a Delaware corporation, the prior owners of substantially all of the assets of Holding and Colt.

31. "Coltec Claims" means the Allowed Claims of Coltec against Colt and Holding relating to, among other things, rent obligations in connection with the West Hartford Lease, certain indemnity obligations of Colt relating to the Colt Acquisition and any claims arising with respect to the Hartford Lease by virtue of payments made by Coltec to Water + Way.

32. "Coltec Settlement Agreement" means that certain settlement agreement between Colt and Coltec, and agreed to by New Colt Acquisition Corporation and the CDA.

33. "Committee" means the Official Committee of General Unsecured Creditors of Colt's Manufacturing Company, Inc., appointed by order of the Bankruptcy Court in accordance with Section 1102(a) of the Bankruptcy Code, as may be reconstituted from time to time.

34. "Confirmation Date" means the date and time the Clerk of the Bankruptcy Court enters the Confirmation Order on its docket.

35. "Confirmation Hearing" means the hearing conducted before the Bankruptcy Court for the purpose of considering confirmation of the Plan.

36. "Confirmation Order" means an order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

37. "Credit Agreement" means the Credit Agreement, dated as of March 22, 1990, as amended, entered into between Colt and the Bank pursuant to which the Bank agreed to loan \$28,500,000 to Colt on a revolving credit basis and pursuant to which the Bank extended a term loan to Colt, which had an outstanding principal balance of \$9,100,000 on the Petition Date, and as to which the CDA is a participating lender in the revolving credit loan.

38. "Creditor" means any person holding a Claim against either of the Debtors that arose or is deemed to

have arisen on or before the Petition Date including, without limitation, a Claim against the respective Debtors' Estates of a kind specified in Subsections 502(g), 502(h) or 502(i) of the Bankruptcy Code.

39. "Debtors" means Holding and Colt.

40. "Debtors-in-Possession" means Holding and Colt, in their respective capacities as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

41. "Deferred Liabilities" has the same meaning as in the Definitive Agreement.

42. "Definitive Agreement" means the Agreement and Plan of Merger dated as of August 10, 1994 by and among New Colt Holding Corp., New Colt Acquisition Corporation, Holding and Colt which is attached hereto as Exhibit A.

43. "Definitive Agreements" mean collectively, the Definitive Agreement and related agreements, documents and instruments which shall reflect the terms of the Definitive Agreement, the New Investor Agreement and the Plan.

44. "Disclosure Statement" means the Disclosure Statement with respect to the Plan which has been filed with the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

45. "Disputed Claim" means a Claim as to which the Debtors or any other party in interest has interposed an objection in accordance with the Plan, the Bankruptcy Code, or the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order.

46. "Disputed Claims Escrow" means that escrow created on the Effective Date to hold Cash withheld on account of Disputed Claims.

47. "Effective Date" means the Business Day immediately following the date on which the Confirmation Order shall have become a Final Order and on which all conditions to the consummation of the Plan set forth in Article IX.(B) have been satisfied or waived as provided for in Article IX.(C). Such date shall not be later than September 30, 1994.

48. "Employee Stock Ownership Plan" means a defined contribution plan established in March 1990 by Agreement between CP Holding Corp. and the UAW for the benefit of hourly employees of Colt represented by the UAW. The plan

is funded through a Trust Agreement with State Street Bank as trustee and holds common stock of CP Holding Corp.

49. "Environmental Claim" means any Claim under federal, state or local environmental laws or regulations, for damages arising from or costs incurred by a Governmental Authority or any Person in response to a release or threatened release of a hazardous or toxic waste, substance or constituent, or other substance into the environment.

50. "Estate" means the estate created under Section 541 of the Bankruptcy Code in the respective Reorganization Cases of Colt or Holding.

51. "Final Order" means an order of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing, has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, or move for reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Proponents or, in the event that an appeal, writ of certiorari, or reargument or rehearing has been sought, such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed or from which reargument or rehearing was sought, or certiorari has been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired.

52. "Firearms Intellectual Property" is defined in Item 60 below.

53. "General Unsecured Claim" means a Colt General Unsecured Claim or a Holding General Unsecured Claim.

54. "Hartford Lease" means the lease for the manufacturing facility in Hartford, Connecticut under which Colt is the lessee and Water + Way is the lessor.

55. "Holding" means CP Holding Corp., a Delaware corporation which holds all of the outstanding stock of Colt.

56. "Holding Administrative Claim" means an Administrative Claim asserted against Holding.

57. "Holding General Unsecured Claim" means any Claim against Holding which arose or which is deemed by the Bankruptcy Code to have arisen prior to the Petition Date, and which is not otherwise classified herein.

58. "Holding Intercompany Claim" means any claim of Holding against Colt.

59. "Incremental Postpetition Credit Agreement Claim" means the amount of the Allowed Claim of the Bank arising under the Postpetition Credit Agreement which is in excess of the amount of the pre-petition revolving credit loans and letters of credit outstanding on the Petition Date, but such amount shall exclude interest and fees payable pursuant to the Postpetition Credit Agreement, which Colt shall continue to pay to the Bank on a current basis, and, for purposes of Clause 2 (a) of "Treatment of Bank Claim" in Article III-B, such amount shall exclude letters of credit outstanding on the Effective Date which are to be cash collateralized as provided in Clause 2 (d) of "Treatment of Bank Claim" but shall include the principal amount of loans borrowed under the Postpetition Credit Agreement for purposes of such cash collateralization.

60. "Intellectual Property" means: a) certain trademarks, patents, the Colt Trade Name and copyrights which are described in and were licensed to Colt under the Trademark Agreement (the "Firearms Intellectual Property"); b) all of the remaining intellectual property owned by the Name Partnership (the "Non-Firearms Intellectual Property."); and (c) a promissory note in the amount of \$1.8 million payable to the CDA or its assignee; all as more specifically described in a certain Purchase and Sale Agreement among the Name Partnership, the CDA, and New Colt Holding.

61. "Interest" means the right of a holder and owner of issued and outstanding shares of the Old Common Stock of Colt, Old Common Stock of Holding, the Old Series A Preferred Stock, the Old Series B Preferred Stock, the Old Warrants of Holding, or other equity securities of the Debtors.

62. "Merger" means the merger of New Colt Acquisition Corporation with and into Colt, with Colt surviving as a wholly-owned subsidiary of New Colt Holding Corp., pursuant to the terms of the Definitive Agreement.

63. "Modified Collective Bargaining Agreement" means the Collective Bargaining Agreement, as modified dated as of the Effective Date between Colt and the UAW, on terms acceptable to the Debtors and New Colt Acquisition Corporation, that will provide for, among other things, the Agreed Wage and Work Rule Changes.

64. "Motion to Assume or Reject the Hartford Lease" means the motion filed by the Debtors on June 27, 1994 to

assume the Hartford Lease with Water + Way under certain conditions or in the alternative to reject the Hartford Lease.

65. "Multi-Party Release" means that certain agreement dated as of August 10, 1984 by and among the Debtors, the Bank, the CDA, Coltec, the UAW, the Name Partnership (together with its general and limited partners and certain individuals and entities affiliated with the Name Partnership named in the Acquisition Litigation), Water + Way, the Committee on behalf of its members New Colt Holding Corp. on behalf of itself and its shareholders, and New Colt Acquisition Corporation, as further described in Article VII, Section I of the Plan.

66. "Name Partnership" means CF Intellectual Property Limited Partnership, a Connecticut limited partnership.

67. "Name Partnership Litigation" means the adversary proceeding pending in the Bankruptcy Court, No. Adv. 92-2223, commenced by CFIPC against Colt on or about June 5, 1992.

68. "Name Partnership Note" means that certain promissory note dated March 22, 1990 in the original principal amount of \$9,950,000, payable by the Name Partnership to Colt, secured by the Name Partnership's right, title and interest in the Intellectual Property. Colt pledged the Name Partnership Note to the Bank and assigned to the Bank all of Colt's right, title and interest in the Intellectual Property and all proceeds thereof.

69. "New Colt Acquisition Corporation" means the newly formed corporation which is 100% owned by New Colt Holding Corp.

70. "New Colt Holding" means New Colt Holding Corp., the newly formed holding company which shall hold 100% of the Reorganized Colt Common Stock. Initially 91.5% of the common stock of New Colt Holding will be owned by New Colt L.P. and 8.5% owned by the Employee Stock Ownership Plan.

71. "New Colt Holding Common Stock" means all of the shares of common stock of New Colt Holding, authorized pursuant to the Plan and issued on the Effective Date as described in Article VI of the Plan.

72. "New Colt Holding Preferred Stock" means all the shares of the preferred stock of New Colt Holding, redeemable for \$10 million, to be issued to the Connecticut Development Authority pursuant to Article VI, Section 2(c)

of the Plan and in accordance with the term sheet set forth as Exhibit 3 to the Disclosure Statement.

73. "New Colt L.P." means the newly formed Delaware limited partnership which will own on the Effective Date 91.5% of the common stock of New Colt Holding. The general partner of New Colt L.P. is New Colt Management, L.P. which is controlled by Donald Zilkha.

74. "New Investor Agreement" means the agreement between the Debtor, the Connecticut Development Authority, and New Colt Acquisition Corporation, approved by the Bankruptcy Court on March 18, 1994.

75. "Non-Firearms Intellectual Property" is defined in Item 60 above.

76. "Objection to the Claims of Water + Way" means the objection filed by the Debtors on June 27, 1994 to claims of Water + Way.

77. "Old Common Stock of Colt" means the existing common stock of Colt.

78. "Old Common Stock of Holding" means the existing common stock of CF Holding.

79. "Old Series A Preferred Stock" means the existing series A preferred stock of Holding.

80. "Old Series B Preferred Stock" means the existing series B preferred stock of Holding.

81. "Old Warrants of Holding" means the existing warrants to purchase Old Common Stock of Holding.

82. "Ordinary Course Expenses" means accounts payable and other working capital liabilities incurred in the ordinary course of business by the Debtors-in-Possession since the Petition Date.

83. "Other Priority Claim" means any Allowed Claim entitled to priority pursuant to Section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim or (b) a Priority Tax Claim.

84. "Person" means an individual, corporation, partnership, joint venture, association, joint stock company, trust, estate, unincorporated organization, government, or agency or political subdivision thereof, or other entity.

85. "Petition Date" means March 18, 1992, the date on which Colt and Holding each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

86. "Plan" means this Fifth Amended and Restated Joint Chapter 11 Plan of Reorganization of Holding and Colt, and the exhibits and schedules hereto, as the foregoing may be amended or modified from time to time in accordance with the provisions hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules.

87. "Postpetition Credit Agreement" means the agreement, dated as of April 8, 1992, as amended, entered into between Colt as borrower and the Bank as lender, and as to which the CDA is a participating lender, pursuant to Sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code, and under which the Bank agreed to provide Colt with postpetition financing.

88. "Postpetition Credit Agreement Orders" means the order of the Bankruptcy Court, dated April 8, 1992, approving the Postpetition Credit Agreement and all subsequent orders of the Bankruptcy Court approving amendments to the Postpetition Credit Agreement.

89. "Pre-Acquisition Products Liability Claims" means claims arising out of or relating to products shipped by Colt prior to March 22, 1990.

90. "Priority Tax Claim" means any Claim entitled to priority in payment under Section 507(a)(7) of the Bankruptcy Code, but only to the extent it is entitled to priority under such subsection.

91. "Post-Acquisition Products Liability Claims" means claims arising out of or relating to products shipped by Colt from March 22, 1990 through the Effective Date.

92. "Products Liability Claims" means Pre-Acquisition Products Liability Claims and Post-Acquisition Products Liability Claims.

93. "Products Liability Insurance Policies" means policies for product liability insurance with the Reliance Company and Sporting Arms Insurance Limited.

94. "Proponents" shall mean the CDA and the Debtors.

95. "Reorganization Case" means the case under Chapter 11 of the Bankruptcy Code in which either Colt or Holding is a Debtor and Debtor-in-Possession.

96. "Reorganized Colt" means Colt's Manufacturing Company, Inc., the surviving corporation following the merger with New Colt Acquisition Corporation pursuant to the Definitive Agreement and as reorganized pursuant to the Plan.

97. "Retired Benefits" means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the Debtors prior to the Petition Date.

98. "Schedules" means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtors as required by Section 521 of the Bankruptcy Code and the Bankruptcy Rules.

99. "Secured Capital Lease Claim" means a claim arising from the Capital Leases.

100. "Secured Claim" means a claim other than a setoff claim, secured by a security interest in or lien upon property of an Estate to the extent of the value, as of the Effective Date, of the holder of such claim's interest in the Estate's interest in such property, as determined by the Bankruptcy Court pursuant to Section 506 of the Bankruptcy Code or as agreed to among the Debtors, New Colt Acquisition Corporation, the Proponents and the holder of such Secured Claim.

101. "Tax Claim" means a claim, if allowed, entitled to priority pursuant to Section 507(a)(7) of the Bankruptcy Code.

102. "Trademark Agreement" means the agreement dated March 22, 1990, entered into between Colt and CLP which subsequently assigned its rights thereunder to the Name Partnership.

103. "UAW" means the International Union United Automobile Aerospace and Agricultural Employment Workers of America and its Local 378.

104. "UAW Note" means the obligation arising from a certain Payment Agreement, dated March 22, 1990, between Holding and the UAW.

105. "UAW Note Claims" means claims arising pursuant to the UAW Note.

106. "Water + Way" means Water + Way Properties, a Connecticut limited partnership, which is the lessor under the Hartford Lease.

107. "Water + Way Claims" means the Allowed Claims of Water + Way relating to, among other things, rental and other obligations under the Hartford Lease.

108. "Water + Way Settlement Agreement" means that certain settlement agreement among Water + Way and Colt, pursuant to which the Water + Way Claims are resolved.

109. "West Hartford Lease" means the lease for manufacturing and office facilities in West Hartford, Connecticut under which Colt is the lessee and Coltec is the lessor.

B. Interpretation

Unless otherwise specified, all sections, articles, and exhibit references in the Plan are to the respective section in, article of, or exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

C. Application of Definitions and Rules of Construction Contained in the Bankruptcy Code

Words and terms defined in Section 101 of the Bankruptcy Code shall have the same meaning when used in the Plan, unless a different definition is given in the Plan. The rules of construction in Section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

D. Other Terms

The words "herein," "hereof," "hereto," "hereunder," and others of similar importence refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. A term used herein that is not defined herein shall have the meaning ascribed to that term if any, in the Bankruptcy Code.

II.

UNCLASSIFIED ADMINISTRATIVE EXPENSES AND PRIORITY CLAIMS

A. Payment of Administrative Expenses

Each Administrative Claim that is an Allowed Claim (including claims for compensation and reimbursement of expenses under Bankruptcy Code Sections 503(b)(2), (3), (4) and (5)) shall be treated in accordance with Article III.(B) hereof or on such other terms as may be mutually agreed upon between such Administrative Creditor and Reorganized Colt; provided, however that (i) Administrative Claims representing liabilities incurred in the ordinary course of business by the Debtors shall be assumed and paid by Reorganized Colt in accordance with the terms and conditions of the particular transactions and any agreements relating thereto, and (ii) the Bankruptcy Court shall fix a date to hear and determine all applications for final allowances of compensation or reimbursement of expenses under Section 330 of the Bankruptcy Code, which date shall be on or before the Confirmation Date.

B. Colt Administrative Claims

The Debtors shall pay each Colt Administrative Claim that is an Allowed Claim in full on the Effective Date or pursuant to terms and conditions which are less favorable to such holders and agreed to by holders of certain Colt Administrative Claims. Without limitation, the following Administrative Claims shall be paid as provided below as a result of agreement of the parties:

1. **Pension Funds.** Reorganized Colt will continue in place the existing Bargaining Unit Employees' Pension Plan and the Salaried Retirement Income Plan (the "Retirement Plans"). As a result of prohibitions in the Bankruptcy Code relating to payment of prepetition debt, the Retirement Plans became underfunded. In order to continue the Retirement Plans with the resources available to Reorganized Colt, the Debtor has sought a funding waiver for both Retirement Plans for 1993 from the Internal Revenue Service (the "Waiver"). Any excise tax claims required to be paid in connection with the Waiver will be paid in accordance with the terms of such Waiver.

Since Reorganized Colt has no current intention of terminating either of the Retirement Plans, any liabilities due the Pension Benefit Guaranty Corporation for any unfunded benefit liabilities

upon plan termination shall not be affected by the reorganization case unless such plans have been terminated prior to Confirmation.

2. Claims of Colt Hourly Employees. Upon assumption of the Collective Bargaining Agreement, as modified, each Colt hourly employee with an Allowed Claim for wages, vacation bonus, vacation pay or sick leave shall receive up to \$1,000 in Cash on account of the Allowed Claim, payable as follows: (i) up to \$250 payable on the Effective Date; (ii) up to \$250 payable on December 31, 1994; (iii) and the balance up to \$500 payable on June 30, 1995. In the event any Allowed Claim exceeds \$1,000, the remainder will be satisfied with compensating time off at the rate of one day for every three (3) month period following the Effective Date until the remainder of the claim is satisfied in full.
3. Postpetition Credit Agreement Claims. The Postpetition Credit Agreement Claims of the Bank shall be treated in accordance with Article III, (E) Class 3.
4. Ordinary Course Expenses. Accounts payable and other working capital liabilities incurred in the ordinary course of business by the Debtors-in-Possession since the Petition Date will be paid by Reorganized Colt in accordance with the customary terms between the Debtors and the holders of the Claim; provided, however, ordinary course expenses under this clause and the Definitive Agreement shall be limited to post-petition liabilities as appear on the Debtor's balance sheet at Closing and such other claims as appear on Exhibit 4 to the Disclosure Statement. The Ordinary Course Expenses plus post-retirement health and medical benefits shall not exceed \$24,000,000.
5. Professional Fees and Expenses. All applications for compensation and reimbursement of expenses for professionals employed by the Debtors and the Committee not previously heard by the Bankruptcy Court shall be presented to the Bankruptcy Court for approval. Administrative Claims for unpaid fees and expenses of professionals that have been allowed by the Bankruptcy Court at or prior to the Effective Date shall be paid in full in cash on the Effective Date. Fees and expenses of professionals allowed by the Bankruptcy Court after the Effective Date shall be paid in cash promptly upon allowance by the Bankruptcy Court.

As a condition of confirmation in the Definitive Agreement, and unless otherwise agreed, (a) the unpaid portion of such Allowed Claims for compensation and reimbursement of expenses for professionals, other than a claim by Zolfo, Cooper & Company, including claims pursuant to Sections 503(b) and 506 of the Bankruptcy Code, shall not exceed, in the aggregate, \$2,724,800 for the period before December 14, 1993; and (b) for the period December 14, 1993 through August 31, 1994 (i) allowed paid and unpaid fees and expenses of Debtors' bankruptcy counsel shall not exceed \$800,000; (ii) allowed fees and expenses of counsel to the Committee shall not exceed \$150,000; and (iii) unpaid allowed fees and expenses of other professionals, when combined with the Allowed Claims of Interlaken, shall not exceed \$280,000. Reorganized Colt shall have no responsibility for any claim by Zolfo, Cooper & Company nor shall it receive any payments ordered to be paid by them.

6. Assumption Costs of Executory Contracts. The Debtors will assume or reject such executory contracts and unexpired leases as requested by New Colt Acquisition Corporation. Such request will be made on or before the execution of the Definitive Agreement. Reorganized Colt shall cure, or provide adequate assurance that it will promptly cure, defaults under any executory contracts or unexpired lease assumed in accordance with this Plan.
7. Reclamation Claims. The holders of allowed reclamation claims of approximately \$120,000 shall be paid in cash in full at the later of the Effective Date, the date the expense is allowed or as agreed between the holder of the expense and the Debtors.

C. Holding Administrative Claims

The Debtors shall pay each Holding Administrative Claim that is an Allowed Claim in full on the Effective Date or pursuant to terms and conditions which are less favorable to such holders and agreed to by holders of certain Holding Administrative Claims.

D. Priority Tax Claims

Reorganized Colt shall pay each Priority Tax Claim that is an Allowed Claim in full by the end of the six year

period commencing on the Assessment Date. Each holder of a Priority Tax Claim shall receive an unsecured note on the Effective Date payable by Reorganized Colt in equal quarterly payments of principal and interest. The interest rate on the note to the Internal Revenue Service shall be equal to the underpayment rate under Section 6621 of the Internal Revenue Code of 1986, as amended. The interest rate on the note to the State of Connecticut shall be 8.0% per annum.

E. Other Priority claims

The holders of Other Priority Claims that are Allowed Claims, not specifically designated herein, shall receive in full release, settlement and discharge of such Claim (a) Cash equal to the amount of their Allowed Claim or (b) such other treatment as to which the Debtors and such holder agree in writing.

III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Summary

The categories of Claims and Interests listed below classify Allowed Claims for all purposes, including voting, confirmation, and distribution pursuant to the Plan.

1. Classification of Claims Asserted Against Colt

<u>CLASS</u>	<u>STATUS</u>
Class 1: Secured Capital Lease Claims.	Unimpaired - not entitled to vote.
Class 2: Colt Salaried Employee Claims.	Impaired - entitled to vote.
Class 3: Bank Claim Against Colt.	Impaired - entitled to vote.
Class 4A: Post-Acquisition Products Liability Claims.	Impaired - entitled to vote.
Class 4B: Pre-Acquisition Products Liability Claims.	Impaired - entitled to vote.
Class 5: Colt General Unsecured Claims.	Impaired - entitled to vote.

Class 6: Coltec Claims.	Impaired - entitled to vote.
Class 7: Water + Way Claims.	Impaired - entitled to vote.
Class 8: Holding Intercompany Claims.	Impaired - entitled to vote.
Class 9: Name Partnership Claims.	Impaired - entitled to vote.
Class 10: Old Common Stock of Colt.	Impaired - deemed to reject.

2. Classification of Claims Asserted Against Holding

Class 11: Bank Claim Against Holding.	Impaired - deemed to reject.
Class 12: Holding General Unsecured Claims.	Impaired - deemed to reject.
Class 13: Coltec Claims.	Impaired - entitled to vote.
Class 14: Colt Intercompany Claims.	Impaired - entitled to vote.
Class 15: UAW Note Claims.	Impaired - deemed to reject.
Class 16: Old Series A Preferred Stock.	Impaired - deemed to reject.
Class 17: Old Series B Preferred Stock.	Impaired - deemed to reject.
Class 18: Old Warrants of Holding.	Impaired - deemed to reject.
Class 19: Old Common Stock of Holding.	Impaired - deemed to reject.

3. Classification and Treatment of Claims Asserted Against Colt.

Class 1: Secured Capital Lease Claims.

1. Classification: Class 1 consists of the Secured Capital Lease Claims which consist entirely of Claims arising out of the Capital Leases.

2. Treatment: The holders of the Secured Capital Lease Claims that are Allowed Claims shall have their Claims reinstated and reaffirmed in full and shall retain their respective security interests in the respective property until their respective claims are paid in full, with such modifications as are specifically agreed to by such holders. The amount to which a holder of a Secured Capital Lease Claim is entitled as a result of reinstatement shall be paid on the Effective Date, such amount to be reduced by any amounts received after the Petition Date by such holder.

Class 2: Colt Salaried Employee Claims.

1. Classification: Class 2 consists of the Wage and Benefit Claims of Colts Salaried Employees.

2. Treatment: Reorganized Colt shall compensate salaried employees who hold wage and benefit Claims with compensating time off at the rate of one day for every three (3) month period following the Effective Date until such claim is satisfied in full. If a Colt salaried employee is severed or terminates his or her employment with Colt prior to receiving his or her full benefits, as provided for herein, he or she will be provided Cash in lieu of compensating time off for the balance of such Claim on the 365th day following his or her termination.

Class 3: Bank Claim Against Colt.

1. Classification: Class 3 consists of the Bank Claim against Colt.

2. Treatment: The holder of the Bank Claim Against Colt shall receive on the Effective Date:

(a) Cash in an amount equal to the sum of:

(1) 100% of the aggregate amount of payments, not in excess of \$2,661,000, which Colt has made, or which Colt has borrowed under the Postpetition Credit Agreement in order to make, on or prior to the Effective Date, in respect of (1) Capital Expenditures relating in any way to the Debtors move from the Hartford facility from January 1, 1994 (as such term is defined in the Postpetition Credit Agreement), in an aggregate amount not in excess of \$1,661,000.00; (2) expense reimbursement obligations to New Colt Acquisition Corporation in accordance with paragraph 5.1 of the New Investor Agreement, in an aggregate amount not in excess of \$650,000 and (3) indemnification obligations to New Colt Acquisition Corporation

pursuant to paragraph 9 of the New Investor Agreement, in an aggregate amount not in excess of \$350,000.00 ("Fully Reimbursable Expenses"); plus

(ii) 50% of the next \$3,000,000 of the Incremental Postpetition Credit Agreement Claim (to the extent outstanding) above the portion of the Claim which is allocated to Fully Reimbursable Expenses pursuant to subclause (a)(i) above; plus

(iii) 20% of the next \$1,000,000 of the Incremental Post-petition Credit Agreement Claim (to the extent outstanding); plus

(iv) 40% of the balance of the Incremental Post-petition Credit Agreement Claim (to the extent outstanding); and

(b) Cash in the amount of \$14,000,000 in respect of the principal of the Bank Claim Against Colt (exclusive of the Incremental Postpetition Credit Agreement Claim); and

(c) Payment in Cash of all interest, fees, expenses, and other amounts accrued and owing to the Bank to the Effective Date pursuant to the terms of the Postpetition Credit Agreement or the Plan (including, without limitation, letter of credit fees, commitment fees and all reasonable out-of-pocket expenses and counsel fees payable under the Postpetition Credit Agreement, excluding only (i) investment advisory fees of the Bank, (ii) counsel fees of the Bank relating exclusively to the Allowed Claim of the Bank arising under the Credit Agreement or to the formulation, negotiation or implementation of the Plan, and (iii) any portion of the principal of the Bank Claim Against Colt to the extent in excess of the amounts payable to the Bank pursuant to clauses (a) and (b) above); and

(d) Cash collateral in such amount, if any, as may be necessary to cause the aggregate amount of cash collateral held by the Bank to secure letters of credit issued by the Bank and outstanding on the Effective Date to equal 105% of the face amount of such letters of credit; provided that cash collateral need not be furnished to the Bank with respect to any letters of credit as to which other arrangements, satisfactory to the Bank in its sole discretion, have been made.

Reorganized Colt will make the payment upon the entry of a Final Order allowing the last Post-Acquisition Products Liability Claim.

For voting purposes, each Class 4A Claim shall be estimated at \$1.00 unless the holder of such Claim makes a motion ten (10) days prior to the Confirmation Date to estimate the Claim for voting purposes at a different amount.

For distribution purposes, the Post-Acquisition Products Liability Claims shall be liquidated by settlement or by objection to claim as determined by the Bankruptcy Court or United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 157(b)(5).

The insurance proceeds, if applicable, would be distributed pursuant to the Products Liability Insurance Policies.

Class 4B: Pre-Acquisition Products Liability Claims.

1. **Classification:** Class 4B consists of the Pre-Acquisition Products Liability Claims.

2. **Treatment:** Holders of Pre-Acquisition Products Liability Claims shall receive nothing from Reorganized Colt. The rights, if any, of holders of such Claims against (a) Coltec or (b) the Products Liability Insurance Policies shall not be impaired under this Plan.

For voting purposes, each Class 4B Claim shall be estimated at \$1.00 unless the holder of such Claim makes a motion ten (10) days prior to the Confirmation Date to estimate the Claim for voting purposes at a different amount.

Class 5: Colt General Unsecured Claims.

1. **Classification:** Class 5 consists of Colt General Unsecured Claims.

2. **Treatment:** The holders of Allowed Colt General Unsecured Claims will receive their pro rata share of \$3,550,000 in cash plus any amount paid to Zolfo, Cooper & Company pursuant to orders entered by the Bankruptcy Court that Zolfo, Cooper & Company is required by Final Orders to disgorge.

The foregoing consideration shall be distributed to holders of Allowed Claims in Class 5 on the Effective Date; provided that any portion of such consideration that

Reorganized Colt will make the payment upon the entry of a Final Order allowing the last Post-Acquisition Products Liability Claim.

For voting purposes, each Class 4A Claim shall be estimated at \$1.00 unless the holder of such Claim makes a motion ten (10) days prior to the Confirmation Date to estimate the Claim for voting purposes at a different amount.

For distribution purposes, the Post-Acquisition Products Liability Claims shall be liquidated by settlement or by objection to claim as determined by the Bankruptcy Court or United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 157(b)(5).

The insurance proceeds, if applicable, would be distributed pursuant to the Products Liability Insurance Policies.

Class 4B: Pre-Acquisition Products Liability Claims.

1. **Classification:** Class 4B consists of the Pre-Acquisition Products Liability Claims.

2. **Treatment:** Holders of Pre-Acquisition Products Liability Claims shall receive nothing from Reorganized Colt. The rights, if any, of holders of such Claims against (a) Coltec or (b) the Products Liability Insurance Policies shall not be impaired under this Plan.

For voting purposes, each Class 4B Claim shall be estimated at \$1.00 unless the holder of such Claim makes a motion ten (10) days prior to the Confirmation Date to estimate the Claim for voting purposes at a different amount.

Class 5: Colt General Unsecured Claims.

1. **Classification:** Class 5 consists of Colt General Unsecured Claims.

2. **Treatment:** The holders of Allowed Colt General Unsecured Claims will receive their pro rata share of \$3,550,000 in cash plus any amount paid to Zolfo, Cooper & Company pursuant to orders entered by the Bankruptcy Court that Zolfo, Cooper & Company is required by Final Orders to disgorge.

The foregoing consideration shall be distributed to holders of Allowed Claims in Class 5 on the Effective Date; provided that any portion of such consideration that

comes due by reason of disgorgement of fees by Zolfo, Cooper & Company shall be distributed within a reasonable time after such funds are received from Zolfo, Cooper & Company.

Class 6: Coltec Claims.

1. **Classification:** Class 6 consists of the Coltec Claims against Colt.

2. **Treatment:** The holder of the Coltec Claims will be treated in accordance with the Coltec Settlement Agreement.

Class 7: Water + Way Claims.

1. **Classification:** Class 7 consists of the Water + Way Claims against Colt.

2. **Treatment:** The Water + Way Claims will be treated in accordance with the Water + Way Settlement Agreement. Among other things, the Settlement Agreement will provide that Colt rejects the Hartford Lease and that Colt shall pay Water + Way \$250,000 in cash upon the Effective Date. The settlement is also conditioned upon certain undertakings by Coltec to Water + Way.

If the Water + Way Settlement Agreement is not consummated, then either (A) the Debtors will assume the Hartford Lease in accordance with the conditions outlined in the Motion to Assume or Reject the Hartford Lease; or (B) the Debtors will reject the Hartford Lease in accordance with the Motion to Assume or Reject the Hartford Lease and, upon resolution of the Debtors' Objection to the Claims of Water + Way, any Allowed Colt General Unsecured Claim will be paid on terms no less favorable than those provided to holders of Class 5 Claims.

Class 8: Holding Intercompany Claims.

1. **Classification:** Class 8 consists of the Holding Intercompany Claims.

2. **Treatment:** Prior to the Merger, Holding shall transfer the Holding Intercompany Claim, after setoff of the Colt Intercompany Claim, to Colt. Holding will receive the Multi-Party Release.

Class 9: Name Partnership Claims.

1. **Classification:** Class 9 consists of all Name Partnership Claims against the Debtors.

2. Treatment: Upon completion of the transactions contemplated in Article VII, Section D, the CCA, as assignee of the Class 9 claims, shall receive \$10 million of New Colt Holding Preferred Stock.

Class 10: Old Common Stock of Colt.

1. Classification: Class 10 consists of the Old Common Stock of Colt.

2. Treatment: The holders of Old Common Stock of Colt shall receive no distribution pursuant to the Plan. Each share of Old Common Stock shall be canceled and extinguished by virtue of the Merger and pursuant to the terms of the Definitive Agreement.

C. Classification and Treatment of Claims Asserted Against Holding.

Class 11: Bank Claim Against Holding.

1. Classification: Class 11 consists of the Bank Claim Against Holding.

2. Treatment: The holder of the Bank Claim Against Holding shall receive no distribution from Holding pursuant to the Plan.

Class 12: Holding General Unsecured Claims.

1. Classification: Class 12 consists of all Holding General Unsecured Claims.

2. Treatment: Holders of Holding General Unsecured Claims will receive no distribution pursuant to the Plan.

Class 13: Coltec Claims.

1. Classification: Class 13 consists of the Coltec Claims against Holding.

2. Treatment: The holder of the Coltec Claims will be treated in accordance with the Coltec Settlement Agreement.

Class 14: Colt Intercompany Claim.

1. Classification: Class 14 consists of the Colt Intercompany Claims.

2. Treatment: All Colt Intercompany Claims will be offset against the Holding Intercompany Claim.

Class 15: UAW Note Claims.

1. Classification: Class 15 consists of claims for principal and accrued interest arising pursuant to the UAW Note.

2. Treatment: The holder of the UAW Note Claims shall receive no distribution pursuant to the Plan.

Class 16: Old Series A Preferred Stock.

1. Classification: Class 16 consists of the Old Series A Preferred Stock.

2. Treatment: The holders of Old Series A Preferred Stock shall receive no distribution pursuant to the Plan.

Class 17: Old Series B Preferred Stock.

1. Classification: Class 17 consists of the Old Series B Preferred Stock.

2. Treatment: The holders of Old Series B Preferred Stock shall receive no distribution pursuant to the Plan.

Class 18: Old Warrants of Holding.

1. Classification: Class 18 consists of the Old Warrants of Holding.

2. Treatment: The holders of the Old Warrants of Holding shall receive no distribution pursuant to the Plan.

Class 19: Old Common Stock of Holding.

1. Classification: Class 19 consists of the Old Common Stock of Holding.

2. Treatment: The holders of Old Common Stock of Holding shall receive no distribution under the Plan.

IV.

TREATMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES.

A. Assumption of Executory Contracts and Unexpired Leases

Subject to the requirements of Sections 365 and 1123 of the Bankruptcy Code, all executory contracts or unexpired leases of the Debtors that have been scheduled as such in Schedule G of the Debtors' Schedules filed with the Bankruptcy Court and that have not been rejected by the Debtors in accordance with the New Investor Agreement and the Definitive Agreement or pursuant to an order of the Bankruptcy Court or are not the subject of pending applications to reject at the Confirmation Date, shall be assumed by Debtors on the Effective Date. Entry of the Confirmation Order by the Clerk of the Bankruptcy Court shall constitute approval of such assumptions pursuant to Section 365 of the Bankruptcy Code.

If any party to an executory contract or unexpired lease which is deemed assumed pursuant to the Plan objects to such assumption, the Bankruptcy Court may conduct a hearing on such objection at the Confirmation Hearing or on any date which is either mutually agreeable to the parties or fixed by the Bankruptcy Court. All payments to cure defaults that may be required by Section 365(b)(1) of the Bankruptcy Code shall be made by Reorganized Colt. In the event of a dispute regarding the amount of any such payments or the ability of Reorganized Colt to provide adequate assurance of further performance, Reorganized Colt shall make any payments required by Section 365(b)(1) of the Bankruptcy Code after the entry of a Final Order resolving such dispute or by such other treatment as the parties may agree to or by subsequently moving to reject such executory contract or unexpired lease.

B. Claims Arising From Rejection

All proofs of claim with respect to claims arising from the rejection of executory contracts or unexpired leases must be filed with the Bankruptcy Court no later than twenty days after the entry of the order of the Bankruptcy Court authorizing such rejection but in no event later than ten (10) days prior to the Confirmation Hearing. Any Claims not filed within such time will be forever barred from assertion against the Debtors, their Estates, their property or Reorganized Colt. Unless otherwise ordered by the Bankruptcy Court, all such Claims arising from the rejection of executory contracts and unexpired leases shall be treated as Colt General Unsecured Claims under the Plan. Any claims

arising from rejection of executory contracts and unexpired leases that are not resolved by agreement or by Final Order prior to the Confirmation Hearing shall be estimated by the Bankruptcy Court at the Confirmation Hearing for purposes of the Disputed Claims Escrow. The amount distributable under the Plan for any such Claim which subsequently becomes an Allowed Claim shall not exceed the amount so estimated and reserved.

V.

ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS OR INTERESTS; CRANDOWN

A. Classes Entitled to Vote

Classes 2, 3, 4A, 4B, 5-9, 13 and 14 shall be deemed impaired for the purpose of the Plan and shall be entitled to vote separately to accept or reject this Plan. Classes 10, 11, 12, and 15-19 shall be deemed impaired and shall not be entitled to vote on the Plan because such Classes are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Class 1 is deemed unimpaired and shall not be entitled to vote to accept or reject the Plan.

B. Class Acceptance Requirement

An impaired Class of Claims shall have accepted the Plan if at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims of such Class that have voted on the Plan vote to accept the Plan, pursuant to Section 1126(c) of the Bankruptcy Code.

C. Crandown

The Proponents may request confirmation of the Plan under Section 1129(b) of the Bankruptcy Code in the event that any impaired Class of Claims shall fail to accept the Plan in accordance with Section 1129(a) of the Bankruptcy Code. Pursuant to Section 1129(b) of the Bankruptcy Code, the Plan may be confirmed over the objection of a rejecting Class if the Bankruptcy Court determines at the Confirmation Hearing that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to any such Class. However, the Plan cannot be confirmed, and the Proponents will not seek confirmation of the Plan, in the event that any one of Classes 3, 5, 6, 9 or 13 fails to accept the Plan.

D. Best Interest Test

Notwithstanding acceptance of the Plan, if fewer than 100% of the creditors in a Class accept the Plan, the Court must find, whether or not any party in interest objects to confirmation of the Plan, that the Plan is in the best interests of the holders of claims or interests. Bankruptcy Courts have generally defined "best interest" as the Bankruptcy Code's requirement that under any plan of reorganization each member of an impaired class of creditors or interest holders must receive or retain, on account of its claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount such creditor or interest holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. The Proponents believe that the Plan is in the best interests of all holders of Claims.

VI.

PROVISIONS OF EQUITY SECURITIES ISSUED PURSUANT TO THE PLAN

A. **Merger Agreement.** Upon approval of the Disclosure Statement, New Colt Holding Corp., New Colt Acquisition Corporation, both of which are affiliates of Zilkha & Company, and the Debtors shall enter into an Agreement and Plan of Merger (the "Definitive Agreement") substantially in the form attached hereto as Exhibit A. Under the Definitive Agreement, which is subject to Bankruptcy Court approval, New Colt Holding Corp., in exchange for providing certain funding, will acquire the stock of the reorganized debtor by means of a merger between New Colt Acquisition Corporation and Colt. Under the Definitive Agreement, New Colt Acquisition Corporation will merge with and into Colt, which will continue as the surviving corporation and be a wholly-owned subsidiary of New Colt Holding Corp.

1. **New Entities.** In order to effectuate the transactions contemplated by the Definitive Agreement, new entities shall have been formed. New Colt L.P., a Delaware limited partnership ("New Colt L.P."), will own initially 91.5% of the common stock of New Colt Holding on a fully diluted basis. Certain accredited investors and members of Colt Management will be the limited partners of New Colt L.P. The general partner of New Colt L.P. will be New Colt Management L.P., a Delaware limited partnership ("New Colt Management L.P."). Certain affiliates and associates of Zilkha & Company will be the limited partners in New Colt Management L.P. The general partner of New Colt Management L.P. will be New Colt Management, Inc., a Delaware

subchapter S corporation ("NCHI"). The sole shareholder of NCHI will be Donald Zilkha.

2. **Merger Transaction.** Subject to the terms and provisions of the Definitive Agreement, the Plan, Delaware corporate law and the Bankruptcy Code, on the Effective Date, New Colt Acquisition Corporation shall merge with and into Colt, the separate corporate existence of New Colt Acquisition Corporation shall cease, and Colt will emerge as the surviving corporate entity. Colt will exist after the Effective Date as Reorganized Colt. Holding will dissolve by operation of law. On the Effective Date, the operations of New Colt Holding and Reorganized Colt will be the responsibilities of their respective boards of directors.

3. **Merger Funding.** Pursuant to the Definitive Agreement and the Plan, New Colt Holding will fund the Plan, or cause the Plan to be funded, with an aggregate of \$26,788,754 plus payments to the Bank under Clause 2(c) of the "Treatment of the Bank Claim" and as described in the Definitive Agreement (the "Merger Consideration"). In accordance with the Plan, the Merger Consideration will be used to satisfy all Allowed Claims. The Merger Consideration will consist of \$12 million contributed by New Colt L.P. to New Colt Holding, \$18 million in term loan borrowings by New Colt Acquisition Corporation, and the balance in borrowings by New Colt Acquisition Corporation under a \$20 million revolving loan facility.

4. **Conditions Precedent to Merger.** Pursuant to the Definitive Agreement, the obligations of New Colt Holding and New Colt Acquisition Corporation to consummate the merger are subject to, among others, the following conditions, any one or more of which may be waived by New Colt Holding or New Colt Acquisition Corporation:

(a) The Bankruptcy Court shall have approved the Definitive Agreement and the transactions contemplated by the Definitive Agreement and the New Investor Agreement;

(b) New Colt Holding and New Colt Acquisition Corporation shall have entered into employment agreements with those individuals listed on Schedule 6.1(h) to the Definitive Agreement;

(c) New Colt Acquisition Corporation shall have obtained financing from one or more lenders of at least \$20,000,000 on terms satisfactory to New Colt Acquisition Corporation. On or before the day following the conclusion of the hearing on the Disclosure Statement, New Colt Acquisition Corporation

shall have obtained a commitment letter from a financial institution;

(d) The representations and warranties of CF Holding and Colt contained in the Definitive Agreement qualified as to materiality shall be true, complete and correct and those not so qualified as to materiality shall be true, complete and correct in all material aspects, in each case at and as of the Effective Time with the same force and effect as though made on and as of the Effective Time;

(e) There shall have been no material adverse change in the financial condition, assets, or business, of CF Holding and Colt, taken as a whole, nor shall there be any occurrence, damage, destruction or loss which could have a Material Adverse Effect, as defined in the Definitive Agreement on Holding and Colt, taken as a whole, whether or not covered by insurance;

(f) The covenants, approvals, authorizations, licenses, registrations, declarations or filings shall have been obtained from or made to, as the case may be, the Department of Defense, the Bureau of Alcohol, Tobacco and Firearms, the Department of Commerce, and under the Defense Production Act of 1950;

(g) The Coltec Settlement Agreement shall have been executed and delivered, shall have been approved by a Final Order of the Bankruptcy Court and shall have become effective, subject only to the occurrence of the Effective Date;

(h) The Modified Collective Bargaining Agreement shall have been executed and delivered and shall have become effective, subject only to the occurrence of the Effective Date;

(i) The West Hartford Lease, as modified in accordance with the Coltec Settlement Agreement shall have been assumed by Colt and assigned to Reorganized Colt as authorized by Final Order of the Bankruptcy Court, and shall have been executed and delivered and shall have become effective, subject only to the occurrence of the Effective Date;

(j) An unstayed order confirming the Plan shall have been entered.

B. Revised Corporate Structure.

1. Terms of Certain Securities to be Issued.

(a) **Reorganized Colt Common Stock.** As a result of the Merger, in exchange for the Merger Consideration, each share of Common Stock of New Colt Acquisition Corporation issued and outstanding immediately prior to the Effective Time shall thereafter represent one validly issued, fully paid and non-assessable share of Common Stock of Reorganized Colt. The shares of Reorganized Colt shall have such rights to dividends, liquidation, voting and other matters as are set forth in Reorganized Colt's New Certificate of Incorporation and as otherwise provided by Delaware Law. For the term of the Modified Collective Bargaining Agreement (April 1, 1998), there will be no dividends, share re-purchases, or other capital reducing transactions, provided however that dividends may be paid if the payment of the dividends (i) does not result in the total debt of Reorganized Colt exceeding 75% of its total capital and (ii) such dividends do not exceed 50% of the amount by which EBITDA (earnings before interest, taxes, depreciation and amortization) exceeds \$10 million for the year in which the dividend is paid.

For the duration of the Modified Collective Bargaining Agreement, Reorganized Colt may pay a one-time only capital dividend, provided that (i) it does not result in the total debt of Reorganized Colt exceeding 75% of its total capital and (ii) Reorganized Colt has made profit-sharing payments during the two years prior to when the dividend will be paid.

(b) **New Colt Holding Common Stock.** New Colt Holding Common Stock will be issued initially \$1.5% to New Colt L.P. and 8.5% to the Employee Stock Ownership Plan. Over time, the Employee Stock Ownership Plan will own 11.5% of such stock on a fully diluted basis and management of Reorganized Colt may own up to 8.5% of such stock on a fully diluted basis pursuant to stock option and stock bonus plans established by Reorganized Colt and New Colt Holding. The Debtors, the CDA, New Colt L.P. and the UAW may elect to issue one or more classes of securities with different voting rights or liquidation preferences.

(c) **New Colt Holding Preferred Stock.** New Colt Holding Preferred Stock in the amount of \$10 million shall be issued under the Plan to the Connecticut Development Authority.

C. Corporate Governance.

After the Merger, the Boards of Directors of New Colt Holding and Reorganized Colt shall each consist of:
 (i) Donald Zilkha, who shall be chairman of the Board,
 (ii) John Rigas, (iii) three individuals associated with or employed by Zilkha & Company, (iv) two UAW representatives (who shall share one vote), (v) one person appointed by the CDA and (vi) Ronald C. Whitaker, the current president and chief executive officer of Colt. In addition, John W. Holjes, currently vice president and chief financial officer of Colt, shall be an ex officio member of the Boards with such powers as are specified in the by-laws of New Colt Holding and Reorganized Colt. Mr. Whitaker will be president and chief executive officer of New Colt Holding and Reorganized Colt, and Mr. Rigas will be the treasurer and secretary of each entity.

VII.

MEANS OF IMPLEMENTATION OF THE PLAN

The distributions contemplated under the Plan shall be completed in accordance with the following provisions:

A. Plan Funding

Reorganized Colt will fund its obligations under the Plan as follows: (a) payment of cash in the amount of \$26,788,754 plus the payments to the Bank under Clause 2(c) of the "Treatment of the Bank Claim" and as adjusted to reflect the amount of Debtor-in-Possession financing outstanding on the Closing Date as set forth in the Definitive Agreement (the "Closing Cash Payment"); (b) assumption of the (i) ("Deferred Liabilities") as defined in Column II of Exhibit 2 to the Definitive Agreement in an amount not to exceed \$3,579,765 and (ii) accounts payable, other working capital liabilities incurred in the ordinary course of business by the Debtors since the Petition Date ("Ordinary Course Liabilities") and post-retirement health and medical benefits which shall not exceed \$24,000,000 in total.

B. Cancellation of Existing Securities and Issuance of Reorganization Securities

As a result of the Merger, on the Effective Date, the following transactions will occur:

1. Cancellation, annulment and extinguishment of all Old Common Stock of Holding, all Old Common Stock of Colt, all Old Series A Preferred Stock, all Old Series B

Preferred Stock and all Old Warrants of Holding, all of which shall occur automatically by the opening of business on the Effective Date without further notice or order; and

2. The issuance, distribution and transfer by New Colt Holding and Reorganized Colt, respectively, of the Reorganization Securities in accordance with the terms of the Plan.

C. New Credit Facility

As part of the New Investor Agreement, New Colt Acquisition Corporation has agreed to arrange for not less than \$20 million of financing for Reorganized Colt. New Colt Acquisition Corporation will have a commitment from a financial institution on or before the day following the conclusion of the hearing on the Disclosure Statement for such financing.

D. CDA Acquisition and Contribution of Intellectual Property to Reorganized Colt

The Name Partnership will convey all of the Intellectual Property to the CDA for \$10 million in cash. In addition, the Name Partnership will be entitled to receive certain contingent payments from New Colt Holding as set forth in that certain Purchase and Sale Agreement among the Name Partnership, the CDA and New Colt Holding. The CDA will convey the Intellectual Property to New Colt Holding in return for \$10 million of New Colt Holding Preferred Stock. After the Merger, Reorganized Colt will guaranty up to \$1.25 million of the above-referenced payments with respect to the development and marketing of the Non-Firearms Intellectual Property. In consideration therefor, New Colt Holding will license the Firearms Intellectual Property to Reorganized Colt.

E. Modified Collective Bargaining Agreement

The Debtors and the UAW have negotiated the Modified Collective Bargaining Agreement, on terms satisfactory to New Colt Acquisition Corporation, that will provide for, among other things, the Agreed Wage and Work Rule Changes, to be effective as of the Effective Date. The Modified Collective Bargaining Agreement shall be assumed by the Debtors and shall be binding on Reorganized Colt in accordance with its terms.

F. Continuation of Retiree Benefits

Reorganized Colt will continue after the Effective Date all Retiree Benefits.

G. Settlement of Post-Acquisition Products Liability Claims

For purposes of distribution under the Plan, the Post-Acquisition Products Liability Claims pending against the Debtors as of the Petition Date shall be liquidated by settlement among the parties or by objection to claim as determined by the Bankruptcy Court or the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 157(b)(5).

H. Transfer of Holding Intercompany Claim

In accordance with the Definitive Agreement, Holding shall transfer to Colt the Holding Intercompany Claim, after setoff of the Colt Intercompany Claim.

I. Dissolution of Holding and Wind-Up of Bankruptcy Cases

After the Effective Date Holding shall be dissolved by operation of law.

After the Effective Date, Reorganized Colt and Holding shall promptly wind up their bankruptcy cases. Reorganized Colt shall fund up to \$50,000 or such other amounts as may be mutually agreed to permit the Debtors to close out their Reorganization Cases.

J. Revestment of Assets

The property of the Estates of the Debtors shall revest in Reorganized Colt on the Effective Date free and clear of all Claims, liens, charges and encumbrances and interest of Creditors and holders of interest (other than as expressly provided herein). Thereafter, New Colt Holding and Reorganized Colt may operate their businesses and may use, acquire and dispose of property free of any restrictions of the Bankruptcy Code. As of the Effective Date, all property of Reorganized Colt shall be free and clear of all Claims and interests, and all liens, security interests, encumbrances, third party rights, or Claims of any kind, except as provided specifically in the Plan.

K. Method of Distribution Under the Plan

1. In General. All Cash distributions shall be made by Reorganized Colt in accordance with the Plan. Except as

set forth herein, Reorganized Colt shall make all distributions of Cash pursuant to the Plan on the Effective Date or as soon thereafter as is practicable. The consideration to be distributed to holders of Colt General Unsecured Claims shall be deposited in a segregated account on the Effective Date and shall at all times on and after the Effective Date be held in trust for the benefit of such holders.

2. **Manner of Payments Under the Plan.** Any payment of Cash made to the Bank by Reorganized Colt pursuant to the Plan will be made by wire transfer on the Effective Date without setoff. All other payments of Cash made by Reorganized Colt will be either by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of Reorganized Colt.

3. **Setoffs.** Reorganized Colt may, but shall not be required to, set off against any Claim (other than the Bank Claim Against Colt) and the payments to be made pursuant to the Plan in respect of such Claim, any Claims of any nature whatsoever, the Debtors may have against the claimant, but neither the failure to do so nor the allowance of any such Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim the Debtors may have against such claimant.

4. **Distribution of Unclaimed Property.** Except as otherwise provided in the Plan, any distribution of property (Cash or otherwise) under the Plan which is unclaimed after six months from the Confirmation Date shall be transferred to Reorganized Colt. Notwithstanding the foregoing, all amounts reserved in the Disputed Claims Escrow for Class 5 Claims in excess of amounts distributed therefrom for Disputed Claims that subsequently become Allowed Claims, together with the total amount of unclaimed funds previously distributed to holders of Allowed Claims in Class 5, shall be distributed pro rata to holders of Allowed Claims in Class 5 six months after the Class 5 Distribution Date.

5. **De Minimis Distributions.** No Cash payment of less than five dollars (\$5.00) shall be made to any Creditor.

6. **Business Days.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

L. Settlement of Litigation and Release.

Pursuant to the terms of the Multi-Party Release, each of the Debtors, the Bank, the CDA, Coltec, the UAW, the Name Partnership, together with its general and limited partners and certain individuals and entities affiliated with the Name Partnership named in the Acquisition Litigation, Water + Way and the Committee on behalf of its members, New Colt Acquisition Corporation, and New Colt Holding Corp. on behalf of itself and its shareholders will (to the extent therein provided) release and forever discharge, individually and collectively, each of the other parties thereto (or certain of them, as the case may be) together with such party's present and former direct and indirect subsidiaries or affiliates, each of their present and former shareholders, present and former officers, directors, and employees, present and former attorneys, advisors or consultants presently or formerly retained by any of them, present and former agents, and the predecessors, successors and assigns of all or any of them from any and all claims (as such term is defined in the Multi-Party Release) whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, and whether based upon facts now known or unknown, direct or derivative, in law, admiralty, equity or bankruptcy, against any of the parties thereto which any party or the affiliate of any party and the predecessors, successors and assigns of any or all of them ever jointly or individually had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the Effective Date, including, without limitation: (a) with respect to the Bank and the CDA, any and all claims arising from, and any and all transactions, relationships, negotiations, or dealings relating in any way, directly or indirectly, to any and all loans, credit accommodations, services, or uses of the foregoing under and including the Credit Agreement and the Post-Petition Credit Agreement, any other agreements entered into, or notes, or other documents executed in connection therewith or as an adjunct or supplement thereto or required thereby, and any prior agreements under which the Bank (or any of its predecessors or successors) made loans or extended credit or any service or accommodation of any type or kind whatsoever to or on behalf of the Debtors; (b) any and all claims asserted in, or which relate in any way, directly or indirectly, to claims asserted in connection with (i) the Colt Acquisition, (ii) the Name Partnership Litigation, (iii) the Acquisition Litigation and (iv) the Name Partnership Note; (c) with respect to the Bank, Coltec and the Name Partnership, any and all claims that have been or could have been asserted in any avoidance actions, or other proceedings relative to the Debtors, Debtors-in-Possession or the Estates, in any way

connected, directly or indirectly, to any payment or transfer made or any lien, security interest or other encumbrance granted to, or for the benefit of, any of the Bank Released Parties, the Coltec-Released Parties or the Name Partnership Released Parties (as such terms are defined in the Multi-Party Release); (d) any and all claims arising from or relating in any way, directly or indirectly, to the formulation, negotiation, implementation, confirmation or consummation of the Plan or Disclosure Statement, or any other contract, instrument, release, or other agreement or document created in connection with the Plan; and (e) any and all claims arising from or relating in any way, directly or indirectly, to the Merger pursuant to the Definitive Agreement as contemplated by the Plan.

Notwithstanding the foregoing, nothing in the Multi-Party Release shall in any way release any party from its obligations pursuant to the Plan, the Definitive Agreement or the Plan Documents (as defined in the Multi-Party Release). Without limiting the foregoing, nothing herein shall operate as a release of any claims by a Releasor pursuant to: (a) that certain Purchase and Sale Agreement dated as of August 19, 1994 among the Name Partnership, the CDA and New Colt Holding; (b) that certain Settlement Agreement dated as of August 16, 1994 among Coltec, New Colt, the Debtors and the CDA; and (c) that certain Settlement Agreement dated as of August 16, 1994 among Coltec, Water + Way, the Debtors and New Colt.

M. Abandonment of Preferences and Other Estate Causes of Action

Neither New Colt Holding, New Colt Acquisition Corporation, Reorganized Colt, nor the Debtors-in-Possession nor any Person claiming on behalf of the Debtors-in-Possession shall commence or continue any preference, fraudulent conveyance or other avoidance actions after the Effective Date (and any such actions which are pending shall be discontinued with prejudice and without costs no later than the Effective Date), nor shall the Debtors-in-Possession at any time assign, transfer, or otherwise convey or grant any interest in any of such claims or causes of action.

Notwithstanding the foregoing, if the Water + Way Settlement Agreement is not consummated, Reorganized Colt will continue any preference or other cause of action the Debtors and Debtors-in-Possession may have against Water + Way.

W. Post-Consummation Fees and Expenses

Reorganized Colt shall pay allowed fees and expenses of professionals for post-Consummation services upon such terms and conditions as are agreed to among the Debtor, the Committee, the professionals and Reorganized Colt and as approved by the Bankruptcy Court.

VIII.

PROCEDURES FOR RESOLVING DISPUTED AND CONTINGENT CLAIMS

A. Objection Deadline

Prior to the Confirmation Hearing, objections to Claims (other than Allowed Claims) shall be filed with the Bankruptcy Court and served upon the holders of each of the Claims to which objections are made.

B. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to all or any portion of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. The maximum amount that shall be distributed with respect to a Class 5 Disputed Claim that becomes an Allowed Claim after the Confirmation Hearing shall be the amount reserved in the Disputed Claims Escrow with respect to such claim pursuant to order of the Bankruptcy Court. Subject to the preceding sentence, Reorganized Colt shall withhold from the property to be distributed to a Class on the Effective Date, under the Plan an amount of Cash sufficient to be distributed on account of all Disputed Claims in such Class. The withheld amount shall be placed in the Disputed Claims Escrow.

C. Distributions on Account of Disputed Claims

Distributions to each holder of a Disputed Claim, to the extent that it becomes an Allowed Claim, shall be made out of amounts of Cash maintained in the Disputed Claims Escrow in accordance with the provisions of the Plan governing the Class of Claims to which the Allowed Claim belongs. At or prior to the Confirmation Hearing, the Bankruptcy Court shall establish the amount to be reserved for each Disputed Claim in the Disputed Claims Escrow.

IX.

CONDITIONS PRECEDENT

A. Conditions to Confirmation

The following are conditions precedent to confirmation of the Plan, unless waived pursuant to Article IX.(C):

1. CDA shall have entered into an agreement to acquire the Name Partnership's right, title and interest to the Intellectual Property (including the Name Partnership Claims) and CDA shall have entered into an agreement with Reorganized Colt or its affiliate which provides for the conveyance of the Firearms and Non-Firearms Intellectual Property and all proceeds thereof pursuant to Article VII(D) hereof;

2. The Coltec Settlement Agreement shall have been executed and delivered, shall have been approved by an Order of the Bankruptcy Court, and shall have become effective, subject only to the occurrence of the Effective Date;

3. The West Hartford Lease as modified in accordance with the Coltec Settlement Agreement shall have been assumed by Colt as authorized by an order of the Bankruptcy Court, and shall have been executed and delivered and shall have become effective, subject only to the occurrence of the Effective Date;

4. The Modified Collective Bargaining Agreement shall have been assumed by Colt as authorized by an order of the Bankruptcy Court, and shall have been executed and delivered and shall have become effective, subject only to the occurrence of the Effective Date;

5. The Multi-Party Release shall have been executed and delivered and shall have become effective, subject only to the occurrence of the Effective Date;

6. The Administrative Claims for unpaid fees and expenses of professionals, other than Zolfo, Cooper, incurred before December 14, 1993 and payable on the Effective Date pursuant to Section II.B.5 of the Plan shall not have exceeded \$2,724,800; and

7. The amount of Allowed Claims in Class 5, when combined with the aggregate amount estimated and reserved for Claims which have not yet been allowed, and which, if allowed, would be Class 5 Allowed Claims, does not exceed \$7,100,000.00.

B. Conditions to Consummation

The following are conditions precedent to consummation of the Plan, unless waived pursuant to Article IX(C):

1. The Confirmation Order shall have been entered, in form and substance acceptable to the Proponents, the Bank, and New Colt Acquisition Corporation, and shall have become a Final Order;
2. The New Credit Agreement shall have been executed, delivered and shall have become enforceable;
3. CDA shall have acquired the Intellectual Property and conveyed the Firearms and Non-Firearms Intellectual Property pursuant to Article VII(D) hereof;
4. The orders approving (a) the assumption of the Modified Collective Bargaining Agreement; (b) the assumption of the West Hartford Lease; and (c) the Coltec Settlement Agreement shall have become Final Orders; and
5. The Closing as defined in the Definitive Agreement shall have occurred.

C. Waiver of Conditions to Confirmation or Consummation

The requirement that a particular condition to confirmation or consummation be satisfied may be waived in whole or in part by the unanimous written consent of the Proponents, New Colt Acquisition Corporation and the other parties affected by such waiver. Consistent with the above, (a) the fifth condition to Confirmation set forth in Article IX(A) of the Plan (pertaining to the Multi-Party Release) and the first condition to Consummation set forth in Article IX(B)(1) of the Plan (pertaining to the Confirmation Order) may not be waived without the prior consent of the Bank which shall be manifested in a writing signed by an officer of the Bank; (b) any condition to Confirmation and Consummation which affects unsecured creditors may be waived only by written instrument executed by or on behalf of the Committee; (c) any condition to Confirmation and Consummation which affects Coltec may be waived only by written instrument executed by or on behalf of Coltec; and (d) any condition to Confirmation and Consummation which affects the UAW may be waived only by written instrument executed by or on behalf of the UAW.

2.

EFFECT OF CONFIRMATION

A. Discharge

Unless otherwise specifically provided in the Plan as of the Effective Date, Debtor is discharged from any claim and any "debt" (as that term is defined in Section 101(5) of the Code), ("Claims") and Debtor's liability in respect thereof is extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, legal or equitable, known or unknown, that arose from any agreement of Debtor entered into or obligation of Debtor incurred before the Confirmation Date, or from any conduct of Debtor prior to the Confirmation Date, including, without limitation, all interest, if any, on any such debts, whether such interest accrued before or after the date of commencement of the Case, and from any liability of a kind specified in Sections 502(g), 502(h) and 502(i) of the Code, whether or not a proof of claim is filed or deemed filed under Section 501 of the Code, such claim is allowed under Section 502 of the Code, or the holder of such claim has accepted the Plan.

The rights afforded in the Plan and the treatment of all Creditors provided herein shall be in exchange for and in complete satisfaction discharge and release of all Claims of any nature whatsoever, known or unknown, against the Debtors or any of their respective Estates or properties or interests in property. Except as otherwise provided herein, upon the Effective Date, all Claims against and interests in the Debtors will be satisfied, discharged and released in full in exchange for the consideration provided hereunder. All Persons shall be precluded from asserting against the Debtors, their predecessors, their successors (including New Colt Holding, Reorganized Colt and New Colt L.P.) or their respective assets or properties, any other Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, except as expressly permitted herein.

B. Injunction

In addition to the injunction imposed pursuant to Section 1141(d) of the Bankruptcy Code, upon consummation of the Plan, the Confirmation Order shall constitute and provide for an injunction by the Bankruptcy Court against all Persons from commencing or continuing any action or proceeding with respect to a Claim against or affecting the Debtors, New Colt L.P., New Colt Holding, Reorganized Colt, or any property of any such entity or any direct or indirect

transferee of any property of, or direct or indirect successor in interest to, any of the foregoing.

C. Additional Injunctions

The Confirmation Order shall provide that, on the Effective Date, all Creditors, all holders of Interests, New Colt Acquisition Corporation, Reorganized Colt, New Colt Holding and its shareholders, and all other parties in interest in the Reorganization Cases, shall be enjoined from the commencement or continuation of any action or proceeding at law or in equity (including without limitation, any action or proceeding seeking indemnification or contribution) relating to (a) with respect to the Bank and the CDA, any and all claims (as such term is defined in the Multi-Party Release) arising from, and any and all transactions, relationships, negotiations, or dealings relating in any way, directly or indirectly, to any and all loans, credit accommodations, services, or uses of the foregoing under and including the Credit Agreement and the Postpetition Credit Agreement, any other agreements entered into, or notes, or other documents executed in connection therewith or as an adjunct or supplement thereto or required thereby, and any prior agreements under which the Bank (or any of its predecessors or successors) made loans or extended credit or any service or accommodation of any type or kind whatsoever to or on behalf of the Debtors; (b) with respect to the Bank, the CDA, Coltec, and the Name Partnership, any and all claims asserted in the Acquisition Litigation or the Name Partnership Litigation, or which relate in any way, directly or indirectly, to claims which were or could have been asserted by the Debtor or any Creditor in connection with (i) the Colt Acquisition, (ii) the Name Partnership Litigation, (iii) the Acquisition Litigation and (iv) the Name Partnership Note; (c) with respect to the Bank, Coltec and the Name Partnership, any and all claims that have been or could have been asserted in avoidance actions, or other proceedings relative to the Debtors, Debtors-in-Possession or the Estates, in any way connected, directly or indirectly, to any payment or transfer made or any lien, security interest or other encumbrance granted to, or for the benefit of, any of the Bank Released Parties, the Coltec Released Parties, or the Name Partnership Released Parties (as such terms are defined in the Multi-Party Release); and (d) any and all claims arising from or relating in any way, directly or indirectly, to the formulation, negotiation, implementation, confirmation or consummation of the Plan or Disclosure Statement, or any other contract, instrument, release, or other agreement or document created in connection with the Plan; and (e) any and all claims arising from or relating in any way, directly or indirectly, to the

Merger pursuant to the Definitive Agreement as contemplated by the Plan.

Notwithstanding the foregoing, no Releasor (as defined in the Multi-Party Release) shall be enjoined from the commencement or continuation of any action or proceeding against any party that is not a Released Party named (as defined in the Multi-Party Release) with respect to such Releasor.

D. No Successor Liability

Except as otherwise expressly provided in the Plan or the Definitive Agreement, New Colt Holding and Reorganized Colt do not, pursuant to the Plan, the Definitive Agreement or otherwise, assume, agree to perform, pay, discharge or indemnify creditors against, or otherwise have any responsibility for, any liabilities or obligations of Debtors, fixed, contingent or otherwise, known or unknown, relating to or arising out of the operations of or assets of the Debtors, whether arising prior to, on or after the Effective Date. Neither New Colt Holding, New Colt L.P., New Colt Management, L.P. nor Reorganized Colt is and will be, a successor to any of the Debtors by reason of any theory of law or equity, and none shall have any successor or transferee liability of any kind or character, except that New Colt Holding and Reorganized Colt shall assume the obligations specified in this Plan, the Definitive Agreements or the Confirmation Order.

XI.

RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Reorganization Cases and the Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code and for, *inter alia*, the following purposes:

1. To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases or the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which either Debtor is a party or with respect to which either Debtor may be liable, and to hear and determine the allowance of Claims resulting therefrom;
2. To determine any and all pending adversary proceedings, applications, and contested matters;

3. To ensure that distributions to holders of Allowed Claims are accomplished as provided herein;
4. To hear and determine any and all objections to the allowance or estimation of Claims filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or interest, and to allow or disallow any Disputed Claim, in whole or in part;
5. To resolve issues arising with respect to Products Liability Claims;
6. To resolve issues with respect to Environmental Claims;
7. To resolve issues with respect to the Plan Documents;
8. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
9. To issue such orders in aid of execution of the Plan, to the extent authorized by Sections 105(a) and 1142 of the Bankruptcy Code;
10. To consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
11. To hear and determine all applications for compensation and reimbursement of professional fees under the Plan or pursuant to Sections 330, 331, 501(b), 1103 and 1129(a)(4) of the Bankruptcy Code;
12. To determine requests for the payment of Claims entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including compensation of and reimbursement of expenses of parties entitled thereto;
13. To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with this Plan other than agreements with respect to the acquisition and transfer of the Intellectual Property described in Article VII(D);
14. To hear and consider any matters relating to the liability of New Colt Holding or Reorganized Colt

with respect to claims arising before the Effective Date;

15. To recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

16. To hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code, including, but not limited to, matters concerning the Debtors' ability to use certain of the Debtors' tax attributes;

17. To hear any other matter not inconsistent with the Bankruptcy Code;

18. To consider and act upon the compromise and settlement of any claim against or cause of action on behalf of the Debtors or their Estates; and

19. To enter a final decree closing the Reorganization Cases.

XII.

MISCELLANEOUS PROVISIONS

A. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or the general corporation law of the State of Delaware, the law of the State of Connecticut shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan, except as otherwise expressly stated in any such agreement, document or instrument.

B. Section Headings

The Section headings contained in the Plan are for reference purposes only and shall not affect, in any way, the meaning or interpretation of the Plan.

C. Severability of Plan Provisions

In the event that any provision in the Plan is determined to be unenforceable following the Effective Date, which finding does not adversely affect the distributions hereunder, then such provision shall be severable from the

Plan and shall in no way limit or affect the enforceability and operative effect of any and all other provisions hereof.

D. Withholding and Reporting Requirements

In connection with the Plan and all instruments issued in connection therewith and distributions thereon, Reorganized Colt shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements.

E. Exculpation

Neither Colt, Holding, the CDA, the Bank, the Committee, New Colt Acquisition Corporation nor any of their respective counsel, professionals, members, officers, directors, employees, advisors, attorneys or agents shall have or incur any liability to any holder of a Claim or Interest, any other party in interest in the Reorganization Cases or any other Person for any act, event or omission in connection with, or arising out of the formulation, negotiation or implementation of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan or any contract, instrument, release or other agreement or document created in connection with the Plan, except for willful misconduct or gross negligence, and in all respects, shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

F. Committee

On the Effective Date, provided that distribution to Class 5 claimants pursuant to the Plan shall have occurred, the duties of the Committee shall terminate, except with respect to any appeal of an order in the Reorganization Cases, applications for professional fees of any professional and objections to claims of Class 5 creditors.

G. Amendments

Modifications of the Plan may be proposed in writing by the Proponents at any time prior to the Confirmation Date, provided that (a) the Plan, as modified, meets the requirements of Sections 1122 and 1123 of the Bankruptcy Code and (b) the Proponents shall have complied with Section 1125 of the Bankruptcy Code; provided, however, that no modifications may be proposed without the unanimous consent of the Proponents and New Colt Acquisition Corporation. The Plan

may be modified at any time after the Confirmation Date and prior to the Effective Date by the Proponents, provided, that (i) the Plan as modified meets the requirements of Sections 1122 and 1123 of the Bankruptcy Code, (ii) the Bankruptcy Court, after notice and hearing confirms the Plan as modified, under Section 1129 of the Bankruptcy Code, and (iii) the circumstances warrant such modifications; provided, however, that no modifications may be proposed without the unanimous consent of the Proponents and New Colt Acquisition Corporation. Notwithstanding anything provided herein to the contrary, no modifications, alterations, amendments or changes to any of the provisions of the Plan dealing with the Claims of the Bank or other provisions relating to or affecting the Bank, including, but not limited to (i) the classification or treatment of the Bank Claim Against Colt, (ii) the Multi-Party Release, (iii) the Confirmation Order, (iv) the definition of "Effective Date," or (v) the Definitive Agreements may be made without the prior consent of the Bank which shall be manifested by a writing signed by an officer of the Bank. Notwithstanding the foregoing, no modification, alteration, amendment or changes to any of the provisions of the Plan that affect holders of Colt General Unsecured Claims, the Committee or any professional person employed by the Committee shall be made without the prior written consent of the Committee. Notwithstanding the foregoing, no modification, alteration, amendment or changes to any of the provisions of the Plan that affects the CDA, New Colt Acquisition Corporation, Coltec or the UAW shall be made without the prior written consent of the affected party.

H. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, the holders of Claims, the holders of Interests, and their respective successors and assigns.

I. Notices

Any notice required or permitted to be provided under the Plan shall be in writing and served by (a) certified mail, return receipt requested, (b) hand delivery, or (c) overnight delivery service, addressed as follows:

Colt's Manufacturing Company, Inc.
P.O. Box 1368
Hartford, Connecticut 06144-1368
Attn: Ronald C. Whitaker

with a copy to:

Murtha, Cullina, Richter and Pinney
CityPlace, 185 Asylum Street
Hartford, Connecticut 06103
Attn: Robert A. White, Esq.

Connecticut Development Authority
Department of Economic Development
865 Brook Street
Rocky Hill, Connecticut 06106
Attn: John J.C. Harndon

with a copy to:

Shipman & Goodwin
One American Row
Hartford, Connecticut 06103
Attn: Ira Goldman, Esq.

New Colt Acquisition Corporation
c/o Zilkha and Company
767 Fifth Avenue
45th Floor
New York, New York 10153
Attn: John Rigas

with a copy to:

Samuel M. Feder, Esq.
Rogers & Wells
200 Park Avenue
New York, New York 10166

Creditanstalt-Bankverein
245 Park Avenue
New York, NY 10167
Attn: Raymond Herbert, Esq.

with a copy to:

Salkin, Rodin & Goodman
750 Third Avenue
New York, NY 10017-2778
Attn: Henry Goodman, Esq.

Official Committee of Unsecured Creditors
c/o Day, Berry & Howard
CityPlace I, 185 Asylum St.
Hartford, CT 06103
Attn: John B. Nolan, Esq.

Dated: Hartford, Connecticut
August 19, 1994

Respectfully submitted,

CONNECTICUT DEVELOPMENT AUTHORITY

By: _____
John J.C. Herndon
President

By: Ira H. Goldman - ct05656
 Shipman & Goodwin
 One American Row
 Hartford, CT 06103-2619
 Its Attorneys

COLT'S MANUFACTURING COMPANY, INC.
 and CF HOLDING CORP., Debtors and
 Debtors-in-Possession

By: John W. Holts
 John W. Holts
 Vice President and
 Chief Financial Officer

By: Robert A. White
 Robert A. White - ct08277

MURTHA, CULLINA, RICHTER AND PINNEY
 CityPlace, 185 Asylum Street
 Hartford, Connecticut 06103
 (203) 240-6000
 Co-counsel for the Debtors

ATTACHMENT 3A

COLT ALL-AMERICAN DOUBLE ACTION 9MM PISTOL RECALL

**PRODUCT SAFETY
WARNING
AND RECALL
NOTICE**



**Colt
All-American
Double Action 9mm Pistols**

If you own a Colt's All-American Double Action 9mm pistol with serial numbers R400001 to R400052, R400053 to R400054, and R400055 to R400056, and those with a letter A before or after the number, they may accidentally discharge if struck or dropped. A blow to the rear of the slide while a round is in the chamber can cause the pistol to discharge. The firing mechanism in these pistols will be modified free of charge, and thereby reduce the possibility of accidental discharge resulting from a blow.

**MEANWHILE, ALL OWNERS AND SHOOTERS
OF THESE PISTOLS ARE CAUTIONED:**

- 1) Carry this pistol *only* with the chamber empty.
- 2) Never chamber a round until immediately before you are ready to fire.
- 3) Always control your pistol so as to prevent its being dropped or struck or blown.

Especially with a round in the chamber.

If you own one or more of these pistols, complete and return the coupon (or a copy of it) to:

Colt's Manufacturing Company, Inc.
P. O. Box 1580 Dept. 802000
Hartford, CT 06144-1580

If the coupon is missing, send a postcard or note to the address shown above. Give your name, address and the serial number of each All-American pistol you own. Arrangements will be made as soon as possible to modify your pistol(s). You will be given further details and additional instructions as to when, where and how to send your pistol(s) for modification.

Please **DO NOT** send your pistol(s) to Colt at this time. For further information, you may call us toll-free at 1-800-425-0001.

Print Serial Number:	_____
Name:	_____
Address:	_____
City:	_____
State:	_____
Zip:	_____



COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1868, HARTFORD, CONNECTICUT 06144-1868, 203/236-6311

COLT ALL AMERICAN DOUBLE ACTION PISTOL MODIFICATION

Dear

Our records show that you own a Colt All American double action pistol. You are, therefore, one of the first people we want to reach to let you know of a product recall.

We regret any inconvenience to you, but urge you to read the **Product Safety Warning and Recall Notice** enclosed, and follow the instructions within it. For your safety, please make sure you only carry the pistol with the chamber empty.

Please return the coupon so that we have confirmation of the serial number on your pistol and your address. Also, if you know of anyone else with a Colt All American pistol, please share this information with them, and ask them to contact Colt with their name, address, and serial number.

Thank you for your patience and cooperation. We will try to minimize your inconvenience.

Sincerely,

Donna Lis
Supervisor
Customer Service

Enclosure: Product Safety Warning and Recall Notice

RC2001

SYMBOL OF QUALITY SINCE 1836





COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1858, HARTFORD, CONNECTICUT 06144-1858, (203) 261-5311

COLT ALL AMERICAN DOUBLE ACTION PISTOL MODIFICATION

Dear Colt Distributor/Dealer:

If you have any Colt All American double action pistols in stock, you are one of the first people we want to reach to let you know of a product recall.

We regret any inconvenience to you, but urge you to read the **Product Safety Warning and Recall Notice** enclosed. Please let us know the serial numbers of any of the pistols you have in stock and we will tell you when and where to send them for modification. Meanwhile, please follow the safety instructions in the recall notice and delay any further sales until the pistols are modified.

Also, please share this information with those of your customers who might own a Colt All American pistol, and ask them to contact Colt with their name, address, and serial number.

Sincerely,

Donna Lis
Supervisor
Customer Service

Enclosure: Product Safety Warning and Recall Notice

RC2002

SYMBOL OF QUALITY SINCE 1838





COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1898, HARTFORD, CONNECTICUT 06184-0898 (203) 236-6311

RE: Colt All American Double Action Pistol - MODIFICATION

Dear Colt Owner:

Thank you for your recent response to our advertisement regarding Colt All American double action pistols. We are offering to modify, without charge, the firing mechanism in your pistol to reduce the possibility of accidental discharge if you have a round in the chamber and the pistol is dropped or struck a blow. We urge you to take advantage of this offer, further details of which are outlined in the Terms of Agreement, enclosed. Please read these carefully, then complete and sign the acceptance form and mail it back to Colt as soon as possible.

We will write to you again when we receive your acceptance form to give you more details and to tell you when, where, and how to ship your pistol. MEANWHILE, ONLY CARRY THE PISTOL WITH THE CHAMBER EMPTY, AND DO NOT SHIP YOUR PISTOL YET.

Thank you for your interest in Colt products.

Sincerely,

Donna Lis
Supervisor
Customer Service

Enclosures (1) Terms of Agreement
(2) Acceptance Form

RC2003

SYMBOL OF QUALITY SINCE 1836



COLT'S MANUFACTURING COMPANY, INC.

PO BOX 1868, HARTFORD, CONNECTICUT 06144-1868, 203/236-6911

**TERMS OF AGREEMENT
COLT ALL AMERICAN
DOUBLE ACTION PISTOL
- MODIFICATION -**

1. This recall introduces a modification to the firing mechanism.
2. There will be no replacement of other parts, nor any repair or refinishing of the pistol. The parts replaced will not be returned.
3. If the pistol is deemed unsafe or otherwise unfit for continued use, it will be returned with a brief explanation. If it is possible to modify your pistol, this will be done before it is returned.
4. Cost of shipping the pistol to the Colt factory will be paid by the pistol owner, while handling and shipping costs to return it will be at no charge to the owner.

RC2004

SYMBOL OF QUALITY SINCE 1873





COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1898, HARTFORD, CONNECTICUT 06144-1898, 203/236-6011

**ACCEPTANCE FORM
COLT ALL AMERICAN
DOUBLE ACTION PISTOL
- MODIFICATION -**

I agree to the Terms of Agreement and I authorize the modification of my pistol/s, Serial

Number/s _____

Signed _____

Print Name _____

Date _____

*Print Address _____

(Please Check One Block)

- Options: ☐ I do wish to have my pistol/s modified.
☐ I do not wish to have my pistol/s modified for the following reason:

*Note: U.P.S. will not deliver to a Post Office Box. If address for return U.P.S. shipment of the pistol is different from mailing address above, please list shipping address below.

RC2005

SYMBOL OF QUALITY SINCE 1836





COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1804, HARTFORD, CONNECTICUT 06144-0805, 860/234-6311

RE: Colt All American Double Action Pistol - MODIFICATION

Dear Colt Owner:

We recently received your pistol, serial number _____.

We did not want you to ship it to Colt. Nevertheless, we will keep the pistol and we will process it once you return the completed acceptance form.

Please read the Terms of Agreement, copy enclosed, and return the completed Acceptance Form to Colt's.

Thank you for your continued patience.

Sincerely,

Donna Lis
Supervisor
Customer Service

Enclosure (1) Terms of Agreement
(2) Acceptance Form

RC2306

SYMBOL OF QUALITY SINCE 1836





COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1368, HARTFORD, CONNECTICUT 06144-1368, 203/291-6311

COLT ALL AMERICAN PISTOL MODIFICATION

Dear

Thank you for returning your acceptance form. We have entered your name on our listing of owners of Colt All American double action pistols to be modified.

Based on our current work flow, we estimate being ready to modify your pistol in approximately:

_____ days/weeks/months.

PLEASE DO NOT SEND YOUR PISTOL YET

When your pistol can be worked on, we will send you shipping instructions.

Meanwhile, we strongly advise you to CARRY YOUR PISTOL ONLY WITH THE CHAMBER EMPTY.

Sincerely,

Donna L. Lis
Supervisor
Customer Service

RC2097

SYMBOL OF QUALITY SINCE 1836





COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1866, HARTFORD, CONNECTICUT 06114-1866, (203) 236-4311

PLEASE READ CAREFULLYSHIPPING INSTRUCTIONSCOLT ALL AMERICAN DOUBLE ACTION PISTOL - MODIFICATION

Dear Colt Owner:

We are now ready to modify your pistol. Please prepare your pistol and ship it as described in the following instructions.

Prepare Pistol and Package

1. Point your pistol in a safe direction, remove the magazine and check that the magazine is empty.
2. Keep your pistol pointing in a safe direction, pull back the slide and look in the chamber to make sure it is empty.
3. Close the slide and install the empty magazine.
4. Place the pistol, complete with magazine, in a well-padded package.
5. Do not send accessories, display boxes, etc. with your pistol.

Ship Pistol in Package

Send the package directly by U.P.S. or other common carrier unless prohibited by local law. Please prepay your shipment and make sure you insure it adequately. Packages that are not prepaid will not be accepted.

Address the package to:
C.M.C.I. (Dept. RC2000)
Talcott Road
West Hartford, CT 06110

Continued On Reverse Side...

SYMBOL OF QUALITY SINCE 1838



Further Information

Cost - You pay only for shipping your pistol to the factory. It will be shipped back to you at no charge to you.

Direct Shipping - You should ship the pistol directly and receive the return shipment directly. There is no need to go to a dealer as a Federal Firearms License is not required. However, some local laws may require shipment through a dealer.

Serial Numbers Damaged - Do Not ship handguns with defaced or obliterated serial numbers. This is a violation of federal law.

Modification - Upon receipt at the factory, the firing mechanism will be modified. When completed, the trigger guard will be stamped with "**".

Return of Your Pistol - You should receive the modified pistol in about three to five weeks after it is received at the factory.

Tell a Friend - If you have a friend with a Colt pistol similar to yours, tell him or her about this modification. Ask that person to contact Colt (you have our address), and we will be happy to have that pistol modified too.

Other Services - Modification of the firing mechanism is the only work that will be done at this time. If you require any other service, return your pistol to Colt's in the normal way.

Other Colts Products - If you are interested in the current line of Colt products, please go to your nearest Colt dealer. We will be happy to show you the latest Colt line.

Thank you.

Sincerely,

Donna Lia

Donna Lia
Supervisor
Customer Service

RC2008



COLT'S MANUFACTURING COMPANY, INC.

PO BOX 1878, HARTFORD, CONNECTICUT 06144-1878 (203) 236-4311

February 16, 1995

COLT ALL AMERICAN PISTOL MODIFICATION

Your Order Number _____

Colt's Repair Order Number _____

Colt All American Pistol Serial Number _____

Dear Colt Dealer:

We have your customer's gun on hold in our repair department. Please help us contact your customer direct so that we can notify them of a product safety Warning and Recall that affects this product. Please either ask your customer to call our dedicated telephone number (toll free) 1-800-426-8001 or send us your customer's name and address so that we can notify them in writing. We will hold the pistol until we hear from your customer.

Also, if you have any of those pistols in stock you are one of the first people we want to reach to let you know of the product recall too.

We regret any inconvenience to you, but urge you to read the Product Safety Warning and Recall Notice enclosed. Please let us know the serial numbers of any of the pistols you have in stock and we will tell you when and where to send them for modification. Meanwhile, please follow the safety instructions in the recall notice and delay any further sales until the pistols are modified.

Also, please share this information with those of your other customers who might own a Colt All American pistol, and ask each of them to contact Colt with their name, address and serial number.

Thank you for your patience and cooperation. We will try to minimize your inconvenience. Meanwhile, you may also receive additional notifications of this program through our advertising agency, but you need only respond to this one.

Sincerely,

Donna Lis
Supervisor, Customer Service

Enclosure: Product Safety Warning and Recall Notice

RC1G09

SYMBOL OF QUALITY SINCE 1926

ATTACHMENT 3B

COLT LIGHT RIFLE RECALL



COLT'S MANUFACTURING COMPANY, INC.

P.O. BOX 1368, HARTFORD, CONNECTICUT 06144-1368, 860/236-5311

October 11, 2000

To: All Colt's Domestic Distributors and/or Owners of the Colt Light Rifle

RE: COLT LIGHT RIFLE PRODUCT RECALL

On September 1, 2000, Colt's Manufacturing Co., Inc., as the distributor for Colt Rifles Inc., announced a Product Recall of the Colt Light Rifle, Model # CLR306SRBL (30-06 caliber only). Our concern was that some Colt Light Rifles might not conform to Colt's quality and safety standards.

At that time, Colt requested distributors in receipt of this Rifle model to return them to Colt for inspection and repair. To the extent that these Rifles already were shipped to dealers, we also requested our distributors to identify the dealer or other purchaser to whom they were sold. We then followed up with these parties who did not return their Rifles to Colt. Enclosed please find a list by serial number of the Colt Light Rifles not yet returned. We ask for your assistance.

If you are in possession, or know of someone in possession, of a Rifle bearing one of these serial numbers, please: **DO NOT USE THE RIFLE. IMMEDIATELY RETURN IT TO COLT. DO NOT ATTEMPT TO DIAGNOSE OR REPAIR.** In some Rifles, the firing pin can fail to cock and can rest on the primer of a cartridge in the chamber. This condition could lead to an accidental discharge. Colt's has received no reports of personal injury or property damage. However, we initiated this program to prevent the possibility of injury.

Of this Rifle model, the highest serial number subject to recall is LR002838. Any model of this Rifle with a serial number of LR002838 or lower that does not have an upper case "O" stamped on the upper receiver must be returned for repair to: CMCI, Attn: Product Service, Talcott Road, West Hartford, CT 06110. Please call Customer Service at (800) 962-COLT (2358) for shipping instructions.

This Rifle model was sold nationwide during June and July 2000 through Colt's domestic distributors only. No other Colt Rifles Inc. products and no Colt's Manufacturing Co., Inc. products are involved in this program.

Thank you for your immediate cooperation. If you have any questions, please contact either Mike Reising (ext. 1506) or Josh Dersey (ext. 1386) at the above toll-free telephone number.

Sincerely,



COLT'S MANUFACTURING COMPANY, INC.
P.O. BOX 1868, HARTFORD, CONNECTICUT 06144-1868, (860) 236-6311

FOR IMMEDIATE RELEASE

Contact: Carlson Chen
Colt's Manufacturing Co.
(860) 236-6311

COLT'S RECALLS LIGHT RIFLE

West Hartford, Conn. — September 1, 2000. . . . Colt's Manufacturing Company in conjunction with Colt Rifles Inc. announced today a recall of its new Colt Light Rifle (Model CLR3064SRBL - 30-06 caliber only) citing a potential safety problem with the bolt assembly. More specifically, in some rifles, the firing pin may fail to cock and may rest on the primer of a cartridge in the chamber. As a result, the rifle may fail to fire or fire unexpectedly.

According to Lynn Fowler, Colt's Chief Operating Officer, "While we do not believe this to be a pervasive problem, we are being duly cautious to ensure that all rifles are returned for evaluation and repair or replacement as necessary." Colt's is requesting its distributors and dealers who have received the rifles to return them immediately as instructed in the Product Recall Notice. The dealers are also being requested to provide Colt's with information about end users who have already taken possession of their rifles. Colt's will evaluate and repair each rifle as necessary as part of its Lifetime Service Agreement.

"We are requesting our customers to neither use the rifle nor make an attempt to diagnose or repair the problem. Instead, they should promptly contact our Customer Service Department at 1-800-962-COLT (2658) for return instructions. Although we have received no reports of personal injury or property damage, safety is our number one concern," said David Johnson, Director of Engineering. Representatives of Colt's met with staff at its former Saco Defense, now General Dynamics Armament Division, to discuss product modifications as this is where the rifle is manufactured. Colt's is confident that the appropriate modifications will be made and rifle shipments of other calibers will commence shortly.

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SYMBOL OF QUALITY SINCE 1836



COLT LIGHT RIFLE RECALL QUESTIONS AND ANSWERS

WHAT IS THE CURRENT SITUATION WITH THE COLT LIGHT RIFLE?

The Colt Light Rifle Model # CLR3064SRBL is being recalled for inspection and repair/replacement as necessary. Please note that the recall affected only those rifles made in caliber .30-06. Colt Light Rifles will also be available in the following calibers: .300 Win. Mag., 7mm Rem. Mag., .270 Win., .25-06 Rem., .308 Win., and .243 Win. Once again, these calibers have not been affected by the recall.

WHAT IS THE REASON FOR THE RECALL?

The main reason for the recall is to ensure the safety of our customers. In some rifles, the firing pin may fail to cock and may rest on the primer of a cartridge in the chamber. As a result, the rifle may fail to fire or fire unexpectedly. This problem may not be present in all rifles and may occur intermittently. As a result, no attempt should be made to diagnose the problem or repair the rifles. Although we have received no reports of personal injury or property damage, safety is our number one concern.

HOW MANY RIFLES DID THIS RECALL AFFECT?

The recall only affected the rifles made in .30-06 caliber, shipped nationwide between June and July 2000. Approximately 580 rifles were affected.

WHAT IS COLT'S MANUFACTURING'S RELATIONSHIP WITH COLT RIFLES INC.?

Colt's Manufacturing Company Inc. and Colt Rifles Inc. are sister companies. Colt's Manufacturing is the exclusive distributor for rifles made by Colt Rifles Inc.

WHAT SHOULD I DO WITH MY COLT LIGHT RIFLE? HOW DO I KNOW THAT MY RIFLE IS PART OF THE RECALL?

End users may call Colt's customer service department to determine whether their rifle is part of the recall. Once that is determined, they should ship their rifle immediately to the following address: C.M.C.I., Attn: Product Service, Talcott Road, West Hartford, CT 06110. Colt will pay for the shipping of your rifle.

Distributors have been instructed to return all Colt Light Rifles in stock to Colt for free repair or replacement. They should also inform their dealers to do the same. Please inform Colt of any rifle already purchased by an end user and include the purchaser's name, address, telephone number and the serial number of the rifle.

WHEN WILL MY RIFLE BE RETURNED? WHO SHOULD I CALL FOR STATUS UPDATES ON MY RIFLE?

We will make every effort to return your rifle as quickly as possible. Our main concern is the safety of our customers. To check on the status of your rifle, please call the customer service department for updates.

Colt Light Rifle Questions & Answers
Page 2

WHAT IF I WANT A REFUND (NOT A REPAIR OR REPLACEMENT)?

At this time, refunds are not being offered. However, Colt will be evaluating each rifle and will repair/replace it per our Limited Lifetime Service Agreement.

WHEN WILL SHIPMENTS OF THE COLT LIGHT RIFLE RESUME?

Regular shipments of the Colt Light Rifle will resume as soon as product modifications have been made.

PLEASE NOTE THE FOLLOWING CALL ROUTING:

Type of Call	Point of Contact
Major media, consumer advocacy groups and publications	Carlton Chen, Ext. 1315
Distributors or Dealers	Mike Reissig, Ext. 1506 or Josh Dorsey, Ext. 1386
Customer inquiries	Customer Service, Ext. 1450



COLT'S MANUFACTURING COMPANY, INC.
P.O. BOX 1868, HARTFORD, CONNECTICUT 06144-1868, 860/236-0311

PRODUCT RECALL NOTICE

Colt Light Rifle Model # CLR3064SRBL (30-06 caliber only)

Colt's Manufacturing Company Inc. in conjunction with Colt Rifles Inc. has instituted a product recall on the Colt Light Rifle Model # CLR3064SRBL .30-06 caliber only.

The reason for the recall is in some rifles, the firing pin may fail to cock and may rest on the primer of a cartridge in the chamber. As a result, the rifle may fail to fire or fire unexpectedly. This problem may not be present in all rifles and may occur intermittently. As a result, we are requesting our customers make no attempt to diagnose the problem or to repair the rifles. Although we have received no reports of personal injury or property damage, safety is our number one concern.

All Colt distributors have been notified of the recall via fax today and we will follow up with a certified letter and phone call to ensure their receipt and understanding of the product recall. We are requesting our distributors to contact their customers and notify them to promptly return their Colt Light Rifles to Colt's for a free repair/replacement. If a dealer has already sold the rifle to an end user, we are also requesting the customer information so we may follow up with them directly.

Please note we are requesting any phone calls received, regarding the recall, should be referred to the contacts listed below for proper handling. Under no circumstances should you comment to any outside caller unless you are the designated point of contact.

Type of Call	Point of Contact
Major media, consumer advocacy groups and publications	Carlton Chen, Ext. 1315
Distributors or Dealers	Mike Reissig, Ext. 1506 or Josh Dorsey, Ext. 1386
Customer inquiries regarding recall or repairs in process	Customer Service, Ext. 1450

SYMBOL OF QUALITY SINCE 1836





COLT'S MANUFACTURING COMPANY, INC.
P.O. BOX 1465, HARTFORD, CONNECTICUT 06144-1865, 860/336-6311

28 August, 2000

To: All Colt's Domestic Distributors:

RE: COLT LIGHT RIFLE PRODUCT RECALL

Encl(1): Serialized List of Delivered Rifles

We recently sent a Product Advisory to you out of concern that some Colt Light Rifles might not conform to fit and finish product specifications. We asked you to stop all deliveries of these Rifles, inform your customers to return them to us if not satisfied, and to report to us the number of Rifles already sold.

Please be informed that we now are announcing a Product Recall to inspect and repair or replace approximately 580 Rifles. In some Rifles, the firing pin can fail to cock and can rest on the primer of a cartridge in the chamber. This condition could lead to an accidental discharge. **THEREFORE, DO NOT USE THE RIFLE. IMMEDIATELY RETURN IT TO COLT. DO NOT ATTEMPT TO DIAGNOSE OR REPAIR.** The company has received no reports of personal injury or property damage. However, we are initiating this program to prevent the possibility of injury.

The Colt Light Rifles identified with the potential problem are Model #CLR306SRBL, Cal. 30.06. The enclosure lists by serial number all the CLR306SRBL Rifles delivered to you.

The Colt Light Rifles listed above were sold nationwide during June and July 2000, through Colt's domestic distributors only. No other Colt Rifles Inc. products and no Colt's Manufacturing Co., Inc. products are involved in this program.

As a Colt Distributor, we request that you please immediately take the following action:

- 1) Return all Colt Light Rifles on hand to Colt's at CMCI Attn: Product Service, Talcott Road, West Hartford, CT 06110 for repair and return.
- 2) Advise your customers to stop using the Rifle, to promptly contact Colt's at (800) 962-COLT (2658) and to return their Rifle to Colt's, and provide them with a copy of this letter.
- 3) Immediately report to Colt's by serial number, the name, address, and phone number of each of your customers, who have purchased these Rifles.

End-users who own one of the Colt Light Rifles, CLR306SRBL, should stop using the Rifle immediately and call Colt's at (800) 962-COLT (2658). A Colt's Customer Service representative will help them determine if their Rifle is part of this program, and if necessary, will arrange for an expeditious repair and return.

Thank you for your immediate cooperation with this program. If we can be of any assistance to you, please contact either Mike Reissig (ext. 1506) or Josh Dorsey (ext. 1386) at the above toll-free telephone number.

Sincerely,

Barnes, Linda

To: All
Subject: Colt Light Rifle Recall

To All Colt Employees:

As you may be aware, Colt is currently instituting a recall on the Colt Light Rifle Model # CLR2084SR9L (.30-06 caliber only.) Please refer to the employee bulletin boards for more information regarding this recall.

Please note we are requesting any phone calls received, regarding the recall, should be referred to the contacts listed on the recall notice, on the employee bulletin board, for proper handling. Under no circumstances should you comment to any outside caller unless you are the designated point of contact.

Thank you for your cooperation.

Lynn Lowder



COLT'S MANUFACTURING COMPANY, INC.
P.O. BOX 1866, HARTFORD, CONNECTICUT 06144-1806, (800) 236-6511

17 August, 2000

To: All Colt's Domestic Distributors

RE: COLT LIGHT RIFLE PRODUCT RECALL

We recently sent a Product Advisory to you out of concern that some Colt Light Rifles might not conform to fit and finish product specifications. We asked you to stop all deliveries of these Rifles, inform your customers to return them to us if not satisfied, and to report to us the number of Rifles already sold.

Please be informed that, in cooperation with Colt Rifles Inc., we now are announcing a Product Recall to inspect and repair or replace approximately 530 Rifles. In some Rifles, the firing pin can fail to cock and can rest on the primer of a cartridge in the chamber. This condition can lead to an accidental discharge. **THEREFORE, DO NOT USE THE RIFLE. IMMEDIATELY RETURN IT TO COLT'S. DO NOT ATTEMPT TO DIAGNOSE OR REPAIR.** The companies have received no reports of personal injury or property damage. However, we are initiating this program to prevent the possibility of injury.

The Colt Light Rifles identified with this potential problem are Model # CLR306SRBL, Cal. 30.06. Attached is a list of Rifles, identified by serial numbers, that were shipped to you.

These Rifles were sold nationwide during June and July 2000, through Colt's domestic distributors only. No other Colt Rifles Inc. products and no Colt's Manufacturing Co., Inc. products are involved in this program.

As a Colt Distributor, we request that you please immediately take the following action:

- 1) Return all of these Rifles on hand to Colt's, West Hartford.
- 2) Contact your customers and notify them to promptly return these Rifles to Colt's, and provide them with a copy of this letter.
- 3) Immediately report to Colt's by serial number, the name, address, and phone number of each of your customers, who have purchased these Rifles.

End-users who own one of these Rifles, Model # CLR306SRBL, must stop using the Rifle immediately and call Colt's at (800) 962-COLT (2638) during business hours. A Colt's Customer Service representative will help them determine if their Rifle is part of this program. All such Rifles returned to Colt's will be repaired or replaced without charge.

Thank you for your immediate cooperation with this program. If we can be of any assistance to you, please contact either Mike Reising (ext. 1506) or Josh Dorsey (ext. 1386) at the above toll-free telephone number.

Sincerely,

J.W. Dorsey IV



COLT'S MANUFACTURING COMPANY, INC.
P.O. BOX 1868, HARTFORD, CONNECTICUT 06114-1868, 860/236-6311

Joshua W Dorsey IV
Manager, Domestic Sales

August 15, 2000

To: All Colt's Domestic Distributors

RE: Colt Light Rifle

Colt's previously requested all distributors of the Colt Light Rifle (CLR) refrain from delivering the rifles to their customers until further notice. Careful analysis by expert Gunsmiths and Engineers reveals there are CLR potential safety issues that could cause harm to the user. The CLR should not be used/fired until repairs are completed. Therefore, Colt's requires all Colt Light Rifles previously delivered to customers be returned to Colt's. Consequently, Colt's requests that you please immediately take the following action:

- 1) Return all CLR's to Colt's.
- 2) Contact all CLR customers and notify them to return their CLR to Colt's for repair/replacement, and that there is a safety hazard with the use of the CLR.
- 3) Immediately report to Colt's by CLR serial number the names, addresses and phone numbers of every customer in possession of the CLR.

Colt's always fully stands behind its weapons/products and will completely honor the Colt Light Rifle service agreement. Colt's will either repair the minor discrepancies or replace the rifle with a new one of the same caliber. All current and valid Colt Light Rifle orders except the CLR308NRBL and the CLR243NRBL models will be produced within Colt's standards and delivered to the customer in the near future.

If we can be of any future assistance to you, please feel free to contact either Mike Reissig at 1.800.962-2658 extension 1506 or Josh Dorsey at extension 1086.

Sincerely,

J.W. Dorsey IV

SYMBOL OF QUALITY SINCE 1836





COLT'S MANUFACTURING COMPANY, INC.
P.O. BOX 1868, HARTFORD, CONNECTICUT 06149-1868, 860/236-6311

Joshua W Dorsey IV
Manager, Domestic Sales

July 24, 2000

To: All Colt's Domestic Distributors

RE: Colt® Light Rifle
PRODUCT ADVISORY

Recently, Colt Rifles Inc. introduced the new Colt Light Rifle and Colt's Manufacturing Company, Inc. ("Colt's") as its agent, and began to make product shipments to its U.S. distributors. It now has come to our attention that some Rifles might not conform to the product specifications' fit and finish requirements. Consequently, Colt's is requesting that you please immediately take the following action:

- 1) Halt all deliveries of these Rifles to your customers until further notice.
- 2) Notify all customers who are not satisfied with these Rifles to return them to Colt's in the manner specified in the accompanying Instruction Manual.
- 3) Immediately report to Colt's the number of Rifles already sold to customers.

As always, Colt's will fully stand behind the products it sells and will honor the Colt Light Rifle service agreement.

If we can be of any future assistance to you, please feel free to contact either Mike Reissig at 1 800 962-COLT (962-2658), extension 1506 or Josh Dorsey at extension 1386.

Sincerely,

J.W. Dorsey IV

SYMBOL OF QUALITY SINCE 1836

April 25, 2003

Mr. Walter Olson
875 King Street
Chappaqua, NY 10514

Dear Mr. Olson:

As a follow-up to last week's hearing on H.R. 1036, the "Protection of Lawful Commerce in Arms Act" we have enclosed for your review a copy of the official transcript of this hearing.

The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Additionally, attached are questions posed by Minority members. We would appreciate your response submitted with the corrected version of the transcript.

Please return your answers and any corrections on the transcript to the Subcommittee on Commercial and Administrative Law, B-353 Rayburn House Office Building, Washington, D.C. 20515 to the attention of Christine Baldwin by May 9, 2003. If you have any questions, you may contact Paul Taylor of my staff at (202) 226-7680 for assistance.

Sincerely,

CHRIS CANNON
Chairman, Subcommittee on
Commercial and Administrative Law

Enclosure
CC: cmb

RESPONSES TO POST-HEARING QUESTIONS FROM WALTER OLSON

1. You testified that the United States Supreme Court in *New York Times v. Sullivan* curtailed state tort litigation to ensure that the First Amendment rights of national newspapers were not undermined by jury verdicts based upon common law theories contrary to that right. Is there a comparable Supreme Court case limiting suits against the gun industry on constitutional grounds?

No, the Court has not to my knowledge ruled on the issue.

2. You testified that, as you understood the bill, it is not designed to eliminate all suits against the industry only those that are most abusive. Please identify in the bill what types of abusive suits would be eliminated and which legitimate suits would be preserved. In responding to this question, please use natural language and do not merely recite the legislative language.

H.R. 1036 (as of the time of my testimony) would curtail fundamentally abusive lawsuits such as: suits seeking to blame gun manufacturers for criminals' misuse of their products; suits seeking to blame gun dealers for crimes even though they have neither broken the law nor engaged in negligent entrustment; and suits which attempt an end run around Congressional will by inviting judges or juries to ban gun designs valued by many legitimate gun buyers and that legislatures have not seen fit to ban.

H.R. 1036 would not prevent plaintiffs from suing gunmakers and dealers on a wide variety of conventional and familiar grounds of liability law. For example, manufacturers could still be sued on grounds that a gun was defective in its manufacture (i.e., not delivered in intended form), or did not live up to a warranty or contractual term of sale, and even on defective-design claims by third parties where a gun has caused injury although not used in a criminal or criminally negligent way (examples: guns alleged to "fire when dropped" or to fire very inaccurately). Dealers could be sued not only in cases where a violation of federal or state law has led directly to injury, but also on claims that they have negligently entrusted a firearm to an inappropriate buyer. Both manufacturers and dealers would remain open to suits seeking injunctive (noncash) relief.

April 25, 2003

Mr. David Lemongello
24 Montclair Avenue
Nutley, New Jersey 07117

Dear Mr. Lemongello:

As a follow-up to our recent hearing on H.R. 1036, the "Protection of Lawful Commerce in Arms Act" we have enclosed for your review a copy of the official transcript of this hearing.

The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Additionally, attached are questions posed by Minority members. We would appreciate your response submitted with the corrected version of the transcript.

Please return your answers and any corrections you on the transcript to the Subcommittee on Commercial and Administrative Law, B-353 Rayburn House Office Building, Washington, D.C. 20515 to the attention of Christine Baldwin by May 9, 2003. If you have any questions, you may contact Paul Taylor of my staff at (202) 226-7680 for assistance.

Sincerely,

CHRIS CANNON
Chairman, Subcommittee on
Commercial and Administrative Law

Enclosure
CC: cmb

RESPONSES TO POST-HEARING QUESTIONS FROM DAVID LEMONGELLO

Dear Chairman Cannon, Ranking Member Conyers, and fellow Members of the Judiciary Committee:

I am writing to respond to the questions you asked of me in your April 10 letter.

1. There was testimony at the hearing that suggested that your lawsuit would not be adversely affected by H.R. 1036. Under which exemption in H.R. 1036 would your case be allowed to proceed?

As you can imagine, if H.R. 1036 becomes law, a court will have to determine whether my case would be allowed to proceed. Under the analysis of the bill that I have seen, it seems likely that my case would not be allowed to proceed if H.R. 1036 becomes law, and that no exemption would save it. If Congress is sincerely interested in preserving my right to seek justice in the courts, I would hope that they do so clearly.

2. Will manufacturers, sellers or dealers who engage in grossly irresponsible conduct, if that conduct is not also illegal under some state or federal statute, be liable for damages under H.R. 1036?

No. In many cases, including my own, grossly irresponsible gun dealers and manufacturers will not be liable for the damages caused by their irresponsible conduct under H.R. 1036. In my case, it was clearly irresponsible—negligent—for the gun dealer to sell 12 guns to a straw purchasing team. It was also irresponsible—negligent—for the manufacturer to supply its guns to the dealer without requiring that it use any reasonable sale practices. The manufacturer did not even require or recommend that the dealer use the sales guidelines that the manufacturer's own trade association has put out. The judge in my case has already ruled that under West Virginia law the dealer and the manufacturer may be liable in negligence and public nuisance for my injuries. But under H.R. 1036, those rules of negligence and public nuisance would no longer apply to gun dealers, manufacturers and trade associations.

April 25, 2003

Lawrence G. Keane, Esq.
Vice President & General Counsel
National Shooting Sports Foundation, Inc.
11 Mile Hill Road
Newtown, CT 06470

Dear Mr. Keane:

As a follow-up to last week's hearing on H.R. 1036, the "Protection of Lawful Commerce in Arms Act" we have enclosed for your review a copy of the official transcript of this hearing.

The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Additionally, attached are questions posed by Minority members. We would appreciate your response submitted with the corrected version of the transcript.

Please return you're answers and any corrections on the transcript to the Subcommittee on Commercial and Administrative Law, B-353 Rayburn House Office Building, Washington, D.C. 20515 to the attention of Christine Baldwin by May 9, 2003. If you have any questions, you may contact Paul Taylor of my staff at (202) 226-7680 for assistance.

Sincerely,

CHRIS CANNON
Chairman, Subcommittee on
Commercial and Administrative Law

Enclosure
CC: cmb

RESPONSES TO POST-HEARING QUESTIONS FROM LAWRENCE G. KEANE

1. Should a federally licensed firearms dealer who has been trained or educated through the “Don’t Lie for the Other Guy” program on how to detect and deter illegal straw purchasers of firearms be liable for damages if they act contrary to that training? Would H.R. 1036 permit a lawsuit against a dealer who acts contrary to the education provided under this program if the weapon is ultimately used by a third party to injure someone?

The joint cooperative ATF/NSSF educational program, “Don’t Lie for the Other Guy,” is designed and intended to assist ATF in its efforts to help educate federally licensed firearms dealers on how to detect and deter the illegal straw purchase of a firearm. To date NSSF, in partnership with ATF, has distributed approximately 23,000 “Don’t Lie for the Other Guy” dealer kits throughout the United States. ATF has advised NSSF that inspectors carry “Don’t Lie for the Other Guy” dealer kits in their vehicles and distribute them when they visit dealers. NSSF is proud of the fact that the “Don’t Lie for the Other Guy” program is a partner in the U.S. Department of Justice’s “Project Safe Neighborhoods.” NSSF applauds Attorney General Ashcroft’s announcement made during the national “Project Safe Neighborhoods” conference that the Justice Department would have a renewed focus on the prosecution of illegal straw purchasers. NSSF in partnership with ATF is working to expand the important “Don’t Lie for the Other Guy” message to reach a wider public audience through televised public service announcements.

Unfortunately, the question as posed is a factually incomplete hypothetical. The question appears to focus on the narrow issue of whether a dealer did or did not follow all of ATF’s many suggestions and recommendations contained in the “Don’t Lie for the Other Guy” program materials. As ATF itself acknowledges on the video component of the “Don’t Lie for the Other Guy” dealer kit, it is not always easy for a dealer to determine or know whether a transaction is legitimate or whether it is an illegal straw purchase. The mere fact that a sale turns out after the fact to have been a straw purchase should not give rise to liability against the dealer, nor the manufacturer or distributor. What is clear, however, is that H.R. 1036 does not prevent a suit against a dealer who knowingly and willfully sells a firearm to a straw purchaser or violates any law in transferring a firearm. See H.R. 1036, Section 5(A)(i) and (iii).

2. Former police officer, David Lemongello, testified that he was injured by a weapon that was purchased in a suspicious sale and later used by another criminal to shoot him. Should a seller be insulated from liability in a situation such as this? Will a seller be insulated from liability under H.R. 1036 if a weapon purchased in a suspicious sale is transferred to another person who then inflicts injury upon another?

As ATF itself acknowledges on the video component of the “Don’t Lie for the Other Guy” dealer kit, it is not always easy for a dealer to determine or know whether a transaction is a legitimate or whether it is an illegal straw purchase. The mere fact that a sale turns out after the fact to have been a straw purchase should not give rise to liability against the dealer, nor the manufacturer or distributor. What is clear, however, is that H.R. 1036 does not prevent a suit against a dealer who knowingly and willfully sells a firearm to a straw purchaser or violates any law in transferring a firearm. See H.R. 1036, Section 5(A)(i) and (iii). The facts and circumstances surrounding a given transaction establish whether the dealer knowing and willingly transferred a firearm to an illegal straw purchaser or in violation of the law and thus whether a suit against that dealer is proper under H.R. 1036.

The facts and circumstances surrounding the transfer of the firearm involved in former police officer Lemongello’s case are more involved than the Subcommittee is aware. Upon information and belief, the straw purchaser used by the multiply convicted felon to illegally purchase the firearm in question was a known customer of the store. Before making the sale, a store employee did inquire of the straw purchaser as to reason for the purchase. Later that day or early the next morning the store’s management voluntarily alerted ATF of the transaction. The dealer subsequently voluntarily cooperated with ATF in an undercover sting operation that resulted in the successful apprehension of the convicted felon who was illegally trafficking firearms into New Jersey. The dealer permitted ATF to install surveillance equipment in the store and permitted an undercover ATF agent to pose as a store employee. The “straw purchaser” also cooperated with law enforcement in exchange for leniency in the subsequent criminal prosecution against her. The convicted felon pled guilty in federal court and was sentenced to 15 years incarceration. As part of his plea agreement the defendant signed a cooperation agreement with the United States requiring him to disclose any information he had concerning the in-

volumenent of others. As former police officer Lemongello testified, the dealer was not prosecuted. It is also worth noting that former police officer Lemongello has also sued Sturm, Ruger and Co., Inc., even though the firearm transferred by the dealer was a used firearm.

3. You testified that a conservative estimate for the total industry-wide cost of defending lawsuits is approximately \$100 million. On what do you base that figure? You further indicate that the cost of litigation is absorbed almost exclusively by the gun industry because insurance carriers have denied coverage. On what do you base that assertion? Please provide any documentary support for both of these claims.

See written and oral testimony. The legal bills of individual companies are privileged and confidential business information not shared with competitors. Glock Inc.'s former general counsel Paul Jannuzzo publicly estimated that the litigation expense would cost his company alone \$15 million dollars a year. I also base my estimate on conversations with insurance professionals, including brokers, underwriters and claims managers, who have been involved in dealing with insurance for the firearms industry for many years. I also base my estimate on my own experience as a practicing attorney having represented firearms manufacturers in litigation matters.

4. You also testified that the premiums within the firearms industry have skyrocketed. Please provide any data you have reflecting a surge in insurance premiums for the gun industry. In addition, please provide any information that establishes a nexus between the rate of premiums and the risk or cost of litigation.

See written and oral testimony. Industry members have also informed me that in addition to dramatic and skyrocketing premium increases they have experienced substantial increases in their deductibles and in self-insured retentions (SIR). Moreover, the scope of coverage has been restricted, in addition to blanket exclusions for the types of suits that would be stopped by this legislation. Many insurance carriers have abandoned the market and no longer will write liability policies for firearms companies, such as CNA Re and Chubb among others. Other carriers will renew existing firearms company clients but will not write policy for new clients. I also base my opinion on court decisions in insurance coverage cases denying coverage; and conversations with insurance coverage counsel, insurance professionals, including brokers, underwriters and claims managers, who have been involved in writing insurance for and managing claims involving firearms industry companies.

5. You testified that over thirty states have enacted similar legislation to prevent frivolous suits against the gun industry. Please identify each state statute on which you rely and explain how it is similar to H.R. 1036. Don't these statutes mostly preclude suit by municipalities and other governmental subdivisions, absent consent or approval from the State, without interfering with traditional tort liability actions brought by individuals and organizations?

See attached chart. The statutes speak for themselves. What they all have in common is that they are designed to stop junk lawsuits that improperly attempt to blame manufacturers and product sellers for the criminal misuse of their legally sold, non-defective products. Many but not all of these suits have been filed by municipalities. An example of such a reckless lawsuits not brought by a municipal plaintiff is the NAACP lawsuit currently on trial in the United States District Court for the Eastern District of New York before Senior District Court Judge Jack B. Weinstein (*NAACP v. Acusport Corp., et al.* 99 Civ. 3999, Civ. 7037).

<i>STATE</i>	<i>STATUTES</i>
<i>Alabama</i>	2000 Ala. Acts 762
<i>Alaska</i>	Alaska Stat. Ann §09.65.155
<i>Arizona</i>	Ariz. Rev. Stat. §12-714
<i>Arkansas</i>	Ark. Code Ann. §14-16-504 & §14-54-1411
<i>Colorado</i>	Col. Rev. Stat. §13-21-504.5(1)
<i>Florida</i>	Fla. Stat. §790.331
<i>Georgia</i>	Ga. Code Ann. §16-11-184
<i>Idaho</i>	Idaho Code §5-247
<i>Indiana</i>	Indiana Code 34-12-3
<i>Kansas</i>	Kansas Stat. Ann. 60-4501
<i>Kentucky</i>	Ky. Rev. Stat. Ann. §65.045
<i>Louisiana</i>	La. Rev. Stat. Ann. §40:1799
<i>Maine</i>	Me. Rev. Stat. Ann. tit §30- A §2005
<i>Michigan</i>	Mich. Comp. Laws Ann. §28.435.
<i>Mississippi</i>	Miss. Code Ann. §11-1-67
<i>Missouri</i>	§21.750 RSMo and §67.138 RSMo
<i>Montana</i>	Mont. Code Ann. §7-1-115
<i>Nevada</i>	Nev. Rev. Stat. Ann. §12.107.
<i>North Carolina</i>	G.S. 14-409.40
<i>North Dakota</i>	§62.1-01-01
<i>Ohio</i>	Oh. Rev. Code §2305.401
<i>Oklahoma</i>	Okla. Stat. Ann. tit §1289.24a
<i>Pennsylvania</i>	18 Pa. Cons. Stat. Ann. §6120
<i>South Dakota</i>	S.D. Codified Laws §21-58-2
<i>Tennessee</i>	Tenn. Code Ann. §39-17-1314
<i>Texas</i>	Tex. Civ. Prac. & Rem. Code Ann. §128.001
<i>Utah</i>	Utah Code Ann. §78-27-64
<i>Virginia</i>	Va. Code §15.2-915.1
<i>West Virginia</i>	W.Va. Code §55-18-2
<i>Wyoming</i>	Wyo. Stat. Ann. G.S. §9-14-101

Neither H.R. 1036 nor any of these many state statutes interfere with traditional tort liability actions brought by individuals and organizations. All that H.R. 1036 and these state statutes do is stop junk lawsuits that are not based on traditional and well-recognized tort law claims, regardless of whether the plaintiff is a state, a municipality, an interest group or a citizen. As the judge said in dismissing the District of Columbia's junk suit seeking to blame members of the firearms industry for the acts of criminals, "Based upon . . . relevant case law and bedrock legal principles, this Court concludes that the arguments of the defendants are compelling as to the entry of judgment in their favor. The plaintiffs' myriad claims herein are burdened with many layers of legal deficiencies." *District of Columbia v. Beretta U.S.A. Corp., et al.*, Civil Action 0428-00, slip op. at 4 (D.C. Super. Ct. 2002).

6. You identified several programs such as "Don't Lie for the Other Guy," and the ATF Partnership for Progress Seminars as indicative of the voluntary efforts by the industry to prevent or curtail illegal gun sales. How

does your organization monitor and measure the success of these programs?

The joint cooperative ATF/NSSF educational program, “Don’t Lie for the Other Guy,” is designed and intended to assist ATF in its efforts to help educate federally licensed firearms dealers on how to detect and deter the illegal straw purchase of a firearm. To date NSSF, in partnership with ATF, has distributed approximately 23,000 “Don’t Lie for the Other Guy” dealer kits throughout the United States. ATF has advised NSSF that inspectors carry “Don’t Lie for the Other Guy” dealer kits in their vehicles and distribute them when they visit dealers. NSSF is proud of the fact that the “Don’t Lie for the Other Guy” program is a partner in the U.S. Department of Justice’s “Project Safe Neighborhoods.” NSSF applauds Attorney General Ashcroft’s announcement made during the national “Project Safe Neighborhoods” conference that the Justice Department would have a renewed focus on the prosecution of illegal straw purchasers. NSSF in partnership with ATF is working to expand the important “Don’t Lie for the Other Guy” message to reach a wider public audience through televised public service announcements.

“Partnership for Progress” is a joint NSSF/ATF seminar program put on throughout the United States by NSSF and ATF staff to provide continuing education and training for dealers on a variety of topics, such as preventing the theft of firearms, inventory and detecting and deterring the illegal straw purchase of firearms.

ATF also attends NSSF’s annual trade show, the SHOT Show, and is provided booth space to meet and speak with dealers attending the show. Since the earliest days of the SHOT Show ATF has put on seminars for dealers on a wide variety of topics. In addition to the ATF seminars, NSSF conducts its own seminars for dealers on various topics. NSSF also conducts “SHOT Show University” and “Retailer University.”

Like all trade associations, membership in the NSSF is voluntary. Participation in any of its educational programs is also voluntary. ATF has repeatedly thanked NSSF and industry for its voluntary cooperation in these various programs. We look forward to working in partnership with ATF to expand the reach of our “Don’t Lie for the Other Guy” program through televised public service announcements. ATF has informed NSSF that it believes these programs are valuable and worthwhile. Therefore, NSSF will continue them as long as ATF believes they are worthwhile.

7. Please provide examples of Supreme Court dicta in which an individual right to bear arms is recognized.

In the *Dred Scott* decision the Supreme Court conceded that if freed African-Americans were recognized as citizens they would be entitled to “keep and bear arms” and that Congress could “not deny the people the right to keep and bear arms . . .” *Dred Scott v. Sandford*, 60 U.S. 393, 19 How. 393, 15 L. Ed. 691 (1856). The Supreme Court also recognized that the Second Amendment provides an individual right in *United States v. Cruikshank*, 92 U.S. 542, 551, 23 L. Ed. 588 (1875). See also *Presser v. Illinois*, 116 U.S. 252, 265, 6 S. Ct. 580, 29 L. Ed. 615 (1886); *Miller v. Texas*, 153 U.S. 535, 538, 14 S. Ct. 874, 38 L. Ed. 812 (1984).

In a 1990 Fourth Amendment case the Supreme Court had occasion to discuss the Second Amendment in the context of other fundamental rights. The Court said:

“The People” seems to have been a term of art employed in selected parts of the Constitution . . . The Second Amendment protects “the right of the people to keep and bear Arms,” and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to “the people.” See also U.S. Const., Amdt. 1 (“Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble”); Art. I, §2, cl. 1 (“The House of Representatives shall be composed of Members chosen every second year by the People of the Several States”) (emphasis added). While this textual exegesis is by no means conclusive, it suggests that “the people” protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of the community.”

United States v. Verdugo-Urquidez, 494 U.S. 259, 265, 110 S. Ct. 1056, 1060–61, 108 L. Ed. 2d 222, 232–33 (1990). See also *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 841, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992) (The Constitution guarantees “freedom of speech, press, and religion; the right to keep and bear arms . . .”).

Justice Clarence Thomas wrote in a concurring opinion, “Marshaling an impressive array of historical evidence, a growing body of scholarly commentary indicates

that the ‘right to keep and bear arms’ is, as the Amendment’s text suggests, a personal right.” *Printz v. United States*, 521 U.S. 898, 938, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997) (Thomas, J. concurring). The right to bear arms was discussed as a personal right by Justice John Paul Stevens in a dissenting opinion in *Spencer v. Kemna*, 523 U.S. 1, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998) (Stevens, J. dissenting) (Continuing injury caused by a criminal conviction “may result in tangible harm such as . . . loss of the right to vote or to bear arms . . .”).

8. [Repeat of Question 7.]

