NOTE

A Crack in the Floodgates: New York’s Fourth Department, the PLCAA, and the Future of Gun Litigation After Williams v. Beemiller

JACOB S. SONNER†

“If the plaintiff wins this case . . . it will open the floodgates of [gun] litigation. Trial lawyers will go crazy. They’ll bankrupt the [gun industry].”

INTRODUCTION

On October 5, 2012, an appellate court in Rochester, New York allowed a gunshot victim’s case against the manufacturers and distributors of the weapon used in his shooting to proceed past the defendants’ motions to dismiss. The decision contradicted a wealth of judicial precedent insulating the firearms industry from liability in cases where third parties criminally used guns. Further, the decision reopened a door for gun-control-conscious plaintiffs to enhance public health goals through litigation. This Note traces the history of one violent crime, a statute protecting gun manufacturers, a New York court’s interpretation of both, and a social policy shift that may turn the tide in favor

† J.D. Candidate, Class of 2014, SUNY Buffalo Law School. Thanks to Richard Schaus, Esq. and Barbara Schaus, Esq. for their advice and guidance, and to my family for their love and support.

1. JOHN GRISHAM, THE RUNAWAY JURY 113 (1996). Grisham’s fictional account of a big tobacco lawsuit directed this warning at the tobacco industry. Id. In a 2003 cinematic adaptation of the novel, the firearms industry replaced big tobacco as the threatened defendant. See RUNAWAY JURY (Regency Enterprises, New Regency Pictures, Epsilon Motion Pictures 2003).

of using the judiciary to impose heightened regulatory measures on the firearms industry.

Part I chronicles the facts behind Williams v. Beemiller, including an Ohio gun retailer’s lax standards and a western New York criminal’s illegal firearm trafficking scheme. Part II covers Congress’s enactment of the Protection of Lawful Commerce in Arms Act and its effects on lawsuits against the firearm industry. Part III discusses the Fourth Department’s decision in Williams v. Beemiller and its reasoning behind the holding. Lastly, Part IV evaluates Williams v. Beemiller within the context of a revived gun-control movement.

I. 2003: DANIEL WILLIAMS’ FUTURE IS TRAGICALLY LINKED TO BEEMILLER, MKS SUPPLY, CHARLES BROWN, JAMES NIGEL BOSTIC, AND CORNELL CALDWELL

In August 2003, sixteen-year-old Daniel “Bud” Williams was playing basketball outside his Buffalo, New York home when eighteen-year-old Cornell Caldwell misidentified the teen as a rival gang member. Caldwell aimed and fired his Hi-Point 9mm semi-automatic handgun at Williams, piercing his target’s abdomen with a bullet. Media and law


5. See Susan Schulman, Lou Michel & Dan Herbeck, The Damage Done: Two Buffalo Lives Intertwine as a Gun Trafficker’s Scheme Shoots Down a Young Athlete’s Dream, BUFFALO NEWS, June 12, 2005, at A1 (in 2005, the
enforcement investigations eventually discovered that Caldwell’s pistol arrived on the Buffalo streets courtesy of an infamous gun trafficking scheme responsible for supplying hundreds of illegal weapons used in many of the city’s gun crimes.6

Caldwell’s 9mm was manufactured by Hi-Point (Beemiller), a.k.a. Beemiller, Inc., a federally licensed firearms manufacturer incorporated in Ohio.7 Beemiller sold the semi-automatic handgun to MKS Supply, Inc. (MKS), an Ohio federally licensed firearm distributor.8 Subsequently, MKS sold the weapon to Charles Brown, a federal gun licensee.9 But the Beemiller-MKS-Brown chain was a series of unusually close transactions. In fact, MKS was Beemiller’s sole Hi-Point distributor,10 and Charles Brown was MKS’s president.11 Williams alleged Brown bought Hi-Point firearms from his own company, MKS, to retail at gun shows.12 Williams also contended Brown was in daily

Buffalo News published The Damage Done series, investigating James Nigel Bostic and proliferation of illegal weapons onto western New York streets).

6. See id.


11. See Brief for Plaintiffs-Appellants, supra note 10, at 3.

12. Id.
contact with Beemiller management as both a distributor and retailer.13

Then, in October 2000, Brown sold a Beemiller Hi-Point 9mm pistol and eighty-six other handguns to Kimberly Upshaw and James Nigel Bostic at an Ohio gun show.14 For years, Bostic ran one of the largest gun-trafficking operations in western New York, providing approximately 250 inexpensive firearms to criminals in the greater Buffalo area, Rochester, and New York City.15 Beemiller’s Hi-Point 9mm semi-automatic was his most frequent purchase.16 Ultimately, Beemiller and MKS supplied 181 firearms to Bostic.17

Capitalizing on Ohio’s less restrictive gun laws18 and the anonymity of gun show purchases, Bostic and three women bought firearms under false assertions Bostic was planning on starting his own gun store.19 Though Bostic purchased a handful of firearms in his own name, most of the weapons trafficked to western New York were purchased in a series

13. Id.
15. See Schulman, Michel & Herbeck, supra note 5.
16. See id. Bostic purchased Hi-Point handguns for approximately $89 each. They retailed on western New York streets for nearly $300. See id.
19. See Schulman, supra note 3; Schulman, Michel & Herbeck, supra note 5.
of illegal “straw purchases” by his three cohorts. The guns were linked to several crimes in Buffalo before Caldwell used one of Bostic’s Hi-Point 9mms to shoot Williams. For their crimes, Caldwell and Bostic were sentenced to six- and seven-year prison terms respectively. Hoping to recover for his gunshot injuries, Daniel Williams sued Brown, Beemiller, and MKS.

II. 2003: THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT SAVES A GUN INDUSTRY UNDER FIRE

In 2003, the same year Daniel Williams was shot, the firearms industry was under attack. The mass shooting at Columbine High School in 1999 had enflamed the passions of gun-control advocates nationwide, and firearm manufacturers and distributors were taking the worst of their lumps in the courtroom.

The wave of lawsuits filed against firearm manufacturers and distributors mirrored the extensive anti-tobacco litigation that put cigarette companies on the defensive. Though tort lawsuits against tobacco companies began more than fifty years ago, they gained a full head of steam after plaintiff victories in the early 2000s. Anti-gun


22. See Gun by Gun, supra note 21; Schulman, Michel & Herbeck, supra note 5.

23. See Williams, 952 N.Y.S.2d at 336.


25. See id.


27. See id.
lawsuits joined anti-tobacco litigation in a growing trend: using the courtroom to advance public health goals like combating gun violence and smoking.\textsuperscript{28}

Many of the goals associated with the anti-gun litigation matched the aims of the tobacco lawsuits.\textsuperscript{29} Extreme gun-control and anti-tobacco advocates hoped extensive litigation might bankrupt manufacturers.\textsuperscript{30} More realistic proponents aimed at forcing gun and tobacco companies to make their products safer, reveal past malevolent conduct, and assume the costs of injuries their products caused.\textsuperscript{31}

But while tobacco lawsuits were often class action ventures,\textsuperscript{32} nearly all firearm lawsuits were brought by either: (1) shooting victims seeking compensation for their injuries; or (2) state and local governments trying to reduce costs incurred fighting gun crimes.\textsuperscript{33} Gunshot victims and their families sued firearm manufacturers directly under negligence, public nuisance, and strict liability theories.\textsuperscript{34} Meanwhile, more than twenty-five municipalities—including cities like Boston, Chicago, Detroit, Los Angeles, New Orleans, Philadelphia, New York, San Francisco, St. Louis, and Washington D.C.—filed similar lawsuits.\textsuperscript{35}

\textsuperscript{28} See id. at 198-02, 205.
\textsuperscript{29} See id. at 205-14.
\textsuperscript{30} See id. at 205-07.
\textsuperscript{31} See id. at 207, 209-10, 212, 214.
\textsuperscript{32} See id. at 216-17.
\textsuperscript{33} See Rostron, supra note 24, at 481-82.
In both circumstances, plaintiffs attempted to hold firearm manufacturers, distributors, and retailers liable for negligent behavior despite intervening actions by third-party criminals.\textsuperscript{36}

The small firearms industry could not withstand the crippling attack. As early as 2000, insurance companies began dropping gun manufacturers’ coverage.\textsuperscript{37} A handful of firearm companies were forced out of business.\textsuperscript{38} Then, in 2003, a measure of legislative relief offered the firearm industry a glimmer of hope. Gun companies heartily backed the first version of the Protection of Lawful Commerce in Arms Act (PLCAA), a statute aimed at protecting gun manufacturers and distributors from frivolous tort litigation.\textsuperscript{39} But Democrats stalled the Act in the Senate, tacking on assault weapons bans, beefed-up background checks, and mandatory trigger locks.\textsuperscript{40}

Two years after the first PLCAA failed, momentum swung in the gun industry’s favor. Thirty-three states had already taken steps to preclude baseless lawsuits from being filed against gun manufacturers and distributors,\textsuperscript{41} but a handful of lawsuits lingered on court dockets, and the industry’s legal bills were adding up. By 2005, firearms companies had sunk more than $200 million into litigation against gunshot victims and municipalities.\textsuperscript{42} For the U.S.

\textsuperscript{36} See, e.g., Ileto v. Glock, Inc., 349 F.3d 1191, 1195 (9th Cir. 2003) (plaintiffs attempting to hold handgun manufacturers and distributors liable for a gunman’s shooting spree in a Jewish Community Center culminating in a postal worker’s murder); City of New York v. Beretta U.S.A., Corp., 401 F. Supp. 2d at 257-58 (city requesting various forms of injunctive relief against firearm companies whose guns were used in crimes).

\textsuperscript{37} Sharon Walsh, Gun Industry Views Pact as Threat to Its Unity, WASH. POST, Mar. 18, 2000, at A10.

\textsuperscript{38} See Bill Sammon, Gun Makers Halt Settlement Talks with Cities: Blame White House’s ‘Politically Motivated’ Intervention, WASH. TIMES, Jan. 20, 2000, at A1; Walsh, supra note 37.

\textsuperscript{39} See Brian DeBose, Bill Seeks to Protect Firearms Industry from Suits, WASH. TIMES, Feb. 20, 2005, at A03.

\textsuperscript{40} See id.

\textsuperscript{41} See id.

firearms industry, whose total profit in 1999 was $200 million, the legal bills were unmanageable. So, prodded by gun lobbies like the National Rifle Association (NRA), the second PLCAA cleared the Senate in 2005. Its expressed purpose: to insulate firearm manufacturers, marketers, distributors, and importers from liability when “the harm [is] caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.”

The PLCAA provides grounds for immediately dismissing “qualified civil liability actions” in Federal and State courts. Qualified civil liability actions are lawsuits brought “by any person against a manufacturer or seller of a [firearm], or a trade association, for damages . . . or other relief, resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party.”

But the PLCAA exempts six different qualified civil liability actions from automatic dismissal. The first exemption permits litigation against gun transferors who knowingly provide a firearm for some criminal activity which directly injures the plaintiff. The second exemption allows lawsuits against a gun seller for negligent entrustment or negligence per se. The first two exceptions are limited to the immediate firearm seller or transferor. But the third PLCAA exception provides plaintiffs an


46. 15 U.S.C. § 7902(a) (2006). It also mandated dismissal of all pending “qualified civil liability actions.” Id. § 7902(b).


48. See id. § 7903(5)(A)(i)-(vi).

49. See id. § 7903(5)(A)(i). Gun transferors violate federal firearm trafficking laws when they convey a firearm knowing it will be used in a crime of violence. 18 U.S.C. § 924(h) (2006).

opportunity to sue deep pockets—gun manufacturers, distributors, and sellers.  

Dubbed “the predicate exception, the third exemption permits claims against gun manufacturers, distributors, and sellers who ‘knowingly violate[] a State or Federal statute applicable to the sale or marketing of the firearm.” It also allows claims against manufacturers and distributors who aid, abet, or conspire to complete illegal firearm or ammunition sales. For plaintiffs to recover, the manufacturer or seller’s violation must proximately cause the harm for which relief is sought. Clarifying the exception, the PLCAA offers model “predicate statutes.” Despite the example statutes, courts became mired in a difficult analysis determining whether the defendants’ alleged transgressions violated a statute “applicable” to the sale or marketing of a firearm.

Municipalities and private plaintiffs tried to invoke the predicate exception by alleging the gun manufacturers and distributors had violated state and local nuisance laws.

51. See id. § 7903(5)(A)(iii). The fourth, fifth, and sixth exceptions permit actions for breach of contract or warranty, faulty design or manufacture directly causing plaintiff’s injuries, and certain lawsuits brought by the Attorney General. Id. § 7903(5)(A)(iv)-(vi).

52. Id. § 7903(5)(A)(iii); see also Ileto v. Glock, Inc., 421 F. Supp. 2d 1274, 1285-86 (C.D. Cal. 2006), aff’d, 565 F.3d 1126 (9th Cir. 2009).


54. Id. § 7903(5)(A)(iii).

55. They include the defendant’s aiding or abetting a fraudulent gun transfer or purchase and conveying or selling a gun to a person prohibited from owning a firearm under 18 U.S.C. § 922. See 15 U.S.C. § 7903(5)(A)(iii)(I)-(II).


But most courts refused to label nuisance laws “predicate statutes” because the nuisance laws were not adequately *applicable* to the sale or marketing of firearms. In one notable exception, Indiana’s Court of Appeals broadly interpreted the “applicable” portion of the predicate exception and allowed the City of Gary’s lawsuit to continue despite Smith and Wesson’s motion to dismiss. Though the *City of Gary* case represents a different interpretation of the predicate exception, it—and every other court dealing with the predicate exception—failed to articulate a concrete standard for what laws might be predicate statutes.

The Ninth Circuit’s attempt at defining “predicate statute” was cursory, precluding only general tort theories like public nuisance from the predicate exception. The Second Circuit’s effort didn’t make the predicate exception waters any clearer. After declining to find New York’s public nuisance statute “applicable” to gun marketing or sale, the Second Circuit suggested the predicate exception required violation of “statutes (a) that expressly regulate firearms, or (b) that courts have applied to the sale and marketing of firearms; [or (c)] . . . that do not expressly regulate firearms but that clearly can be said to implicate the purchase and sale of firearms.” But in a dissenting opinion, Judge Katzmann expressed concern that the decision failed to define predicate statutes for future courts.

Without guidance, the only clear examples of predicate statutes are those provided by the PLCAA. The statute

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60. *See* Sorensen, *supra* note 57, at 592-93.

61. *See* *Ileto*, 565 F.3d at 1138; Sorensen, *supra* note 57, at 592.


63. *See* id. at 406 (Katzmann, J., dissenting).

allows qualified civil liability actions based on violations of state or Federal record-keeping laws. It also permits claims alleging firearms manufacturers or distributors directly aided, abetted, or conspired to falsify information relating to gun sales. But the PLCAA cites only one specific Federal gun law as a predicate statute: 18 U.S.C. § 922, subsections (g) and (n). Subsection (g) makes it unlawful for firearm distributors to knowingly sell guns to, among others, fugitives, drug users, aliens, convicts released after one year or more in jail, and persons adjudicated mentally defective. Similarly, subsection (n) makes it unlawful for any person indicted for a crime punishable by one or more years in prison to receive or convey a firearm in interstate or foreign commerce.

Without a clear definition for “predicate statutes,” the predicate exception remains a difficult requirement for plaintiffs to satisfy. And the PLCAA became a nearly-impervious shield barring most qualified civil liability actions against gun manufacturers, distributors, and sellers.

III. 2012: NEW YORK’S FOURTH DEPARTMENT IS AMONG THE FIRST TO ALLOW A QUALIFIED CIVIL LIABILITY ACTION TO SURVIVE THE PLCAA

But on October 5, 2012, the Supreme Court of New York Appellate Division, Fourth Department became the first post-PLCAA court to sustain a qualified civil liability action since the City of Gary, Indiana’s lawsuit against Smith and

65. Id. § 7903(5)(A)(iii)(I); see, e.g., 18 U.S.C. § 923(g)(1)(A) (2006) (requiring records to be kept for importation, production, shipment, receipt, or sale of guns during a period decided by the Attorney General); 27 C.F.R. § 478.124(a) (2012) (demanding nearly all changes in a firearm’s disposition be documented on the weapon’s transaction record).


67. Id. § 7903(5)(A)(iii)(II).


69. Id. § 922(n).
Wesson. Daniel Williams’ complaint against Beemiller and MKS was dismissed at the trial court level after the firearms manufacturer and distributor moved to dismiss the claim under the PLCAA. But on appeal, Williams’ attorneys argued the case fell within the PLCAA’s predicate exception and was not automatically dismissible.

They contended Beemiller and MKS knowingly marketed and sold firearms to criminals. Williams also claimed the defendants knowingly violated statutes prohibiting straw purchases and sales to convicted felons. The plaintiff gave several reasons why Beemiller and MKS knew or should have known their sales to Bostic were illegal: (1) bulk handgun purchases are common practice for illegal gun traffickers; (2) repeat handgun purchases are evidence an illegal gun trafficker is restocking his inventory; (3) large cash firearm sales indicate illegal trafficking; (4) “Saturday Night Specials” like Hi-Point 9mm handguns are criminal favorites; (5) Hi-Point 9mms have no collector value; and (6) Bostic and Upshaw’s actions were obviously illegal straw purchases.

The Fourth Department agreed with Williams and overturned the trial court’s dismissal. Though the court recognized Williams’ case fit the very definition of a qualified civil liability action, it decided the lawsuit fell within the PLCAA’s predicate exception. The Fourth

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71. Williams, 952 N.Y.S.2d at 336-37.
72. Daniel Williams was represented at the Fourth Department by Connors & Vilardo, LLP, Buffalo, NY and the Brady Center to Prevent Gun Violence, Washington, D.C. Id. at 335.
73. Id. at 337.
74. See Brief for Plaintiffs-Appellants, supra note 10, at 5-6.
75. See id. at 7-8.
76. See id.
77. Williams, 952 N.Y.S.2d at 337. The Honorable Erin M. Peradotto penned the Fourth Department’s decision. Id. at 336.
78. Id.
Department’s theory on the PLCAA and accomplice liability, holding Beemiller and MKS liable for the criminal actions of a third-party retailer and third-party buyer, may provide future plaintiffs a better crack at firearm manufacturers and distributors.\textsuperscript{79}

A. The Fourth Department and the Predicate Exception

Before analyzing Williams’ case in light of the PLCAA, the Fourth Department reflected on the traditional standard for motions to dismiss plaintiffs’ claims.\textsuperscript{80} Courts “accept as true the facts as alleged in the complaint and . . . accord plaintiffs the benefit of every possible favorable inference.”\textsuperscript{81} This standard would form the basis for the Fourth Department’s decision to allow Williams’ case to continue past dismissal.\textsuperscript{82} Further, it allowed the appellate court to identify statutory violations in Williams’ complaint though the plaintiff’s complaint did not specify any.\textsuperscript{83}

Without detailing specific laws, Williams’ complaint alleged Beemiller, MKS, and Brown “violated federal, state, and local statutes, regulations, and ordinances by engaging in illegal gun trafficking and illegally selling the Hi-Point handgun.”\textsuperscript{84} The defendants argued Williams’ failure to identify specific statutes precluded a finding under the predicate exception.\textsuperscript{85} But the court decided it would not require Williams to identify specific predicate statutes violated by the defendants.\textsuperscript{86}

\begin{itemize}
\item \textsuperscript{79} See id. at 339.
\item \textsuperscript{80} See id. at 338.
\item \textsuperscript{81} Id.
\item \textsuperscript{82} See id.
\item \textsuperscript{83} See id.
\item \textsuperscript{84} Id.
\item \textsuperscript{85} See id. New York General Municipal Law principles demand specific pleadings. See N.Y. GEN. MUNIC. LAW § 205-e (McKinney 2007).
\item \textsuperscript{86} See Williams, 952 N.Y.S.2d at 338. The defendants primarily relied on General Municipal Law principals demanding specific pleading requirements. See, e.g., MUNIC. § 205-e. But cases outside those arising under General Municipal Law do not typically require such specificity. See Williams, 952 N.Y.S.2d at 338. In their brief to the Fourth Department, the plaintiffs
\end{itemize}
Instead, the Fourth Department read several statutory violations into Williams’ complaint, each a component of the Gun Control Act of 1968.\(^\text{87}\) In 1968, Congress made a concerted effort to regulate the passage of firearms through interstate commerce.\(^\text{88}\) Today, many of the Act’s sections regulate the purchase and transportation process.\(^\text{89}\) Each violation recognized by the court was directly committed by Brown, including: (1) failing to adequately record identifying information from gun purchasers; (2) transferring firearms on the buyer’s fraudulent representations despite the seller knowing or having reason to believe their falsehood; and (3) knowingly or negligently conveying a firearm to a convicted felon.\(^\text{90}\)

Despite being the first court to utilize the predicate exception against a firearm manufacturer or distributor in five years, the Fourth Department added little to clarify the vague standard.\(^\text{91}\) The court found Williams sufficiently alleged violations satisfying the predicate exception.\(^\text{92}\)

But the court’s analysis of whether the specific provisions violated were predicate statutes was brief. Each firearm statute implicated by the Fourth Department was part of the 1968 Gun Control Act.\(^\text{93}\) And the only statutes deemed predicate statutes by the PLCAA are sections of the 1968 Gun Control Act.\(^\text{94}\) Thus, an in-depth analysis was not necessary to decide whether portions of the same Act were

\(^{87}\) See Williams, 952 N.Y.S.2d at 338-39.


\(^{90}\) See Williams, 952 N.Y.S.2d at 338-39. The specific statutes violated were 18 U.S.C. §§ 923(g), 922(b), 922(m), and 922(d)(1).

\(^{91}\) See id. at 337-39.

\(^{92}\) See id.


predicate statutes. Instead, the court safely assumed each federal gun law was applicable to the sale and/or marketing of firearms.

However, the Fourth Department wasn’t content in deciding only the federal gun laws were predicate statutes. The court amended its decision on February 1, 2013, and tacked on one sentence allowing Williams’ public nuisance claim to survive the PLCAA. Citing Johnson v. Bryco Arms and City of New York v. A-1 Jewelry and Pawn, Inc., the Fourth Department concluded Williams had adequately brought a public nuisance claim against Beemiller and MKS. But the cursory rationale for allowing Williams’ public nuisance claim rests on shaky authority. The decisions cited by the Fourth Department to support public nuisance statutes being “applicable” to firearm sales or marketing are not entirely convincing since: (1) Johnson v. Bryco Arms was decided in 2004, before the PLCAA’s enactment; and (2) City of New York v. A-1 Jewelry and Pawn, Inc. was a 2007 district court case decided before the Second Circuit issued its 2008 opinion barring public nuisance laws from being predicate statutes.


96. See Williams, 952 N.Y.S.2d at 338-39.


98. See id.


Though the Fourth Department’s decision divorced itself from generally accepted principles of public nuisance and the predicate exception, its decision in Williams does little to illuminate the current predicate exception standard. The elusive definition remains—a law applicable to gun sales or marketing whose violation proximately causes harm for which relief is sought—without any clarification of “applicable.”\footnote{103. See 15 U.S.C. § 7903(5)(A)(iii) (2006).} The Second Circuit hinted at a less-strict approach, but no clear standard has emerged to determine whether a law or regulation \textit{indirectly} concerning the gun industry may serve as a predicate statute.\footnote{104. See City of New York, 524 F.3d at 404 (acknowledging a law indirectly regulating the gun industry but directly implicating firearm sales or marketing might be a predicate statute).}

\textbf{B. The Fourth Department, the PLCAA, and Accomplice Liability}

The Fourth Department had little trouble finding Charles Brown’s statutory violations triggered the predicate exception. And since Brown was, in effect, MKS, determining the distributor’s complicity in the violation was not a stretch.\footnote{105. See Brief for Plaintiffs-Appellants, \textit{supra} note 10, at 3.} But Beemiller’s role in the gun-selling scheme was more attenuated.\footnote{106. See Williams v. Beemiller, Inc., 952 N.Y.S.2d 333, 339 (App. Div. 4th Dep’t 2012), \textit{amended by} 962 N.Y.S.2d 834 (N.Y. App. Div. 4th Dep’t 2013).} Still, the Fourth Department decided Williams had sufficiently established both Beemiller and MKS’s complicity in the violations.\footnote{107. See id. Gun control advocates argue firearm manufacturers perversely promote illegal gun sales and trafficking by ignoring problems like corrupt dealers, straw purchases, high-volume sales, gun shows without background checks, superficial security measures, and unsafe weapon designs. See \textsc{Legal Action Project, Brady Ctr. to Prevent Gun Violence, Smoking Guns: Exposing the Gun Industry’s Complicity in the Illegal Gun Market} 2-16 (2003).}

Wielding accomplice liability to capture a gun manufacture in litigation is nearly an unprecedented leap. Only one line of cases ties manufacturers and distributors
to firearm retailers under an accomplice liability theory. In *City of Gary ex rel. King v. Smith & Wesson* (some stages of the litigation proceeding as *Smith & Wesson v. City of Gary ex rel. Clay*), the Supreme Court of Indiana allowed the municipality’s case to continue past a motion for dismissal after it found gun manufacturers and distributors—including Beemiller, who was a named defendant in the Indiana case—were accomplices to the violation, though they had not directly violated a firearm statute.

But the *City of Gary* line of cases is an outlier on the spectrum of firearm lawsuits, and it directly opposes Ninth Circuit and Second Circuit decisions on whether nuisance laws comport with the predicate exception. For five years, *City of Gary* was the only case employing accomplice liability in a PLCAA motion for dismissal. Tellingly, the Fourth Department cited the *City of Gary* case for general PLCAA principles—not for the meat of its predicate exception or accomplice liability analyses.

Unaided by significant case law, the Fourth Department accepted Williams’ allegations that Beemiller and MKS were accomplices to Brown’s statutory violations. The court only cited one Sixth Circuit decision to support its theory on accomplice liability. The decision, *United States v. Carney*, was a criminal case decided in 2004, one year before the PLCAA’s enactment. The *Carney* court found two firearm dealers had aided and

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110. See Sorensen, *supra* note 57, at 583, 593.


112. See *id.* at 337-39.

113. *Id.* at 339.

114. See *id.* (citing United States v. Carney, 387 F.3d 436, 446-47 (6th Cir. 2004)).

abetted fraudulent and illegal gun purchases, making them accomplices to criminal actions.\textsuperscript{116}

The distinctions between Beemiller and MKS, and the \textit{Carney} defendants are striking.\textsuperscript{117} First, the defendants in \textit{Carney} faced criminal charges.\textsuperscript{118} Beemiller and MKS are in danger of being found civilly liable for Daniel Williams’ injuries.\textsuperscript{119} Second, as dealers, the \textit{Carney} defendants were directly involved in statutory violations committed by third parties.\textsuperscript{120} In the \textit{Williams} case, Brown—a federally licensed gun dealer—played the same role.\textsuperscript{121} But Brown’s company, MKS, was one step removed from Bostic and the illegal purchases.\textsuperscript{122} Similarly, Beemiller, the manufacturer, was even further removed from Brown’s statutory violations.\textsuperscript{123} Williams argued, and the court agreed, that Beemiller and MKS made themselves accomplices to Brown’s statutory violations when they learned 13,000 of their guns were used to commit crimes.\textsuperscript{124} Other persuasive factors included Brown’s employment with MKS and the distributor’s position as “sole marketer and distributor of Hi-Point firearms.”\textsuperscript{125} But beyond learning their guns were frequently used in crimes, the only link establishing Beemiller’s complicity in the statutory violations was daily phone calls between Brown and the manufacturer.\textsuperscript{126}

\textsuperscript{116.} See \textit{Carney}, 387 F.3d at 441, 446.
\textsuperscript{117.} Evidencing the unprecedented nature of the Fourth Department’s decision, the court chose a criminal case decided before the PLCAA’s enactment to aid its decision in a civil case concerning a motion to dismiss under the PLCAA.
\textsuperscript{118.} \textit{Carney}, 387 F.3d at 441.
\textsuperscript{119.} \textit{Williams}, 952 N.Y.S.2d at 336.
\textsuperscript{120.} See \textit{Carney}, 387 F.3d at 442 (detailing the defendant’s repeated sales to a convicted felon through straw purchasers).
\textsuperscript{121.} See \textit{Williams}, 952 N.Y.S.2d at 336 (chronicling Bostic and his cohorts’ straw purchases from Brown at Ohio gun shows).
\textsuperscript{122.} See \textit{id}.
\textsuperscript{123.} See \textit{id}.
\textsuperscript{124.} \textit{Id.} at 339.
\textsuperscript{125.} \textit{Id}.
\textsuperscript{126.} See Brief for Plaintiffs-Appellants, supra note 10, at 3, 5.
The Fourth Department’s accomplice liability reaches substantially farther than Carney’s, but does the PLCAA leave gun manufacturers and distributors vulnerable to accomplice liability? The answer is not as clean as the Fourth Department’s analysis.

Title 18 of the United States Code codifies various federal criminal laws, and chapter 44 is entirely devoted to gun crimes including those violated by Brown and Bostic. A defendant is an accomplice to a federal criminal law when he “aids, abets, counsels, commands, induces or procures [the crime’s] commission.” However, courts have not universally found chapter 44 laws comporting with accomplice liability. And even if Beemiller and MKS could be accomplices to Brown’s chapter 44 violations, claims against the manufacturer and distributor may still be dismissible under the PLCAA.

Broadly, the PLCAA insulates manufacturers, marketers, distributors, importers, and sellers from liability when third parties criminally misuse their firearms. It accomplishes its purpose by subjecting qualified civil liability actions to immediate dismissal. A qualified civil liability action is brought against firearm manufacturers or distributors for damages caused by criminal action by a person or third party. For the PLCAA, person means “any individual, corporation, company, association . . . or any other entity.” The definition does not exclude gun retailers who sell firearms on behalf of manufacturers and distributors. So, it would seem manufacturers and

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128. See id. §§ 921-931.
129. Id. § 2 (punishing accomplices as principals); United States v. Carney, 387 F.3d 436, 446 (6th Cir. 2004).
134. Id. § 7903(3).
135. See id.
distributors might be insulated from immunity when retailers unlawfully use or sell their firearms.

As described above, the predicate exception allows qualified civil liability actions to proceed when the defendant has knowingly violated a predicate statute, and the violation proximately caused the harm for which the plaintiff is trying to recover. If plaintiffs can show defendants aided, abetted, or conspired with any person to make a false or fraudulent purchase of a firearm, the predicate exception is triggered. But the Fourth Department’s accomplice liability theory goes beyond the illegal purchase. It captures manufacturers and distributors, parties who may not have been present at—or have knowledge of—the sale or conveyance.

And even if they are accomplices, complicity does not automatically establish liability. Firearm manufacturers and distributors are not liable for injuries caused by negligent sales or marketing unless they: (1) proximately cause the plaintiff’s injuries; and (2) have knowledge (or can be reasonably expected to have knowledge) of the retailer’s malfeasance.

First, proximate causation limits civil liability, but there may be multiple proximate causes of the same injury. Further, negligence of an intervening party does not necessarily insulate a prior actor’s negligence from liability. Therefore, the proximate cause element may be satisfied even in accomplice liability cases. The Fourth Department had little trouble deciding Williams adequately showed Brown, MKS, and Beemiller proximately caused his injury.

136. Id. § 7903(5)(A)(iii).
137. See id. § 7903(5)(A)(iii)(I).
138. See id. § 7903(5)(A)(iii).
139. See Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29 (2010).
140. See Restatement (Second) of Torts § 447 (1965).
141. The Fourth Department added a proximate causation analysis in its amended opinion. It decided the criminal shooting did not automatically sever the chain of causation, leaving the question of whether Beemiller and MKS had
Second, plaintiffs must also adequately allege each defendant “knowingly violated a State or Federal statute applicable to the sale or marketing of the product.” In *Williams*, the Fourth Department found Brown had knowingly violated several predicate statutes. Then, it decided Beemiller and MKS knew or should have known about Brown’s violations. If the Fourth Department’s decision to hold Beemiller and MKS liable arose from the portion of the predicate exception allowing lawsuits against defendants who aid or abet fraudulent purchases, it demanded little evidence. Brown’s employment at MKS provided a sufficient link to capture the distributor, but the best evidence Williams offered against Beemiller was the company’s daily contact with MKS/Brown. Neither the Fourth Department’s decision, nor the plaintiff’s brief provided evidence the manufacturer directly oversaw any of Brown’s transactions.

Without Beemiller or MKS’s direct violation of a predicate statute, the Fourth Department needed to categorize the companies as accomplices to keep them in the litigation. But perhaps such a novel approach warrants more elaborate justification. The rocky framework for marrying accomplice liability and the PLCAA is exacerbated by the PLCAA’s very purpose—protecting firearm manufacturers and distributors when a third party (like a retailer) misuses their products. Though the Fourth proximately caused Williams’ injuries to a future jury. See *Williams v. Beemiller, Inc.*, 962 N.Y.S.2d 834, 836 (App. Div. 4th Dep’t 2013).


144. *See id.* at 339.

145. Note: the Fourth Department did not cite the aiding and abetting portion of the PLCAA in regards to Beemiller and MKS. *See id.*


148. The Fourth Department limited its accomplice analysis to one paragraph. *See Williams*, 952 N.Y.S.2d at 339.

Department’s decision is innovative, it will likely demand more extensive review by future courts presiding over PLCAA motions to dismiss.

IV. THE FOURTH DEPARTMENT, WILLIAMS V. BEEMILLER, AND THE FUTURE OF GUN CONTROL

Due to the timing of the Williams decision, the Fourth Department’s ruling could help reinvigorate public-health-motivated litigation against the gun industry. Gun violence has not decreased in the ten years since municipalities and gunshot victims first attempted to take down the firearm industry in the courtroom.150 In 2004, one year before the PLCAA’s enactment, 29,569 people were killed by firearms.151 Six years later, in 2010, 31,672 people suffered the same fate.152 For years, gun-control advocates have lobbied legislatures, proliferated propaganda, and encouraged lawsuits hoping to reduce the number of deaths from firearms.153 The opposing side on this hot-button issue has been equally aggressive, rallying behind the NRA and


151. See id. (the data includes accidental shootings and those killed by police in emergency response).

152. See id. Though the total number of gun-caused deaths rose by nearly 2,000, when measured against the population increase, the overall rate only marginally increased. Gun violence is heavily concentrated in certain demographic groups; e.g., black males ages fifteen to twenty-four. See Julie Samia Mair, Stephen Teret & Shannon Frattaroli, A Public Health Perspective on Gun Violence Prevention, in SUING THE GUN INDUSTRY: A BATTLE AT THE CROSSROADS OF GUN CONTROL AND MASS TORTS 39, 44-46 (Timothy D. Lytton ed., 2005).

the Second Amendment.\textsuperscript{154} Gun-control advocates’ aims are simple. They point to three common areas deserving improved regulation: design, sale, and possession.\textsuperscript{155}

Proposed design regulations often include additional security measures like trigger locks, chamber indicators, and personalized safeties.\textsuperscript{156} But the most commonly suggested regulations affect gun sales at the retail level. Some gun-control advocates support banning firearms disproportionately used in crime, and others promote restrictions on the number of guns that can be bought in a single purchase.\textsuperscript{157} More invasive regulations have been suggested to monitor firearm sales.\textsuperscript{158} Gun-control advocates believe forcing firearm manufacturers to take responsibility for their weapons through the chain of sale might encourage them to micromanage retailers, reducing irresponsible selling.\textsuperscript{159}

Of the three commonly suggested modes of regulation, gun-owner behavior is the most difficult to affect. Safe ownership not only includes learning the capabilities and dangers of each firearm, but it also demands secure storage to prevent children, criminals, and untrained adults from accessing guns.\textsuperscript{160}

The need to prevent guns from falling into the wrong hands has been tragically reinforced within the last year. Shootings at a movie theater, shopping mall, and primary school have thrust mental health and gun ownership issues together as federal and state governments scramble to propose new legislation and regulation on who may own and


\textsuperscript{155} See Mair, Teret & Frattaroli, supra note 152, at 50-61.

\textsuperscript{156} See \textit{id.} at 50-51.

\textsuperscript{157} See \textit{id.} at 53-54.

\textsuperscript{158} See \textit{id.} at 56.

\textsuperscript{159} See \textit{id.}

\textsuperscript{160} See \textit{id.} at 56-57.
On January 15, 2013, New York Governor Andrew Cuomo signed into law the nation’s strictest gun control legislation. Little over one month after the mass shooting at Sandy Hook Elementary School, President Barack Obama briefed the press on a sweeping set of proposed regulations aimed at the gun industry.

An avalanche of control sentiment has some legislation moving quickly. But in the past, legislative failures slowed gun-control progress. For many advocates, litigation against the firearm industry presented a more effective route to promote regulation. Holding gun companies liable as accomplices when their products are misused or criminally used would force them to take greater responsibility for their retailers and consumers. Common issues in the future might be: When is a firearm manufacturer/distributor/retailer liable for a person with mental health problems using their weapon to commit a violent crime? Must they know the person has mental health issues? Should they be expected to know a buyer has a history of mental health concerns?

Perhaps Congress and/or fifty state legislatures will enact the far-reaching reforms gun-control advocates are calling for. But any new law will undoubtedly face vociferous objection from the NRA, other gun lobbies, and


163. See Jackie Kucinich & Aamer Madhani, Obama Presses Broad Gun Plan: Controls Certain to Provoke NRA’s Strong Opposition, USA TODAY, Jan. 16, 2013, at 1A.


165. See Schuck, supra note 153, at 225.

166. See id.
Senators and Representatives sensitive to gun rights.\textsuperscript{167} If progress slows, litigants might look to the Fourth Department’s decision in Williams v. Beemiller as a means to reopen the portal to legal action against the gun industry.

However, it must be recognized that Williams v. Beemiller is a state appellate court decision carrying little precedential value outside New York. Still, the decision might inspire potential plaintiffs and attorneys to seek creative ways around the PLCAA. And if more courts are willing to hold manufacturers and distributors liable as accomplices to retailer’s illegal sales, gun-control advocates will have promising litigation opportunities.

Many guns used in violent crimes are trafficked by dealers engaging in a variety of illegal sales like the straw purchases made for James Nigel Bostic.\textsuperscript{168} Straw purchases present an ongoing problem for law enforcement nationwide.\textsuperscript{169} And if courts decide the PLCAA does not insulate manufacturers and distributors from liability when their retailers violate federal and state gun-sale laws, many will face lawsuits from gunshot victims. Under the Fourth Department’s analysis, gun manufacturers and distributors will be on notice of their responsibility for their dealers if their firearms are frequently used in crimes.\textsuperscript{170} Thirteen thousand Hi-Point guns used in crimes was enough for the


\textsuperscript{168} Julius Wachtel, Sources of Crime Guns in Los Angeles, California, 21 POLICING: INT’L J. POLICE STRATEGIES & MGMT., 220, 221-23 (1998).


Fourth Department. And some of the largest gun manufacturers—like Smith & Wesson, Ruger, and Mossberg—design and produce firearms commonly used by criminals.

Time will tell how the Fourth Department’s decision in Williams v. Beemiller will affect firearm litigation and the PLCAA. But if the winds of change continue to favor greater gun regulation, it will not be surprising to see litigation against the firearms industry reborn. In fact, little over one month after the Fourth Department allowed Daniel Williams' case to proceed past a PLCAA challenge, a handful of Missouri plaintiffs cited the case in their own effort to avoid PLCAA dismissal.

In April 2007, David W. Lodgson offered a stolen credit card to purchase ammunition and magazines from Shawnee Gun Shop. Lodgson used the ammunition to kill the Missouri plaintiffs' family members in a deadly shopping center shooting. The Missouri plaintiffs sued Shawnee Gun Shop and used Williams v. Beemiller in an attempt to fit their case into one of the PLCAA’s exceptions to dismissible qualified civil liability actions.

CONCLUSION: PRESSING THE FLOODGATES

The Fourth Department’s decision in Williams v. Beemiller doesn't open the gun companies up to the

171. Id.
174. Id. at 2.
175. Id.
extensive litigation that threatened to bankrupt the firearm industry a decade ago. The facts behind the case are too narrow to be generally applied. Charles Brown's close relationship with MKS Supply and Beemiller is not common amongst firearm manufacturers, distributors, and retailers. But it helped the Fourth Department deploy its theory on accomplice liability. Further, the PLCAA still presents a high hurdle for future firearm plaintiffs to overcome. But if the PLCAA is a floodgate holding back a tide of unchecked firearm litigation, Williams v. Beemiller represents a crack in the dam. Future litigants may rely on—or be inspired by—Williams v. Beemiller in efforts to circumvent PLCAA dismissal.

