



604 Avoiding & Dealing with Class Actions

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Faculty Biographies

Thomas L. Aldrich

Thomas L. Aldrich is chief litigation counsel at Baxter International Inc. in Deerfield, IL. At Baxter, he manages the company's products liability and commercial litigation, including defense of mass tort litigation.

Prior to working at Baxter International, Mr. Aldrich was a partner at Schiff Hardin & Waite in Chicago, where his practice was concentrated in the areas of products liability, insurance coverage, and environmental law. He also served as outside general counsel for Eljer Industries. During that same period, he acted as national coordinating counsel for Eljer's wholly owned subsidiary, U.S. Brass Corporation, in defense of its polybutylene plumbing systems litigation. He was also assistant general counsel of Household Manufacturing, Inc.

Mr. Aldrich has published and spoken widely on issues relating to products liability, class actions, insurance coverage and relations between inside and outside counsel.

Mr. Aldrich is a graduate of Northwestern University School of Law.

Peter J. Brennan

Peter J. Brennan is associate general counsel/litigation at Sears, Roebuck and Co. in Hoffman Estates, IL. He is responsible for managing all of the company's nonemployment litigation, which, at any one time, includes over 2,500 lawsuits.

Mr. Brennan began his legal career as a staff law clerk at the United States Court of Appeals for the Seventh Circuit followed by several years in New York at Kaye Scholer where he worked on securities and other commercial litigation. Mr. Brennan then served as an assistant corporation counsel for the City of Chicago and gained extensive trial experience.

Mr. Brennan received his undergraduate and law degrees from Georgetown University.

Carlton S. Chen

Carlton S. Chen is vice president, general counsel, and secretary of Colt's Manufacturing Company, Inc., the last American-owned manufacturer that predominantly manufactures small arms for the United States military and its allies. Colt is the subject of intense litigation brought by government entities, the NAACP, and individuals represented by class action law firms who are seeking to make Colt and other firearm manufacturers responsible for criminal and negligent use of firearms.

Prior to Colt, Mr. Chen held in-house counsel positions at Olin Corp. and Sara Lee Corp. He also was a corporate lawyer at the law firm of Gager, Henry & Narkis in Waterbury, CT. He began his legal career at the Federal Trade Commission.

Mr. Chen is active in ACCA's Westchester/Southern Connecticut Chapter. He is working with the Connecticut Coalition for Class Action Fairness and has mentored law students at Quinnipiac University School of Law through Colt's participation in an ABA-approved legal externship program. Mr. Chen is a member of the Executive Board of Connecticut Yankee Council, BSA and the National Council of Boy Scouts of America honored him with the Silver Beaver Award for distinguished service to youth.

Mr. Chen graduated from Columbia University and from New York University School of Law as a Root-Tilden Scholar.

Brackett B. Denniston, III

Brackett B. Denniston III is vice president and senior counsel for litigation and legal policy at General Electric Company in Fairfield, CT. He was named chairman of the company's Policy Compliance Review Board, the governing compliance board of the company. Mr. Denniston leads GE's worldwide litigation and compliance areas.

Prior to working at GE, he was chief legal counsel to Governor William F. Weld of Massachusetts, and was responsible for judicial selection, criminal justice, legal policy, and litigation for the Commonwealth. Mr. Denniston was a partner, and earlier an associate, at Goodwin, Procter, and Hoar in Boston, where he specialized in complex civil litigation, securities matters, and white collar crime throughout the United States.

Prior to that he was chief of the major frauds unit of the U.S. Attorney's Office, responsible for white-collar crime prosecutions. He was a member of the Attorney General's White Collar Crime Operations Committee. He was awarded the Department of Justice's Director's Award for Superior Performance for his role in over 100 successful prosecutions. Early in his career, Mr. Denniston served as a law clerk to the Honorable Herbert Y. Choy of the United States Court of Appeals for the Ninth Circuit.

Mr. Denniston is a summa cum laude graduate of Kenyon College and a magna cum laude graduate of Harvard Law School, where he was an editor of the *Harvard Law Review*.

Leonard A. Gail

Leonard A. Gail is deputy general counsel and senior vice president for Bank One Corporation in Chicago. Mr. Gail supervises litigation, bankruptcy, and regulatory defense efforts. He also supervises the finance and administration functions of Bank One's Law, Compliance, and Government Relations Department. He also teaches trial advocacy at the Law School of the University of Chicago.

Prior to joining Bank One, he was a partner at Bartlit, Beck, Herman, Palenchar & Scott, where he was a trial lawyer. He also worked at the Kirkland & Ellis law firm, which he joined after clerking for the Honorable James B. Moran in the United States District Court for the Northern District of Illinois.

Mr. Gail is vice chairman of the Celiac Disease Center at the University of Chicago, vice chairman of the Sinai Hospital Medical Group, and an Advisory Board member of the Northwestern University School of Speech.

Mr. Gail graduated magna cum laude from Dartmouth College and cum laude from Harvard Law School.

604, Avoiding and Dealing with Class Actions,
Tuesday, October 22, 2002, 2:30-4:00 PM

MASS LITIGATION AGAINST THE FIREARM INDUSTRY

Presented by

Carlton S. Chen

VP, GC & Secty of Colt's Mfg. Co., Inc., Hartford, CT

A1. Background

- Over 25 lawsuits (patterned after the tobacco suits) filed in numerous state and Federal courts by over 35 cities and others seeking massive sums of money and injunctive relief for increased police and public services for crime and accidents purported caused by firearm manufacturers

A2. Background

- The Clinton Administration, Congress, multiple state legislatures, various public interest groups and the press (of course) join in the fray
- Lawsuits are brought by the industry against various U.S., state and municipal officials. Investigation of the industry are begun by the FTC and various state AGs

A3. Background

- State legislation is passed in 29 states barring or limiting the lawsuits against the industry
- More than half of the lawsuits are dismissed in whole or in major part based on established principles of law or statutes
- NAACP case to be tried in Nov. 2002, with California cases in 2003

B1. The Crisis

- Colt, a small, predominantly military supplier of light arms (<\$100M sales), must contend with multiple other contract, corporate, and financial matters, with a limited staff
- Typical of other major firearm manufacturers
- This is “bet-the-company” - indeed, “bet-the-industry” - litigation

B2. The Crisis

- **Politicians** - Spitzer, Cuomo, Blumenthal - motivated by political ambition
- **Activists** - Brady Center to Prevent Gun Violence - motivated by publicity, donations, movement to outlaw firearms
- **Mass Tort Bar** - Lieff Cabraser, Milberg Weiss, Castano Law Gp, Weitz & Luxenberg - motivated by contingency fees, targeting other industries

B3. The Crisis

- **Battles must be waged on multiple fronts, aggressively and simultaneously, including:**
 - political battles (with mostly Democrats, such as Cuomo, Spitzer, Blumenthal, Morial, Hahn, Rendell, Archer)
 - legislative battles (in state governments, e.g., CA, MA, MD, NJ, NY)
 - public relations and multimedia battles (for the hearts and minds of the public and customers)
 - litigation battles in courtrooms around the country
 - battles with insurers over defense and coverage of these novel lawsuits

C1. Dealing with It

- **Develop an overall coordinated approach to the “crisis”**
 - Build a “team” that takes a broader view of the crisis, looking beyond just the courtrooms and lawsuits
 - Establish procedures for effective communications and coordination among the various elements of your team
 - Establish and participate in an industry-wide joint defense effort, looking broadly at the solution to the crisis, but without sacrificing your individuality and judgment

C2. Dealing with It

- **The Public Relations Front**
- Understand the significance of this aspect of the crisis as it will impact all other aspects of your defense
- Develop the right Team and the right message and integrate it into all aspects of the defense
- Be proactive in getting the good message out

C3. Dealing with It

- **The Legislative/Political Front**
- Legislative and political efforts can be pivotal to the litigation and ultimate resolution of the crisis
 - Remember: Public opinion will greatly affect your efforts
 - Consider affirmative state and federal lobbying and legislative efforts
 - Do not ignore the lobbying and legislative efforts of your adversaries
- Make sure this effort is integrated with your litigation and other efforts

C4. Dealing with It

- **The Litigation Front**
- Select counsel experienced in working with and coordinating defenses to attacks on multiple fronts, and in being a working part of joint defense teams
- Establish procedures for effective coordination and communication

D1. Avoiding It (?)

- **Advance planning is important**
- Look ahead to spot litigation trends that could involve broad attacks on your company and industry
- Become involved in association activities that establish effective joint defense, lobbying, litigation monitoring, and legislative arms
- Establish relationships with effective public relation specialists and capable law firms
- Consider and implement preventive measures, including periodic reviews of your client's management, marketing and product design functions
- Move quickly when the threat appears

D2. Avoiding It (?)

- **Watch out for:**
 - Demonizing an industry
 - Junk science studies
 - Introduction of “feel-good” legislation
 - Political campaign issues
 - Concerns over health and safety
- **A comprehensive but coordinated approach is vital to success**

MASS LITIGATION AGAINST THE FIREARM INDUSTRY

Background

October 1998. The Castano Group of plaintiffs lawyers, on behalf of the Mayor and City of New Orleans, brings suit naming in excess of 30 firearm manufacturers, distributors, retailers and associations claiming that their negligent marketing and defective firearm design caused criminals and others to acquire and misuse firearms, thereby causing the City of New Orleans to incur significant increased costs of police, emergency services, pension benefits and medical care, as well as diminished property values and lost tax revenues.

January 2000. Several highly tragic and publicized school shootings occur over the intervening two years, raising the level of public and political attention on the lawsuits.

March 2000. Following involvement of the Clinton Administration, Smith & Wesson enters into a highly-publicized "agreement" with the Secretary of Housing and Urban Development, that appears to capitulate on many of the issues in the lawsuits. The NRA and firearm enthusiasts attack Smith & Wesson and its sales plummet.

April 2000. Various members of the industry sue Andrew Cuomo, Elliot Spitzer and officials of 14 municipalities claiming that their efforts to steer government purchases to Smith & Wesson are unlawful.

Spring 2000. Within 18 months, approximately 25 similar lawsuits involving more than 35 cities, counties, various "public interest groups," individuals seeking class certification, and one state government are brought against Colt and other members of the firearm industry.

Summer 2000. Within two years, multiple insurance coverage lawsuits are brought, ultimately with seemingly inconsistent results.

November 2001. Three years from the filing of the first lawsuit by New Orleans, the highest state courts in New York, Connecticut, California, Florida and Louisiana affirm the dismissal of various lawsuits brought against manufacturers based on negligent marketing, distribution, public nuisance, product liability and/or unjust enrichment regarding the sale of non-defective, lawful products.

March 2002. City of Boston voluntarily drops its lawsuit against the industry after vigorously prosecuting the suit, taking many depositions and reviewing several hundred thousand pages of documents produced by the defendants. The City states in its motion to the court that it "has learned that members of the firearm industry have a long-standing commitment to reducing firearm accidents and to reducing criminal misuse of firearms." The City states that Boston's and the Industry's common goals could be best achieved through mutual cooperation and communication. It also cites its enormous litigation expenses, in excess of \$30,000 per month that caused it to realize that it was wasting taxpayer moneys. Shortly thereafter, Boston and Smith & Wesson obtain a court order to vacate their earlier entered consent decree.

March 2002. Brady Center to Prevent Gun Violence persuades the Mayor of Jersey City to file a lawsuit against the industry after Boston bows out.

April 2002. U.S. Senators Zell Miller (D-GA) and Larry Craig (R-ID) introduce S.2268 that would bar politically motivated lawsuits against the firearm industry. U.S. Representatives Cliff Stearns (R-FL) and Chris John (D-LA) earlier introduced H.R. 2037 in the House. Both bills seek to prevent plaintiffs from making a manufacturer or seller of firearms or ammunition, or its trade association, from being liable for harm caused by a criminal or other unauthorized user. Such protection does not apply to any breach of warranty or traditional product liability claim. As of late July 2002, 22 Senators signed onto S.2268 and 227 Representatives (more than half of the members) signed onto H.R. 2037, which is scheduled for a full vote by the House Committee on Energy and Commerce.

April 2002. Kansas becomes the 29th state to provide some form of protection to the firearm industry against frivolous and politically motivated lawsuits. Gov. Bill Graves signs the lawsuit preemption bill into law, which bars local and county governments from suing for damages arising from the legal manufacturing or sale of firearms.

June 2002. The Ohio Supreme Court, in a 4-3 decision, reverses the court of appeals that affirmed the trial court's dismissal of the Cincinnati case on the ground that sufficient facts were alleged. Soon after, the Cincinnati City Council votes down a motion to discontinue its lawsuit against the industry.

Fall 2002. Almost 4 years since the first lawsuit was brought:

- i) More than half of the lawsuits have been dismissed in whole or in major part based on established principles of law or by upholding and applying the new state statutes barring the suits.
- ii) Of the remaining lawsuits, only 4 (3 coordinated lawsuits brought by California cities and counties pending before state Judge DiFiglia in San Diego; and the NAACP lawsuit pending before Judge Weinstein in Federal district court in Brooklyn, where trial is to begin on November 18, 2002) are actively proceeding toward trial and there is reason to believe that the California lawsuits may ultimately be dismissed.

NAACP Convention News
www.naACP.org

Kweisi Mfume
President and Chief Executive Officer
Julian Bond
Chairman, Board of Directors

FOR IMMEDIATE RELEASE
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**NAACP TO FILE CLASS ACTION LAWSUIT AGAINST GUN
MANUFACTURERS**

*Lawsuit supported by the Open Society Institute,
the Irene Diamond Fund, the law firm of Weitz and Luxenberg,
Educational Fund to End Handgun Violence, and attorney Elisa Barnes.*

New York- Kweisi Mfume, President & CEO of the National Association for the Advancement of Colored People (NAACP) announced plans to file an injunctive class-action lawsuit to force gun manufacturers to distribute their product responsibly.

Rather than seeking monetary damages, the lawsuit will take the unprecedented step of seeking significant changes in the gun industry's business practices. The lawsuit, to be filed later this week in the United States District Court for the Eastern District of New York, builds on the landmark verdict in the *Hamilton vs. Accu-tek* case.

"Easily available handguns are being used to turn many of our communities into war zones," said Mfume. "The fact that the illegal trafficking of firearms disproportionately affects minority communities in this country is indisputable. Urban communities have sadly become so accustomed to the prevalence of firearms in their neighborhoods that they are no longer shocked at the sound of gunfire."

According to a 1998 National Vital Statistics Report, African American males between the ages of 15-24 are almost five times more likely to be injured by firearms than white males in the same age group. Black females in that category are almost four times more likely to be injured by firearms than white females. Firearm homicide has been the leading cause of death among young African American males for nearly 30 years.

"The gun industry has refused to take even basic measures to keep criminals and prohibited persons from obtaining firearms," said Mfume. "Last week's tragic shootings in Indiana and Illinois bear witness to the results of the gun industry's willingness to turn a blind eye."

A member of a white supremacist organization killed an African American man, a Korean student and wounded nine other ethnic and religious minorities during a two-state shooting rampage. Authorities said the man used a .380 semi-automatic handgun and a .22 caliber pistol that he obtained from an illegal weapons dealer. The dealer reportedly purchased 65 firearms from one retailer.

"When 65 guns are sold to one person, something is wrong," Mfume said. The industry must be as responsible as any other and they must stop dumping firearms in over-saturated markets. The obvious result of dumping guns is that they will increasingly find their way into the hands of criminals."

The NAACP received funding for the first phase of the litigation from the Open Society Institute and the Irene Diamond Fund and is receiving the *pro bono* representation of Denise Dunleavy, Esq. and the Manhattan law firm of Weitz & Luxenberg. Joshua Horwitz, Executive Director of the Educational Fund to End Handgun Violence, and attorney Eisa Barnes, Esq., who earlier this year was victorious when a federal jury ruled against the industry's negligent marketing practices, will both serve as co-counsel in the lawsuit.

Founded in 1909, the National Association for the Advancement of Colored People (NAACP) is the nation's oldest and largest civil rights organization. Its half-million adult and youth members throughout the United States and the world are the premier advocates for social justice and equal opportunity in their communities.