



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**GUN DEALER ADVENTURE OUTDOORS
DEFAULTS IN PROMINENT GUN CASE**

***MAYOR MICHAEL R. BLOOMBERG AND NEW YORK CITY,
WITH ASSISTANCE BY PRO BONO LAWYERS FROM PILLSBURY WINTHROP SHAW PITTMAN LLP
AND ATTORNEYS FROM THE NEW YORK CITY LAW DEPARTMENT,
PREVAIL IN ANOTHER LEGAL EFFORT TO STEM THE FLOW OF ILLEGAL GUNS***

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New York, June 2, 2008 – Mayor Michael R. Bloomberg and New York City took another step forward in their fight against illegal guns this morning as the legal team for Adventure Outdoors, a gun dealer based in Smyrna, GA, tried to withdraw its representation on the eve of trial. When Judge Weinstein rejected that eve-of-trial maneuver, then the gun shop owner, Jay Wallace, formally defaulted in court. As a result, the Court granted the City's motion for a default judgment. This means that the trial – which had been scheduled to begin Wednesday – won't proceed as planned, and the City will prevail on "liability." (Rather than monetary damages, the City has asked the Court to enter an injunction requiring Adventure Outdoors to obey the law and appointing a federal monitor to oversee its sales practices and to provide employee training.)

"This is an important victory for New Yorkers – as good as a win at trial – and a validation of our innovative efforts to hold gun dealers accountable for following federal laws," noted Mayor Bloomberg in a statement issued by City Hall.

"This default by Adventure Outdoors is a victory for all residents of this City," noted Corporation Counsel Michael A. Cardozo of the New York City Law Department. "It means that one more gun dealer will be subject to careful scrutiny, and it sends another loud message to gun dealers throughout the country to be sure that they sell only to lawful purchasers. This result allows the City to continue to focus on stemming the flow of illegal guns to the City without the expense and time required for a lengthy and contested trial."

John Renzulli of Renzulli Law Firm LLP, the attorneys for Adventure Outdoors, filed papers in court this morning saying that it was seeking to withdraw from representing Adventure Outdoors because neither he nor his client believed it could receive a fair trial before Federal District Judge Jack Weinstein, before whom the case was to be tried. "Despite its frivolous contention that it could not receive a fair trial before a highly respected federal judge, we suspect that the real reason Adventure Outdoors defaulted was because it realized that, after a lengthy trial, it would lose," Corporation Counsel Cardozo added.

"The City had a compelling case against Adventures Outdoors just as it had against the other 20 defendants in the suits who have now settled. We look forward to working with the Court to put into place appropriate remediation measures that will help protect the people of the City of New York," said Pillsbury partner Kenneth Taber, who with Partner Maria Galeno, served as lead trial counsel for New York City. Taber, Galeno and the rest of the Pillsbury team have provided "extraordinarily generous contributions" – according to Cardozo – in legal services and counsel on a "pro bono" basis as part of the Law Department's Public Service Program to help the City in its battle to keep illegal guns off the streets of New York.

"We are pleased that Adventure Outdoors has conceded liability, and we are hopeful that the court will fashion a remedy that ensures a decline in the number of Adventure Outdoors' guns that are trafficked to New York City and used in crime," added Eric Proshansky, co-counsel on the case from the New York City Law Department and Deputy Chief of the office's Affirmative Litigation Division.

Mayor Bloomberg's Gun Efforts

Mayor Bloomberg has made the fight against illegal guns one of the centerpieces of efforts to make New York City safer and keep crime down. These efforts have included co-chairing Mayors Against Illegal Guns, a coalition of 320 mayors from across the country, and lobbying congress to enact effective gun legislation that will make it easier to prosecute criminally, and sue civilly, gun dealers who sell guns illegally. The lawsuits are an important element of these efforts, as they alert gun dealers that their sales practices will be scrutinized by the City and the public. Prior research has shown that such efforts are effective in reducing the number of guns sold by dealers that are subsequently recovered in crimes.

"A new independent analysis of sales from seven of the dealers under monitoring shows that the oversight has been extraordinarily effective at reducing the flow of illegal guns from these stores onto city streets. The analysis, conducted by Johns Hopkins Professor Daniel Webster [and Dr. Howard Andrews of Columbia University], finds that 'the probability that guns sold by the defendant dealers would be recovered by police in the City within one year of retail sale decreased 75 percent from their pre-sting levels,'" the Mayor noted in his statement today.

Mayor Bloomberg added, "Today's decision by Mr. Wallace to surrender his opportunity to defend his case at trial paves the way for the court to appoint a monitor of Adventure Outdoors. We have always said that we have no interest in bankrupting gun dealers, only in ensuring that they follow federal laws. Clearly, our strategy of enlisting court-appointed monitors has been working, and today we take another step toward keeping illegal guns out of the hands of criminals. I want to thank Corporation Counsel Michael Cardozo, Criminal Justice Coordinator John Feinblatt, and our outstanding pro bono legal team from Pillsbury Winthrop for all their hard work."

Gun Dealer Cases

It was these efforts by Mayor Bloomberg that encouraged the City to move forward with its "gun dealer" cases. It sued 27 gun dealers alleging they have created a "public nuisance" in New York by selling handguns that were later used to commit crimes in the city. New York brought two lawsuits in total.

- The first lawsuit, captioned *City of New York v. A-1 Jewelry & Pawn* (06CV2233(E.D.N.Y.), was filed in Brooklyn federal court on May 15, 2006. It began with 15 dealers, of which 11 have now entered into settlement agreements, two defendants were dropped and two have defaulted – including Adventure Outdoors today.
- The second lawsuit, captioned *City of New York v. Bob Moates Sports Shop Inc*, (06 cv 6504(E.D.NY.), and filed on Dec. 7, 2006, originally involved 12 dealers. Of these, nine have settled. One defendant was dropped, and one defaulted.

The Adventure Outdoors Gun Case and Why It Has Been in the Media

The Adventure Outdoors case has received prominent media attention, since it was the first of the two lawsuits to go to trial. Brooklyn Federal Court Judge Jack Weinstein had been expected to preside over

this civil case, with an “advisory jury.” The City claimed that Adventure Outdoors had created a “public nuisance” in New York by selling weapons that later ended up being used in crimes here.

In other words, the City alleged that Adventure Outdoors sold guns to persons not entitled to buy them, and those guns found their way to NYC, where they created a public nuisance. The City hired an investigative agency, the James Mintz Group, to make simulated “straw purchases” (i.e. those in which one person submits to a background check for a gun actually to be used by someone else, usually someone who couldn't get a gun legally on his or her own). The Mintz Group sent undercover buyers to five states, including Georgia where Adventure Outdoors is located, where they bought weapons in these simulated straw purchases.

Judge Weinstein recently ruled that, in his view, there is no constitutional right to a jury in this case, since it is a nuisance case in which the City is seeking only injunctive relief. However, he also agreed to seat an “advisory jury” – i.e. one that would hear the evidence and decide who should win – so that if it turned out he was wrong, and an appellate court found there was a right to a constitutional jury, the case would not have to be retried. (In other words, a jury verdict would have already been entered.)

“Given the relevant legal precedent, and the added fact that Judge Weinstein had taken the careful legal step to seat an advisory jury, Adventure Outdoor's claims that it couldn't get a fair trial are without basis,” Corporation Counsel Cardozo noted. “If the judge had been overruled on appeal, then the jury's verdict would have controlled.”

The City had also planned to call Mayor Bloomberg as a witness in the case. However, last Wednesday (May 21st), the judge ruled Bloomberg shouldn't testify, saying he feared a "media display." New York City Corporation Counsel Michael A. Cardozo noted at the time, "We respectfully disagree with the court's decision but are confident that the city's other witnesses will be able to explain successfully to the court why the city should prevail." The trial was expected to take four weeks. However, today's developments end that prospect.

What's the Status of the Two “Gun Dealer” Lawsuits Now?

Of the City's two “gun dealers” lawsuits, here's a breakdown of the legal status:

First Lawsuit – Brought in May 2006:

Settled:

- A-1 Jewelry & Pawn, GA
- AAA Gun & Pawn Brokers, GA
- Big Tom's Pawn Shop [trade name of Welsh Pawn Shop], GA
- Jim's Guns and Whatever, OH
- Dunkelberger's Sports Outfitters, PA
- Cole's Gun Shop, VA
- The Gun Store, Inc., Doraville, GA
- Peddler's Post, Washington Ct. House, OH
- Gallery Distributing, Mount Penn, PA
- Woody's Pawnshop, Orangeburg, SC
- Patriot Services, Richmond, VA

Defaulted:

- Adventure Outdoors, Smyrna, GA (was supposed to go to trial tomorrow)
- Mickalis Pawnshop, Summerville, SC

Dismissed:

- Webb's Sporting Goods, Madison Heights, VA
- Old Dominion Guns & Tackle, Danville, VA

Editor's Note: Congressional restrictions on access to trace data had barred the City from obtaining up-to-date trace data. When the City was able, through the discovery process in the lawsuit, to obtain current data from these defendants, from which we were able to determine the number of firearms sold by them and recovered in the City, they were dismissed from the suit.

Second Lawsuit – Brought in December 2006:

Settled:

- Hot Shots Jewelry & Pawn, GA
- Miller Rod & Gun, OH
- Dick's Pawn, SC
- Coastal Pawn Shop, SC
- Rooks Sales & Service, SC
- Town & Country Pawn Shop, VA
- John's Gun & Tackle Room, Easton, PA
- Franklin Rod & Gun Shop, Rocky Mount, VA
- Toccoa Pawn & Variety, Toccoa, GA

Defaulted:

- Gwinnett Pawn Shop, Norcross, GA

Scheduled for Trial in September:

- Bob Moates Sport Shop, Midlothian, VA

Dismissed:

- Trader World, North Charleston, SC

Editor's Note: In the host of cases where the City settled with plaintiffs, each agreement provides for the appointment of a federal court monitor who will provide training programs to help ensure that the dealer is following the law and conduct surprise integrity tests to ensure that the dealer is not in engaging illegal "straw sales" or violating federal, state or local firearms laws.

***New York City's "Gun Dealer" Cases
v. "Gun Manufacturer" Cases
– What's the Difference?***

It is important not to confuse the aforementioned "gun dealer" cases with the City's separate case against "gun manufacturers."

The City's gun manufacturers case involved efforts by New York City to require gun manufacturers to monitor the activities of their dealers and take steps to ameliorate any illegal or negligent practices that permitted guns sold by those dealers to enter the illegal market for guns. The City commenced this action in 2000.

It was scheduled to go to trial in November of 2005 but shortly before then the U.S. Congress enacted a law, the Protection of Lawful Commerce in Arms Act, signed by the President, that the defendants argued barred the case. Judge Weinstein rejected the defendants' argument. However, the U.S. Court of Appeals for the Second Circuit, on April 30, 2008, in a 2-1 ruling, reversed Judge Weinstein and ruled that the City's suit was barred by the Immunity Act passed by Congress in 2005. The City is still considering the next appellate steps it will take with respect to this case.

***U.S. Supreme Court Gun Case –
How That Also Differs***

Tangential to the City's gun dealer and gun manufacturer cases, the U.S. Supreme Court has also been weighing some gun issues recently.

The court heard oral argument on March 18th of this year in a case, *Heller v. District of Columbia*, in which Washington, D.C.'s tough local hand gun law has been challenged as unconstitutional.

New York City participated in the submission of an *amicus* or "*Friend-of-the-Court*" brief, in which we supported the principle that states can establish reasonable regulations on the use of guns. The Court is expected to decide the case before the end of this month.

Pillsbury Contributed Legal Time
Through the Law Department's Public Service Program

Pillsbury Winthrop Shaw Pittman LLP, a leading law firm with 14 offices in the United States and internationally, composed of more than 800 lawyers, has generously donated its time to the City as part of the Law Department's Public Service Program, to help the City prosecute the various gun cases – an endeavor saving the City millions of dollars.

Two partners – Ken Taber and Maria Galleno – and as well as a number of Pillsbury associates have spent literally thousands of hours working on the case with the New York City Law Department, taking and defending depositions, preparing briefs, arguing motions and preparing for trial.

"We are immensely grateful for Pillsbury's extraordinary efforts on this case. Along with a fine New York City team, Pillsbury added overwhelming legal power to the case – and to the Mayor's ability to curtail the spread of illegal guns. We thank the firm and its staff for their incredible assistance," noted Corporation Counsel Cardozo.

The New York City Law Department's Public Service Program, a unique initiative based on the public service/corporate mindset embraced by Mayor Bloomberg, grew out of the strong interest expressed by law firms that aided the Law Department after the Sept. 11, 2001 tragedy. The program functions as a public/private initiative, where law firms volunteer associate time to the Law Department, assisting it in managing its heavy caseload. In turn, high-caliber attorneys are offered a unique chance to give back to the City of New York in the spirit of public service and bolster their legal skills. Dozens of firms have donated more than \$250 million to the City since the program's inception in 2002.

In today's gun case, the Law Department's Affirmative Litigation Division Deputy Chief, Eric Proshansky, led the City's legal team, with assistance from Affirmative Litigation lawyers Gail Rubin, Richard Costa, Melanie Ash and Ari Biernoff.

Pillsbury's legal team included Kenneth Taber, Maria Galeno, John Pritchard (all partners) as well as Portis Hicks (a retired partner), Susan Greenberg, Sangita Shah, James Wheaton, Ken Newby, Greg Lembrich, Angie Kim, Elizabeth Husa and Ryan Kriger (all associates).

Michelle Ward of Decision Analysis also donated time to the trial team.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 690 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit nyc.gov/law.

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