

Executive Summary

Buyer Beware:

Defective Firearms and America's Unregulated Gun Industry

Consumer Federation of America

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The **Consumer Federation of America** (CFA) is a nonprofit association of 300 consumer groups, representing more than 50 million Americans that was established in 1968 to advance the consumer interest through research, education, and advocacy.

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Introduction

Beyond the rhetorical debate between “gun control” and “gun rights” lies a longstanding and unaddressed problem: every year many gun owners and bystanders are killed or injured by defective or hazardously-designed guns. Consider the following real-life examples that graphically illustrate how guns with safety-related defects can kill or seriously injure gun owners and innocent bystanders:

- A gun owner took his .22 Colt single-action revolver with him on a fishing trip. He was sitting on a rock when the gun fell from his holster, struck a rock, and discharged. The bullet lodged in his bladder, damaging vital nerves and rendering him impotent.¹
- Mike Lewy was unloading his Remington Model 700 rifle in his basement apartment. As he moved the safety to the fire position in order to lift the bolt handle to eject a chambered cartridge, the gun discharged. The bullet went through the ceiling and struck his mother, who was shot in the upper left leg and required hospitalization for more than a month.²
- Carlton Norrell was changing a tire when close friend, William Kerr, accidentally dropped his .41 Magnum Sturm, Ruger Old Model revolver. The bullet struck Mr. Norrell in the temple and drilled a straight line across the front of his skull. Mr. Norrell died eight days later.³

Why do these tragedies occur? There is no question that firearms—like prescription drugs, insecticides, household chemicals, and many other products commonly found in American homes—are inherently dangerous. Consumers can’t use them without risking injury to themselves or others.

The gun lobby maintains that unintentional shootings⁴ generally occur as a result of carelessness on the part of the gun owner.⁵ Firearms industry marketing is replete with

¹ Johnson v. Colt Industries, 609 F. Supp. 776 (D. Kan. 1985), aff’d, 797 F.2d 1530 (10th Cir 1986).

² Lewy v. Remington Arms, Inc., 563 N.E.2d 397 (Ill. 1990).

³ Erik Larson, “Wild West Legacy: Ruger Gun Often Fires If Dropped, But Firm Sees No Reason for Recall,” *The Wall Street Journal*, June 24, 1993.

⁴ Unintentional shootings are often referred to as firearm “accidents.” This characterization, however, implies that injuries occur by chance and cannot be foreseen or prevented. Public health research has replaced the term “accident” with the more accurate term “unintentional injury.” This is based on the recognition that most unintentional injuries are preventable through the application of public health strategies including passive safety devices, public education, modification in product design, or limiting access to specific products.

⁵ “...we urge that you not purchase a firearm.’...and other comments on safe and responsible firearm use,” Third Edition, Sporting Arms and Ammunition Manufacturers’ Institute, Inc., p. 2: “Recognizing that essentially all firearms accidents are the result of carelessness or a lack of knowledge of fundamental

messages about “responsibility” that emphasize the importance of owner behavior without mentioning the potential dangers of the product. Pro-gun organizations such as the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI)⁶ suggest that focusing on user education is all that is needed to reduce firearm accidents.⁷

While consumer education does play an important role in injury prevention, no amount of user instruction can eliminate the risks associated with product defects in design or manufacture. Despite the fact that firearms kill nearly twice as many Americans as all household products combined, no federal agency has the necessary authority to ensure that guns don’t explode or unintentionally discharge when they are dropped or bumped. This is unique. The federal Consumer Product Safety Commission (CPSC) exists to make sure that consumers are not killed or injured by common household and recreational products. The agency tries to ensure that toasters don’t catch fire, toys don’t come apart, lawn mowers don’t cut off toes, and the myriad of consumer products within its jurisdiction are safe. By comparison, firearms are exempt from CPSC oversight and *no* other federal agency has the power to ensure that firearms manufactured and sold are safe.⁸

Currently, the civil justice system is the only mechanism available to protect consumers from defect-related death and injury and to ensure that guns are safe and free from defects in design or manufacture. Traditional product liability lawsuits have been of tremendous importance in regulating the safety of firearms and ammunition and compensating consumers who suffer injury or death caused by manufacturer’s negligence.

Exactly how many victims are killed or injured each year by defective firearms is unknown. There exists no coordinated data collection on unintentional firearm injuries and deaths that includes vital information such as the specific type of gun, caliber, and source. Comprehensive data is essential to identify firearms that are exceptionally likely to be involved in unintentional firearms-related injury or death, and to inform the public of the risks associated with such guns.

safety rules, SAAMI has emphasized educational efforts that instill a clear sense of responsible firearms ownership and use.” Retrieved from the Internet at <http://www.saami.org/> on January 21, 2005..

⁶ The firearms industry has developed its own voluntary standards through an organization called the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI). These standards are strictly voluntary and therefore manufacturers do not have to comply with them. There is also no way to enforce specific regulations or to penalize companies that do not fully comply.

⁷ *Supra* note 5.

⁸ In addition, no federal agency has the power to set mandatory standards for firearm safety devices such as trigger locks. In 2000 the Consumer Product Safety Commission (CPSC) conducted informal tests on 32 gun locks—16 trigger locks and 16 cable locks. Most of the locks failed. Some could be opened with a paperclip or a pair of tweezers, and some opened just by banging the lock on a table or by hitting it with a hammer. Many firearm safety devices on the market give consumers nothing more than a false sense of security.

The data that does exist on unintentional shooting deaths and injuries comes from the National Center for Injury Prevention and Control (NCIPC) at the Centers for Disease Control and Prevention (CDC). This data does not delineate deaths from defective firearms. According to NCIPC, 802 Americans were unintentionally shot and killed in 2001 alone.⁹ That same year, an additional 17,696 people were treated in emergency rooms for nonfatal, unintentional shooting injuries.¹⁰ Using these statistics, for every one victim that dies in an unintentional shooting, 22 survive with injuries.

This study details what is known about defective firearms, the gun industry's response to the problem, and suggests a comprehensive solution to reducing deaths and injuries from such products. The study also contains three Appendices that list known warnings and/or recalls of 1) Handguns, 2) Rifles, and 3) Shotguns. The appendices are broken out by type of firearm; listed alphabetically by maker and within that chronologically by date of first known public advisory.

Section One: Defective Firearms—Defective Regulation

Regulatory jurisdiction under the CPSC extends to approximately 15,000 different “consumer products.”¹¹ Virtually every product used for household or recreational use falls within CPSC's jurisdiction, including everything from baby walkers to coffee makers to all-terrain vehicles. The agency even has jurisdiction over pellet and BB guns.¹²

Unfortunately, current federal standards regulating consumer products *do not* apply to firearms or ammunition sold in the United States. In fact, domestically produced firearms and ammunition are specifically *excluded* from any regulation by the CPSC.¹³

⁹ While these numbers are shocking, they actually reflect a decrease in the number of victims killed unintentionally. Overall, from 1993 to 2001, the NCIPC reports that rates of unintentional firearms deaths fell by 46 percent—down to an average rate of .28 per 100,000. Such reductions may not necessarily represent a drop in the number of victims suffering unintentional gunshot wounds, however, but only a reduction in the number of victims who actually *die* from their injuries. For example, among the unacknowledged factors that may be contributing to this current trend are improvements in trauma care, which increases the chances of surviving an unintentional shooting.

¹⁰ Data on nonfatal injuries collected by the National Electronic Surveillance System, Consumer Product Safety Commission from WISQARS Nonfatal, <http://www.cdc.gov/ncipc/wisqars/default.htm>.

¹¹ CPSA §3, 15 USC §2052.

¹² Although some have suggested that CPSC be given jurisdiction over firearms, the agency is not well-suited for the task. At present, CPSC lacks the resources to adequately oversee the products currently within its jurisdiction. In light of the agency's resource deficiencies and the Department of Justice's (DOJ) expertise in the area, CFA recommends that DOJ be empowered with health and safety authority over firearms and ammunition. Additionally, non-powder firearms should be removed from CPSC's jurisdiction and placed with DOJ.

¹³ With the exception of tobacco and firearms, the following products are exempt from CPSC regulation primarily because they fall under the jurisdiction of another agency: motor vehicles or motor vehicle equipment; tobacco and tobacco products; pesticides; firearms and ammunition; aircraft, aircraft engines,

The story of how the National Rifle Association (NRA) led the fight to have firearms and ammunition excluded from the nation's toughest consumer protection legislation demonstrates the grassroots power of the gun lobby and how it was able to build itself into the modern day political powerhouse that is feared by many policymakers at both the federal and state level.¹⁴

The Senate bill that established the CPSC as the nation's leading consumer protection agency originally included firearms and ammunition among the many products within the agency's jurisdiction. However, when the bill was considered in the House of Representatives, an amendment by Michigan Congressman John Dingle, an NRA board member at the time, was adopted that effectively excluded firearms and ammunition from the supervision of the CPSC. This amendment, which was buried and largely unnoticed in the voluminous language of the bill, did not specifically use the words "firearm" or "ammunition." The amendment cleverly exempted "any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (26 USC § 4181)." The IRS tax statute referred to in the CPSCA provides for an excise tax on firearms and ammunition.

Despite the fact that Congress took great care to exempt firearms and ammunition from its oversight when it created the CPSC in 1972, there was no such restriction imposed when the CPSC was later empowered to enforce the Federal Hazardous Substances Act (FHSA).

Senator McClure introduced an NRA-sponsored amendment to the FHSA to deny the CPSC a "foothold" into firearms or ammunition regulation. The NRA was able to generate bipartisan support for the amendment by mailing NRA members and organizing a formidable congressional grassroots mail campaign. This effort became the model that has been used by the NRA over the years to kill many gun violence prevention measures.

Having already passed the U.S. House of Representatives, the CPSC amendment came to a vote in the Senate on July 18, 1975. Senator McClure opened the debate by saying that safety regulation of firearms and ammunition was "indeed a consumer issue—where the consumers of a specific product have made their wishes to be left alone abundantly clear." The amendment passed on a voice vote, killing the effort to regulate ammunition.¹⁵

propellers, or appliances; boats, vessels, and appurtenances to vessels; drugs, devices, or cosmetics; and food.

¹⁴ "The Enforcement Fable, How the NRA Prevented the Enforcement of the Nation's Gun Laws," Handgun Control and The Center To Prevent Handgun Violence, March 21, 2000, p. 4.

¹⁵ Congressional Record, Senate, Volume 121, Part 18, July 18, 1975, p. 23569.

Additional legislation was passed in 1981 making it clear that the Commission had no authority to regulate firearms and ammunition.¹⁶

According to official documents posted on the NRA website, the leadership believes it is a tribute to Senator McClure and the founders of the NRA-ILA that the precedent set almost 30 years ago remains the line that cannot be crossed today.¹⁷

Section Two: Guns Aren't Supposed to Misfire

Guns and Cars: Two Peas in a Pod

When used improperly, firearms and automobiles are products capable of inflicting damage and death to the user and innocent bystanders. The gun lobby likes to point out that both products are tools capable of productive or unproductive use, depending on the operator. What the gun lobby fails to point out is that the Federal Government regulates automobiles for safety while guns are completely exempt from similar regulation.

Until the 1960s, automobile death and injury was considered an inevitable aspect of general car ownership and operation. Blame for injuries caused by accidents was attributed to the “nut behind the wheel,” or the “sleepy/inattentive/incompetent” driver. However, when consumer advocates, and then the Federal Government, began to look at the actual design of automobiles and roads and took steps to change those designs, automobile death and injury rates plummeted. Automobile regulation has mandated the creation of dozens of safety innovations, from seatbelts to collapsible steering columns, cutting highway deaths nearly in half over the years.¹⁸

Today, automobiles must meet safety standards before reaching the consumer, and if a safety defect is detected after distribution, the government has the power to force the manufacturer to issue a recall. Unfortunately, safety regulation of firearms remains stuck in a pre-1960's mindset. A poorly designed gun produced in the United States that shoots out of the wrong end of the barrel is not subject to any regulatory scrutiny.

Another key idea that has made consumer product regulation work is an acceptance that people do make mistakes and sometimes act carelessly. But when they do, the design and distribution of the product can mitigate the consequences. Safety innovation in the automobile industry has shown that regulated design saves lives and prevents injuries, even when people make mistakes or behave irresponsibly. The same

¹⁶ 15 USC § 2052.

¹⁷ “Corzine-Kennedy ‘Consumer Protection’ Bills Poor Smokescreen for Back-Door Gun Prohibition,” NRA Fact Sheets. Retrieved from the Internet at <http://www.nra.org/Issues/FactSheets/Read.aspx?ID=149> on January 21, 2005.

¹⁸ According to the National Center for Health Statistics, the U.S. death rate from motor-vehicle accidents has dropped from a high of 28.5 in 1969 to 15.4 in 2002.

approach should apply to firearms. In fact, the emotional stress and adrenaline rush associated with using a gun, especially in lawful self-defense, makes any potential defect in design or manufacture doubly hazardous.

Unfortunately, the gun industry continues to avoid federal health and safety regulation and often blames the consumer for accidents and product malfunction. While there are many safety innovations for firearms, in the absence of a federal regulatory agency with the power to mandate their inclusion they have been incorporated episodically, if at all.

Firearms and automobiles really are like two peas in a pod. There is no more reason to allow firearm manufacturers to make guns that fire unexpectedly, killing and injuring bystanders and users, than there is to allow automobile manufacturers to sell cars that suddenly burst into flames or have faulty braking systems. But what separates these two peas in a pod is that, unlike cars, there is no federal agency that has health and safety authority over gun makers. The firearms industry is left to self-regulate and decide what, if any, safety mechanisms to include with its products. The result, as revealed in the next section, can be deadly for the consumer.

Section Three: The Most Common Offenders

The following firearm models have been dubbed “the most common offenders” because of the high number of complaints associated with them. These manufacturers are aware of the safety issues associated with these guns.

Glock Pistols

Glock pistols have been involved in more than 45 lawsuits¹⁹ relating to unintentional shootings, even though they have been on the market only since the late 1980's. Many of the Glock pistol incidents involve law enforcement. Police officers have had Glock pistols inadvertently discharge in a variety of situations including while holding unresisting suspects at gunpoint. For example, a driver stopped during a sex sting operation was unintentionally shot and wounded by a Tampa police officer in April 2002. The officer used his Glock service pistol to knock on the driver's window. According to Tampa police authorities, the gun went off unintentionally.²⁰

Additionally, because of their short, light trigger pull, Glock pistols have allegedly been involved in numerous household shootings involving young children. For example, in January 2004 a Nashville, Tennessee police officer was unintentionally shot to death by his 3-year-old son. The boy grabbed his father's .40-caliber Glock service weapon from

¹⁹ Review of the Firearms Litigation Clearinghouse, December 13, 2004.

²⁰ *St. Petersburg Times*, April 25, 2002.

a kitchen table.²¹ In September 2004, the 3-year-old stepson of a Marshall County, Alabama deputy sheriff unintentionally killed himself with a Glock pistol.²²

Remington Rifles

Remington 700, 721, 722, 40X, and 600 series bolt-action rifles have discharged unexpectedly when the safety control is moved to “Off” from a position of “Safe.” Remington itself calls this defect “Firing on Safety Release” (abbreviated “FSR” in Remington documents). Firing on safety release is the most common but not the only type of Remington rifle unintentional discharge that can occur without the trigger being pulled. Remington also has had hundreds of customer complaints for firing when the bolt is closed (FBC), firing on bolt opening (FBO), and firing when jarred or bumped (JO).²³

Despite the fact that Remington had convened a Product Safety Subcommittee to evaluate complaints about the Model 700, it responded to every customer complaint with a form letter blaming the consumer for “amateur gunsmithing” or improper cleaning or lubrication. When Remington could not attribute the complaint to one of these causes, it stated that the company was unable to duplicate the problem and that the consumer must have inadvertently pulled the trigger.²⁴ According to attorney Richard Miller, who has litigated numerous cases on Remington rifle defects, “To this day, Remington has never publicly admitted (as it does in internal documents) that its bolt action rifles are susceptible to intermittent unexpected discharges without pulling the trigger.”²⁵

Saturday night special Handguns

The Bryco/Jennings Model 38 semiautomatic is similar in design and manufacture to many other guns commonly known as Saturday night specials or “junk guns.” Die-cast metal and other forms of low-priced construction are used to make Saturday night specials inexpensive to manufacture and purchase. Many of these pistols, such as the Bryco 38, have one manual safety but no internal automatic drop safety. When first sold, the Bryco retailed for about \$100. Other .380-caliber pistols, made of steel and

²¹ Associated Press report, January 4, 2004 (The ultra-compact 9mm Model 26 Glock was the officer's backup gun, which he had left on a bedroom bureau. It should be noted that ultra-compact pistols in general have a toy-like appearance that has been known to attract small children).

²² *Sand Mountain Reporter*, September 14, 2004.

²³ Correspondence: Richard Miller, Esq. to *SHOOTING INDUSTRY* business journal, July 14, 1993.

²⁴ *Ibid.*

²⁵ *Ibid.*

equipped with more comprehensive user safety systems, commonly cost several times as much.²⁶

There have been at least three dozen lawsuits against Bryco/Jennings for making and distributing allegedly defectively designed firearms.²⁷ The company has lost or settled more than two dozen of these cases and is currently in bankruptcy. The bankruptcy arose in 2002 after a jury awarded 7-year-old Brandon Maxfield \$49 million in damages. Brandon was unintentionally shot in the face at close range with a Bryco 38 and left a quadriplegic. The jury found that the Bryco pistol was defectively designed.²⁸

Single-Action Revolvers

More than 600 people, including children, have been killed or injured by unintentional discharges from Sturm, Ruger & Company's Old Model single-action revolvers.²⁹ This revolver was manufactured from 1953 until 1972. It incorporated no positive safety device and is therefore extremely prone to discharge when dropped or bumped. The design of the gun was modified in 1973 to include a transfer bar safety, which prevents the gun from firing when dropped. However, by the time the gun was redesigned, 1.5 million of the original revolvers were in the hands of consumers.³⁰

Other single-action revolvers suffer from similar safety-related problems. For example, in 1986 a federal appeals court upheld a punitive damages award of \$1.25 million against Colt in a case involving the unintentional discharge of a single-action revolver.³¹ Plaintiff Johnson had taken the handgun with him on a fishing trip. He was sitting on a rock when the gun fell from his holster, struck a rock, and discharged. The bullet lodged in his bladder, damaging vital nerves and rendering him impotent.

²⁶ For example, the all-steel .380-caliber Walther Model PPK, has an automatic drop safety, loaded chamber indicator, and a manual safety that allows unloading and loading while set to "on." Common retail prices of this and numerous similar guns are between \$400 and \$600.

²⁷ *Supra*, note 19.

²⁸ Maxfield v. Bryco Arms, et al., Superior Court of the State of California, Alameda County, Case Number 841636-4.

²⁹ *Supra* note 19.

³⁰ Erik Larson, "Wild West Legacy: Ruger Gun Often Fires If Dropped, but Firm Sees No Need for Recall," *The Wall Street Journal*, June 24, 1993.

³¹ Johnson v. Colt Industries, 609 F. Supp. 776 (D. Kan. 1985), *aff'd*, 797 F.2d 1530 (10th Cir 1986). The court in Johnson observed that the jury could have viewed the manufacturer's conduct, in characterizing the gun as a throwback to the Old West, "as putting marketing concerns ahead of safety concerns."

The SKS Semiautomatic Assault Rifle

More than 300,000 SKS semiautomatic rifles were imported into the country in the late 1980's and early 1990's.³² They have proven to have major design and safety problems. Built primarily by the Chinese Defense Agency, these imported rifles can unexpectedly fire in full-automatic mode while being loaded without the trigger being pulled (See Rifles Appendix—Navy Arms). The SKS chambers the same round as the Soviet AK-47 assault rifle. In runaway full-automatic mode, the SKS can fire at the rate of more than 1,000 rounds a minute.

Winchester Model 94 Rifle

The Model 94 rifle was introduced in 1894 as Winchester's first lever-action gun designed for use with modern high-powered ammunition. Most commonly used as a deer-hunting rifle, more than 5,000,000 Model 94s have been produced to date.³³ These rifles can unintentionally discharge in at least three different ways: when half-cocked in the "safety" hammer notch; when moving the finger lever without touching the trigger; and during unloading.

The Model 94 is based on a 1860's lever-action design originally meant for rimfire ammunition. Made substantially the same until about 1992, early models of this rifle have no safety except for a half-cock position of the exposed hammer, which is supposed to keep the firing pin off the cartridge. The user is expected to carry the gun set this way, until prepared to fire—at which time he cocks the hammer fully back with his thumb and pulls the trigger. Many product liability cases were brought against Winchester when this half-cock failed in the field and the hammer fell forward discharging the gun. This would occur, for instance, when the exposed hammer caught on an obstruction like a branch or twig and was nudged out of the half-cock position and discharged the gun.³⁴ Later models of the Winchester 94 are now equipped with forms of manual safety.

The Remington Model 11 Semiautomatic Shotgun

More than 850,000 Remington 11s were made and sold from 1911 to 1948 and many are still currently in use. It has been found that fragile parts in the gun's action can break away, causing cartridges to be set off when ammunition is feeding into the chamber (See Shotgun Appendix). This sometimes results in the shotguns firing repeatedly until the shells in their magazines are exhausted. No pressure on the trigger is required for this firing to occur.

³² Melvin Claxton, "Firearm Defects Take Toll," *The Detroit News*, December 15, 2003. Retrieved from the Internet at <http://www.detnews.com/2003/specialreport/0312/16/a10-8000.htm> on January 21, 2005.

³³ *SHOOTING INDUSTRY*, March 1996.

³⁴ "Intentional vs. Accidental Shootings: A New Target?" *New Targets: An overview of Firearms Litigation*, 1999. Retrieved from the Internet at <http://lp.findlaw.com/> on January 21, 2005.

The Remington Shotgun Barrel Class Action

In 1995, Remington et al entered into a settlement of class action claims brought by owners of certain Remington 12-gauge shotguns including: Remington 12-gauge Model 870, 1200, 11-87, 3200, and Sportsman 58, 12-A or 12-P shotguns. The action named all of these models manufactured between 1960 and June 1995. This was substantially all shotguns made by Remington during those years.³⁵

This shotgun liability suit was filed against the Remington Arms Company, Inc., E. I. du Pont de Nemours and Company, and Sporting Goods Properties, Inc., the du Pont subsidiary formerly known as Remington. The complaint alleged that the type of steel formerly used for the barrels of these shotguns (American Iron and Steel Institute C-1140 modified steel) constituted a manufacturing defect that could and had resulted in the explosion of the barrel in use.

In 1997, the Court approved payments to more than 477,000 class members, who owned more than 750,000 eligible shotguns. It was paid out of a 31.5 million dollar fund established to meet current and future claims.³⁶

This aggregate body of information makes it clear that numerous firearms can and do fire unexpectedly, without contact with their triggers. Many of these firearms fire ammunition too powerful to allow for true “aim in a safe direction,” while engaging in normal gun handling. In the following section, we will examine the firearms industry’s common responses to such safety information, lawsuits, and resulting efforts to establish gun-related consumer safety standards and regulations.

Section Four: The Gun Industry’s Response

Like many American industries, the bottom line is the primary concern of the gun industry when considering consumer safety.³⁷ If product liability claims can be settled for pennies-on-the-dollar, or litigation prolonged to discourage legitimate claims, the gun industry wins. If product recalls can be avoided or costly model upgrades put off, the industry wins.

As outlined in Section Three of this report, the firearms industry has long known that millions of guns in America share design features that expose their owners and those

³⁵ Garza v. Sporting Goods Properties, Inc., 1996 WL 56247, W.D.Tex., 1996.

³⁶ Garza Class Action Settlement Notice of May 30, 1997.

³⁷ Affidavit of Robert A. Ricker, IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT MANUFACTURERS' MOTION FOR SUMMARY JUDGMENT, Consolidated California Cases, March 7, 2003.

around them to increased danger.³⁸ Yet firearm manufacturers have undertaken few industry-wide efforts to improve product safety.³⁹

Many firearm manufacturers seem to ignore technology—including their own—that would make guns safer and less apt to unintentionally discharge. Internal memos, gun patents, and employee depositions show that many safety features are inexpensive, easily incorporated into existing models, and have been available for decades.⁴⁰ Additionally, most manufacturers appear to routinely disregard customer complaints and refuse to recall guns even after losing or settling lawsuits. Some gun makers go further, using confidentiality agreements as part of legal settlements to conceal information about allegedly defective firearms.⁴¹

Confidentiality Agreements

Gun manufacturers' insistence on confidentiality agreements is common in product liability settlements. The agreements have kept critical information about the safety record of gun manufacturers from the public and are a prime example of how the gun industry conceals information about injuries and fatalities connected with its products. As outlined in other sections of this report, the industry has done so with the help of Congress and the NRA. There are no current requirements to report complaints and injuries to any federal or state agency, and gun manufacturers cannot be compelled to inform gun buyers of problems others have had with their weapons.

When police officer Randall Smith was accidentally shot in the head by a fellow law enforcement officer with a Glock semiautomatic pistol in 1995, he sued the manufacturer, claiming the weapon was defectively designed and unreasonably dangerous. Glock settled the lawsuit. The settlement contained a confidentiality agreement preventing Officer Smith, whose injuries left him permanently brain damaged, from talking about the case or revealing any details he learned about Glock before the settlement. His lawyer also is barred from talking about the case by the confidentiality agreement. Such agreements are standard policy for Glock when settling lawsuits. *The Detroit News* documented more than 50 lawsuits against Glock in the past eight years. In those with confirmed settlements, Glock insisted on confidentiality agreements.⁴²

³⁸ Melvin Claxton, "Defective Firearms Go Unchecked," *The Detroit News*, December 14, 2003. Retrieved from the Internet at <http://www.detnews.com/2003/specialreport/0312/16/a13-7201.htm> on January 21, 2005.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Supra* note 38.

According to a former plant manager of Davis Industries, at the time a leading Southern California based manufacturer of small, inexpensive handguns, a common practice used to avoid expensive litigation when a consumer was injured by a Davis firearm was to offer an immediate payment of \$1,000 in return for the offending firearm. The former industry official claimed the type of consumer who would purchase a Davis handgun tended to need the money especially if they had been injured. More often than not the injured consumer agreed to the quick settlement. Additionally, the company would retrieve the offending firearm before word of a potential problem was widely publicized.⁴³

Section Five: Defective Tires and Bad Meat

Imagine if car companies could introduce new cars with no built-in safety protection, if drug companies could sell untested drugs at will, or if there were no requirements for the safety and inspection of meats.

Fortunately, that's not the case.

Virtually every consumer product—from children's toys to refrigerators and cars—is regulated for safety. Congress has given authority to federal agencies to assure that almost every consumer product in America is subject to safety regulation. For example, the Consumer Product Safety Commission (CPSC) regulates the safety of consumer products used in the home, at schools, and in recreation; the United States Department of Agriculture (USDA) has authority over meat and poultry; and the National Highway Traffic and Safety Administration (NHTSA) sets safety standards for cars.

The history of consumer product regulation teaches that a significant number of deaths, injuries, and illnesses can be prevented as a result of properly implemented and rigorously enforced health and safety standards. Below is one example of how federal regulation works to protect Americans every day.

The Firestone Recall

In 2000, American consumers witnessed one of the largest consumer product recalls in the automobile industry when Firestone recalled its 15-inch ATX and ATX II tires and the Wilderness AT tires produced at its plant in Decatur, Illinois. The tires were increasingly losing tread and causing the vehicles they were supporting to rollover resulting in an increase in automobile-related deaths and injuries.

On August 9, 2000, both Ford and Firestone issued a recall of more than 14.4 million tires. At the time of the August 9th recall announcement, Firestone estimated that 6.5 million of these tires were still in service.⁴⁴ On August 15, Firestone announced a

⁴³ *Supra* note 37.

⁴⁴ Senate Rpt. 106-423 - MOTOR VEHICLE AND MOTOR VEHICLE EQUIPMENT DEFECT NOTIFICATION IMPROVEMENT ACT.

reimbursement policy to replace the faulty tires. The policy covered tires purchased between January 1, 2000 and August 8, 2000 from a company-owned Firestone Tire and Service Center or authorized retailer. Customers with a recalled tire were notified by mail and given instructions on how to go about replacing the defective tires free of charge. Replacements included other Bridgestone/Firestone tires or competitors' equivalents if necessary to expedite the exchange and minimize inconvenience to customers. Both the policy and information on how to receive a reimbursement form were posted on Bridgestone/Firestone's websites and printed in paid advertisements in the August 16th edition of 41 major newspapers nationwide.⁴⁵

Conclusion

Since the passage of the Consumer Products Safety Act in 1972, the gun lobby has fought to avoid federal health and safety regulation for the products it promotes. As a result, gun manufacturers routinely do not include simple safety devices that could prevent some unintentional shootings. In addition, some manufacturers have apparently known about unsafe design features in their products for years, yet when injury or death occurs they try and shift the blame to the consumer to avoid liability.

Ideally, firearm manufacturers should be subject to the same health and safety standards that currently apply to manufacturers of other consumer products. Comprehensive safety regulation would ensure that all manufacturers include a comprehensive safety system in every firearm that adequately indicates the presence of a cartridge in the chamber, the state of readiness to fire, and, in magazine-fed firearms, a device that disables the firearm when the magazine is removed.

Effective firearms regulation must include rigorous enforcement authority. At the federal level, the most capable agency to implement oversight would be the U.S. Department of Justice. At the state level, current approaches include giving such authority to state attorneys general, state Justice Departments, or independent boards.

Product liability litigation is currently the only mechanism available to hold gun manufacturers accountable when a defect in a gun's design or manufacture results in death or injury. Confidentiality agreements, common in product liability settlements, have kept critical information about the safety record of gun manufacturers from the public and are a prime example of how the gun industry actively conceals information about injuries and fatalities connected with its products. Such agreements should be eliminated. Additionally, all incidents of unintentional firearm injuries should be evaluated to determine whether the manufacturer contributed to the injury.

In the 109th Congress, the gun lobby will once again try to limit civil liability for injuries and deaths caused by industry negligence. If successful, it will further erode consumer

⁴⁵ "Bridgestone/Firestone Announces Reimbursement Policy; Firestone Tire and Service Centers, Authorized Retailers Will Purchase Competitors' Tires When Necessary," *Financial News*, August 15, 2000.

recourse and advance the gun industry's campaign to retain its unique exemption from responsibility.

Ultimately, this dangerous dynamic can and must change. How many more firearm injuries and deaths it will take to spur this change remains to be seen.

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