

Applying Mexican Law in U.S. Courts? Mexico v Smith & Wesson

Dr. León Castellanos-Jankiewicz

Researcher, International Law

T.M.C. Asser Institute for International & European Law, The Hague

Mexico's ongoing transnational litigation against the firearms industry in U.S. courts is raising important questions of private international law, in particular as regards the application of Mexican tort law in U.S. courts. In its civil complaint against seven gun manufacturers and one wholesale arms distributor filed in federal court in 2021, Mexico argues that the defendant companies aid and abet the unlawful trafficking of guns into Mexico through irresponsible manufacturing, marketing and distribution practices. On this basis, Mexico claims that all relevant illegal conduct—resulting in human casualties, as well as material and economic loss—occurs on its territory and that, therefore, Mexican domestic tort law applies to six of its claims following the principle of *lex loci damni*.

Last September, the defendant's motion to dismiss was granted by the District Court for the District of Massachusetts largely on the basis of the Protection of Lawful Commerce in Arms Act (PLCAA, 15 U.S.C. §§ 7901-7903). PLCAA prohibits bringing a "qualified civil liability action" in federal or state court against gun manufacturers and distributors for harm "solely caused by the criminal or unlawful misuse of firearm products" by third parties. On appeal in the U.S. First Circuit, Mexico argues that the district court's application of PLCAA to bar its claims under Mexican tort law was "impermissibly extraterritorial". In particular, the claims that PLCAA prohibits, avers Mexico, only prohibit damages arising from the "criminal and unlawful misuse" of firearms in the U.S. and in respect to U.S. legislation—not Mexican laws. The high profile nature of the case suggests that the First circuit might address the extent of PLCAA's scope of application, including whether the district court's interpretation was "impermissibly extraterritorial".

For a detailed outline of the litigation history and the transnational issues at stake, including a discussion of two amicus briefs filed by professors of international and transnational law, you are welcome to read my recent post in *Just Security*, available [here](#).