

Brace yourself: The US Supreme Court has granted certiorari in the firearms case of Smith & Wesson Brands, Inc., et al. v. Estados Unidos Mexicanos (Mexico)

This month the US Supreme Court granted certiorari in the case of Smith & Wesson Brands, Inc., et al. v. Estados Unidos Mexicanos (Mexico). For more information, [click here](#). For some Private International Law implications, [click here](#).

The petitioners are: Smith & Wesson Brands, Inc.; Barrett Firearms Manufacturing, Inc.; Beretta U.S.A. Corp; Glock, Inc.; Sturm, Ruger & Company, Inc.; Witmer Public Safety Group, Inc., d/b/a Interstate Arms; Century International Arms, Inc.; and Colt's Manufacturing Company, LLC.

As previously reported, this is a much-politicized case initiated by Mexico against US gun manufacturers. Mexico alleges *inter alia* that defendants actively assist and facilitate trafficking of their guns to drug cartels in Mexico. Among the claims for relief are: Negligence, public nuisance, defective condition - unreasonably dangerous, negligence per se, gross negligence, unjust enrichment and restitution, violation of CUTPA [Connecticut Unfair Trade Practices Act], Violation of Mass. G.L. c. 93A [Massachusetts Consumer Protection Act], punitive damages.

At first, a US District Court dismissed the case, which we reported [here](#). However, the Court of Appeals for the First Circuit reversed. See a recent official statement from the Mexican government [here](#) (in Spanish).

Some of the arguments of the Court of Appeals are (for the full judgment, [click here](#)):

[...] p. 38 *et seq.*

- “Instead, defendants contend that even for pleading purposes the

complaint fails to allege facts plausibly supporting the theory that defendants have aided and abetted such unlawful sales.

- “We disagree, finding instead that Mexico’s complaint adequately alleges that defendants have been aiding and abetting the sale of firearms by dealers in knowing violation of relevant state and federal laws. “[T]he essence of aiding and abetting” is “participation in another’s wrongdoing that is both significant and culpable enough to justify attributing the principal wrongdoing to the aider and abettor.” *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 504 (2023).

[...]

- “It is therefore not implausible that, as the complaint alleges, defendants engage in all this conduct in order to maintain the unlawful market in Mexico, and not merely in spite of it.

[...]

- “We think it clear that by passing along guns knowing that the purchasers include unlawful buyers, and making design and marketing decisions targeted towards those exact individuals, the manufacturer is aiding and abetting illegal sales. And this scenario, in substance, is fairly analogous to what Mexico alleges.”

The Court of Appeals concludes:

- In sum, **we conclude that the complaint adequately alleges that defendants aided and abetted the knowingly unlawful downstream trafficking of their guns into Mexico.** Defendants’ arguments to the contrary are premised either on an inaccurate reading of the complaint or on a misapplication of the standard of review on a motion to dismiss under Rule 12(b)(6). Whether plaintiffs will be able to support those allegations with evidence at summary judgment or at trial remains to be seen. At this stage, though, we must “accept all well-pleaded allegations of [Mexico] as true and afford all inferences in [Mexico’s] favor.” [...]

As expected, Smith & Wesson Brands, Inc. et al. were unsatisfied with the judgment and filed for certiorari before the US Supreme Court. The questions presented are:

1. **Whether the production and sale of firearms in the United States is the “proximate cause” of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico.**
2. **Whether the production and sale of firearms in the United States amounts to “aiding and abetting” illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.**

In particular, and among other allegations, Smith & Wesson argues that: “Mexico’s theory of liability reduces to this: ‘A manufacturer of a dangerous product is an accessory or co-conspirator to illicit conduct by downstream actors where it continues to supply, support, or assist the downstream parties and has knowledge—actual or constructive—of the illicit conduct.’” However, Smith & Wesson contends that that theory of aiding and abetting has been rejected in case law and emphasizes the distinction between active complicity and passive conduct. It alleges that even if a company has extensive commercial activity, it is not an active participant in downstream criminal acts unless the company engages in some other “affirmative misconduct” in promoting those acts (p. 29 *et seq.* of the petition).

Amicus briefs have been filed by:

- Washington Legal Foundation
- Atlantic Legal Foundation
- Landmark Legal Foundation
- Montana
- National Shooting Sports Foundation, Inc.
- National Association of Manufacturers et al.
- The American Constitutional Rights Union et al.
- National Rifle Association of America and Independence Institute
- Firearms Policy Coalition, Inc. and FPC Action Foundation
- The Buckeye Institute and Mountain States Legal Foundation’s Center to Keep and Bear Arms
- Michigan Coalition for Responsible Gun Owners
- National Association for Gun Rights and the National Foundation for Gun Rights
- S. Senator Ted Cruz, U.S. Representative Darrell Issa, and 25 Other

Members of Congress

- The Second Amendment Foundation

If the Supreme Court affirms the Court of Appeals' judgment, this is only the beginning of a long and complex litigation. As stated by the Court of Appeals, it remains to be seen whether Mexico's allegations can be proven at summary judgment or at trial. Any updates will be reported here.