US Supreme Court: Judgment in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico) – A few takeaways

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In June 2025, the US Supreme Court delivered its opinion in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico) 605 U.S. 280 (2025). The Opinion is available here. We have previously reported on this case here, here and here (on the hearing).

As previously indicated, this is a much-politicized case brought by Mexico against US gun manufacturers, alleging *inter alia* negligence, public nuisance and defective condition. The basic theory laid out was that defendants failed to exercise reasonable care to prevent the trafficking of guns to Mexico causing harm and grievances to this country. In this regard, the complaint focuses on aiding and abetting of gun manufacturers (rather than of independent commission).

In a brilliant judgment written by Justice Kagan, the Court ruled that PLCAA bars the lawsuit filed by Mexico. Accordingly, PLCAAS's predicate exception did not apply to this case.

This case has attracted wide media attention and a great number of amici curiae briefs was filed urging both reversal and affirmance or being neutral. Those urging reversal far outnumbered the other two categories, some of which were filed by Attorney Generals of numerous US states, American Constitutional Rights Union, American Free Enterprise Chamber of Commerce, Chamber of Commerce of the United States of America, Firearms Regulatory Accountability Coalition, Inc., National Association for Gun Rights, Inc., National Rifle Association of America, Product Liability Advisory Council, Second Amendment Foundation, Sen. Ted Cruz and others, Gun Owners of America, Inc., etc.

Primary holding

Held: *Because Mexico's complaint does not plausibly allege that the defendant gun manufacturers aided and abetted gun dealers' unlawful sales of firearms to Mexican traffickers, PLCAA bars the lawsuit.*

Main federal statutes applicable and case law cited

The Protection of Lawful Commerce in Arms Act (PLCAA), 119 Stat. 2095, 15 U. S. C. §§ 7901–7903

18 U. S. C. § 2(a) – Principals

Direct Sales Co. v. United States, 319 U. S. 703 (1943)

Twitter, Inc. v. Taamneh, 598 U. S. 471 (2023)

Rosemond v. United States, 572 U.S. 65 (2014)

United States v. Peoni, 100 F. 2d 401, 402 (CA2 1938)

For further information (incl. PLCAA's predicate exception), please refer to the previous post on the hearing, here.

A few takeaways from the judgment are the following:

Plausibility

The Court clarified that *plausibly* "does not mean 'probably,' but 'it asks for more than a sheer possibility that a defendant has acted unlawfully.'" And Mexico did not meet that threshold (p. 291). Indeed, the Court goes even further and speaks of mere speculation as regards some of Mexico's allegations (p. 296).

Aiding and Abetting

The Court stated the requirements of aiding and abetting derived from criminal law (as coined by Learned Hand): "an aider and abettor must 'participate in' a crime 'as in something that he wishes to bring about' and 'seek by his action to make it succeed.'" The Court said that Mexico failed to properly plead this to the level required (p. 294).

Considering that Mexico based its claims on aiding and abetting liability, the Supreme Court begins by setting forth the three ancillary principles: 1) Citing *Twitter*, the Court notes that aiding and abetting is a rule of secondary liability for specific wrongful acts. In the case of a broad category of misconduct, the participation must be pervasive, systematic and culpable; 2) Aiding and abetting usually requires misfeasance rather than nonfeasance (such as failure to act or an omission when there is no independent duty to act); 3) Incidental activity is unlikely to count as aiding and abetting (p. 292).

In this regard, the Supreme Court ruled that Mexico's allegations only refer to nonfeasance (or indifference) (p. 297). The Court also noted that contrary to normal practice in this type of cases, Mexico does not pinpoint any specific criminal transactions that the defendants allegedly assisted. And at the same time, Mexico sets the bar very high by alleging that all manufacturers assist a number of identified rogue dealers in their illegal pursuits (p. 294).

Importantly, the Court noted that "Mexico never confronts that the manufacturers do not directly supply any dealers, bad-apple or otherwise." (p. 295) Indeed, they

supply to middleman distributors that are independent. It is the conduct of rogue dealers, two levels down, that causes Mexico's grievance and Mexico does not name them (there is only a reference to a Washington Post article, see our previous post).

A note to the reader: Mexico did identify a distributor in its complaint (Witmer Public Safety Group, Inc., which does business as Interstate Arms), however its complaint barely mentioned it, that is why the Court decided for simplicity's sake to focus only on manufacturers (see footnotes 1 and 4 of the judgment).

The Supreme Court also dismissed Mexico's allegations that the industry had failed to impose constraints on their distribution chains to reduce unlawful actions (*e.g.* bulk sales or sales from homes), which the court considers as "passive nonfeasance" in the light of *Twitter*. Nor were the allegations regarding the design and marketing decisions of guns accepted as these products may also appeal to law-abiding citizens.

History of PLCAA

The Court ends with some analysis of PLCAA's purpose and the kind of suits it intended to prevent. The Court concludes that Mexico's suit closely resembles those suits and if it were to fall in the predicate exception, it would swallow the entire rule.

Comments

At the outset, please note that the comments already made regarding the hearing of this case apply to a large extent to the final judgment.

The Supreme Court rendered a judgment that is clear, logical and addresses key matters of the litigation, without testing the troubled waters of proximate cause. In particular, it avoids departing from previous precedents such as *Direct Sales* and *Twitter*, which in my view set clear standards with regard to aiding and abetting liability. It also helpfully stated the requirements of aiding and abetting derived from criminal law (as coined by Learned Hand) and applicable to the case at hand.

During the hearing of this case, there was much uncertainty regarding the different federal statutes applicable, as well as the relationship between the

different actors in the distribution chain of weapons. None of that confusion is seen in this judgment, which is extremely clear and well-thought through.

As regards the liability of merchants and their products (as referred to in my previous post, such as baseball bats and knives), the Supreme Court helpfully clarified that: "So, for example, an "ordinary merchant[ ]" does not "become liable" for all criminal "misuse[s] of [his] goods," even if he knows that in some fraction of cases misuse will occur. Twitter, 598 U. S., at 489; see id., at 499. The merchant becomes liable only if, beyond providing the good on the open market, he takes steps to "promote" the resulting crime and "make it his own." United States v. Falcone, 109 F. 2d 579, 581 (CA2) (L. Hand, J.), aff'd, 311 U. S. 205 (1940)." (p. 292)

Justices Thomas and Jackson (coincidentally the two black justices of the Court, a conservative and a liberal justice, respectively) filed Concurrent Opinions, which blurs the line between the two camps. In my view, these Opinions are more restrictive than the unanimous decision and make it more difficult to file a suit, requiring an *earlier finding* of guilt or liability in an adjudication regarding the violation (Thomas) or making non-conclusory allegations about a *particular* statutory violation under PLCAA (Jackson). In my view, the majority decision does not require either.

In sum, the majority Opinion greatly clarifies this area of law. A positive development, amid the tumultuous docket of the Court in this era of great uncertainty.

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