

‘Case Closed’ for City’s Suit Against Handgun Retailers

BY JOEL STASHENKO

NEW YORK City’s nine-year-long litigation against a group of gun store owners that it accused of illegally selling handguns has drawn to a close.

Eastern District Judge Jack Weinstein agreed with the report by special master Peter Pope, a partner at Jenner & Block, that the city’s purpose in launching the litigation—to cut the supply of handguns by targeting high-volume retailers whose practices allowed “strawman” purchases—has largely been achieved and that Pope’s assignment has “concluded.”

“Congratulations to the Special Master for a job well done,” Weinstein scrawled on Pope’s final report in *City of New York v. A-1 Jewelry & Pawn*, 06-cv-2233, in late June. “Close the case.”

Strawman purchases refer to cases where people who are not legally prohibited from possessing handguns buy them on behalf of those who are barred from doing so.

Pope told Weinstein in the report that the defendant-dealers, many of whom are in the South, have undergone training to teach their employees to identify when “strawman” sales are taking place, and that in simulated strawman purchases undertaken by investigators, the employees are routinely discouraging such sales.

In addition, spot checks of inventory records showed retailers were properly maintaining lists of customers who were refused weapons purchases or of purchasers whose weapons were later traced to criminal activities.

The *A-1 Jewelry & Pawn* case was one of two suits launched in 2006 as the Bloomberg administration sought to



Peter Pope, a partner at Jenner & Block

aggressively curb sales by “rogue” out-of-state retailers who sold guns that made their way into New York City.

City of New York v. A-1 Jewelry & Pawn was filed in May 2006. *City of New York v. Bob Moates’ Sport Shop*, 06-cv-06504, was filed in December 2006. The *Moates* litigation was effectively concluded by a settlement signed off on by Weinstein in September 2008.

Both suits were nearly identical in their claims that the 27 out-of-state retailers named in the two actions were creating a public nuisance in New York City by selling handguns illegally, especially through strawman purchases.

Most of the retailers were in Georgia,

South Carolina or Virginia.

The city sought three-year monitoring periods in which each retailer was to bring their sales practices in line with federal and state regulations, a process Pope said was successful. With the monitoring period over, he said there is nothing left for the special master to do.

The last retailers whose sales were monitored Adventure Outdoors of Smyrna, Georgia, Mickalis Pawn Shop of Summerville, South Carolina, and Peddler’s Post of Washington, Ohio., according to Michael Ross, a Jenner & Block partner who along with partner Tarsha Phillibert assisted Pope.

Pope said in an interview that the gun

litigation represents government “thinking smartly” about a problem and finding a way to attack it.

“It is about using basic nuts-and-bolts training and looking at records,” he said. “It seems to have worked. It is not rocket science. It is about training and testing [store sales procedures] and counting guns.”

Going forward, Pope said he hopes that the retailers will continue to sell weapons only to eligible customers. “We hope and expect so,” he said. “They embraced the training.”

Weinstein designated Pope as special master in 2011, succeeding Andrew Weissmann, another Jenner & Block partner who is now chief of the fraud section of the Criminal Division of the U.S. Department of Justice.

Pope was formerly deputy attorney general in charge of the criminal division of state attorney general’s office and director of policy for both governors Eliot Spitzer and David Paterson. He is co-chairman of Jenner & Block’s white-collar defense and investigations practice.

Pope said both he and Weissmann served as special master pro bono.

Jenner & Block billed the city about \$1.2 million—\$460,000 for other legal work done by Jenner & Block, and \$740,000 for investigatory work and for nearly two dozen training sessions on complying with weapons sales laws.

Pope credited assistant New York City Corporation Counsel Eric Proshansky with leading the city’s legal efforts in the gun cases. He said in his report that research by Johns Hopkins University confirms the success of the litigation and monitoring.

According to a 2013 study, the New York Police Department found that the instances where weapons recovered from crime scenes that were found to have been purchased at one of the 18 targeted dealers were perceptibly lower after 2006 compared to the time before the litigation was filed.

Johns Hopkins researchers Daniel Webster and Jon Vernick tracked about 12,000 handguns sold at 10 of the largest dealers named in *A-1 Jewelry* both before and after the city’s litigation. They found that five of the 6,186 weapons sold following the filing of the suit were recovered by the NYPD in criminal investigations. Of

the 6,081 handguns they tracked prior to the 2006 lawsuits, 31 were discovered at New York City crime scenes.

“The findings from our study are consistent with a growing body of research evidence which indicates that gun dealers’ sales practices affect the probability of guns getting to criminals, and that policies designed to hold gun sellers accountable can curtail the diversion of guns to criminals,” Webster and Vernick wrote.

The Bloomberg administration patterned its approach to litigation after the use of undercover agents and sting operations to curb illegal gun sales in Chicago and Detroit.

These were not the first suits brought to stem the flow of illegal guns into the city.

The Giuliani administration filed and the Bloomberg administration pursued *City of New York v. Beretta U.S.A. Corp.*, 00-cv3641, a broad challenge to major gun manufacturers based on the city’s contention that gun makers were creating a public nuisance in New York through their marketing and sales practices.

That suit ultimately failed when the U.S. Court of Appeals for the Second Circuit ruled that Congress has carved out protections for gun manufacturers from local public nuisance laws like New York City’s (NYLJ, May 1, 2008).

Some of the gun retailers named in the later city suits also fought back.

In 2007, Bob Moates’ Sport Shop of Richmond, Va., staged a “Bloomberg Gun GiveAway” drawing to protest New York City’s suits.

Adventure Outdoors retained former congressman Bob Barr to file a 2008 suit against Michael Bloomberg and New York City in Cobb County Superior Court in Georgia, claiming that naming the company as a defendant was “careless, willful and clearly illegal.”

The suit was dismissed the following year on a technicality.

Bloomberg himself tried to testify in *A-1 Jewelry* about the toll that violence involving illegal guns takes on the city.

Weinstein refused to allow the testimony, ruling that Bloomberg’s appearance would not add to the case and that the judge was intent on preventing the litigation from turning into a “media show for either side” (NYLJ, May 23, 2008).

In June 2008, Weinstein granted a default judgment in the city’s favor

against Adventure Outdoors as a trial against the store was set to begin (NYLJ, June 3, 2008).

“Adventure Outdoors has decided that it does not intend to defend itself at a bench trial,” John Renzulli, a White Plains attorney representing the Georgia retailer, explained at the time. “Unlike the city, which can spend unlimited amounts of the taxpayers’ money. Adventure Outdoors is a small retail dealer with limited resources and cannot afford to participate in a four-week bench trial, the result of which is a foregone conclusion.”

Lawyers for Pillsbury Winthrop Shaw Pittman led by partner Kenneth Taber represented the city pro bono when the gun litigation was active in the mid-2000s.

Bloomberg’s continuing interest in stemming the flow of illegal guns led to his formation, along with then-Boston mayor Tom Menino and 13 other U.S. mayors, of Mayors Against Illegal Guns. The group merged with Moms Demand Action for Gun Sense in America in 2014 to form Everytown for Gun Safety.

Everytown’s research director, Ted Alcorn, said the *A-1 Jewelry* and *Moates*’ cases helped focus attention on illegal or questionable gun-sales practices.

“It seems, based on the accounts of those involved and the evidence, that the techniques that they employed were very effective,” Alcorn said in an interview. “Conducting stings and indicating to the dealers that they were under the microscope had some impact on their behavior,” he said. Though the retailers were initially resistant, “they moved to a place where they were in agreement, I think that was a really good sign.”

Alcorn said Everytown for Gun Safety is emphasizing extending background checks to the sales of weapons by unlicensed dealers, especially at gun shows, as the best way of keeping weapons out of the hands of criminals and others not eligible to legally own weapons.

@Joel Stashenko can be reached at jstashenko@alm.com.

Twitter: @Joel_Stashenko