



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**FEDERAL COURT JUDGE ALLOWS CITY'S CASE
AGAINST IRRESPONSIBLE GUN INDUSTRY PRACTICES TO PROCEED**

***RULING IS A MAJOR VICTORY FOR NEW YORK CITY AND ITS PUBLIC SERVICE COUNSEL,
THELEN REID & PRIEST LLP; DECISION MEANS THAT THE CITY CAN PURSUE
ITS ACTION AGAINST GUN MAKERS WHO CREATE A
PUBLIC NUISANCE THROUGH THEIR GUN SALES AND DISTRIBUTION PRACTICES***

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New York, Dec. 1, 2005 – Federal Court Judge Jack B. Weinstein of the Eastern District of New York today ruled in favor of New York City in allowing its case against gun manufacturers and distributors to proceed. Although the court found that the "Protection of Lawful Commerce in Arms Act" – recently enacted by the U.S Congress – is constitutional, it also found that the Act does not apply to the City's gun case, and ruled that the case can proceed. The City has been assisted in the matter by volunteer attorneys and staff from Thelen Reid & Priest LLP, a leading law firm, as part of the New York City Law Department's Public Service Program.

The suit, *City of New York v. Beretta, USA et al.*, seeks an injunction to require gun manufacturers and distributors to adopt reasonable practices to assure that their products are not sold to criminals and other persons forbidden from purchasing guns. The City's suit alleges that some gun manufacturers and distributors turn a blind eye to the small number of their retail dealers who sell guns in an irresponsible manner. The City intends to prove in court that if manufacturers and distributors monitored their dealers more closely, dangerous sales practices such as "straw purchases" (in which a legal purchaser acts as a "stand-in" for an illegal purchaser) and "multiple sales" (in which purchasers make single purchases of large numbers of guns for illegal resale) could be prevented and the flow of illegal guns into the City would be reduced. The City's case is not seeking monetary damages, but rather seeks to require more responsible marketing and distribution practices by the gun industry.

"The City applauds today's ruling, which is a large step forward in helping to protect New Yorkers from random gun violence," said Michael A. Cardozo, Corporation Counsel of the New York City Law Department. "The tragic shooting death of NYPD Detective Dillon Stewart this week reaffirms the urgent need for legislators and the courts to better control irresponsible sales and marketing practices by the gun industry."

"Greater accountability is needed in the gun marketplace, and this welcome ruling helps require it," Police Commissioner Raymond W. Kelly said.

Michael S. Elkin, Vice Chair of Thelen Reid & Priest and the City's lead public service counsel, added: "We are heartened that Judge Weinstein recognizes that this new Federal law does not apply to our case. While the defendants have been granted the right to appeal, we are confident that we will prevail on appeal and the case will move forward, enabling us to end the negligent and reckless practices of the gun industry that contribute to the avoidable tragedy of gun violence in the City."

In his ruling today, Judge Weinstein noted that “the [Protection of Lawful Commerce in Arms] Act is inapplicable to the present litigation.” The judge ruled that the City’s suit comes within an exception expressly provided for in the Act for conduct that violates state statutory law. The trial remains stayed pending appellate review.

In addition to Michael Elkin, Thelen Reid & Priest’s legal team included Thomas Lane and Gabriel M. Nugent. Eric Proshansky, Deputy Chief of the Law Department’s Affirmative Litigation Division, is co-counsel on the trial. The City’s legal team also included Gail Rubin, June Buch, Richard Costa and Melanie Ash, and legal assistance was also provided by the Brady Center to Prevent Gun Violence, the Center for Constitutional Law, and the law firm Wilmer Cutler Pickering Hale and Dorr LLP.

In late October, Thelen Reid & Priest and the New York City Law Department were honored by New Yorkers Against Gun Violence, a leading advocacy group whose mission is to reduce gun violence through advocacy and education. The group presented Michael Cardozo and Michael Elkin with awards commemorating their agencies’ work in protecting New Yorkers from gun violence.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600’s, the Department’s 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department’s attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

Thelen Reid & Priest LLP is a national law firm with more than 440 lawyers located in New York, San Francisco, Washington, D.C., Los Angeles, Silicon Valley and northern New Jersey. The firm provides legal services with a focus on complex commercial litigation; corporate and capital markets transactions; project and asset finance; construction; labor and employment; intellectual property; domestic and international tax; employee benefits; government affairs; and real estate. The firm is also very active in public service and pro bono work. Its web site is: www.thelenreid.com.

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