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No ‘Occurrence’ For Ghost Gun Seller

17 Sep 2024

In *Granite State Insurance Co. et al., v. Primary Arms, LLC*, the U.S. District Court for the Southern District of New York recently addressed the issue of whether an insurance company has a duty to defend a firearms retailer in lawsuits alleging that the retailer's sale of "ghost guns" contributed to gun violence. *Granite State Insurance Co.*, No. 23 CIV. 7651 (LGS), 2024 WL 4008167 (S.D.N.Y. Aug. 30, 2024). The court held that the insurers had no duty to defend because the underlying lawsuits did not allege an "occurrence" as defined in the insurance policies.

The State of New York and the cities of Buffalo and Rochester sued Primary Arms, a Texas-based firearms retailer, alleging that the company unlawfully sold unfinished frames and firearm parts to New York residents which could be easily converted into completed firearms, evading gun control laws and regulations requiring serial numbers and background checks and contributing to an increase in gun violence.

The lawsuits claimed that Primary Arms' actions violated various laws and constituted public nuisance, negligence, and deceptive business practices. Primary Arms sought coverage under its commercial general liability and commercial umbrella liability insurance policies. The policies provided coverage for damages caused by an "occurrence," defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

The court granted the insurers’ motion for summary judgment, declaring that they had no duty to defend Primary Arms in the underlying lawsuits. The court reasoned that the underlying lawsuits did not allege an "occurrence" because Primary Arms' alleged conduct was not accidental. The court explained that under Texas law (which applied to the case), it is not an accident if the insured commits an intentional act that results in injuries that ordinarily follow from or could be reasonably anticipated from the intentional act. The court emphasized that the focus is on the factual allegations in the underlying lawsuits, not the legal theories asserted.

The court further noted that the underlying lawsuits alleged that Primary Arms intentionally marketed and sold unfinished firearm parts with the knowledge that they could be easily converted into untraceable firearms and rejected Primary Arms' argument that its alleged failure to implement controls on who could purchase its products constituted negligence rather than intentional conduct. The court concluded that Primary Arms' deliberate choice not to implement controls despite these risks was not an accident, noting “[t]hese allegations may be presented as negligence claims, but they do not allege an accident.“ Accordingly, the court held that the insurers had no duty to defend under the policies.

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