

## Smoking Gun

**A court case against gun maker Smith and Wesson will land Philadelphia, a city with “significant societal interest.”**

By **BRIAN HICKEY**

The story echoes countless others in the “accidental-shooting” file. A kid finds a gun in his parents’ bedroom and shows it off to some friends. Thinking it’s unloaded because the magazine has been removed, he points it at one of them and pulls the trigger.

He expects nothing to happen because he doesn’t notice the bullet sitting in the chamber. Death or grave injury results. So does public outcry from those who see it as yet more evidence that guns are evil. The Second Amendment set responds that while such accidents are tragic, guns are safe when used properly and kept away from children.

From there, the incident fades into memory—except for victims on both sides of the trigger left to live with the repercussions—until the next one.

It’s in that last step that the case of Royce Ryan differs.

Eight years old when a friend in his Wichita, Kan., neighborhood accidentally shot him through the head in April 1998, his life’s never been the same.

Lucky to have survived, Ryan would go blind if his mother didn’t

put drops into his left eye every two hours, every single day. That’s just the way it is when nerve damage makes it impossible for that eye to close.

He suffered some hearing, speech and memory loss while brain damage ushered in behavioral and psychological problems. That’s just the reality of life after surviving a gunshot to the head.

But rather than disappearing into years of surgery and rehabilitation, the seventh-grader’s fight will soon take a very public turn.

His family’s lawsuit against gun maker Smith and Wesson, a Pennsylvania gun shop and the shooter’s mother is scheduled to hit a Philadelphia courtroom late next year. And that, attorneys involved in the case predict, will attract yet more national attention to an issue that never seems to go away.

Like the incident itself, the issues in this product-liability suit aren’t unique.

Ryan’s family contends the gun was defective because a device designed to prevent firing after a



Still the same: Royce Ryan survived an accidental shooting in '98. Now his family is suing.

magazine is removed didn’t work. The Smith and Wesson model 915 9mm semi-automatic pistol didn’t have a “load indicator device,” which would have shown the weapon was loaded, they say.

The suit also holds Eagle Arms Sports Shop, an Allentown area gun shop, liable for not providing safety manuals and directions to the shooter’s father when he purchased the weapon there several years back.

Ryan’s attorneys in Philadelphia and Kansas, and from a national public-interest law firm in California, maintain the youth wouldn’t have been shot had those

safety measures been in place. They're seeking undisclosed damages.

Should they win, they'll buck a long-running trend in which gun makers and distributors have regularly—and successfully—argued guns can't be considered defective for doing what they're legally produced to do.

Today at least one other pending case makes the same argument. In Berkeley, Calif., the parents of a 15-year-old who was shot and killed by a friend under nearly identical circumstances brought suit against the Beretta USA Corp. seven years ago.

In 1998 a jury sided with Beretta in determining the gun wasn't defective, but charges of jury misconduct landed it back on a docket this year. Reacting to that case, gun proponents openly blamed the shooter's family for the death. (The families settled out-of-court for \$100,000.)

Keep and Bear Arms, a self-proclaimed "gun owners' home page," said the shooter's family "left a loaded gun where an untrained, impulsive and judgmentally challenged adolescent could find it."

Though representatives at Smith and Wesson's headquarters in Massachusetts and at their Market Street office in Center City both declined comment, their attorney says similar charges will surface when the trial approaches.

Pittsburgh attorney Clem Trischler argues that the issue isn't one of design, but of a gun owner failing to lock a weapon away from a child.

"The owner [the shooter's father] said he wouldn't have cared if he had 10 gun locks. He still

wouldn't have used them," Trischler says.

Referring to depositions already given in the case, Trischler maintains the shooter's father was given that common gun-safety device when he purchased the weapon.

"This is a case about user responsibility. While we feel sympathy for the family, Smith and Wesson is in no way responsible for Royce Ryan's injuries," he adds.

Victoria Ni, a staff attorney for [Trial Lawyers for Public Justice](#), concedes shooter Jared McMunn's mother was negligent for not warning anyone about her son's "propensity to perhaps play with guns" when he went to live with his father in Kansas shortly before the shooting.

That being said, Ni still maintains the ultimate responsibility lies with gun makers.

The argument that guns are designed to kill and maim is "a loophole for an extremely dangerous product," she says. "All we're trying to do is hold them accountable for their product, like any other company would be."

What's unusual about the case is that a Kansas shooting will be heard nearly 1,400 miles away in a Philadelphia courtroom. Ni, whose firm signed onto the case last month, says they brought it here because the gun was purchased in the region, and the shop could've done business with customers from the city.

When Kansas attorney Robert Pottroff—he's leading the case and now taking depositions from the shooter, the shooter's father and officials from Smith and Wesson—needed local counsel, he

contacted Robert Mongeluzzi, president-elect of the Philadelphia Trial Lawyers Association, who agreed to sign on.

It probably wasn't a bad choice.

Attorneys from Mongeluzzi's firm handled a 1989 case in which a jury awarded \$11.3 million to an Olney woman who was accidentally shot in the head under similar circumstances when she was 14 years old. (There, the gun shop was held liable for not including written instructions when it sold a gun to the victim's neighbor.)

Mongeluzzi, who won an undisclosed sum for the family of an 18-year-old who died during a gene-therapy experiment at the University of Pennsylvania's teaching hospital and is currently working on the Pier 34 case, says Philadelphia's an ideal venue. And it's not because of the reputation that local juries often grant large awards in civil cases.

"Clearly, it's the city in the area most affected by this product," he says. "There's a significant societal interest in gunshot litigation here."

That interest already put Philadelphia on the gun maker-lawsuit forefront. Former Mayor Ed Rendell's idea to sue gun makers for shooting-related expenses launched a wave of suits filed by cities across the country in recent years—though a U.S. District Court dismissed Philadelphia's two years ago.

The Ryan case could now become the highest-profile lawsuit challenging Smith and Wesson, the nation's largest gun manufacturer, since a 2000 settlement with the federal government in which the company promised to put locking

devices on all guns to prevent those shootings.

And if Mongeluzzi's prediction holds true, the Ryan case will be the first of many.

"With the power, clout and money the NRA [National Rifle Association] has, we'll never legislate safe guns. It'll only happen through juries," says Mongeluzzi, maintaining the case isn't about banning guns.

"Gun makers are bottom-line creatures. Make it more expensive for them to not make guns safer, and they'll do it. They have to answer for what they could've done but didn't do," he continues. "Whether we win or lose, it's only the first wave. We're going to keep coming at them until they do what's right."