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The Implications of *Kelley* from the Plaintiff's Perspective

by Gerard P. Uehlinger

The Court of Appeals of Maryland in *Kelley v. R.G. Industries, Inc.*, has held that the manufacturers and marketers of *Saturday Night Special* handguns are strictly (read absolutely) liable to innocent persons who suffer gunshot injuries from the criminal misuse of their products. The holding applies to the parties in *Kelley*, and to all other causes of action accruing after the date of mandate (after October 3, 1985) and where the retail sale of the gun to a member of the public occurred after the date of mandate.

Kelley's impact has some short-term effects, but its true force will not be felt for some time. In the short term, the opinion's negative comments on R.G.'s product places Mr. Kelley himself in a most favorable position in the litigation, and likewise creates a terrible burden for the foreign manufacturer and U.S. distributor (no retailer having been identified). Another short-term impact is on similar pending cases in Maryland's trial courts. In at least one case in Baltimore City, counsel (including this writer) and the court collectively agreed to await the *Kelley* decision before proceeding further. Given that decision to conserve judicial resources, some fine-tuning of the last part of *Kelley* may be necessary to treat pending cases equitably, especially where the date of injury or death postdated Mr. Kelley's injuries. Of course, this fine-tuning would affect a finite num-

ber of cases (probably five or fewer).

It is *Kelley's* long-term impact which is most significant. From this time forward, competent Plaintiffs' counsel should investigate any death by handgun to determine the handgun's date of sale to the public. If it qualifies under *Kelley's* prospective-only rule, the handgun should be evaluated for possible classification as a *Saturday Night Special*. Such investigations could develop many actionable cases over the next five years. This should create tremendous pressure on manufacturers, distributors and retailers to restrict distribution. Indeed, from now on, local handgun retailers would be well advised to sell only (a) top of the grade (i.e., police department issue and target) handguns, and (b) *only* to persons who display a Maryland State Police permit to carry the handgun. This retail policy would be more effective than the gunshops' insurance policies, which no doubt will be quickly rewritten to exclude this kind of liability from coverage. Any other sale of any other handgun (even to a law-abiding citizen) exposes the retailer to the significant risk of absolute liability exposure to a victim if the handgun is *ever* used by a later criminal perpetrator (e.g., after theft from the little old lady who kept it under her pillow). Another caveat: prudent retailers should stop selling machine guns, machine pistols, and weapons easily convertible to same. Given *Kelley*, the Maryland courts

will probably have little hesitation to impose liability for the sale of those instruments.

Of course, *Kelley* is not a cure-all for those who propose stricter gun control. That will take a group of brave, dedicated, and inspired state legislators to ban the sale and possession in Baltimore City (where much of Maryland's carnage takes place) of all handguns other than those possessed with state police permits, or under lock and key at a target or shooting club.

Gerard P. Uehlinger is a trial attorney with the law firm of Lentz, Hooper, Jacobs & Blevins, P.A. He is a 1971 graduate of Princeton University and a 1975 graduate of the University of Maryland School of Law. In the *Kelley* case he was counsel for The Foundation for Handgun Education, and wrote its amicus curiae brief to the Court of Appeals of Maryland. He is counsel for Plaintiffs in the first similar case in the Circuit Court for Baltimore City, which was filed before *Kelley* was certified to the court of appeals. Long active in bar association and community activities, he resides with his wife and three children in Baltimore City.
