

No Warning Shot

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Tech 435
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The Presenter

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 - Graduating Senior from Northern Illinois University
 - Bachelors in Industrial Management & Technology, Emphasis Environmental Health and Safety
 - Double Minor, Safety & Productivity
 - Previous presenter at ASSE Student Day
 - Independent study and creation of a standard operating guideline for the landing of life-flight helicopters



Case Overview

- Johnson v. Colt Industries
 - Product liability
- In 1973 somewhere in Kansas Mr. Johnson is legally carrying his pistol in a holster while fishing.
- Mr. Johnson was shot in the buttocks by his gun, a Colt Single Action .22, after it fell from his holster striking a rock while in the hammer down position
 - (negligent discharge or ND)
- Mr. Johnson sued for damages physical and psychological

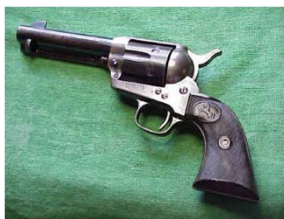
<http://openjurist.org/797/f2d/1530/johnson-v-colt-industries-operating-corporation>

Why This Case?

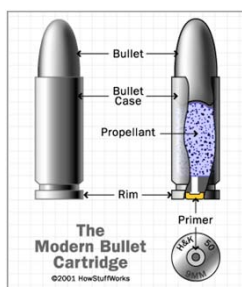
- Breadth
 - Several layers of responsibility are at play
 - Mr. Johnson, Colt, the gun store
 - Several distinct and different torts were claimed
 - Failure to warn, negligence
 - Product defect in design, manufacturing, and marketing
- Depth
 - Colt Industries is an iconic, cultural landmark in American History – associated with the Wild West, cowboys, six-shooters, etc
 - The case would later show that the company had known about the defective products **from its inception until the then-current day of the lawsuit 130+ years**

What is a “hammer”?

- The hammer is the portion of the gun which strikes the bullet, causing it to fire
- In a single action model, the hammer must be manually cocked back to fire, before the trigger can be pulled – Mr. Johnson’s hammer was not pulled back
- 2 hammer positions: safe and ready to fire



http://neaca.com/images/Colt_SAA_45LC_343642_1922_12_.JPG



<http://science.howstuffworks.com/revolver2.htm>

Hammer Positions

- The hammer can only be in two positions:
- Forward, or safe
- Rear / cocked, or ready to fire



<http://www.cowanuctions.com/item/Images/w9894.jpg>



http://p2.la-img.com/446/34854/14296502_1_1.jpg

Why is this case different?

- Johnson v. Colt Industries intersects several unique occurrences and concepts in American culture and law
 - Iconic company
 - Existing patents and knowledge
 - Multiple similar incidents
 - Several different tort claims
 - Very high human cost of error
 - Very large damages sought
 - Multiple defendants in the tort
 - Incredible feats of human “stupidity”

Call the Lawyers

- Mr. Johnson sued Colt under the Kansas tort of product liability and negligence, claiming they were responsible for damages to his person
 - Defective design
 - Defective manufacturing
 - Defective product
 - Negligence

- Colt argued that they owed zilch

The Crux of the Issue

- Neither side questioned the basic facts of the incident, or the level of damage suffered by Mr. Johnson
- The case revolved entirely around this question:

Who is responsible for Mr.
Johnson's damages?
- Colt argued the onus should be on the user, while Johnson argued that Colt recklessly did not hold up their end of the bargain with respect to dangers of the product

Johnson Opens

- Among the key points of Mr. Johnson's arguments:
 - The gun was in the safe position as instructed by the manual
 - The trigger was not affected by the drop
 - This is a danger not expressed to Mr. Johnson by either the gun store or Colt
 - Thus, the gun is "unreasonably dangerous" and Colt is responsible for their failure to act or warn Mr. Johnson

Colt Responds

- Colt's defense centered around:
 - The instructions said to leave an empty chamber under the hammer (only load 5 rounds)
 - Mr. Johnson should have been more careful
 - Their duty was fulfilled by the above two arguments
 - Argued the consumers duty > their duty to warn / act
 -that's it!

Colt Takes a Broadside



- Colt is exposed handily during opening arguments
 - Johnson's lawyers get Colt's Chief Engineer to admit having prior knowledge of related incidents
 - Johnson's team introduces a patent filed in 1850 in Samuel Colt's name,
 - Patent is for a mechanical stop (i.e. integrated guard) to prevent this hazard in an earlier model gun
 - Johnson introduces also evidence showing the cultural impact of the weapon, including the Wild West and the term "6-shooter"
 - Owners manual is found to have conflicting information regarding loading ammo

<http://images.fincartamerica.com/images-medium-large/1-samuel-colt-1814-1862-granger.jpg>

A Point of Contention

- During the case the judge provided instructions to the jury regarding both the duties of the manufacturer and user of dangerous objects per prior caselaw
- “A manufacturer of **firearms** has the duty to **exercise the highest degree of care** in the design of the product so that it will be reasonably safe...failure to fulfill this duty constitutes negligence.”
- “One who has in his possession, or under his control, **an instrumentality exceptionally dangerous in character** is bound to take exceptional precautions to prevent an injury being done by the instrumentality. **The degree of care must be equal to the degree of danger involved.**”

(1)<http://openjurist.org/797/f2d/1530/johnson-v-colt-industries-operating-corporation>

On the Division of Duties

- Colt had argued that their “highest degree of care” was superceded by Johnson’s “degree of care equal to the danger”
- Colt also argued that the degree of care Johnson must take per jury instruction is not stringent enough
- The court did not agree (surprise)

Judges do not suffer shenanigans

- My favorite passage from the ruling, Judges McKay, Seth and Timbers write:
 - “We are at somewhat of a loss to understand appellant's problem with the instruction. The court obviously placed an "exceptional" duty of care on appellee. We cannot envision a more exacting duty of care short of presumed contributory negligence. Appellant's semantic argument borders on the frivolous.”
- In the conclusion of the ruling, Colt is noted for their all-or-nothing legal style throughout the court battle

The Decision is In

- Finding in favor of Johnson
- The court divides liability for the incident as follows:
 - Colt: 85% Liable
 - The gun store: 10% Liable
 - Mr. Johnson: 5% liable
- Mr. Johnson received \$500,000 in compensatory damages, as did his wife.
 - Reduced to \$850,00 total to reflect Colt's liability
- Mr. Johnson also received \$1.25 million in punitive damages

Today's Impact

- Today Colt continues to manufacture weapons in the United States and remains a popular choice for officers of all kinds
- Product liability cases against weapon manufacturers continue in unrelated incidents
 - Remington 700 cases
- With so much precedent and focus on gun safety in today's culture, any case which wins will be both a) rare and b) incredible in the dollar amount of damages



<http://www.thespecialistsltd.com/files/Remington-Model-700-BDL.jpg>

Bibliography

- <http://openjurist.org/797/f2d/1530/johnson-v-colt-industries-operating-corporation>
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