

# Dallas jurors to hear unprecedented gun liability suit

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In opening arguments of a personal injury suit that could have chilling effects on makers and sellers of small handguns, an attorney for a man paralyzed by a gunshot wound said the gun "had no socially acceptable usefulness whatsoever."

Jurors today began hearing arguments in a suit filed by David Clancy of Amarillo, who is seek-

ing \$20 million from the designer, manufacturer and seller of a revolver that accidentally discharged in 1977 and caused paralysis from his shoulders down. The case, the first of its kind, already has attracted national attention.

As he displayed a 3-foot by 4-foot photograph of a handgun, attorney Windle Turley said the jury must decide, "Does this design (of the small handgun) carry with it some compelling useful-

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—Lawyer Windle Turley

ness that balances well with the risk of the harm that it imposes?" He said small, cheap handguns, such as the one that injured Clancy, are good only for injuring

or killing people, and that handgun distributors should be liable for the damage the weapons cause.

But a lawyer for Zale Corp., owner of the store that sold the gun, told the jury that Turley's argument was comparable to suing a car dealer because a drunken driver used the car to injure someone.

"This is a case for your common sense to be applied," said Randal Mathis, the Zale lawyer. He said

the gun's maker and distributor were not at fault, and the gun caused Clancy's injury only because it "was terribly, terribly abused."

The gun, made by a Tennessee company, was sold by an Amarillo store, Levine's Family Center, owned by Zale. The companies, represented by Dallas lawyers John E. Phillips and Mathis, have emerged as the most vocal defen-

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Wednesday, Jan. 4, 1984, DALLAS TIMES HERALD

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dants in contesting Turley's and Clancy's arguments.

If the eight-woman, four-man jury rules in Clancy's favor, it could set a precedent for juries in other states to require handgun makers and sellers to pay millions of dollars to handgun victims, even in cases where a gun was improperly or illegally used.

During this morning's arguments, Mathis compared handguns to automobiles, kitchen knives, liquor and electricity, saying "all are useful but can be deadly when misused."

Turley said he will bring experts on guns and economics from throughout the nation to testify in the trial, which may last more than three weeks.

But Mathis told the jury some of Turley's witnesses are staunch

gun control advocates who are not credible witnesses in this case.

Pro-gun groups, such as the National Rifle Association, have said they are concerned about that possibility, but they are confident juries will not agree with Turley's arguments.

NRA spokesman Rob Wilson, who calls Turley's basic argument "ridiculous," said handguns are useful for self-defense, hunting and target shooting.

"We're positive the gun companies will prevail" against the approximately 80 cases pending nationwide and using Turley's argument, Wilson said.

Clancy, now 21, was a high school sophomore in October 1977 when he was struck by a bullet from a .22-caliber revolver. He was standing in a school parking lot talking with friends while a schoolmate in a nearby car was

handling a loaded, .22-caliber revolver.

The gun went off, and the bullet struck Clancy's throat, where it still is lodged, Turley said. Clancy, who was in court Tuesday in a motorized wheelchair, is now a quadriplegic with limited use of his arms and no use of his legs.

"Basically, our position is the gun was misused," Phillips said Tuesday when 12 jurors and two alternates were chosen for the civil court trial. State District Judge Nathan Hecht predicted the trial will last three to four weeks.

Phillips told potential jurors the handgun "did what it's supposed to do" by firing when the trigger was pulled. He said the injury resulted because the gun was misused and not because of a dangerous gun design.

Turley, who has helped several clients win multimillion-dollar

awards in personal injury cases, has received national attention in his battle to make small handgun makers and distributors accountable for injuries caused by the guns. Although he has filed several suits similar to Clancy's, none has gone to trial and several have been dismissed, he said.

Turley praised Hecht's decision to allow a jury to decide Clancy's case.

"For the first time it calls a jury of citizens to examine the usefulness of small, concealable handguns distributed to the general public, and weighs that use against the cost to society in terms of injury and death," Turley said.

Turley disputes claims that small handguns commonly are used for target shooting or hunting. He also cites a Case Western Reserve University study showing that a handgun brought into the

home for self-protection is six times more likely to kill a family member or friend than to repel a burglar.

Turley said he has no quarrel with long-barrelled handguns used for sporting, military or police purposes.

Zale lawyers have contended the type of gun control Turley advocates should be handled by legislators, not judges or juries.

Even if the jury rejects Clancy's argument that small handguns are unreasonably dangerous by their very design, his suit leaves room for another type of judgment against Zale and the gun's maker. The suit charges that the gun was unusually dangerous because it lacked a safety device called a "hammer block."

Other defendants in the case are Rogers Research and Develop-

ment Co. of Tennessee, which Turley said designed the gun, and the Tennessee-based Arms Corp. of America and Armsco Distributing Co. The suit claims that Armsco is the "successor corporation" of Arms Corp. of America, which made the gun, but now is defunct.

But the relationship between the two companies is disputed. Howard Rubin, a lawyer for Armsco, told the jurors Tuesday: "We believe the evidence will show that Armsco ... did not manufacture and distribute the handgun in question."

A third-party defendant is Kenneth Hacker of Amarillo, Clancy's schoolmate who was handling the gun when it fired. Clancy said he believes the shooting was an accident. But Turley said Zale sought to include Hack as a defendant.