

Insurance

Argument Preview

AIG, Firearm Retailer Set for Court Clash on 'Ghost Gun' Cases

Sept. 16, 2025, 5:00 AM EDT

Summary by Bloomberg AI

AI Generated



A federal appeals court is set to weigh an insurance dispute between American International Group Inc. units and a firearm retailer over coverage for "ghost gun" litigation, adding to a growing body of law addressing liability insurers' obligations to pay defense costs in public nuisance suits.

Texas-based Primary Arms LLC is contesting a lower court ruling that AIG doesn't owe insurance coverage for the cost of litigation alleging the firearm seller contributed to gun violence by marketing and selling ghost guns. The insurer is off the hook because the allegations were based on the gun company's intentional conduct, the lower court held.

Primary Arms' appeal, which is set for oral argument on Wednesday and is one of several pending coverage disputes over the underlying ghost gun cases, presents "a window into much bigger issues that are being developed, both in the tort realm and in the insurance realm," said Adam Fleischer, an insurance-side partner at BatesCarey LLP.

Public nuisance suits, traditionally filed over property rights, have expanded in recent years to support broad legal claims over the opioid epidemic, lead paint, social media addiction, and climate change.

The US Court of Appeals for the Second Circuit's eventual ruling could add more authority in an underdeveloped area of law "because the tort of public nuisance historically was used for different types of cases," said Amy Cassidy, a partner at Nicolaides Fink Thorpe Michaelides Sullivan LLP representing insurers.

Insurers contend the claims are outside the scope of general liability policies that require a covered "occurrence"—usually defined as an accident—to trigger coverage.

"An insurer is economically able to sell insurance precisely because the events that it insures are fortuitous or unplanned and will not arise as to all policyholders," the Complex Insurance Claims Litigation Association, an industry trade group, wrote in an amicus brief submitted to the Second Circuit.

The underlying suits against Primary Arms, brought by New York Attorney General Letitia James (D) and the cities of Buffalo and Rochester, alleged the retailer “took deliberate action to enable the anonymous acquisition of uncontrolled firearms with the predictable outcome of increasing gun violence,” the US District Court for the Southern District of New York said in its August 2024 ruling.

“The failure to perform any checks regarding Defendant’s customers was not a mistake, but rather a deliberate part of Defendant’s business and marketing model in order to maximize sales,” the lower court said, concluding the alleged injuries weren’t caused by an “occurrence.”

The Ninth Circuit ruled for insurers last year on a similar issue in an opioid-related coverage dispute involving drug distributor McKesson Corp. Carriers have additionally scored wins in opioid coverage cases by arguing the underlying suits don’t seek damages “because of bodily injury”—an alternative defense also raised by AIG in the ghost gun case.

‘Bad Precedent’

Policyholder attorneys said the case presents an opportunity for the Second Circuit to reverse what they view as an alarming tide of courts shirking a long-standing analysis over insurers’ duty to defend.

Courts across the country typically construe the duty broadly, requiring insurers to pay for policyholders’ legal costs if there is any potential for coverage based on the allegations in the underlying complaint.

In the case at hand, however, the district court’s “focus on what it calls ‘critical allegations’ that negate the potential for coverage is inimical to the duty-to-defend analysis,” Primary Arms argued in its opening brief.

“The district court in this case seems to be trying very hard to find no coverage,” said Freya Bowen, policyholder-side counsel at Neal, Gerber & Eisenberg LLP.

“I have to think, especially in this case, that it was driven in part by a distaste for the actual industry,” Bowen added.

Some courts have also backed away from the typical coverage standards in opioid-related coverage disputes, said Kenneth Frenchman, a partner at policyholder-side firm Cohen Ziffer Frenchman & McKenna.

“When you start setting the rules based upon the fact that you don’t want to provide this coverage, it results in bad precedent,” Frenchman said.

Failing to apply the correct duty-to-defend standard could prejudice policyholders fighting the underlying claims, said Courtney Horrigan, a partner at Reed Smith LLP who represents corporate policyholders.

Risky Business

The new wave of public nuisance suits generally “present claims where a business scheme goes exactly according to plan—there’s no accident, there’s no mistake, there’s no surprise,” Fleischer from BatesCarey said. “The policyholders are being held liable when everything goes right, and insurance companies are not in the business of guaranteeing business plans.”

Enforcing the occurrence requirement is important because companies are more likely to engage in potentially harmful conduct if shielded from the legal and financial consequences of their actions by the ability to shift risk to insurers, CICLA argued in its amicus brief.

But if insurers don’t want to cover the risk of public nuisance litigation, they could explicitly exclude such claims in their policy language or decline to insure higher-risk businesses at all, policyholder lawyers said.

“The whole idea that when a policyholder engages in the business that the underwriter underwrote and that the insurance company agreed to cover, suddenly they have engaged in an intentional act and therefore are outside the coverage, really doesn’t make a lot of sense,” Horrigan said.

Judges Denny Chin, William J. Nardini, and Maria Araújo Kahn are on the panel.

Willkie Farr & Gallagher LLP represents AIG. Lathrop GPM LLP represents Primary Arms. Crowell & Moring LLP represents CICLA.

The case is Granite State Ins. Co. v. Primary Arms LLC, 2d Cir., No. 24-2748, oral arguments 9/17/25.

To contact the reporter on this story: Olivia Alafriz in Washington at oalafriz@bloombergindustry.com

To contact the editors responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com; Rob Tricchinelli at rtricchinelli@bloombergindustry.com

© 2025 Bloomberg Industry Group, Inc. All Rights Reserved