



A Robb Elementary staffer has filed the first legal action against the company that made the gun used in the school massacre

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SAN ANTONIO — A Uvalde, Texas, educator has filed a court petition to investigate the gun manufacturer whose AR 15-style rifle was used in the May 24 mass shooting that left 19 children and two teachers dead.

The petition for information about Daniel Defense, the Georgia-based company that made the firearm, was filed Thursday, according to court papers obtained by NBC News. The filing was on behalf of Emilia Marin, a staff member who had been outside bringing food into Robb Elementary School for an end-of-year party on May 24 when she saw a car crash, her attorney, Don Flanary, told NBC News.

Flanary said Marin went inside to grab her cellphone to call 911 about the crash. As she was on the phone with 911, she went back outside and saw the 18-year-old gunman hopping a fence, coming toward the school with a weapon strapped across his chest.

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Marin had propped open a door to the school building with a rock when she had gone outside, Flanary said. When she ran inside to hide from the shooter, she kicked the door closed, he said.

The door became one of many details about the massacre that authorities initially provided incorrect details about. At first, they told the public an unidentified staff member left a door open, enabling the gunman to enter; officials later said school video footage showed she had closed the door and that it hadn’t automatically locked as it was supposed to.

The confusion added to the trauma that Marin, who was not physically harmed in the shooting, has endured, Flanary said.

“She is not well psychologically. She is a wreck,” he said. “She’s been to her doctor and she’s continuing to receive treatment. It’s going to be a long road ahead, as it is for so many other people.”

Her filing appears to be the first court action in the massacre. It is not officially a lawsuit, but rather a pre-suit petition that seeks to determine if the gunmaker can be sued for how it markets its weapons. The state of Texas gives parties broad power to investigate potential claims prior to the filing of a lawsuit under a unique provision called Rule 202.

Marin’s filing also requests information about the Daniel Defense AR-15 style rifles that authorities said were found in the hotel room of the gunman who committed the 2017 Las Vegas mass shooting, to see if the company did anything differently in its marketing after that massacre.

“Everybody knows that school shootings are happening. It’s an epidemic. So we want to know, what are they doing to change their marketing practices?” Flanary said.

Specifically, he added, when it comes to the Uvalde gunman, “we’re trying to investigate, did they market to this person? Did they do something that caused him to want to buy the gun, when he just shouldn’t have? And that’s what we’re really concerned about.”

The filing bears similarities to the landmark \$73 million settlement obtained in February by relatives of some of those killed in the 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut.

In that lawsuit, families of the victims argued that gun maker Remington irresponsibly marketed the weapon used in the shooting to at-risk young men such as the Sandy Hook gunman through product placement in violent video games. Remington, based in Madison, North Carolina, has denied the allegations.

On Friday, attorneys representing the father of 10-year-old Uvalde victim Amerie Jo Garza said that they are also seeking information from Daniel Defense on the marketing of their AR-15 style rifles, according to Josh Koskoff of Koskoff Koskoff & Bieder, which sued the manufacturer of the weapon used at Sandy Hook.

Gun manufacturers are typically afforded broad immunity under the 2005 Protection of Lawful Commerce in Arms Act, or PLCAA, a federal law that shields them from being held liable for the “misuse of firearms by third parties, including criminals.”

But the law includes a number of exceptions, including for violations of state law, said David Pucino, deputy chief counsel for the Giffords Law Center to Prevent Gun Violence. The Sandy Hook lawsuit argued the gun manufacturer had violated Connecticut consumer law with its marketing of the weapon.

Daniel Defense, which did not respond to repeated requests for comment about the Uvalde court filing, has a statement on its website saying that it is “deeply saddened by the recent tragic events

in Texas” and that “our thoughts and prayers go out to the families and community devastated by this evil act.”

Marketing tactics are not the only way to violate PLCAA, said Jonathan Lowy, chief counsel and vice president of legal for the Brady Center to Prevent Gun Violence. He added that PLCAA almost always favors gun manufacturers more than those who are harmed by their products.

“It essentially makes victims of gun violence into second-class citizens,” he said.

The National Rifle Association did not immediately respond for a request for comment regarding immunity from the federal law. In the past, libertarian think tanks such as the Cato Institute have defended PLCAA as a “commonsense law” and pointed out that it passed Congress by a nearly two-thirds margin.

Just over a week before the gunman stormed Robb Elementary School, Daniel Defense posted an ad on social media that featured a toddler holding a similar weapon to the one used in the massacre. Those and other marketing practices would be central to any lawsuit, Pucino said.

Each state has a version of consumer protection laws, and whether the same tactic that resulted in a settlement in Connecticut would work in this case remains to be seen, he added.

“I would hope at the very least that if you were Daniel Defense, that you would be rethinking your advertising strategy,” he said.