FEDERAL PRODUCT LIABILITY LITIGATION REFORM: RECENT DEVELOPMENTS AND STATISTICS

Product Liability Law in the Federal Arena

*Sherman Joyce**

INTRODUCTION

The law of product liability has been created by state judges[1] and legislatures.[2] Although not widely noticed, this tradition changed when Congress enacted the General Aviation Revitalization Act of 1994.[3] That legislation established an eighteen-year statute of repose for claims brought by non-commercial passengers injured or killed in accidents involving light aircraft.[4] Until that time, product liability

---

* Sherman Joyce is President of the American Tort Reform Association (ATRA), a national coalition of 400 non-profits, professional societies, trade associations, and corporations working through in-state coalitions to bring fairness and efficiency to the tort system. Mr. Joyce is a graduate of Princeton University and Catholic University Law School. From 1989 to 1994, he served as minority counsel to the Subcommittee on the Consumer of the Senate Committee, Science, and Transportation. In that capacity, he was the lead Republican staff member on legislation to establish uniform rules for product liability law.

1. *See, e.g.*, Greenman v. Yuba Power Prods., Inc., 377 P.2d 897, 900 (Cal. 1962) (establishing strict liability in tort).

2. Mississippi and Texas enacted product liability reform legislation in 1993. MISS. CODE ANN. § 11-1-63 (Supp. 1995); TEX. CIV. PRAC. & REM. CODE ANN. §§ 82.001-.006 (West Supp. 1996).

3. Pub. L. No. 103-298, 108 Stat. 1552 (codified at 49 U.S.C.A. § 40101 (West 1996)). Congress has also enacted tort legislation governing injuries to workers on interstate railroads and longshore and harbor workers. *See* Federal Employers' Liability Act, 45 U.S.C.A. §§ 51-60 (West 1986 & Supp. 1996); Longshore and Harbor Workers' Compensation Act, 33 U.S.C.A. §§ 901-950 (West 1986 & Supp. 1996).

4. The relevant provisions of the statute are as follows:

Sec. 2 Time limitations on civil actions against aircraft manufacturers.

law had been exclusively a function of state law. Nevertheless, product liability reform legislation has been the subject of extensive examination and scrutiny by Members of the United States Congress for one and a half decades.

The first widely noticed effort by the United States Senate to enact federal product liability legislation occurred in 1981 when former Senator Robert Kasten of Wisconsin introduced a bill in the 97th Congress.[5] Since that time, the Senate Committee on Commerce, Science, and Transportation has reported legislation during each successive Congress with the exception of the 100th in 1987-88. Prior to this, the 104th Congress, no legislation has been considered on the merits by the full Senate. Past consideration has been limited to procedural votes to halt filibusters, and, until 1995, no effort has succeeded. During this Congress, however, under the leadership of Senators John D. Rockefeller, IV, of West Virginia, Slade Gorton of Washington, and Joseph Lieberman and Christopher Dodd of Connecticut, the Senate moved very quickly to pass S. 565, the Product Liability Fairness Act of 1995.[6] On May 10, 1995, the bill passed the full Senate by a vote of 61 to 37.[7]

With the exception of the 100th Congress, the House of Representatives has given product liability reform legislation even less attention.[8] The Chairmen of the House Judiciary Committee from 1980 until 1994, Peter Rodino and Jack Brooks, refused to hold even

---

(a) In General.—Except as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred—

(1) after the applicable limitation period beginning on—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer, or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or . . . .

Sec. 3 Other definitions.

For Purposes of this Act—

. . . . (3) the term "limitation period" means 18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft; and . . . .

49 U.S.C.A. § 40101 (West 1996).

5. S. REP. NO. 69, 104th Cong., 1st Sess. 15 (1995).

6. *See* S. 565, 104th Cong., 1st Sess., 141 CONG. REC. S6,407-12 (daily ed. May 10, 1995).

7. 141 CONG. REC. S6,369, S6,407 (daily ed. May 10, 1995).

8. In 1988, the House Committee on Energy and Commerce reported an extensive product liability bill by a bipartisan vote of 30 to 12. *See* H.R. REP. No. 748, 100th Cong., 2d Sess., pt. 1, at 26 (1988).

one day of hearings on the subject. The 1995 change in leadership, however, brought a dramatic change. The Republican leadership, including Speaker Newt Gingrich of Georgia, Majority Leader Richard Armey of Texas, Judiciary Committee Chairman Henry Hyde of Illinois, Commerce Committee Chairman Thomas Bliley of Virginia, Representative Christopher Cox of California, and many others, led the successful effort to pass H.R. 956, the Common Sense Legal Standards Reform Act of 1995, by a vote of 265 to 161.[9] Even more extraordinary than the fact that the House successfully passed legislation for the first time is the speed at which this was done: the vote on final passage occurred on March 10, 1995, only seventy-two days after its January 4th introduction.

On March 14, 1996, a House-Senate Conference Committee filed the Conference Report on H.R. 956, a compromise measure that resolved the differences between the two versions of the legislation.[10] The Senate passed the Conference Report on March 21, 1996, by a vote of 59 to 40.[11] On March 29th, the House passed the measure by a vote of 259 to 158.[12]

Prior to congressional consideration of the Conference Report, the Clinton Administration indicated that the President would veto the bill in its current form.[13] In a March 16th letter from the President to Speaker Gingrich and Majority Leader Dole, the President stated that H.R. 956 "represents an unwarranted intrusion on state authority. . . . Tort law is traditionally the prerogative of the states, rather than Congress. In this bill, Congress has intruded on state power. . . ."[14]

Those who advocated federal product liability reform were pleased that they had established an extensive record on which this legislation could be based.[15] Nevertheless, opponents of the legislation, including the Association of Trial Lawyers of America and some professional consumer organizations, such as Public Citizen, Consumers Union, and

---

9. 141 CONG. REC. H3,015, H3,027 (daily ed. Mar. 10, 1995).

10. H.R. CONF. REP. NO. 481, 104th Cong., 2d Sess. 1 (1996).

11. 142 CONG. REC. S2,553, S2,590 (daily ed. Mar. 21, 1996).

12. 142 CONG. REC. H3,176, H3,204 (daily ed. Mar. 29, 1996).

13. President's Letter to Congressional Leaders on Product Liability Legislation, 32 WEEKLY COMP. PRES. DOC. 514 (Mar. 16, 1996).

14. *Id.* On May 2, the President carried through on this statement and vetoed the bill.

15. The American Tort Reform Association, along with other organizations that advocate legal reform, supported passage of the broadest possible legislation that can be signed into law. H.R. 956, as it passed the House, contains provisions on punitive damages, joint liability, and health care liability that are outside product liability. This analysis will focus only on the law of product liability as that is the topic for this forum, and because the Conference Report on H.R. 956 is limited to provisions on product liability. *See* H.R. CONF. REP. NO. 481, 104th Cong., 2d Sess. 2-3 (1996).

the Consumer Federation of America, continued to suggest that Congress should not—indeed some have stated *cannot*—enact legislation in this area, contending that Congress lacks power under the Constitution to do so.

This Article will analyze the constitutional underpinnings for federal product liability reform legislation and explain why Congress has the authority under both the Commerce Clause and the Due Process Clause to pass federal product liability legislation. It also will explain briefly why federal legislators, who otherwise favor returning power to the individual states, were justified in supporting federal legislation.

I. THE COMMERCE CLAUSE

A. A Brief History

The Commerce Clause[16] has been the basis for enactment of a sweeping array of federal legislation. As Chief Justice Marshall stated, the Commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."[17] Despite the seemingly unlimited authority that this clause confers on the Congress, an analysis of key cases demonstrates that the history of this provision is somewhat uneven.

In the early part of this century, the Supreme Court granted Congress a great deal of latitude to legislate under the Commerce Clause. For example, in *Houston, E. & W. Texas Railway Co. v. United States (Shreveport Rate Cases)*,[18] the Court held that when aspects of intrastate activities and interstate activities were so closely related as to require regulation of both in order to fully regulate interstate commerce, the Commerce Clause permitted such a regulatory process.[19]

Despite this expansive interpretation of Congress' power, just over two decades later, the Court appeared to reverse course. In *A.L.A. Schecter Poultry Corp. v. United States*,[20] the Court ruled that

16. The Commerce Clause provides: "The Congress shall have Power To . . . regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST. art. I, § 8, cl. 3.

17. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 196 (1824).

18. 234 U.S. 342 (1914).

19. *Id.* at 351-52.

20. 295 U.S. 495 (1935).

regulation of the wages and hours worked by employees in a business engaged in interstate activities was not permissible because the matters subject to regulation were only indirectly related to interstate commerce.[21] By limiting the reach of Congress' authority to only those activities that directly affected interstate commerce, the Court sought to avoid the obvious concern that "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government."[22]

After constricting Congress' power in *Schecter Poultry*, the Supreme Court reversed course again and embarked on the path to the current expansive interpretation of the Commerce Clause. In *NLRB v. Jones & Laughlin Steel Corp.*,[23] the Court abandoned the distinction between direct and indirect effects on interstate commerce by upholding the National Labor Relations Act.[24] The Court held that regulation of intrastate activities would be upheld provided the activities "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions."[25]

This trend continued with *Wickard v. Filburn*,[26] in which the Court held that Congress could regulate purely local activities that exert "a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'"[27] The Court indicated further that there would be no return to the narrow holding in *Schecter Poultry*: "[b]roader interpretations of the Commerce Clause [were] destined to supersede the earlier ones . . . ."[28] Since *Wickard*, the Court has never looked back to its restrictive past. Instead, until *United States v. Lopez*,[29] which was decided last year, the Court has granted Congress the unlimited latitude that Chief Justice Marshall described in *Gibbons v. Ogden*.[30]

---

21. *Id.* at 548-50.
22. *Id.* at 548.
23. 301 U.S. 1 (1937).
24. *See id.* at 36-38.
25. *Id.* at 37; *see also* United States v. Darby, 312 U.S. 100, 118 (1941) (Commerce Clause power "extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce.").
26. 317 U.S. 111 (1942).
27. *Id.* at 125.
28. *Id.* at 122.
29. 115 S. Ct. 1624 (1995).
30. *See supra* text accompanying note 17.

B. United States v. Lopez

Because of this expansive interpretation of Congress' power to regulate under the Commerce Clause, Congress has been free to enact legislation regulating business and the economy since *Wickard* without fear of being overturned by the Supreme Court. During that time, the Commerce Clause has provided the basis for enacting a wide variety of legislation.[31] The first indication in over fifty years that this may no longer be the case, however, occurred on April 26, 1995, when the Supreme Court, in *United States v. Lopez*, overturned a federal statute prohibiting guns in the immediate vicinity of a school.[32] Writing for a five-to-four majority, Chief Justice Rehnquist identified three broad categories of activities that Congress may regulate under the Commerce Clause: (1) the "use of the channels of interstate commerce"; (2) the "instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and (3) those "activities having a substantial relation to interstate commerce."[33] The majority agreed that the underlying statute did not fall into any of these categories, concluding that the respondent's activities were purely local and lacked any discernible relationship to interstate commerce.[34]

C. Product Liability Legislation and the Commerce Clause After Lopez

Opponents of federal product liability legislation suggest that the apparent change in Commerce Clause jurisprudence signaled by *Lopez*, after over half a century of virtually unrestricted congressional power, could doom such legislation as beyond Congress' authority, particularly because the underlying area of law has been almost exclusively an issue for state judges and legislatures. An analysis of key aspects of the substance of product liability reform legislation and the rationale for its enactment make clear, however, that this is an issue that Congress can, and indeed should, address, notwithstanding the holding in *Lopez*.

---

31. *See, e.g.*, Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 261 (1964) (upholding public accommodation provisions of the Civil Rights Act of 1964 under the Commerce Clause); Katzenbach v. McClung, 379 U.S. 294, 304 (1964) (holding that racial discrimination at restaurants that receive a substantial portion of their food from out of state has a direct and adverse impact on interstate commerce).

32. 115 S. Ct. at 1630-31.

33. *Id.* at 1629-30.

34. *See id.* at 1634.

1. Regulation of Economic Activities Will Be Upheld

One major distinction between product liability reform proposals in the 104th Congress and the statute in question in *Lopez* is crucial to the Commerce Clause analysis. *Lopez* involved a criminal statute.[35] None of the major Commerce Clause cases prior to *Lopez* involved a criminal statute. Instead, these prior cases all involved potential burdens on economic activity and the issue of whether there was a sufficient nexus between that activity and interstate commerce. The majority in *Lopez* pointed out this distinction in concluding that the statute did not meet the standards articulated by the Court.[36]

2. Product Liability is Closely Related to Interstate Commerce

The derivation of product liability, the nature of the United States economy, and the underwriting process for product liability insurance all demonstrate that product liability is closely related to interstate commerce. Product liability is the term for the "liability of a manufacturer, seller or other supplier of chattels, to one with whom he is not in privity of contract, who suffers physical harm caused by the chattel."[37] Liability can arise out of the sale of a product. Selling or distributing a product clearly falls within the first category that the majority in *Lopez* indicated would authorize Congress to regulate under the Commerce Clause.[38] Indeed, both the House and the Senate bills include provisions that address the liability of wholesalers and retailers.[39]

Further, America competes in an economy that is both national and global. According to the United States Department of Commerce, over 70 percent of the goods manufactured in a state are shipped and sold out of that state.[40] Thus, while state product liability law would be applied by the courts in that state, the products manufactured in

---

35. The Gun-Free School Zones Act of 1990, 18 U.S.C.A. § 922(q) (West Supp. 1996).

36. 115 S. Ct. at 1630-31.

37. JOHN WADE ET AL., PROSSER, WADE AND SCHWARTZ'S CASES AND MATERIALS ON TORTS 694 (9th ed. 1994).

38. *See Lopez*, 115 S. Ct. at 1629 (stating that "Congress may regulate the use of the channels of Interstate Commerce").

39. *See* S. 565, 104th Cong., 1st Sess. § 104, 141 CONG. REC. S6,408 (daily ed. May 10, 1995); H.R. 956, 104th Cong., 1st Sess. § 103, 141 CONG. REC. H2,915 (daily ed. Mar. 9, 1995).

40. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, Pub. No. TC77-CS, COMMODITY TRANSPORTATION SURVEY 1-7 (1981). A strong interstate commerce rationale also supported the General Aviation Revitalization Act. This Act serves as a precedent for broader public liability reform. Congress has enacted legislation regulating civil liability outside of product liability as well. *See supra* note 3.

that state would be subject to the terms of the modified state law less than one time out of three. This supports the argument for federal legislation, as the salutary benefits of state product liability reform, while important, are somewhat limited because product liability is truly a matter of interstate commerce.

The underwriting process for product liability insurance also demonstrates that product liability is a matter of interstate commerce. During the Ford and Carter Administrations, the Federal Interagency Task Force on Product Liability determined that insurers establish their rates on a national basis.[41] Consequently, modifications of the law in a given state will have little or no impact on insurance rates. Underwriters recognize that the manufacture and distribution of products is a matter of national significance and, therefore, of interstate commerce.

3. State Officials Have Called on Congress to Act

The National Governors Association has passed several resolutions in recent years urging Congress to enact uniform product liability laws.[42] In addition, the American Legislative Exchange Council, a bipartisan coalition of more than 2,400 state legislators, supports federal product liability reform legislation.[43] Both organizations are strong supporters of states' rights. Both agree, however, that the problems with our product liability system are national in scope and require national solutions.[44]

Not all state officials, however, support this view. The National Conference of State Legislatures and the Conference of Chief Justices both believe that any reform of product liability law should occur at the state level.[45] Neither, however, has argued that Congress lacks the authority to act in this area. Rather, both groups have limited their arguments to disagreements about federalism and potential difficulties

---

41. *See* Options Paper on Product Liability and Accident Compensation Issues, 43 Fed. Reg. 14,612, 14,614 (1978).

42. *See* S. REP. NO. 69, 104th Cong., 1st Sess. 13-14 (1995). President Clinton was a member of the National Governors Association prior to his election as President. While Governor of Arkansas, he served on two task forces that drafted and approved resolutions supporting enactment of federal product liability reform legislation.

43. *Id.* at 14.

44. *See id.*

45. *See* H.R. REP. NO. 64, 104th Cong., 1st Sess., pt. 1, at 40-41 (1995); S. REP. NO. 69, 104th Cong., 1st Sess. 65-66 (1995); *see also* H.R. REP. NO. 63, 104th Cong., 1st Sess., pt. 1, at 27 (1995).

in applying a federal statute in fifty different state courts.[46] Such arguments are intended to convince Congress not to act—not to state that it *cannot* act. This leaves Congress to decide, based on its own notion of federalism, whether intervention in this area, which has been almost exclusively within the province of state legislators and judges, is appropriate.

II. PUNITIVE DAMAGES REFORM: THE DUE PROCESS CLAUSE

The Commerce Clause plainly empowers Congress to act in the area of product liability if it so chooses. There is, however, another aspect of both the House and Senate bills that supports Congress' intervention in this area. Both bills contain provisions specifying the types of conduct that warrant the awarding of punitive damages, the procedures to determine whether punitive damage awards are appropriate, and the limits on punitive damages based on the harm suffered.[47]

In recent years, the constitutionality of punitive damages has been the subject of nearly annual review by the United States Supreme Court.[48] Early cases hinted that the Due Process Clause places limits on the size of punitive damage awards[49] and that procedural due process requires courts and legislatures to ensure that the rights of defendants are adequately protected because punitive damages are

---

46. H.R. REP. NO. 64, 104th Cong., 1st Sess., pt. 1, at 40-41 (1995); S. REP. NO. 69, 104th Cong., 1st Sess. 65-66 (1995).

47. H.R. 956 establishes a limit on punitive damages based on a multiplier of three times economic damages or $250,000, whichever is greater. H.R. 956, 104th Cong., 1st Sess. § 201, 141 CONG. REC. H2,916 (daily ed. Mar. 9, 1995). S. 565 limits punitive damages to two times compensatory losses (economic and noneconomic) or $250,000, whichever is greater. S. 565, 104th Cong., 1st Sess., § 107, 141 CONG. REC. S6,409 (daily ed. May 10, 1995). The lesser of the two figures would apply in cases involving smaller businesses. *Id.* The Conference Report adopts the Senate approach. H.R. CONF. REP. NO. 481, 104th Cong., 2d Sess. § 108, at 10 (1996).

These reforms are based on the recommendations of three prestigious organizations. *See* AMERICAN COLLEGE OF TRIAL LAWYERS, REPORT ON PUNITIVE DAMAGES OF THE COMMITTEE ON SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE 15 (1989) (advocating a limit of two times compensatory damages or $250,000, whichever is greater); SPECIAL COMM. ON PUNITIVE DAMAGES OF THE SECTION OF LITIG., AMERICAN BAR ASS'N, PUNITIVE DAMAGES: A CONSTRUCTIVE EXAMINATION 6-11 (1986) (proposing to create a rebuttable presumption that punitive damage awards in excess of three times compensatory damages are excessive); REPORTERS' STUDY, AMERICAN LAW INST., 2 ENTERPRISE RESPONSIBILITY FOR PERSONAL INJURY 258-59 (1991) (recommending enactment of a formula based on compensatory damages with an alternative monetary limit).

48. *See, e.g.*, Honda Motor Co. v. Oberg, 114 S. Ct. 2331 (1994); TXO Prod. Corp. v. Alliance Resources Corp., 113 S. Ct. 2711 (1993); Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257 (1989).

49. *See* Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 828-29 (1986); *Kelco Disposal, Inc.*, 492 U.S. at 276-77.

quasi-criminal penalties.[50] Therefore, greater protection is to be afforded defendants in the area of punitive damage awards than in the area of compensatory damages.

Although the Supreme Court has declined to explicitly specify appropriate limits for punitive damages, the Court has suggested that clearly excessive punitive damage awards are unconstitutional. In *Pacific Mutual Life Insurance Co. v. Haslip*,[51] the Court found that a punitive damage award of approximately four times the amount of compensatory damages was very close to what it would consider excessive and, therefore, was "close to the line" of constitutional impropriety.[52] The Court restated its view that an excessive punitive damage award would be unconstitutional in *TXO Production Corp. v. Alliance Resources Corp.*[53] Despite its concern about potentially excessive awards, the Court has declined to establish a test or formula to ensure that punitive damage awards are appropriate in amount. This leads one to conclude that the Court is "inviting" Congress to act in this area.[54]

Until the Court's recent decision in *BMW of North America, Inc. v. Gore*, no punitive damage award had been overturned by the Supreme Court on the ground that it was so excessive that it violated the Due Process Clause. In this case, the Alabama Supreme Court upheld a punitive damage award of $2 million arising out of BMW's nondisclosure of a partial repainting of the vehicle prior to its delivery to the plaintiff as a new automobile.[55] On appeal, the United States Supreme Court stated three bases for determining whether a punitive damage award is so excessive as to violate the Constitution: the reprehensibility of the underlying conduct; whether there is a reasonable relation between the harm suffered and the punitive damage award; and the difference between the punitive damage award and

50. *See* Smith v. Wade, 461 U.S. 30, 59 (1983) (Rehnquist, J., dissenting).

51. 499 U.S. 1 (1991).

52. *Id.* at 23-24.

53. *See* 113 S. Ct. 2711, 2720 (1993). The Eighth Circuit Court of Appeals recently overturned a punitive damage award on the ground that it was excessive. Former Justice Byron White wrote the opinion and stated that he was adhering to precedent by ruling that a punitive damage award 250,000 times higher than actual damages is excessive. *See* Pulla v. Amoco Oil Co., 72 F.3d 648 (1995).

54. 1996 U.S. LEXIS 3390 (U.S. 1996).

55. 646 So. 2d 619, 629 (Ala. 1994) (holding that a remittitur of the $4 million jury verdict was appropriate and that a $2 million award was constitutionally reasonable), *rev'd*, 1996 U.S. LEXIS 3390 (U.S. 1996).

other civil or criminal sanctions that could be imposed for similar wrongdoing.[56]

The Court once again declined to establish a bright-line test for the constitutionality of punitive damage awards. Nevertheless, there can be no doubt that addressing the constitutional issues presented in this line of cases, with *BMW of North America* providing the clearest statement about the limits imposed by the Constitution on punitive damage awards, provides a sound basis upon which Congress can legislate in the area of product liability law.

With respect to procedural due process, the Court found in *Honda Motor Co. v. Oberg*[57] that Oregon's prohibition of judicial review of punitive damage awards violated the Due Process Clause of the Fourteenth Amendment.[58] The House and Senate bills specify key procedural reforms (e.g., bifurcation of trials, a standard of proof by clear and convincing evidence); and because the Conference Report retains these reforms,[59] it ensures that procedural fairness for defendants in proceedings involving punitive damages is enhanced.

CONCLUSION

Congress plainly has the authority to legislate in the field of product liability law. In the *Lopez* dissent, four justices voted in favor of upholding the criminal statute that was overturned by the majority.[60] Thus, the dissent would uphold virtually any federal regulation under the Commerce Clause. While the majority does not subscribe to this interpretation of the Commerce Clause, when faced with the issue of Congress' authority to regulate this area, the majority would recognize that product liability law is inextricably intertwined with matters that are fundamental to interstate commerce: the manufacture, distribution, and sale of products. Thus, the case for the constitutionality of national legislation in this area is overwhelming based on the Commerce Clause, notwithstanding the holding in *Lopez*. Moreover, one of the core issues of federal legislation, punitive damage reform, strengthens the case for constitutionality because the Supreme Court has stated that excessive punitive damages violate the Due Process Clause. That alone is sufficient reason for Congress to legislate.

---

56. 1996 U.S. LEXIS 3390, at *27.
57. 114 S. Ct. 2331 (1994).
58. *Id.* at 2341.
59. *See* H.R. CONF. REP. NO. 481, 104th Cong., 2d Sess. § 108, at 10-12 (1996).
60. 115 S. Ct. at 1657-65 (Breyer, J., dissenting).

The real issue for Congress is not whether it can act in this area. Rather, the issue is whether it will. After well over a decade that saw activity in this area confined to only one house of the Congress during a particular Congress, in 1995, both houses of the United States Congress acted promptly, recognizing that federal product liability legislation is essential to enhancing the competitiveness of American business, encouraging product innovation, and reducing the time and expense needed to adjudicate disputes. These objectives will be accomplished only through greater uniformity, predictability, and fairness in the law of product liability.

Congress has acted in an environment in which the overwhelming trend is to return power to the states. In this area of the law, however, Congress has determined that certain problems with product liability law must be addressed on a national basis, and, therefore, is bucking the trend to return matters to the states. Passage of federal legislation will do little to disturb state primacy in this area of the law. Rather, federal legislation will enhance uniformity in key areas of the law, leaving the majority of issues to be addressed by state courts and state legislators.

Underlying Congress' action is a clear mandate to act: there can be little dispute that the Commerce Clause and the Due Process Clause empower Congress to legislate. In choosing to exercise that authority, Congress has made the correct decision to enact balanced remedies to very real problems in the law of product liability.