Legal Opinion Letter

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SECOND CIRCUIT UPHOLDS FEDERAL LIABILITY REFORM LAW

by
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The U.S. Court of Appeals for the Second Circuit in *City of New York v. Beretta U.S.A. Corp.*, 2008 WL 1884167 (2d Cir. Apr. 30, 2008), a 2-1 decision, upheld the constitutionality of the federal Protection of Lawful Commerce in Arms Act ("PLCAA"), 15 U.S.C. §§ 7901-03, a tort reform law which bars civil actions pending on or filed after October 26, 2005, against manufacturers and suppliers of firearms for harms resulting from the criminal or unlawful misuse of firearms sold in interstate or foreign commerce. The City of New York ("City") challenged the PLCAA in a "regulation by litigation" action seeking injunctive relief and abatement of the alleged public nuisance created by the defendants' claimed distribution practices. The City alleged that the defendants marketed guns to legitimate buyers with the knowledge that those guns would be diverted into illegal markets.

In addition to finding the PLCAA to be constitutional, the Second Circuit found that the City's claims did not fit within the "predicate exception" in the law, which allows claims to be brought against a firearms defendant that knowingly violates a statute applicable to the sale or marketing of firearms and the violation was a proximate cause of the plaintiff's harm. At the district court level, Judge Weinstein in the Eastern District of New York had ruled the PLCAA to be constitutional but found the predicate exception to apply. Consequently, the Second Circuit affirmed Judge Weinstein's ruling on the law's constitutionality, but reversed his finding that the predicate exception applied. The Second Circuit then remanded the case to the district court with instructions to enter judgment dismissing the case as barred by the PLCAA.

The Second Circuit's rejection of the City's constitutional challenges may carry broader significance with respect to potential challenges to other federal civil justice reform laws, so those aspects of the opinion will be discussed here.

First, the Second Circuit rejected the City's claim that the PLCAA exceeded Congress's Commerce Clause authority. The City had argued that Congress exceeded its power by regulating litigation, relying on *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), in which the U.S. Supreme Court found the Gun-Free School Zone Act of 1990 and the civil remedy provision of the Violence Against Women Act to have an insufficient relationship with, or affect on, interstate commerce. The court found that Congress had not exceeded its authority in the PLCAA because "there can be no question of the interstate character" of the firearms industry and "Congress rationally perceived a substantial effect on the industry of the litigation that the Act seeks to curtail."

Next, the court rejected the City's claim that the Act violated the separation of powers principle. The court said that Article III forbids legislatures from prescribing rules of decision in pending cases.

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Here, however, Congress did not "merely direct the outcome of cases," but changed the applicable law. The court agreed with the government, as intervenor, that Congress may enact "new rules of law applicable to pending cases, provided that new rule of law is also made prospectively to cases commenced after enactment."

The court then rejected the City's argument that the PLCAA violated the Tenth Amendment and fundamental principles of federalism. The City claimed that, because the Act's predicate exception applies only to violations of state statutes regulating the sale of firearms, the Act impermissibly determines for the states which branch of government will be recognized by the federal government as the authoritative expositor of any state's pertinent laws. The court said, however, that the "critical inquiry" with respect to a Tenth Amendment challenge is whether the federal law "commandeers the states." The court concluded that the PLCAA "does not commandeer any branch of state government because it imposes no affirmative duty of any kind on any of them." The authors have likewise argued that federal legislation which provides applicable rules of law to be followed by courts is not tantamount to "commandeering." *See* Victor E. Schwartz, Mark A. Behrens & Leavy Mathews III, *Federalism and Federal Liability Reform: the United States Constitution Supports Reform*, 36 HARV. J. ON LEGIS. 269 (1999).

Finally, the Second Circuit rejected the City's argument that by granting qualified tort immunity to firearms' suppliers, the PLCAA violated the City's right of access to the courts found in the First Amendment's Petition Clause. Importantly, the court found that the right of access to the courts "is not violated by a statute that provides a complete defense to a cause of action or curtails a category of causes of action."

The Second Circuit's decision to uphold the PLCAA is consistent with holdings from other courts. *See District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008); *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007); *Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274 (C.D. Cal. 2006). All of these decisions are consistent with numerous court rulings, dating as far back as a century, that have recognized the authority of Congress to enact legislation setting national tort policy rules. *See* Schwartz et al., *supra*.

City of New York is an important ruling for firearms defendants. The Second Circuit is a highly respected court and its reasoning in the case is solid. Consequently, the court's decision is likely to lead other courts to reject PLCAA challenges such as those raised by New York City. The decision is also likely to influence courts that may be asked to review other federal civil justice reform legislation, such as the "Graves Amendment," 49 U.S.C. § 30106, a 2005 federal statute which bars vicarious liability actions against professional lessors and renters of vehicles.

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