SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, et al.,	:	
	:	
Plaintiffs,	:	
	:	**2000 CA 000428 B**
v.	:	**Calendar No. 3**
	:	**Judge Brook Hedge**
BERETTA U.S.A. CORP., et al.,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

This matter comes before the Court on Defendants' Motion for Judgment on the Pleadings filed on October 27, 2005.[1] Plaintiffs filed an Opposition to Defendants' Motion on December 19, 2005, and oral argument was held on March 10, 2006.[2] Upon consideration of counsels' arguments, the Parties' filings, and the record in this case, the Court, for the reasons set forth below, grants Defendants' Motion.

I. Factual Background

A. Procedural History

Plaintiffs brought this action seeking compensatory damages and other equitable relief for conduct by Defendants that Plaintiffs alleged gave rise to liability under common law claims of negligence and public nuisance, as well as under D.C. Code § 7-2551.01 *et seq*. (2001), the Assault Weapon Manufacturing Strict Liability Act of 1990

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[1] Defendants, which consist of various manufacturers, importers, and distributors of firearms, are: Beretta U.S.A. Corp.; Fabbrica d'Armi Pietro Beretta, S.p.A.; Colt's Manufacturing Company LLC; Sturm, Roger & Co., Inc.; Glock Inc.; Glock Ges.m.b.H.; Hi-Point Firearms; H&R 1871, Inc.; Century International Arms, Inc.; KBI Inc.; Taurus International Manufacturing, Inc.; Forjas Taurus, S.A.; Heckler & Koch, Inc.; Heckler & Koch GmbH; Phoenix Arms; Browning Arms Co.; Sigarms; and Smith & Wesson Corp.
[2] Plaintiffs consist of nine individuals and the District of Columbia.

(the "Strict Liability Act"). The theory of liability underlying all three counts listed in the Complaint can be summarized as follows:

> Although the District of Columbia itself has stringent gun control laws, there nonetheless exists an unchecked illegal flow of firearms into the District to which the defendants by action and inaction have contributed. This flow of guns takes place in numerous ways, including "straw purchases" (purchases from licensed dealers on behalf of other persons not qualified to buy under applicable law), multiple sales (multiple purchases over a short stretch of time by persons intending to sell or transfer to others not qualified to buy), sales by the defendants to "kitchen table" dealers licensed to sell but who do not do so from retail stores, and gun show sales by sellers who typically lack federal firearm licenses and are not required to do purchaser background checks. . . . [D]efendants have distributed their firearms without adequate self-regulation or supervision in order to increase firearm sales, knowing or constructively knowing they are creating, maintaining, or supplying the unlawful flow of firearms into the District and similarly knowing those guns will be used to commit crimes such as the ones that have caused death or injury to the individual plaintiffs or persons they represent. . . . [D]efendants are able to restrict or impede the unlawful flow of firearms into the District but have not done so.

District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 638 (D.C. 2005) (en banc), *cert. denied*, 126 S. Ct. 399 (2005).

Defendants responded by filing a motion for judgment on the pleadings seeking dismissal of the suit. On December 16, 2002, Judge Long entered judgment for Defendants and dismissed the action. Judge Long concluded that Plaintiffs' claims of negligence and public nuisance failed basic tests of duty, foreseeability, and remoteness as pleaded; that the District could not bring an action under the Strict Liability Act; and that the individual Plaintiffs did not plead sufficiently their claims under the Strict Liability Act, which, in any event, Judge Long determined to be an unconstitutional exercise of extra-territorial regulation by the District. *Id.* at 637.

On appeal, the District of Columbia Court of Appeals upheld Judge Long's decision as to Plaintiffs' claims of negligence and public nuisance, but reversed her decision as to the District's and the individual Plaintiffs' claims under the Strict Liability Act. *Id.* at 637-38. The court held that the individual Plaintiffs may advance to discovery to attempt to prove their claims under the Strict Liability Act, and the District, though not authorized to bring an action under the Strict Liability Act, may remain in the case for the limited purpose of seeking subrogated damages as to the individual Plaintiffs for whom it has incurred medical expenses. *Id.* at 637. The court further held the Strict Liability Act to be constitutional. *Id.* at 655-59. Although the court allowed the individual Plaintiffs to advance to discovery, the court held that if Plaintiffs are unable to tie a particular defendant to a particular injury-producing weapon after discovery, they will not be entitled to proceed under the Strict Liability Act. *Id.* at 655. The court, therefore, remanded the case for further proceedings consistent with its opinion. *Id.* at 659.

B. Allegations Comprising Plaintiffs' Strict Liability Claims[3]

Plaintiff Bryant Lawson, a 19-year-old resident of the District, was shot and paralyzed in Northeast Washington on January 26, 1997, with a semi-automatic firearm. He was shot near his home as he tried to flee from three armed men. The bullets recovered from Plaintiff Lawson were determined to be either .380 or 9 mm caliber and most likely were fired by a "machine gun," as defined by the Strict Liability Act. Plaintiff Lawson is now a quadriplegic and has relied on Medicaid to pay for the surgery,

[3] The following facts are taken from allegations contained in Plaintiffs' Third Amended Complaint for Damages and Injunctive Relief (the "Complaint"). For purposes of this order, the facts contained in the Complaint are taken as true. *See Blake v. Prof'l Travel Corp.*, 768 A.2d 568, 569 (D.C. 2001).

hospitalization, medications and rehabilitation he has needed because of his gunshot wounds.

Helen Foster-el, former wife of Plaintiff James Foster-el and mother of Plaintiff Michelle Foster-el, was shot and killed in the East Capitol Dwellings housing project in the District on June 21, 1999, during a dispute between neighboring youths armed with handguns. Two of the youths had been armed with 9 mm handguns that had been outfitted with an extended cartridge and loaded with hollow point bullets. Once the dispute began, and the firing commenced, residents of the community scattered. As she was guiding a child into a house, Helen Foster-el was shot twice, once in the back and once in the leg. Helen Foster-el died at the scene from her wounds; one of her daughters, Prudence Foster-el, was with her as she died on the porch. The bullets that killed Helen Foster-el were fired by one or more "machine guns" or "assault weapons," as defined by the Strict Liability Act.

Mary Caitrin Mahoney, daughter of Plaintiff Patrick H. Mahoney, was shot and killed in a Starbucks Coffee store in Georgetown on July 6 or 7, 1997, during an attempted armed robbery. Ms. Mahoney was shot multiple times with a .380 caliber semi-automatic handgun, and at least once with a .38 caliber revolver, after refusing to surrender the keys to the store safe. Ms. Mahoney was 24 years old at the time of her death. Both weapons used to kill Ms. Mahoney are considered "machine guns" or "assault weapons," as defined by the Strict Liability Act.

Andre Wallace, son of Plaintiff Laura Wallace, and Natasha Marsh, daughter of Plaintiff Madilia R. Marsh-Williams, were shot and killed in the driveway of Marsh's home in Northeast Washington on February 8, 2000, while they were unloading

groceries. They were both 17 years old and seniors at Wilson High School. At least one 9 mm bullet was recovered from both of the victims' bodies, each having been fired by a "machine gun" or "assault weapon," as defined by the Strict Liability Act.

Plaintiffs Ahmad Vaughan, Avery Blue, and Gregory Ferguson were shot on June 17, 1998, on the 1300 block of Congress Street in Southeast Washington. While the three Plaintiffs were chatting in front of Vaughan's home, a gang of young men in masks, armed with a pump shotgun, a 9 mm, and an AK-47, opened fire on Vaughan, Blue, and Ferguson. All three Plaintiffs were shot at least once by the AK-47, a weapon that qualifies as a "machine gun" or "assault weapon," as defined by the Strict Liability Act. Vaughan, Blue, and Ferguson each spent several days at the Washington Hospital Center and have each experienced physical and emotional difficulties since the incident.

Plaintiffs allege that Defendants are strictly liable under the Strict Liability Act for having manufactured, imported, or sold one or more assault weapons or machine guns that have been discharged in the District resulting in deaths and bodily injuries. Plaintiffs claim that Defendants are strictly liable to the District for (1) health care costs and Medicaid expenses the District has incurred for care and treatment of victims of this gun violence; and (2) costs of other assistance and compensation provided or paid by the District to police officers, firefighters, and other District employees who have suffered injuries from this gun violence. Plaintiffs also claim that Defendants are strictly liable to the individual Plaintiffs for various compensatory damages proximately caused by Defendants' conduct.

C. The Protection of Lawful Commerce in Arms Act

On October 26, 2005, the President signed into law the Protection of Lawful Commerce in Arms Act (the "PLCAA"), 15 U.S.C. §§ 7901-7903, Pub. L. No. 109-92, 119 Stat. 2095. The PLCAA provides for the "immediate dismissal" of any pending "qualified civil liability action."[4] 15 U.S.C. § 7902(b). The PLCAA defines a "qualified civil liability action" as:

> [A] civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a [firearm], or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party[.]

Id. § 7903(5)(A). The PLCAA, however, provides six exceptions to the definition of a "qualified civil liability action." *Id.* § 7903(5)(A)(i)-(vi). The exception applicable in this case excludes the following from the definition of a "qualified civil liability action": "[A]n action in which a manufacturer or seller of a [firearm] knowingly violated a State[5] or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought[.]" *Id.* § 7903(5)(A)(iii) (the "predicate exception").[6] Accordingly, firearm manufacturers, dealers, sellers, or importers are not protected by the PLCAA if the civil action brought against them falls within this exception.[7]

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[4] The PLCAA's prohibition of a "qualified civil liability action" applies to both state and federal courts. *See* 15 U.S.C. § 7902(a)-(b).

[5] The PLCAA defines the District of Columbia as a "State" for purposes of the statutory exception and other provisions of the Act. 15 U.S.C. § 7903(7).

[6] For purposes of uniformity, the Court uses the same term ("predicate exception") to label this exception as has been used in both federal court cases addressing the PLCAA. *See Ileto v. Glock, Inc.*, 2006 U.S. Dist. LEXIS 12153, *19 (C.D. Cal. March 14, 2006); *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244, 260 (E.D.N.Y. 2005).

[7] The full text of the predicate exception is as follows:

> (iii) an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought, including –

On October 27, 2005, the day after the PLCAA was signed into law, Defendants filed their Motion for Judgment on the Pleadings asking the Court to dismiss this case. Defendants argue that the PLCAA requires immediate dismissal of this action because Plaintiffs' claims under the Strict Liability Act fall squarely under the PLCAA's definition of a "qualified civil liability action."

Plaintiffs oppose Defendants' motion on the grounds that this case falls within the predicate exception and, therefore, is not required to be dismissed under the PLCAA. In the alternative, Plaintiffs argue that if the Court were to find that this action does not fall within the predicate exception and, therefore, hold that the PLCAA does require dismissal of this action, the PLCAA is unconstitutional as applied. Upon Plaintiffs' challenge to the constitutionality of the PLCAA, the United States intervened for the limited purpose of defending the PLCAA's constitutionality. *See* 28 U.S.C. § 2403(a); Super. Ct. Civ. R. 24-I.

II. Legal Standard

A party may move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay trial." Super. Ct. Civ. R. 12(c). "If . . . matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56[.]" *Id.* The

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> (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
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> (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code[.]

15 U.S.C. § 7903(5)(A)(iii)(I)-(II).

standard for disposition of a motion for judgment on the pleadings is identical to that of a Rule 12(b)(6) motion to dismiss. *See Beretta*, 872 A.2d at 639 (citing *Osei-Kuffnor v. Argana*, 618 A.2d 712, 713 (1993)).

When reviewing a motion for judgment on the pleadings, a court must construe all facts and inferences in the light most favorable to the non-moving party, and the allegations in the complaint are taken as true. *Id.* The "purpose of a [Rule 12(c)] motion is to test the formal sufficiency of a statement of the claim for relief; it is not a procedure for resolving a contest about the facts or merits of the case." *Fraser v. Gottfried*, 636 A.2d 430, 432 (D.C. 1994) (quoting C. Wright & A. Miller, *Federal Practice and Procedure* § 1356, at 294 (2d ed. 1990)) (internal quotations omitted). A court may not grant the motion "unless it appears that [the] plaintiff can prove no facts in support of the claim which would entitle the plaintiff to relief." *Vincent v. Anderson*, 621 A.2d 367, 372 (D.C. 1993).

III. Discussion

Defendants argue that this action must be dismissed as a "qualified civil liability action" under the recently enacted PLCAA. Plaintiffs advance two arguments in their Opposition to Defendants' motion: (1) that the PLCAA is not applicable to this case because Plaintiffs' causes of action under the Strict Liability Act fall within the predicate exception contained in the PLCAA; and (2) if the PLCAA is held to be applicable, then the statute is unconstitutional as applied. The Court will address Plaintiffs' arguments in turn.

A. Applicability of the PLCAA

Plaintiffs have brought a civil action against sellers and manufacturers of specified firearms for damages resulting from the criminal or unlawful misuse of such firearms by a third party. Plaintiffs cannot dispute that, absent an applicable exception, the present action falls within the PLCAA's definition of a "qualified civil liability action." *See* 15 U.S.C. § 7903(5)(A). As noted above, the PLCAA requires the "immediate dismissal" of any "qualified civil liability action" pending in any state or federal court. *Id.* § 7902(a)-(b). The statute, however, exempts from dismissal any action in which a seller or manufacturer of firearms knowingly violated a state statute "applicable to the sale or marketing" of firearms and such violation was a proximate cause of the harm for which relief is being sought. *Id.* § 7903(5)(A)(iii). Accordingly, to avoid dismissal under the PLCAA, Plaintiffs must plead (1) a knowing violation (2) of a state or federal statute applicable to the sale or marketing of firearms, (3) which proximately caused the alleged injuries. If the allegations contained in the Complaint fail to satisfy any one of these three requirements, the action must be dismissed pursuant to § 7902(b) of the PLCAA.

Plaintiffs argue that this case falls within the predicate exception because their claims arise under the Strict Liability Act, which, according to Plaintiffs, is a state statute "applicable to the sale or marketing" of firearms. According to Plaintiffs, the plain language of the Strict Liability Act makes clear that the statute is applicable to the sale or marketing of firearms and, therefore, falls squarely within the predicate exception. Defendants, in contrast, argue that the purpose and policy of the PLCAA as a whole, the plain and unambiguous language of the statutory exception, and well-established

principles of statutory construction dictate that the Strict Liability Act is not the type of state statute contemplated in the predicate exception.

The first step in interpreting a statute is to look at the language of the statute. *Jeffrey v. United States*, 878 A.2d 1189, 1193 (D.C. 2005). A court is required to give effect to the statute's plain meaning if the words are clear and unambiguous. *Id.* In interpreting the text of a statute, "it is axiomatic that the words of a statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." *Id.* (citation omitted). A court, however, "must not 'make a fetish out of plain meaning' and . . . where the literal meaning of the statutory language is 'plainly at variance with the policy of the legislation as a whole,' [the court] should not follow it." *Allman v. Snyder*, 888 A.2d 1161, 1168 (D.C. 2005) (quoting *In re Perrin*, 663 A.2d 517, 523 (D.C. 1995)). Statutory interpretation requires that a court "remain more faithful to the purpose [of the statute] than the word." *Jeffrey*, 878 A.2d at 1193 (citation omitted).

1. Plain Language of the Predicate Exception

As noted above, the predicate exception exempts from dismissal "an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought[.]" 15 U.S.C. § 7903(5)(A)(iii). Plaintiffs' only remaining claims against Defendants are for various compensatory damages under the Strict Liability Act. The Strict Liability Act provides that:

> Any manufacturer, importer, or dealer of an assault weapon or machine gun shall be held strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District of Columbia.

D.C. Code § 7-2551.02 (2001) *formerly* D.C. Code § 6-2392 (1981). The question for the Court to consider is whether the Strict Liability Act is the type of state statute "applicable to the sale or marketing" of firearms that Congress intended to include in the predicate exception.

Since the passage of the PLCAA, two federal courts have considered whether certain statutes were predicate exceptions. *See Ileto v. Glock, Inc.*, 2006 U.S. Dist. LEXIS 12153 (C.D. Cal. March 14, 2006); *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244 (E.D.N.Y. 2005). In those cases, whether the plaintiffs' claims under the respective state statute fell within the predicate exception turned primarily on the meaning of the word "applicable." Both cases involved state statutes that were not specifically or exclusively applicable to firearm manufacturers or sellers; rather, the statutes at issue were general public nuisance and negligence statutes. *See Ileto*, 2006 U.S. Dist. LEXIS at *58; *City of New York*, 401 F. Supp. 2d at 261.[8] Accordingly, to determine whether the respective state statutes were "applicable to the sale or marketing" of firearms, each court had to determine whether the word "applicable" should be interpreted in a broad or narrow fashion.

Both courts examined the dictionary definition of the word "applicable" and came to opposite conclusions. The court in *Ileto* determined that the word "applicable" was ambiguous when considered in the context of the entire statutory scheme and should be interpreted narrowly to include only state statutes that are specifically applicable to the

[8] The California statutes at issue in *Ileto* were (1) California Civil Code section 1714(a), which establishes a general duty of care by which all in California must abide; (2) California Civil Code section 3479, which embodies California's definition of a nuisance; and (3) California Civil Code section 3480, which sets forth what constitutes a public nuisance. *Ileto*, 2006 U.S. Dist. LEXIS at *58. The New York statute at issue in *City of New York* was New York Penal Law section 240.45, a criminal nuisance statute. *City of New York*, 401 F. Supp. 2d at 261.

sale or marketing of firearms. *Ileto*, 2006 U.S. Dist. LEXIS at *26, *57-58. In contrast, the court in *City of New York* determined that the word "applicable" was unambiguous and readily understandable as "capable of being applied." *City of New York*, 401 F. Supp. 2d at 263-64. Accordingly, the court determined that because the New York criminal nuisance statute was *capable* of being applied to firearm manufacturers or sellers, the plaintiffs' claims fell within the predicate exception. *Id.* at 264.

Both of those cases, however, involved materially different statutes. In this case, the Strict Liability Act is specifically and exclusively applicable to firearm manufacturers and sellers. Regardless of which dictionary definition of the word "applicable" is considered, there can be no doubt that, like the examples given in the predicate exception, the Strict Liability Act is a state statute that applies specifically and exclusively to the firearms industry. *See* 15 U.S.C. § 7903(5)(A)(iii)(I)-(II). Certainly, on its face, the Strict Liability Act is applicable to the sale of firearms. If a manufacturer, importer, or dealer[9] sells any firearm covered by the Strict Liability Act, and the discharge of that firearm in the District is the proximate cause of any bodily injury or death, that manufacturer, importer, or dealer is strictly liable under the statute.

2. Purpose of the PLCAA

Although, under a literal interpretation of the predicate exception, causes of action brought under the Strict Liability Act would seem to be excluded from the PLCAA's definition of a "qualified civil liability action," the Court must consider whether the purpose of the PLCAA requires the Court to look beyond a literal interpretation of the

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[9] The term "seller" as used in the PLCAA is synonymous with the terms "dealer" and "importer" as used in the Strict Liability Act. The PLCAA defines "seller" as a "dealer" or "importer" as defined in 18 U.S.C. § 921(a)(9) & (11), which is the same statute the Strict Liability Act uses to define "dealer" and "importer." *See* 15 U.S.C. § 7903(6)(A)-(B); D.C. Code § 7-2551.01(3).

Act. *See Allman*, 888 A.2d at 1168 ("[W]here the literal meaning of the statutory language is plainly at variance with the policy of the legislation as a whole, [the court] should not follow it.") (citation and internal quotations omitted). When taken as a whole and in the context of the purpose of the PLCAA, the Court must determine whether the predicate exception was meant to include any state statute that applies to a result of the sale or manufacture of firearms, or whether it was meant to include only those state statutes that apply to the *manner* in which firearms are marketed or sold.

Congress has made clear that manufacturers or sellers of firearms or ammunition products that have been shipped or transported in interstate commerce "are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended." 15 U.S.C. § 7901(a)(5). The imposition of such liability, according to Congress, "is an abuse of the legal system, erodes public confidence in our Nation's laws . . . invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system . . . and constitutes an unreasonable burden on interstate and foreign commerce of the United States." *Id.* § 7901(a)(6). Accordingly, Congress has plainly stated that the purpose of the PLCAA is to prohibit lawsuits attempting to impose such liability. *See Id.* § 7901(b)(1).[10] The Court agrees with the court's statement in *Ileto* that "the clear purpose of the PLCAA was to shield firearms

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[10] Section 7901(b)(1) states:

> The purposes of this Act are as follows . . . [t]o prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

15 U.S.C. § 7901(b)(1). Indeed, the description of the PLCAA under its heading is: "To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others." *See* PLCAA, Pub. L. No. 109-92, 119 Stat. 2095.

manufacturers and dealers from liability for injuries caused by third parties using non-defective . . . firearms." *Ileto*, 2006 U.S. Dist. LEXIS at *35.[11]

The Strict Liability Act is a statute that imposes the type of liability that Congress has attempted to prohibit by enacting the PLCAA. The Strict Liability Act holds manufacturers or sellers of specified firearms strictly liable for injuries caused by the criminal or unlawful misuse of such firearms by third parties, regardless of whether or not the firearm functioned as designed and intended. *See* D.C. Code § 7-2551.02. Therefore, the Strict Liability Act runs head on into the PLCAA's prohibitions.

"It is well established that 'when the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms.'" *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)). Where the literal interpretation of a statutory term would lead to an absurd result, courts must search for other evidence of congressional intent to lend the term its proper scope. *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 454 (1989); *see also Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892) ("It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.").

3. Rules of Statutory Construction

The types of state statutes "applicable to the sale or marketing" of firearms that Congress meant to include within the predicate exception are evidenced by the limiting language of the provision. Included within the predicate exception, by the connecting

[11] The Court does not find it necessary to use extrinsic aids such as the legislative history of the PLCAA in light of *Allman*.

term "including," are specific cases that Congress has determined to be covered by the predicate exception. See footnote 7. Under the doctrine of *ejusdem generis*, where specific words follow general words, the application of the general term is restricted to things that are similar to those specifically enumerated. *See* 2A N. Singer, *Sutherland Statutory Construction* § 47.17 (5th ed. 1992).

Defendants rely on *Molloy v. Metro. Transp. Auth.*, 94 F.3d 808 (2d Cir. 1996) and *United States v. Phillip Morris USA, Inc.*, 396 F.3d 1190 (D.C. Cir. 2005), to support their argument that principles of statutory interpretation require the Court to read the statutory exception in the context of the specific violations that are included within the exception. In *Molloy*, the Second Circuit was faced with the issue of whether staff reductions at thirty-two Long Island Railroad stations constituted an "alteration" to such stations under the American with Disabilities Act. *Molloy*, 94 F.3d at 811-12. The statutory text at issue provided that the ADA applied only to "alterations of an existing station or part thereof." *Id.* at 811; 42 U.S.C. § 1216(e)(2)(B)(i) (1994). The Secretary of Transportation had promulgated regulations defining the term "alteration" as: "[A] change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full height partitions." *Id.*; 49 C.F.R. § 37.3. Noting that the regulation lists only physical modifications of a relatively permanent nature, the court held that "[u]nder the common sense approach to interpreting a general provision in the light of a list of specific illustrative provisions, ejusdem generis, we conclude the general term (here 'change') to include only things similar to the specific items in the list." *Id.* at 812. Accordingly, the

court held that staff reductions at the specified stations did not constitute an alteration because such a change is not physical or permanent in nature. *Id.*

In *Phillip Morris*, the court was presented with the question of whether the District Court had jurisdiction to entertain a claim for disgorgement under RICO. *Phillip Morris*, 396 F.3d at 1197-1202. Under 18 U.S.C. § 1964(a), a District Court is granted jurisdiction to enter a variety of orders "to prevent and restrain" RICO violations. *Id.* at 1198. The appellants argued that the language of § 1964(a) indicates that jurisdiction is granted to the District Court to issue forward-looking remedies aimed at future violations; disgorgement, on the other hand, is a quintessential backward-looking remedy focused on remedying the effects of past conduct. *Id.* In agreeing with the appellants, the court determined under the principles of *ejusdem generis* and *noscitur a sociis* that the remedies explicitly listed in the statute, introduced by the words "including, but not limited to[,]" were all directed towards future conduct and, therefore, served to limit the remedies available under § 1964(a).[12] *Id.* at 1200. The court held that disgorgement was not a remedy directed towards future conduct and, therefore, did not fall within the available remedies of § 1964(a). *Id.*

In this case, the specific cases given as examples in the predicate exception are clearly those involving violations of statutes regulating the *manner* in which firearms are sold or marketed. *See* 15 U.S.C. § 7903(5)(A)(iii)(I)-(II). The specific examples listed

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[12] Section 1964(a) states:

> The district courts . . . shall have jurisdiction to prevent and restrain violations of section 1962 . . . by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

deal with violations of statutes imposing various record keeping and disclosure requirements in regards to the sale or marketing of firearms. Accordingly, the state statutes "applicable to the sale or marketing of firearms" that are mentioned in the general part of the predicate exception are limited to state statutes regulating the manner in which firearms are sold or marketed, and not statutes that are merely capable of being applied to the result of the sale or marketing of firearms.

In conclusion, the Court is faced with a classic tension between two elected branches of different governments, two equally clear legislative judgments, but each embodying opposite policies. On the one hand, the District of Columbia City Council has determined that assault weapons "have little or no social benefit but at the same time pernicious consequences for the health and safety of District residents and visitors." *Beretta*, 872 A.2d at 657 (citing the Strict Liability Act § 2(2), D.C. Law 8-263 [Act 8-289], § 2, 37 DCR 8482 (Dec. 28, 1990)). On the other hand, the United States Congress has trumped local law by passing legislation to protect the profits of such manufacturers, a legislative judgment it is equally entitled to impose. At bottom, Congress enacted the PLCAA to prohibit the very types of lawsuits that the Strict Liability Act allows. The Court cannot interpret the predicate exception in such a manner that leads to a result that is plainly at variance with the federal legislation as a whole. Statutory interpretation requires that a court "remain more faithful to the purpose [of the statute] than the word." *Jeffrey*, 878 A.2d at 1193 (citation omitted). Accordingly, the Court holds that the Strict Liability Act is not a state statute "applicable to the sale or marketing" of firearms, and, therefore, Plaintiffs' causes of action under the Strict Liability Act do not fall within the

predicate exception. Therefore, judgment must be granted for the Defendants unless the Court finds the PLCAA to be unconstitutional.

B. Constitutionality of the PLCAA

Plaintiffs challenge the constitutionality of the PLCAA claiming that the statute violates: (1) fundamental principles of separation of powers; (2) the Fifth Amendment's Due Process and Takings Clauses; (3) principles of equal protection; and (4) Plaintiffs' fundamental right of access to the courts. At the outset, the Court notes that congressional enactments are afforded a presumption of constitutionality, and a court will invalidate such enactments only upon a plain showing that Congress has exceeded its constitutional bounds. *United States v. Morrison*, 529 U.S. 598, 607 (2000). Statutes "adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and . . . the burden is on one complaining of a [constitutional] violation to establish that the legislature has acted in an arbitrary and irrational way." *Eastern Enters. v. Apfel*, 524 U.S. 498, 524 (1998) (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)) (internal quotations omitted). The Court addresses Plaintiffs' constitutional arguments in turn, and for the reasons set forth below, finds the PLCAA constitutional.

1. **Separation of Powers**

Plaintiffs argue that § 7902(b) of the PLCAA, which requires that "qualified civil liability action[s]" be "immediately dismissed" by the courts, is an unconstitutional intrusion on judicial authority in violation of the principle of separation of powers. Plaintiffs claim that the PLCAA's "immediate dismissal" provision is an attempt by Congress to decide cases, without amending the underling substantive law, by requiring

courts to dismiss – and thus resolve in Defendants' favor – any "qualified civil liability action" pending on the date the Act is passed. Plaintiffs argue that this is a direct violation of the rule stated in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), which, according to Plaintiffs, stands for the proposition that Congress may not direct the outcome of pending cases without changing the underlying substantive law.

a. *Klein* Principle

In *Klein* an executor of the estate of a Confederate sympathizer sought to recover, under federal law, the value of property seized by the United States during the Civil War. *Klein*, 80 U.S. at 136. Such property was recoverable upon proof of loyalty to the Union, which the Supreme Court had held, in a prior case, could be established by proof of presidential pardon. *Id.* at 142-43. In *Klein*, the Confederate sympathizer had received a presidential pardon; accordingly, the Court of Claims ruled in his favor. *Id.* at 143. While the case was pending on appeal, however, Congress enacted a law providing that a pardon would instead be taken as proof that the pardoned individual had in fact aided the Confederacy, and, if evidence of such a pardon was offered by the claimant, the court must dismiss the case for lack of jurisdiction. *Id.* at 143-44.

The Court in *Klein* held that the law enacted by Congress purported to "prescribe rules of decision to the Judicial Department" without creating "new circumstances" to which the Court would be left to apply its ordinary rules, and, therefore, violated the doctrine of separation of powers. *Id.* at 146-47. The Court conceded that Congress certainly has the right to limit the Court's appellate jurisdiction, "[b]ut the language of the [statute] shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end." *Id.* at 145. According to the Court, the purpose of the law was "to

deny to pardons granted by the President the effect which this court had adjudged them to have." *Id.* The denial of jurisdiction to the Court was "founded solely on the application of a rule of decision, in causes pending, prescribed by Congress[,]" which, according to the Court, "is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power." *Id.* Ultimately, the Court concluded that the federal law was merely an attempt "to prescribe a rule for the decision of a cause in a particular way[.]" *Id.* The statute did not require the Court to apply any new substantive law created by the statute, but merely prohibited the Court "to give the effect to evidence which, in its own judgment, such evidence should have, and . . . directed [the Court] to give it an effect precisely contrary." *Id.* at 147.

Some courts have interpreted *Klein* as standing for "the principle that Congress cannot direct the outcome of a pending case without changing the law applicable to that case." *Paramount Health Sys., Inc. v. Wright*, 138 F.3d 706, 710 (7th Cir. 1998); *see also Ruiz v. United States*, 243 F.3d 941, 948 (5th Cir. 2001) (citing *Klein* and stating that "[t]he separation of powers principles inherent in Article III prohibit Congress from adjudicating particular cases legislatively."); *Hadix v. Johnson*, 144 F.3d 925, 940 (6th Cir. 1998) ("[T]he Legislature may not impose a rule of decision for pending judicial cases without changing the applicable law."); *Mount Graham Coalition v. Thomas*, 89 F.3d 554, 557-58 (9th Cir. 1996) (noting that Klein stands for the proposition that Congress is prohibited from "directing a particular decision in a case without repealing or amending the law underlying the decision."); *see also Ecology Ctr. v. Castaneda*, 426 F.3d 1144, 1149 (9th Cir. 2005) (citing a Ninth Circuit case interpreting *Klein* and noting that the doctrine of separation of powers is not violated even if the statute "affects, or is

even directed at, a specific judicial ruling so long as the legislation modifies the law.”). The precise scope and meaning of *Klein* has not been fully established by the Supreme Court, but it is undisputed that “its prohibition does not take hold when Congress ‘amend[s] applicable law.’” *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995) (quoting *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 441 (1992)).[13]

b. Congressional Amendment of Applicable Law

Plaintiffs argue that the PLCAA directs the courts to dismiss “qualified civil liability action[s]” without amending the underlying substantive law or setting out new substantive legal standards for the judiciary to apply. According to Plaintiffs, the PLCAA has two commands: (1) it forbids the filing of any “qualified civil liability action” in any court; and (2) it directs the immediate dismissal of any pending “qualified civil liability action.” Plaintiffs argue that the PLCAA only consists of definitions that are entirely internal to the statute itself, and although a court must apply the definitions to determine whether the statute controls, the definitions do not modify, affect, or amend any external, underlying law.

In *Miller v. French*, 530 U.S. 327 (2000), the issue before the Court was whether § 3626(e)(2) of the Prison Litigation Reform Act of 1995 (“PLRA”), which, under certain circumstances, dictated automatic stays of court ordered injunctions, was unconstitutional

[13] The sweeping language of *Klein* seems to cast doubt on Congress’ power to “prescribe rules of decision to the judicial department of the government in cases pending before it.” *Klein*, 80 U.S. at 146. “Such dicta, however, are troublesome inasmuch as the prescription of general rules of substantive law lies at the heart of the legislative function, and courts are obliged to apply the positive law in effect at the time of the judgment.” *United States v. Brainer*, 691 F.2d 691, 695 (4th Cir. 1982) (citing P. Bator, D. Shapiro, P. Mishkin & H. Wechsler, *Hart & Wechsler’s The Federal Courts and the Federal System*, 316 n.4 (2d ed. 1973). The better construction of *Klein* may be that the case only holds only that “Congress violates the separation of powers when it presumes to dictate ‘how the Court should decide an issue of fact (under threat of loss of jurisdiction)’ and purports ‘to bind the Court to decide a case in accordance with a rule of law independently unconstitutional on other grounds.’” *Id.* (citing Bator, Shapiro, Mishkin & Wechsler, *supra*, 316 n.7).

because it mandated a particular rule of decision in violation of the principle of separation of powers established under *Klein*. *Miller*, 530 U.S. at 333-35. The PLRA established standards for the entry and termination of prospective relief in civil actions challenging prison conditions. *Id.* at 331. If prospective relief, existing under a court ordered injunction, did not satisfy the standards of the PLRA, a defendant was entitled to immediate termination of that relief. *Id.* Section 3626(e)(2) provided that if a motion to terminate prospective relief was filed with a court, an automatic stay was imposed staying the relief for a period beginning 30 days after the filing of the motion and ending when the court ruled on the motion. *Id.* The provision was challenged, and the lower court held that it was unconstitutional because it directed "a particular rule of decision, at least during the pendency of the . . . termination motion, contrary to *United States v. Klein*[.]" *Id.* at 335.

Upon review, the Court held that § 3626(e)(2) was not unconstitutional under *Klein* because it worked to amend the applicable underlying law. *Id.* at 349. The Court took no position on the precise scope of *Klein*, but indicated that the prohibitions of *Klein* do not take hold when Congress amends the applicable underlying law. *Id.* According to the Court, § 3626(e)(2), when read in conjunction with the new standards set forth by the PLRA for the continuation of prospective relief, amounted to an amendment to the underlying applicable law. *Id.* The Court stated:

> The prisoners . . . contend that, because § 3626(e)(2) does not itself amend the legal standard, *Klein* is still applicable. As we have explained, however, § 3626(e)(2) must be read not in isolation, but in the context of § 3626 as a whole. Section 3626(e)(2) operates in conjunction with the new standards for the continuation of prospective relief; if the new standards of § 3626(b)(2) are not met, then the stay "shall operate" unless and until the court makes the findings required by § 3626(b)(3). Rather than

> prescribing a rule of decision, § 3626(e)(2) *simply imposes the consequences of the court's application of the new legal standard.*

Id. (emphasis added).

In *Robertson*, Congress, in response to pending litigation challenging various efforts of the federal government to allow harvesting and sale of timber from old-growth forests in the Pacific Northwest, passed a statute that specifically provided that management of the areas of forest at issue, in accordance with the standards set forth in the statute, was "adequate consideration for the purpose of meeting the statutory requirements that [were] the basis" of the pending litigation. *Robertson*, 503 U.S. at 431-35.[14] The effect of the statute was to provide the federal government with a set of statutory standards that, if followed, would then operate to satisfy the government's obligations under various other statutory standards that were the basis of the pending litigation. *See Id.* at 437-38. The Court, upon review, was presented with the question of whether the federal statute violated the principle of separation of powers under *Klein* "because it purported to direct the results in two pending cases" without amending the law underlying the litigation. *Id.* at 436.

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[14] The statute provided:

> The Congress hereby determines and directs that management of areas according to subsections (b)(3) and (b)(5) of this section on the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases captioned *Seattle Audubon Society et al., v. F. Dale Robertson*, Civil No. 89-160 and *Washington Contract Loggers Assoc. et al., v. F. Dale Robertson*, Civil No. 89-99 (order granting preliminary injunction) and the case *Portland Audubon Society et al., v. Manuel Lujan, Jr.*, Civil No. 87-1160-FR.

Robertson, 503 U.S. at 434-35.

The Court held, without reaching the question of whether the lower court's interpretation of *Klein* was correct,[15] that the newly enacted statute was not a violation of separation of powers because it did amend applicable law and did not direct any particular findings of fact or applications of law to fact. *Id.* at 438-39. The Court reasoned that, prior to the enactment of the new provision, the claims in the pending litigation would fail only if the challenged government action violated none of five old provisions, whereas, after the enactment of the new provision, those same claims would fail only if the government action failed to violate neither of *two* new provisions. *Id*. at 438 (emphasis added). According to the Court, the newly enacted statutory provisions effected a modification of the old provisions. *Id.* Furthermore, the Court found nothing in the new provision that purported to direct any particular findings of fact or applications of law to fact. *Id.* For example, the new provision "expressly reserved judgment upon 'the legal and factual adequacy' of the administrative documents authorizing the sales[]" and also "expressly provided for *judicial* determination of the lawfulness of those sales." *Id.* at 438-39 (emphasis in original).

Like the statutes at issue in *Miller* and *Robertson*, the PLCAA works to provide a new legal standard for courts to apply. The statute defines a new class of civil actions – "qualified civil liability actions" – and bars such actions from being brought in any state or federal court and also requires the immediate dismissal of any such actions that are currently pending in any state or federal court. The PLCAA merely requires courts to apply a new legal standard; nothing within the statute controls a court's determination as to whether particular cases satisfy that new legal standard or its exceptions. *See City of*

[15] The Ninth Circuit had held that the statute was unconstitutional under *Klein*, which it interpreted as prohibiting Congress from directing "a particular decision in a case, without repealing or amending the law underlying the litigation[.]" *Seattle Audubon Soc. v. Robertson*, 914 F.2d 1311, 1315 (9th Cir. 1990).

New York, 401 F. Supp. 2d at 293 (addressing the same issue presented in this case and finding that the PLCAA does not run afoul of the *Klein* principle). Like the statute at issue in *Robertson*, the PLCAA "simply imposes the consequences of the court's application of the new legal standard." *See Robertson*, 503 U.S. at 349.

2. Due Process and Takings Challenges

Plaintiffs argue that the PLCAA, by requiring immediate dismissal of this case, deprives Plaintiffs of their vested property right in their causes of action without providing due process of law or just compensation, in violation of the Fifth Amendment. According to Plaintiffs, once they filed their complaints under the Strict Liability Act, their causes of action became vested property rights and entitled to protection under the Due Process and Takings Clauses. Plaintiffs' due process and takings arguments hinge primarily on whether their causes of action may be considered a vested property right.

a. Vested Property Rights

The Court's first task in considering Plaintiffs' due process and takings challenges is to determine whether the PLCAA has deprived Plaintiffs of a property interest protected by the U.S. Constitution. *See* U.S. Const. Amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."); *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999) ("The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest[.]"); *Lynce v. Mathis*, 519 U.S. 433, 439-40 n.12 ("The Fifth Amendment's Takings Clause prevents the Legislature . . . from depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.'"). In this case, the Court must determine whether

Plaintiffs' causes of action under the Strict Liability Act are vested property rights protected by the Fifth Amendment.

As an initial matter, the parties differ as to the source of law the Court must consult to determine whether a cause of action constitutes a vested property interest protected by the Fifth Amendment. Plaintiffs argue that the Court must consult District law to determine whether Plaintiffs' claims under the Strict Liability Act are vested property interests. In contrast, Defendants argue that the Court must consult federal constitutional law to make such a determination.

Property interests protected by the Constitution "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Town of Castle Rock v. Gonzales*, 545 U.S. _, 125 S. Ct. 2796, 2803 (2005) (quoting *Paul v. Davis*, 424 U.S. 693, 709 (1976)) (internal quotations omitted). "Although the underlying substantive interest is created by an independent source such as state law, *federal constitutional law* determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause." *Id.* at 2803-04 (quoting *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9 (1978)) (emphasis in original, internal quotations omitted). Accordingly, although District law creates a cause of action under the Strict Liability Act, federal constitutional law determines whether that cause of action is a property interest protected by the Constitution.[16]

Certain attributes of property interests created by statute and protected by the Due Process Clause emerge from the Supreme Court's entitlement analysis in the area of procedural due process. *See Bd. of Regents v. Roth*, 408 U.S. 564 (1972); *Goldberg v.*

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[16] Accordingly, the decision in *Barrick v. District of Columbia*, 173 A.2d 372 (D.C. 1961), *aff'd sub nom. Swenson v. Barrick*, 302 F.2d 927 (D.C. Cir. 1962), is not controlling in this case.

Kelly, 397 U.S. 254 (1970). In *Roth*, the Supreme Court set the modern standard for determining whether benefits conferred by the State are property interests protected under due process: "To have a property interest in a benefit, a person clearly must have more than an abstract need . . . desire . . . [or] unilateral expectation of it. . . . [h]e must, instead, have a legitimate claim of entitlement to it." *Id.* at 577. It would seem that claimants cannot be said to have a legitimate claim of entitlement to their cause of action. "[A] person has no property, no vested interest, in any rule of the common law." *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59, 88 n.32 (1978) (citations and internal quotations omitted); *see also New York Central R.R. Co. v. White*, 243 U.S. 188, 198 (1917) ("No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit."). "The Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object, despite the fact that otherwise settled expectations may be upset thereby." *Id.* (citation and internal quotations omitted).

The Supreme Court has held that "a cause of action is a *species* of property protected by the . . . Due Process Clause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (emphasis added). In *Logan*, a probationary employee was discharged by his employer, purportedly because his short left leg made it impossible for him to perform his job. *Id.* at 426. Five days later, the employee filed a charge with the Illinois Fair Employment Practices Commission under the Illinois Fair Employment Practices Act ("FEPA") alleging that his employment had been unlawfully terminated because of his physical handicap. *Id.* The employee's filing triggered the Commission's statutory obligation to convene a factfinding conference to obtain evidence within 120 days. *Id.*

Under the FEPA, if the Commission found "substantial evidence" of illegal conduct, it was to attempt to eliminate such conduct by means of conference and conciliation, as well as other procedures. *Id.* at 424-25. If "substantial evidence" of discrimination was not found, the Commission would dismiss the charge. *Id.* at 425. Through inadvertence, the Commission scheduled the conference for a date five days after the expiration of the statutory period. *Id.* As a result, the employee's claim was terminated for failure to comply with the statutory timeline. *Id.* at 427. Before the Supreme Court, the employee argued that his procedural due process rights would be violated were the Commission's error allowed to extinguish his claim. *Id.* at 427-28.

Before determining what process was due, the Court had to determine whether the employee was deprived of an interest protected by the Constitution. *Id.* at 428. The Court emphasized that the "[t]he hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" *Id.* at 430 (citing *Memphis Light*, 436 U.S. at 11-12). The Court concluded that the employee had "more than an abstract desire or interest in redressing his grievance: his right to redress is guaranteed by the State, with the adequacy of his claim assessed under what is, in essence, a 'for cause' standard, based upon the substantiality of the evidence." *Id.* at 431. Therefore, the Court concluded that the employee's right to use the FEPA's adjudicatory procedures was a protected property interest under the Due Process Clause. *Id.* at 432-33.

The Court's decision in *Logan*, however, was premised on the right, guaranteed by the State, to use the FEPA's adjudicatory procedures to redress potentially discriminatory practices, which the Court found to possess the hallmark characteristic of

property: "an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" *Id.* at 430. A typical tort cause of action, whether based in statute or in the common law, does not provide a claimant with such an entitlement. "It is inchoate and affords no definite or enforceable property right until reduced to final judgment." *In re Consolidated United States Atmospheric Testing Litigation v. Livermore Labs*, 820 F.2d 982, 989 (9th Cir. 1987), *cert. denied, Konizeski v. Livermore Labs*, 485 U.S. 905 (1988). "Instead, it represents a right to assert a claim for compensation or some other form of judicial relief. . . . [and its] value is contingent on successful prosecution to judgment." *Id.* For this reason, the majority of federal courts have concluded that a cause of action is not a vested property right protected by the Fifth Amendment until it has been reduced to final judgment. *See Fields v. Legacy Health Sys.*, 413 F.3d 943, 956 (9th Cir. 2005) (holding that although causes of action are a species of property protected by the Due Process Clause, "a party's property right in any cause of action does not vest until final *unreviewable* judgment is obtained.") (quoting *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1086 (9th Cir. 2001)) (emphasis in original and internal quotations omitted); *Jones Truck Lines v. Whittier Wood Prods. Co.*, 57 F.3d 642, 651 (8th Cir. 1995) ("Causes of action are also not fully vested interests until reduced to final judgment."); *Salmon v. Schwarz*, 948 F.2d 1131, 1143 (10th Cir. 1991) (holding that a legal tort claim "affords no definite or enforceable property right until reduced to final judgment.") (citations and internal quotations omitted); *In re TMI*, 89 F.3d 1106, 1113 (3d Cir. 1996) ("[L]egislation affecting a pending tort claim is not subject to 'heightened scrutiny' due process review because a pending tort claim does not constitute a vested right."); *Cooperativa de Ahorro y Credito Aguada v. Kidder, Peabody & Co.*, 993 F.2d 269, 273 (1st Cir. 1993) ("It is

well established that a party's property right in a cause of action does not vest 'until a final, unreviewable judgment has been obtained.'") (citation omitted); *Sowell v. American Cyanamid Co.*, 888 F.2d 802, 805 (11th Cir. 1989) ("[A] legal claim affords no definite or enforceable property right until reduced to final judgment."); *Arbour v. Jenkins*, 903 F.2d 416, 420 (6th Cir. 1990) ("The fact that the statute is retroactive does not make it unconstitutional [because] a legal claim affords no definite or enforceable property right until reduced to final judgment.") (citation and internal quotations omitted); *Adams v. Bowsher*, 946 F. Supp. 37, 41 (D.D.C. 1996) (holding that "a cause of action, while a 'species of property' protected by due process, nonetheless is 'inchoate, and affords no definite or enforceable property right until reduced to final judgment.'") (citation omitted); *Hyundai Merchant Marine Co. v. United States*, 888 F. Supp. 543, 551 (S.D.N.Y. 1995) ("A cause of action . . . 'is inchoate and affords no definite or enforceable property right until reduced to final judgment.'") (citation omitted).

In *Hammond v. United States*, 786 F.2d 8 (1st Cir. 1986), the plaintiff, individually and as executrix of the estate of her deceased husband, brought an action against a private contractor for injuries resulting from the company's alleged failure to adequately design tests to protect the deceased from radiation exposure. *Hammond*, 786 F.2d at 9-10. Two of the plaintiff's causes of action were based in common-law negligence, and the other cause of action was brought under the Massachusetts wrongful death statute. *Id.* at 10. While the plaintiff's action was pending, Congress enacted 42 U.S.C. § 1222, which requires the United States to be substituted as defendant in all suits against private contractors to the government for radiation injuries arising from any of the United States atomic weapons testing programs, and also makes the Federal Tort Claims

Act the sole remedy for those injuries. *Id.* at 9-10. The plaintiff claimed that, by retroactively abolishing her causes of action against the private contractor, § 2212 deprived her of a property right that vested upon her filing of suit on an accrued common-law and state statutory cause of action, in violation of due process. *Id.* at 11.

The court began by noting that "[n]o person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit." *Id.* at 12 (quoting *New York Central*, 243 U.S. at 198); *see also Duke Power*, 438 U.S. at 88 n.32 ("[A] person has no property, no vested interest, in any rule of the common law."). That is true "after suit has been filed and continues to be true until a final, unreviewable judgment is obtained." *Id.* As such, the court held that "rights in tort do not vest until there is a final, unreviewable judgment." *Id.* Accordingly, the court held that because the plaintiff had no vested property right in her state statutory cause of action, § 2212 did not violate due process by retroactively abolishing that cause of action. *Id.*

In *Austin v. City of Bisbee*, 855 F.2d 1429 (9th Cir. 1988), the plaintiffs, police officers for the City of Bisbee, brought an action against the city under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*., for unpaid overtime compensation. *Austin*, 855 F.2d at 1431. During the pendency of the plaintiffs' action, however, Congress passed amendments to the FLSA that, retroactively, abolished the plaintiffs' causes of action against the city by shielding the city from liability for unpaid overtime during the time for which the plaintiffs claimed compensation. *Id.* The plaintiffs claimed that the amendments to the FLSA, which abolished the plaintiffs' causes of action, were unconstitutional under the Due Process Clause. *Id.* at 1432.

The court noted that its decision hinged on Congress' authority to "step into previously-filed litigation and terminate a party's substantive rights." *Id.* at 1434 (citation and internal quotations omitted). The court agreed that "a cause of action is a 'species of property protected by the Fourteenth Amendment's Due Process Clause.'" *Id.* at 1435 (citing *In re Consolidated*, 820 F.2d at 988). The court held, however, that a cause of action "is inchoate and affords no definite or enforceable property right until reduced to final judgment." *Id.* at 1436 (citation omitted). Accordingly, because the plaintiffs' causes of action had not been reduced to final judgment prior to the amendments to the FLSA, the court held that the plaintiffs had no vested property right in their causes of action that would implicate due process. *Id.*

The Court agrees with the overwhelming weight of authority in the federal courts, and holds that a cause of action is not a vested property right until reduced to a final, unreviewable judgment. Accordingly, a cause of action brought under the Strict Liability Act is not a vested property right protected by the Fifth Amendment.

b. Procedural Due Process

Plaintiffs argue that by directing the dismissal of pending lawsuits without consideration of the underlying merits, the PLCAA violates procedural due process. Procedural due process requirements "apply only to the deprivation of interests encompassed by the [Due Process Clause's] protection of liberty and property." *Roth*, 408 U.S. at 569; *accord*, *Leonard v. District of Columbia*, 794 A.2d 618, 624 (D.C. 2002). The Court, *infra*, has already determined that Plaintiffs' causes of actions under the Strict Liability Act are not vested property interests protected by the Due Process Clause. Accordingly, procedural due process protections do not apply in this case. Even

if the Court had found Plaintiffs' causes of action to be property rights protected by the Fifth Amendment, the PLCAA provides all the process that is due. The PLCAA requires only that cases that fit within the Act's definition of a "qualified civil liability action" be dismissed. Before such dismissal, Plaintiffs have been given ample opportunity to demonstrate that this case falls within an exception to the definition of a "qualified civil liability action" or, in the alternative, that the Act is unconstitutional.

c. Retroactivity

The law is well-settled that "legislative Acts adjusting the burdens and benefits of economic life come to [a court] with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976); *see, e.g.*, *Ferguson v. Skrupa*, 372 U.S. 726 (1963); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487-88 (1955). "[T]he strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively." *Pension Ben. Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). If the retroactive legislation is supported by a legitimate legislative purpose furthered by rational means, then "judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches[.]" *Id.* (citing *Usery*, 428 U.S. at 15-16). Although retroactive legislation does have to meet a burden not faced by legislation that has only future effects, "that burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose." *Id.* at 730.

As discussed *infra*, under the Court's equal protection analysis, the PLCAA is rationally related to a legitimate legislative purpose. In regards to the retroactive aspect of the PLCAA, the Court cannot say that requiring pending qualified civil liability actions to be immediately dismissed is not rationally related to preventing undue burdens on interstate commerce. The negative effect that Congress has adjudged qualified civil liability actions to have on interstate commerce is no less burdensome for actions that are already pending in state and federal courts. Congress has made the determination that gun manufacturers should not be subject to liability in such actions, and the negative effect of such lawsuits constitutes an unreasonable burden on interstate commerce. *See* 15 U.S.C. § 7901(a)(5)-(6). Requiring the dismissal of all pending qualified civil liability actions is just as important to Congress' purpose of protecting the firearms industry as is the prohibition on the commencement of qualified civil liability actions in the future.

3. Equal Protection

The PLCAA does not affect a suspect class or a fundamental right; therefore, the Court must review the statute under the deferential rational basis standard of review. *See FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313-14 (1993). Under that standard of review, the legislation must be "rationally related to a legitimate governmental purpose." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). The legislation must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Beach Communications*, 508 U.S. at 313. "Where there are 'plausible reasons' for Congress' action, 'our inquiry is at an end.'" *Id.* at 313-14 (quoting *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980)). No matter how unwise the legislation, "equal protection is not a license for

courts to judge the wisdom, fairness, or logic of legislative choices." *Id.* at 313. The Constitution presumes that such unwise legislation "will eventually be rectified by the democratic process." *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

The Court agrees with the courts in *Ileto* and *City of New York* in holding that the PLCAA is rationally related to a legitimate governmental purpose. *See Ileto*, 2006 U.S. Dist. LEXIS at *74-77 ("Preventing undue burdens on interstate commerce is a legitimate purpose, as is protecting the firearms industry from financial ruin."); *City of New York*, 401 F. Supp. 2d at 294-95 ("There is a rational basis for the distinction the Act draws. Congress made it clear that it thought that nationwide commerce in firearms was particularly imperiled by the threat of qualified civil liability actions."). First, the PLCAA serves a legitimate governmental purpose. The legislation attempts to prevent an undue burden on interstate commerce by prohibiting certain suits that Congress found threatened the economic stability of the firearms industry. Specifically, Congress concluded that lawsuits seeking to hold the firearms industry liable for the criminal or unlawful acts of others threatened the economic viability of the industry. *See* 15 U.S.C. § 7901(b)(1). Secondly, the requirement that such lawsuits be prohibited or immediately dismissed is certainly rationally related to the PLCAA's legitimate governmental purpose of preventing an undue burden on the firearms industry.

4. Right of Access to the Courts

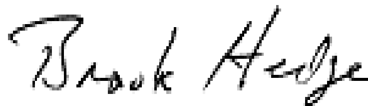
Plaintiffs argue that the PLCAA effectively denies Plaintiffs the ability to pursue their legal claims under the Strict Liability Act thereby restricting Plaintiffs' fundamental right of access to the courts for the redress of their grievances. This is not a case in which the government has burdened or blocked Plaintiffs' right of access to the courts to seek

enforcement of the law; rather, this is a case in which Congress has altered Plaintiffs' prior rights and remedies. *See Hammond*, 786 F.2d at 13. The PLCAA enacts a new legal standard that abrogates Plaintiffs' causes of action under the Strict Liability Act. The Court agrees with the court's short treatment of this argument in *City of New York*, in which Judge Weinstein stated: "There appears to be no merit to plaintiff's claim that the Act deprives it of the right to petition by cutting off its access to the courts." *City of New York*, 401 F. Supp. 2d at 293.

IV. Conclusion

The Court finds that Plaintiffs' causes of action under the Strict Liability Act fall squarely within the PLCAA's definition of a "qualified civil liability action" and do not fall within the PLCAA's predicate exception. Furthermore, the Court finds the PLCAA to be a constitutional exercise of congressional authority. Accordingly, it is by the Court, this 22nd day of May 2006, hereby

ORDERED that Defendants' Motion for Judgment on the Pleadings is **GRANTED**.



BROOK HEDGE
JUDGE

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