

# WOMEN TRIAL LAWYERS CAUCUS

WINTER 2011

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## UPCOMING EVENTS

### Women Trial Lawyers Caucus Convention Welcome Event

February 4, 2011; 4:00 pm–9:00 pm  
Julie Kane's House  
Miami, FL

### AAJ's 2011 Winter Convention

February 5–9, 2011  
Miami Beach, FL

### Women Trial Lawyers Caucus Business Meeting

February 5, 2011; 9:30 am–11:00 am  
Loews Hotel - Crown Conch Room  
Miami Beach, FL

### Women Trial Lawyers Caucus Brunch

February 6, 2011; 10:00 am–12:00 pm  
Emeril's Miami Beach Restaurant  
Miami Beach, Florida



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## Message from the Chair: Mentoring Across the Span of Our Careers



By Marianne C. LeBlanc

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Madeline Albright once famously said, “There is a special place in hell reserved for women who don’t help other women.” Putting aside any religious beliefs, I agree with her sentiment that women have an obligation to help one another, to serve as mentors – trusted counselors and guides – for each other. As Chair of the AAJ Women Trial Lawyers Caucus (WTLC) this year, I have reflected on the career span of women trial lawyers, and the important role that we can, and should, play in each others’ careers. Beginning with law students, and transitioning through from new lawyers to senior lawyers, the WTLC is a permanent home within AAJ for women at all levels of practice. Bringing women together from diverse levels of experience is a valuable opportunity for shared growth and success on which we need to capitalize.

A survey recently performed by the National Association of Women Lawyers (NALP) revealed that although half of first year associates nationally are women, only 16% of equity partners are women. This statistic curiously mirrors the current percentage of AAJ members who are women, which hovers at approximately 18%. Much has been written about the “male default” in law firms when it comes to promotions and opportunities. Although we live with this reality, it must be our choice to reject it and to look for opportunities in our own leadership positions to insist on promotion on the basis of talent and ability.

While reaching forward in our own careers, we must also reach a hand back to women lawyers who are new to the profession. Many of them are searching for women role models, who may be non-existent in their own firms – or community. Some women are eager to find mentors outside their own community due to perceived competition and local politics. The Caucus boasts a membership which includes many of the most talented and successful women trial lawyers in the country. With these resources, I am very pleased to announce that the Women’s Caucus has renewed its commitment to mentoring new

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lawyers. We plan to kick off a new mentoring program at the Winter Convention in Miami, where we will pair mentees with senior women lawyers for regular mentorship.

As we move from our years as a new lawyer to the mid-point of our careers, many of us face the additional challenge of managing a practice, along with our cases. As was observed at our recent Leadership Summit in Vancouver this past July, many women in our ranks have successfully opened their own practices – and look to their colleagues in the Caucus for shared ideas and best practices. Given the unique challenges facing a solo or small firm practice which focuses primarily on plaintiff tort cases, the opportunity for this kind of networking is extremely valuable. The recent NALP survey also revealed that the partners who were considered rainmakers were the most compensated and further, that women were typically not considered to be the rainmakers in their firms. We need to strengthen our own referral networks and to include our WTLC colleagues within them.

The Caucus also provides a home for our members who are now senior practitioners and who have achieved long and prosperous careers. They have “seen it all” and have so much to share with the Caucus – and with each other.

Like our own careers, the Women Trial Lawyers Caucus is growing to better address the challenges that face us. We have reached out to our membership with a recent survey which revealed that our members are looking for opportunities for mentorship, for networking, and for leadership. We are working to increase these opportunities but we do need your involvement to reach our goals. We are looking for women from each state to serve as a state liaison to the Caucus; we are looking for women who are willing to serve as mentors, and for those who seek to have a mentor; and we are looking for women to serve on our several standing committees. Please let me know if you are willing to join in these efforts.

Let's help each other. ■

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# Diversity in Cross-Border Traffic Accidents in the European Union

By Antoinette F. Collignon-Smit Sibinga

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## Introduction

The slogan of the European Union is: Unity in diversity. The E.U. has 27 Member States with unique languages, cultures, histories, and legal systems. Every Member State (hereinafter “MS”) has different laws on damages, limitation periods and standards for medical evidence. For lawyers working in the

field of cross-border accidents it is important to understand these differences.

The answer to the question of what happens if an Italian citizen on vacation in the Netherlands suffers a traumatic injury while driving through Belgium is therefore not so clear-cut.

According to Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (“Rome II”), a victim is entitled to compensation according to the law of the country where the accident occurred unless both parties have “their habitual residence” in another country or another country is “more closely connected” with the tort.

This means that an Italian injured by a Belgian driver on the streets of Belgium will apply Belgian law to her claim. This scenario has become more common with the growing mobility of E.U. citizens and an increase in the number of cross-border accidents.

This article highlights a few substantive and technical differences in the law of torts as applied to cross-border accidents.

## Specialization of lawyers in the field of personal injury law

The development of an experienced and qualified personal injury bar makes a substantial difference in the enforcement of legal rights of traffic accident victims. In most European jurisdictions, the degree of specialization in personal injury law is fairly low. This is not the case in England, Wales, Ireland, Scotland, the Netherlands, France, and Switzerland.

The most formidable European organisation for personal injury lawyers is PEOPIIL with members in all MS. PEOPIIL is a non-partisan organisation, focusing on the dissemination of knowledge of personal injury law, networking, and access to

justice for victims. The PEOPIIL Research Group has published books explaining the central components of personal injury litigation in different MS, and PEOPIIL organizes periodic conferences throughout Europe for its members.\*

## Limitation periods

Limitation periods can prevent claimants from obtaining remedies if they act too late after suffering injuries. There are major differences among MS with respect to personal injury limitation periods. Not only do limitation periods vary in amount of time, but there are variations as to the beginning of a limitation period, procedural requirements for stopping the running of a limitation period, and application to minors, disabled people, and victims.

In Spain, the limitation period for road traffic accidents is one year. In Italy, there is a 2-year limitation period for road traffic accidents. Germany has a 3-year limitation period for actions in tort, but claims for pain and suffering have a limitation period of 30 years. Belgium has a limitation period of 3 years as well as a statute of repose with a limitation period of 30 years regardless of when the victim discovered his or her injury.

In all European jurisdictions the limitation period begins to run from the date of objective material occurrence of the damage, which is usually the date of the accident.

In Belgium, The Netherlands, Italy, and Spain, it is sufficient to send the defendant a registered letter with a written warning in which a victim unequivocally claims damages sustained as a result of the accident. It is not necessary to issue proceedings. In England, Wales, Ireland, and Scotland, it is necessary to issue proceedings.

In the E.U., courts apply the limitation period of the country where the accident occurred even if the lawsuit is filed in a different MS. The limitation period is generally considered to be a matter of substantive law except in the United Kingdom where there is uncertainty as to whether a court will apply the UK limitation period, as a matter of procedural law, instead of the limitation period of the country where the accident occurred.

\*more information can be found on [www.peopil.com](http://www.peopil.com) Continued on page 4

## DIVERSITY IN CROSS-BORDER TRAFFIC ACCIDENTS IN THE EUROPEAN UNION *continued*

Applying these principles to our hypothetical example, an Italian who was injured by another driver in Belgium and subsequently files a lawsuit in Italy will have her case managed by an Italian court that applies the Belgian limitation period. The need for lawyers in the E.U. to apply the limitation period of a different MS, i.e., where the accident occurred, demonstrates the necessity for a high level of cooperation among lawyers in different jurisdictions.

Because victims are often unable to pursue claims due to the expiration of limitation periods of which they were not aware, PEOPIL proposed a new E.U.-level regulation that would require an E.U.-wide limitation period for cross-border personal injury cases of four years from the date of the accident or the date of knowledge of the injured person. For minors, the limitation period would be four years from the date the minor becomes 18 years old. The European Parliament passed a resolution embracing this proposal in 2006. The European Commission recognized in the Consultation Paper on the Compensation of Victims of Cross-Border Road Traffic Accidents of 26 March, 2009 that varying MS limitation periods should be addressed with an E.U.-level regulation.

### **Protection of minors**

In most MS, minors and disabled people are under-protected. In Italy and Austria, the limitation period starts to run from the appointment of a legal representative. In The Netherlands, the limitation period starts to run from the date a minor turns 18 years old, but there is no such protection for disabled people. In France, the limitation period starts to run from the age of 18. In France and Italy, the limitation period is suspended during a period of disability unless the disabled injured person is under the charge of someone capable of taking action.

### **Medical experts**

Medical experts play an important role in case assessment and evaluation, but there are wide differences with respect to requirements to act as medical experts, the form and content of medical reports, medical scales for the evaluation of injuries, and the use of experts and expert reports in court. There is no unified standard for expert evidence.

In most MS, there are no special courses or certificates for medical experts. The form and content of medical reports vary. In The Netherlands, Spain, and Belgium, experts report on injuries as well as the percentage of disability. In The

Netherlands, experts are appointed by both parties or by the judge. Luxembourg courts frequently rely on foreign experts from France, Belgium, or Germany. Some courts strongly rely on expert reports while others use them, only partially, to assist in reaching a decision.

### **Awards for pain and suffering**

In different MS, the same kind of injuries with the same kind of impacts on victims' lives may lead to completely different compensatory awards. The highest awards for a 20-year old female legal secretary suffering from burns, for example, may be found in Ireland, Italy, and Germany while the lowest awards may be found in the Netherlands, Sweden, and Portugal. Some MS allow unlimited non-pecuniary losses while other MS apply caps, fixed tariffs, and legislative limits. The latter include Spain and Italy with respect to road traffic accidents. Denmark also has fixed maximum statutory awards.

### **Conclusion**

Compensation of damages for traffic accident injuries varies widely throughout the E.U. on the basis of different limitation periods, substantive laws, caps, admissibility standards for expert opinions, and networks among plaintiff's lawyers. Lawyers working in this field should be aware of the procedural and substantive differences and seek assistance from colleagues in countries where the accident occurred. ■

Antoinette Collignon-Smit Sibinga is a personal injury lawyer in the Netherlands who specializes in cross-border litigation. She is partner at Legaltree and President of PEOPIL, the Pan-European Organisation for Personal Injury Lawyers, vice-president of IETL (Institute of European Traffic Law) and secretary of the International Practice Section of AAJ.

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#### **Wonders of the East**

**March 14–29, 2011**

Bali, Thailand, Cambodia

#### **Evolution of Trial Practice: A Frank Dialogue Seminar\***

**March 25–26, 2011**

Atlanta, GA  
Hotel Palomar Atlanta-Midtown

#### **Litigating Medical Negligence and Injured Infant Cases Seminar\***

**April 8–9, 2011**

Miami, FL / EPIC Hotel

#### **Litigating Truck Collision Cases Seminar\***

**April 2011**

Frisco, TX / Westin Stonebriar Resort  
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#### **Jazz Fest Seminar: Litigating Auto Collision Cases Seminar**

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*Endowed by Herman, Herman, Katz & Cotlar, LLP. Cosponsored by the Louisiana Association for Justice*

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**June 10–11, 2011**

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Los Angeles, CA / Hotel Palomar  
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#### **Advanced Depositions College\***

**February 18–21, 2011**

New Orleans, LA / Westin Canal Place  
*Cosponsored by the Louisiana Association for Justice*

#### **ATLA's Ultimate Trial Advocacy Course: Art of Persuasion\***

**March 12–16, 2011**

Cambridge, MA / At Harvard Law School and the Sheraton Commander Hotel

#### **Trial Advocacy College: Depositions**

**June 10–12, 2011**

Denver, CO / Hotel Monaco Denver

### Teleseminars

Visit [www.justice.org/education](http://www.justice.org/education) for our current calendar.

**To view the complete AAJ Education schedule and the agenda, faculty, and travel information for each program, visit [www.justice.org/education](http://www.justice.org/education).**

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# Mentoring in the New Millennium

By Jennifer Ingram Wilkinson

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As I look back over my 12 years of law practice and consider the most influential things that have positively affected my career, the number one advantage readily identifiable is that my legal career is the product of having been surrounded by natural mentors. For the entirety of my career I have

been mentored by my law partner/father, Carroll H. Ingram; and for the first nine years of my practice, by former Lt. Governor Evelyn Gandy (the first female Lt. Governor for the State of Mississippi, 1976–1980), who practiced with us from the time she left public office until the day she died. My father and Gov. Gandy were and continue to be effective mentors because they not only invested themselves in me personally, but they also heavily invested themselves in my career – in my performance as an attorney – in my performance as an advocate for my clients – in my performance as an officer of the court. They cared about how I filled my role in this great and noble profession of the law. Both of these relationships were naturally occurring and naturally nurturing. In other words, I did not have to seek them out as mentors; they were just there (naturally occurring); and instead of having a typical Partner/New Associate relationship with my Mentors, my Mentors were my father and a very close personal friend (naturally nurturing). This is not the norm today.

Unfortunately, many (if not most) of our new attorneys find themselves, if employed at all, in the competitive world of big law firms where “nurturing” does not seem to be part of the examples set before them, or they are forced to hang out their own shingle and strike out into the solo practice without that helping hand just down the hall. For these attorneys, the natural and nurturing mentoring experience is not readily available. We must intentionally reach out to mentor our newer lawyers, whether we do this through participation in a Bar-sponsored Mentoring Program, or whether we simply take interest in the new attorneys who are practicing with or near us. Mentoring attorneys in the new Millennium brings with it opportunities as

unique as the “Generation Next” or “Millennials” themselves. According to the February 23, 2010 report by the Pew Research Center, “Millennials: A Portrait of Generation Next:”

Generations, like people, have personalities, and Millennials – the American teens and twenty-somethings currently making the passage into adulthood – have begun to forge theirs: confident, self-expressive, liberal, upbeat and receptive to new ideas and ways of living.

They are more ethnically and racially diverse than older adults. They’re less religious, less likely to have served in the military, and are on track to become the most educated generation in American history. <http://pewresearch.org/millennials/>.

While our society changes and progresses, the framework for our definition of “professionalism” may appear to be threatened. However, these characteristics of the Millennials can be positive traits for zealous advocates of the law and promoters of justice. Educated, confident, open-minded, diverse and energetic attorneys, with the proper guidance and encouragement from those of us who have experience in the profession, can be a mighty force of justice for their clients. With the help of experienced mentors, millennial lawyers can become consummate professionals.

Various people in every area of our lives influence us everyday. That influence can be positive or negative, and we can learn from that influence about how we want to conduct ourselves in the future, or how we do not want to conduct ourselves. A “mentor” is much more than a simple “influence.” A “mentor” is a teacher – a trusted advisor - someone who guides us with the intention of being helpful to us. A good professional mentor will take an interest in and make an investment in the new attorney for the new attorney’s sake, but also for the sake of the legal profession as a whole. While the skills of competence, ability and intellect that are honed during the competitive and arduous law school experience are of the utmost importance as characteristics of a good attorney, in order to cultivate great professionals we must take care to

*Continued on page 7*

## MENTORING IN THE NEW MILLENNIUM *continued*

promote ethics and civility. Mentoring is one very positive way in which all of us can contribute to the overall good of our profession and our system of justice. In the process we will be shaping positively our colleagues, co-counsel, and even our adversaries in the practice, and can make a lasting and

continuous impact upon our clients and the legal system as a whole. The future is bright for our profession if we will seize the opportunities before us to shape and mold our newest brothers and sisters in the law – the Millennials. Carpe Diem! ■

## WHAT'S AHEAD FOR THE WOMEN TRIAL LAWYERS CAUCUS

The coming months promise to be busy and productive for the Women Trial Lawyers Caucus and we hope you will be joining us!

WINTER CONVENTION  
February 5–9, 2011  
Miami Beach, FL  
Register now at  
[www.justicewinterconvention.org](http://www.justicewinterconvention.org)

### Friday Night Party

The Women's Caucus will be kicking off Winter Convention at a party on the water Friday night. Julie Braman Kane, former Chair of the Caucus and partner at the Law Firm of Colson Hicks Eidson, will warmly and generously open her home for the members of the Women's Caucus and their guests for music, cocktails, good food, and even better company. The evening guarantees to start convention off in high spirits.

### Saturday Afternoon Business Meeting

The women of the Women Trial Lawyers Caucus will be hanging-up our cocktail dresses to get down to business for our business meeting Saturday morning, 9:30 am–11:00 am, in the Crown Conch Room of the Loews. Each member will have an opportunity to introduce herself to group and share noteworthy news since our last meeting. Among other items, the Caucus will have an update from each of the Committee chairs and be seeking members to assist the Committees, including the Membership Committee, Fundraising Committee, Scholarship Committee and Publications Committee.

### Sunday Brunch

Always one of the highlights of convention—this Winter Convention's brunch promises not to disappoint! Full tables and overflowing mimosas are a staple of the brunch, which will feature a prominent keynote speaker.

### Managing the Media Training on Monday

AAJ Communications will host the inaugural Managing the Media training at the Winter Convention in Miami. This training is designed to help you be as effective as possible when advocating for your clients, your cases and, most importantly, the civil justice system by grounding you in media knowledge and techniques that will hone your personal communication skills.

### Women's Lobby Days

This spring we will have an important opportunity to make our voices, and those of our clients, heard on Capitol Hill. Women's Lobby Days occurs every other year and is an important opportunity for us to make a real impact in promoting affirmative legislation to a pro-civil-justice Congress. On the first day of Lobby Days, AAJ will provide comprehensive briefing on legislative issues and give us a schedule with a small team of other Women's Lobby Days participants. On day two, we'll be off to Capitol Hill to lobby our U.S. Senators and Representatives.

ELECTIONS AT THE ANNUAL CONVENTION  
July 9–13, 2011  
New York City  
Register now at  
[www.justiceannualconvention.org](http://www.justiceannualconvention.org)

# Massachusetts' Women's Caucus: Through the Terrible Twos and Set to Grow Tall

By Lauren Barnes and Kim Dougherty, Cochairs of the Massachusetts Academy of Trial Attorneys Women's Caucus

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Kim Dougherty: Bubalo, Huestand & Rotman, PLC, North Easton, MA; dougherty@bhtriallaw.com



Three years ago, we worked in the same office. For one of us, the AAJ Women's Caucus Lobby Days event earlier that year – one of the most powerful and invigorating professional experiences she'd had – cemented that the AAJ's Women's Caucus was home. For the other, although a member of

AAJ, she'd found kin in the Women's Bar Association of Massachusetts and the incredible outreach and pro bono work that organization undertook. Both of us loved the organizations we were neck deep in. But we both knew we were missing something: a network and family of women litigators in our own backyard.

With a couple of colleagues, we restarted the long-dormant Massachusetts Academy of Trial Attorneys (MATA) Women's Caucus. Since then, we've held two successful chocolate and wine tasting benefits for a local women's shelter, hosted numerous educational and social events, and created the beginnings of solid connections between talented women litigators in Massachusetts.

It hasn't always been easy. No matter how much we love this group and the incredible women who make it up, work, life, and bureaucratic nightmares get in the way. But this year, we've hit our stride.

In May, prior to MATA's Annual Dinner, the Women's Caucus hosted a champagne celebration for MATA's incoming President, Kimberly Winter. The event served three purposes: 1) honoring our new female president, 2) giving newer and younger attorneys the chance to meet a few more friendly faces before plunging into the crowd of hundreds of attorneys gathered for the dinner, and 3) feeding us champagne! We intend to make this a regular part of the pre-MATA Annual Dinner program.

Just a few weeks later, on June 9, 2010, the Women's Caucus cohosted the second annual "Trials Facing Women Litigators and Tips for Success" program at the Federal Courthouse in Boston. Panelists for this star-studded event, attended by more than one hundred attorneys,

included Martha Coakley, Massachusetts Attorney General; Honorable Marianne Bowler, U.S. District Court Magistrate Judge; Marianne LeBlanc, AAJ's Women Caucus Chair and former Women's Bar Association President; Michelle Pierce of Donoghue Barrett & Signal, P.C. and former Women's Bar Association President; and Sarah Worley, respected mediator of Conflict Resolution, P.C. The panelists shared their vast experiences navigating the challenges facing women litigators and provided excellent perspective and suggestions, leaving the audience armed with guidance for the future.

After several planning meetings with the members of the Women's Caucus, the group has decided to focus its energy on education, mentoring, community service and networking. As part of that, the Caucus hosted its first of a series of brown bag lunches with judges, beginning with Honorable Geraldine Hines of the Massachusetts Superior Court on November 17. On November 30, the Caucus cochaired a Trial Success Stories program, which included AAJ WTLC chair Marianne LeBlanc, as a panelist. From case intake through trial, the panelist provided their perspective on planning, preparation and obtaining a successful verdict.

We are proud of our members and their commitment to renewing the energy of the Caucus. Armed with a team of brilliant, talented women litigators, the Caucus is sure to be successful in its efforts to meet the needs of its constituents and further the interests of women in the profession. ■

For further information regarding MATA's Women's Caucus, please feel free to contact either of us: Lauren Barnes (lauren@hbsslaw.com) and Kim Dougherty (kdougherty@bhtriallaw.com).

# “Blawgging”

By **Adrienne Walvoord**

Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, PC, Philadelphia, PA; [awalvoord@anapolschwartz.com](mailto:awalvoord@anapolschwartz.com)



In the past decade, words that sound like phonetic mistakes or more closely resemble animal sounds – such as tweeting, texting, booking, facing, blogging – have become commonplace jargon. These words have also become a new medium for attorneys to network, comment, and reach the

public at large.

Jim Ronca, a partner at Anapol Schwartz and fellow AAJ member, and I recently took a new spin on blogging for our local legal publication called *The Legal Intelligencer* – we like to call it “Blawgging.” I hope you enjoy our first Blawg and encourage you to do your own blawgging about how it may all unfold...

## **Federal Preemption – Seventh and Tenth Amendments Be Damned**

**By Jim Ronca and Adrienne Walvoord**

Preemption is an arcane legal term that has been enjoying more press time than one might expect. Preemption encompasses the decades-long battle between manufacturers and consumers with significance in everyday life that is often misunderstood and underestimated. Simply, preemption prevents injured victims from suing a manufacturer. And, once again, as the Supreme Court starts its 2010–2011 term, preemption is a hot issue, but is it a concept supported by liberals and despised by conservatives or should it be hated by both sides? This term, the Supreme Court will decide the extent to which federal statutes prohibit plaintiffs from suing manufactures for fraud, defective design, failure to warn, and other claims arising under state common law.

In 2008 and 2009 the Supreme Court decided preemption issues in the pharmaceutical and medical device worlds and came to conflicting conclusions. In *Wyeth v. Levine*, the Court held the FDA’s approval of warning labels for prescription drugs does not preempt state lawsuits for “negligent failure to warn.” Conversely, in *Riegel v. Medtronic* the Supreme Court made it harder for consumers to sue manufacturers of certain medical devices approved by

the FDA in ruling that many state common law claims are preempted by federal law.

For the 2010–2011 term, the Supreme Court has accepted four preemption challenges, including two tort cases, *Williamson v. Mazda Motor*, Docket No. 08-1314 (auto safety standards) and *Bruesewitz v. Wyeth*, Docket No. 09-152 (National Childhood Vaccine Injury Act).

We will be following the Supreme Court tort law preemption decisions as well as the FDA’s issuance of warnings and recalls in the coming months as these will greatly influence consumers’ claims. Libertarians, tea party activists, and “strict constructionalists” are fond of saying that the constitution should be followed, specifically, word for word as the founders intended. Well what could be more specific than this:

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law”

The Tenth Amendment reserved to the states all powers not delegated to the federal government.

It seems the intent is clear. So liberals, who favor pro-consumer issues, and conservatives, who favor strict construction, should be in agreement in condemning preemption. Let’s hope the Supreme Court sees it the same way. ■

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