Lawyers for Public Justice, a public-interest law firm representing consumers, said the decision was “an important and striking development” in light of the general trend in legislatures and courts toward curbing access to the tort system.

The majority opinion by Justice John Paul Stevens said that the Fifth Circuit, along with the many other courts to have given pre-emptive effect to Fifra, had given too broad an interpretation to the 1992 Supreme Court decision that found some suits against cigarette manufacturers to be pre-empted by the federal cigarette labeling law.

That case, *Cipollone v. Liggett Group Inc.*, interpreted the pre-emption clause of the cigarette law, which barred states from imposing any additional “requirement or prohibition” on cigarette manufacturers. The court held that states imposed additional requirements by opening their courts to tort suits.

But that did not mean that all state court suits under all other federal regulatory statutes were pre-empted, Justice Stevens said on Wednesday. The main point of the opinion was that each statute must be interpreted in its own context, according to not only the statutory language but to the his-
tory of litigation involving the regulated product.

State court suits against pesticide manufacturers had previously been common, Justice Stevens said, and Congress should not be interpreted to have displaced them without a more clear indication that it intended to do so. He said that, properly read, the pre-emption language in Fifra permitted suits under state laws that were “parallel” to the federal law, as long as the states did not impose additional or different regulatory requirements.

That meant in this case that the farmers’ claims for “defective design, defective manufacture, negligent testing and breach of express warranty” were not preempted, the court concluded. At the same time, the court ordered the Fifth Circuit to give further consideration to whether the claims for fraud and “failure to warn” could go forward or were pre-empted.

Justice Stevens said the administration’s argument that Fifra broadly required pre-emption “is particularly dubious given that just five years ago the United States advocated the interpretation that we adopt today.”

Dow no longer sells Strong-arm in Texas, New Mexico or Oklahoma, areas where the acidity of the soil evidently blocked the desired action of the product and caused it to harm the crops.

In a dissenting opinion, Justice Clarence Thomas, joined by Justice Antonin Scalia, said the suit should not go forward without giving the Fifth Circuit the opportunity to reconsider its pre-emption ruling for all the claims.