



Environmental ADVISORY ■

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Supreme Court Limits Scope of CERCLA Preemption of State Limitations Periods for Property Damage and Personal Injury Claims

The U.S. Supreme Court ruled yesterday in *CTS Corporation v. Waldburger, et al.*, No. 13–339 (U.S. June 9, 2014), holding that Section 9658 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. (CERCLA) does not preempt state statutes of repose. The Court’s 7–2 decision, reversing the holding of the Fourth Circuit Court of Appeals, resolved a circuit split on the issue. The Ninth Circuit previously held that CERCLA preempts both state statutes of liability and state statutes of repose; however, the Fifth Circuit reached a contrary conclusion when it held that CERCLA’s preemption provision is limited to state statutes of limitations. See, *McDonald v. Sun Oil Co.*, 548 F.3d 774 (9th Cir. 2008); *Burlington Northern & Santa Fe Railway Co. v. Poole Chemical Co., Inc.*, 419 F.3d 355 (5th Cir. 2005). The Supreme Court granted certiorari to hear *CTS Corporation v. Waldburger* in January 2014 to resolve this circuit split.

A. Summary of the Case

In *CTS Corporation v. Waldburger*, a group of 25 landowners filed suit in 2011, seeking damages against CTS Corporation (CTS) for damage to property and personal injury. The landowners alleged that CTS was responsible for the release of concentrated levels of hazardous toxins into a local well from its Asheville, North Carolina, facility during or before 1987, when CTS sold the property. CTS moved to dismiss the case based on North Carolina’s 10-year statute of repose, which requires a plaintiff to file suit within 10 years of the last act or omission that gave rise to the cause of action. Although the landowners alleged they did not discover the contamination in 2009, the statute of repose, unlike a statute of limitation, does not have a discovery rule.

The district court granted CTS’s motion to dismiss, holding that North Carolina’s statute of repose prevents plaintiffs from subjecting a defendant to a tort suit more than 10 years after the last alleged culpable act, and rejecting the plaintiffs’ argument that CERCLA Section 9658 preempts statutes of repose. The Fourth Circuit Court of Appeals, in a divided panel, reversed the district court’s dismissal of the case, holding that CERCLA Section 9658 preempts North Carolina’s 10-year statute of repose. The Supreme Court heard arguments on both sides on April 23, 2014.

B. Summary of Supreme Court's Reasoning

In its opinion, the Supreme Court enumerated several reasons for its decision that Section 9658 does not preempt state statutes of repose.

The Court first emphasized the inherent distinctions between statutes of limitation and statutes of repose. Statutes of limitation focus on the date the claim accrued. Statutes of repose, however, put an outer limit on the right to pursue a claim based on the time of the defendant's alleged tortious act or omission. Importantly, statutes of limitation are intended to encourage plaintiffs to pursue their rights diligently, and thus exceptions can be made in exceptional circumstances. In contrast, statutes of repose are premised on the belief that defendants should be free from liability after a certain period of time, regardless of exceptional circumstances.

The Court then focused on the text of CERCLA and on legislative intent. First, the Court explained that Section 9658, the preemption provision, is the exception to the regular rule, rather than the presumption. The Court noted that state law is not preempted by the statute unless it meets the precise terms of the exception.

Second, the Court reasoned that the text of Section 9658 never actually mentions the term "statute of repose," but instead uses "statute of limitations," throughout. The Court noted that, at the time CERCLA was enacted, the distinction between statutes of repose and statutes of limitations was well-established; thus, if Congress had intended that statutes of repose also be preempted, it would have done so explicitly in the statute.

Third, the Court pointed to Section 9658(b)(2)'s definition of the "applicable limitations period," which the statute describes as "'the period' during which a 'civil action' under state law 'may be brought.'" *CTS Corp.*, No. 13-339 at *14 (quoting §9658(b)(2)). The Court noted that this definition presupposes the existence of a civil action. Statutes of repose, however, prevent causes of action from coming into existence and thus are not related to the accrual of any cause of action. The Court concluded that if the text of the statute was intended to cover statutes of repose, it would not have presupposed the existence of a civil action.

Finally, the Court noted that Section 9658 contains a tolling provision for a select group of plaintiffs. Tolling provisions are inconsistent with the purpose behind statutes of repose, and thus, Congress would not have included a tolling provision if it intended statutes of repose to be covered by Section 9658.

For these reasons, the Court held that statutes of repose are not within Congress' preemption mandate under CERCLA.

C. Implications

This decision resolves the circuit split on the question of whether Section 9658 of CERCLA preempts state statutes of repose in addition to statutes of limitation. The Fourth and Ninth Circuits had opened the doors for plaintiffs to recover tort damages for historical contamination that would otherwise be time-barred under state tort theories. The Supreme Court's reversal of this decision reinforces the purpose of statutes of repose, which allow states that choose to enact such statutes to limit the right of plaintiffs to seek redress for contaminant releases that occurred many years or decades ago.

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