

# CLIENT UPDATE

## SUPREME COURT: STATES HAVE POWER TO RESTRICT CONTAMINATION SUITS DESPITE CERCLA PRE-EMPTION

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On June 9, 2014, the United States Supreme Court issued a decision holding that the pre-emption provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) relating to private rights of action for personal injury and property damage do not apply to statutes of repose.

### BACKGROUND

Congress enacted CERCLA in 1980 to promote the cleanup of contaminated sites. CERCLA provides a federal cause of action to recover costs of cleanup from Potentially Responsible Parties, such as current and former owners and operators of a site. CERCLA, however, does not provide a private remedy for personal injury or property damage. Rather, CERCLA leaves in place state causes of action for personal injury and property damage, but replaces state statutes of limitations with a federal rule that mandates that no cause of action will commence until “the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages . . . were caused or contributed to by the hazardous substance, or pollutant or contaminant concerned.” This discovery rule pre-empts state statutes of limitations that do not have a discovery rule, and was enacted by Congress to prevent polluters from avoiding the consequences of their actions when a latent injury takes years to reveal itself.

## **BACKGROUND OF SUPREME COURT CASE**

The case decided by the Supreme Court, *CTS Corp. v. Waldburger*, arose in North Carolina where CTS Corporation (“CTS”) operated an electronics plant from 1954 to 1985. The plant manufactured electronic parts, using and storing hazardous chemicals in the process. In 1987, CTS sold the property, which was later purchased by the plaintiffs. In 2009, 22 years after CTS sold the property, the plaintiffs discovered the property was contaminated and, in 2011, sued CTS in federal court for personal injury and property damage under state nuisance law.

North Carolina’s statute of limitations for personal injury and property damage claims is three years, but provides that such claims “shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant.” Because plaintiffs brought suit within two years of discovery, the North Carolina statute of limitations did not bar plaintiffs’ claims. However, North Carolina also has a statute of repose for personal injury and property damage claims which states that regardless of when plaintiff knew or should have known of the injury, “no claim shall accrue more than 10 years from the last act or omission of the defendant giving rise to the claim.”

Relying on that statute of repose, CTS moved to dismiss and the trial court dismissed the claims because it had been more than 10 years since CTS had contaminated the property. The Court of Appeals for the Fourth Circuit reversed the trial court, holding that CERCLA pre-empted both the statute of limitations and the statute of repose. The Fourth Circuit found that CERCLA’s pre-emption regime was ambiguous as to whether it applied to both statutes of limitations and statutes of repose, even though it references only the former. Given the ambiguity, the Fourth Circuit resolved the issue in favor of pre-emption, invoking the proposition that remedial statutes should be interpreted in a liberal manner. The Supreme Court reversed.

## **STATUTES OF LIMITATIONS VERSUS STATUTES OF REPOSE**

The Supreme Court began its analysis by examining the statutory text of CERCLA Section 9658, which pre-empts certain periods specified in “a statute of limitations.” Nowhere does Section 9658 address or mention a statute of repose. Next, the Court explained the distinction between the two types of statutes. A statute of limitations commences when a plaintiff’s cause of action accrues. The rationale behind a statute of limitations is to encourage a plaintiff to act on his or her rights or lose them after the passage of time. By contrast, a statute of repose focuses on the date of the last culpable act or omission by the

potential defendant, quite apart from whether a cause of action has even accrued. That is, statutes of repose reflect a legislative decision that a person should not be subject to liability after a certain time. Because the two statutes have different goals, and because CERCLA only mentions statutes of limitations, not statutes of repose, the Supreme Court held that Congress meant to pre-empt the former but not the latter.

## **CONCLUSION**

Although only a few states have statutes of repose similar to that of North Carolina, it remains to be seen whether other states will view the Supreme Court's decision as an opening to restrict private pollution suits against corporations. For corporations with facilities in multiple states, it may be worth examining whether those states have statutes of repose that could impact private pollution claims in the wake of this decision.

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Please do not hesitate to contact us with any questions.

June 17, 2014