

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



Supreme Court Narrows CERCLA Preemption of State Limits on Tort Claims

In an opinion strictly interpreting the statutory text of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the U.S. Supreme Court limited the scope of a CERCLA provision that is designed to extend state law claims for personal injury or property damage resulting from hazardous substance contamination. Although the case may have limited practical application because of the relatively unique nature of the North Carolina law involved, the Supreme Court's decision in *CTS Corp. v. Waldburger* has the effect of cutting off the plaintiffs' claims for injuries allegedly caused by decades-old contamination.

As background, Congress enacted Section 9658 of CERCLA in 1986 to protect plaintiffs from having their personal injury or property damage claims prematurely extinguished by operation of state statutes of limitation. Under the "discovery rule" established by Section 9658, state statutes of limitation will not begin to run until a plaintiff discovers (or reasonably should have discovered) that the claimed harm was caused by contamination. Any state statute that holds otherwise is preempted by CERCLA.

In *CTS*, the Supreme Court was asked whether Section 9658, which by its express terms preempts conflicting state statutes of limitations, also preempts state statutes of repose. Although statutes of limitations and statutes of repose both may operate to prohibit a plaintiff from bringing a claim based on the passage of time, the two policies have distinct purposes. A statute of limitations requires a plaintiff to file a lawsuit within a certain timeframe after the claim arises in order to limit stale claims where evidence and witnesses may have been lost. On the other hand, a statute of repose represents a legislative policy decision that a defendant should be free from liability after a certain time (*i.e.*, a "hard stop" to tort liability).

The plaintiffs in the case filed a state-law tort claim in federal court against CTS, which operated an electronics plant in Asheville, North Carolina from 1959 to 1985. CTS eventually sold the plant in 1987. The plaintiffs included a group of landowners who claimed that their drinking water wells were contaminated by hazardous substances released by CTS when it operated the electronics plant. CTS moved to dismiss the claim as untimely under North Carolina's statute of repose, which bars tort actions commenced more than 10 years after the last tortious act committed by the defendant. Because the last act by CTS occurred in 1987 – 24 years before the lawsuit – the trial court dismissed the claim.

The Court of Appeals for the Fourth Circuit reversed the decision of the trial court and reinstated the plaintiffs' claims, holding that Section 9658 does preempt statutes of repose. The Court of Appeals found that the interpretation in favor of preemption was consistent with the purposes of CERCLA, pointing to the premise that remedial statutes such as CERCLA should be interpreted in a liberal manner.

Babst Calland
Attorneys at Law

babstcalland.com

Pittsburgh, PA

Two Gateway Center
603 Stanwix Street
Sixth Floor
Pittsburgh PA 15222
412-394-5400
FAX 412-394-6576

State College, PA

Suite 302
330 Innovation Blvd.
State College, PA 16803
814-867-8055
FAX 814-867-8051

Charleston, WV

Suite 590
United Center
500 Virginia Street East
Charleston, WV 25301
681-205-8888
FAX 681-205-8814

Akron, OH

Suite 1010
One Cascade Plaza
Akron, OH 44308
234-352-1650
FAX 234-352-1640

Sewell, NJ

380-A Tylers Mill Road
Sewell, NJ 08080
856-256-2495
FAX 412-586-1082

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Signaling a continued intention to engage in strict construction of CERCLA's sometimes ambiguous and contradictory language, the Supreme Court admonished the Court of Appeals for substituting its liberal construction proposition in the place of an interpretation based upon CERCLA's text and structure, writing that "no legislation pursues its purposes at all costs." "Congressional intent is discerned primarily from the statutory text," the Court wrote. The Court proceeded to examine the statutory text and legislative history of Section 9658. As one factor among many, the Court noted that the term "statute of limitations" appears four times in Section 9658 while the term "statute of repose" does not appear at all. After a painstakingly close evaluation of the relevant statutory text and related definitions, the Court concluded that Section 9658 does not preempt state statutes of repose. Thus, the North Carolina statute of repose applied, thereby cutting off the plaintiffs' claims.

As noted above, the Court's holding in *CTS* has limited application. First, it only applies to state-based personal injury and property damage claims, and has no impact on CERCLA cost recovery actions under Section 107, contribution claims under Section 113 or enforcement and response authority under federal and state environmental laws. Moreover, only a handful of states have statutes of repose like the one on the books in North Carolina. It will be interesting to see whether state lawmakers take steps to enact similar statutes of repose to cut off state-based personal injury and property damage claims related to contamination. It is noteworthy that in the aftermath of the *CTS* decision, North Carolina lawmakers have quickly moved to "clarify" that their state's statute of repose was not intended to cut off tort claims related to groundwater contamination, thereby potentially breathing life into the claims the Supreme Court just extinguished.

For additional information regarding the impact of the Court's ruling, please contact Lindsay P. Howard at (412) 394-5444 or lhoward@babstcalland.com, or Michael C. Murphy at (412) 394-6428 or mmurphy@babstcalland.com.