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## CTS Corp. v. Waldburger

Lindsay M. Thane

*University of Montana School of Law*, [lindsay.thane@umontana.edu](mailto:lindsay.thane@umontana.edu)

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**Lindsay Thane**

**ABSTRACT**

The Supreme Court determined that a North Carolina statute of repose barred plaintiffs from bringing suit against CTS Corporation for contamination that occurred on land CTS owned 24 years earlier. The Court found that CERCLA preempts state statutes of limitations in order to allow plaintiffs' claims to accrue when the injury is caused by contamination that has a long latency period. However, the Court also decided that CERCLA does not preempt state statutes of repose because Congress did not specifically preempt them as they did with statutes of limitations, thus; enforcing statutes of repose was not found to frustrate the purpose of CERCLA. Although plaintiffs did not discover the contamination until 22 years after it occurred, they nonetheless failed to bring their claim within the 10 years required by the North Carolina statute and were barred from bringing suit.

**I. INTRODUCTION**

The respondent landowners brought suit alleging damage from contaminants on their land which was previously owned by CTS Corporation ("CTS").<sup>1</sup> CTS sold portions of the property to landowners 24 years earlier with a promise that the site was "environmentally sound."<sup>2</sup> The Court looked to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and found that § 9658 does not pre-empt state statutes of repose.<sup>3</sup> The decision reversed the Fourth Circuit Court of Appeals and upheld North Carolina's statute

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<sup>1</sup> *CTS Corp. v. Waldburger*, 134 S.Ct. 2175, 2181 (2014).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2180.

preventing a tort suit from being brought more than 10 years after the act of the defendant, thus barring the landowners' claim.<sup>4</sup>

## **II. FACTUAL BACKGROUND**

Congress enacted CERCLA in 1980 to “promote ‘the timely cleanup of hazardous waste sites,’” with the costs falling on those responsible for the contamination.<sup>5</sup> At the time of enactment, the Senate Committee on Environment and Public Works conducted a report entitled, *Injuries and Damages from Hazardous Waste – Analysis and Improvement of Legal Remedies* (“Report”), to determine the “adequacy of existing common law and statutory remedies” including any “barriers to recovery posed by existing statutes of limitation.”<sup>6</sup> The Report recommended that, due to the long latency periods of harms from toxic substances, all states should adopt the rule that under statutes of limitation or statutes of repose, an action does not accrue until “the plaintiff discovers or should have discovered the injury or disease and its cause.”<sup>7</sup> Rather than wait for states to respond, in 1986 Congress added § 9658 which explicitly pre-empts state statutes of limitations in claims under CERCLA, but is silent on the question of whether statutes of repose are also pre-empted.<sup>8</sup>

The land in this dispute was used by CTS from 1959-1985 for manufacturing and disposal of electronic parts, including storage of the chemicals trichloroethylene and dichloroethane.<sup>9</sup> CTS sold the property in 1987 and that buyer sold portions to the individual

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<sup>4</sup> *Id.* at 2181.

<sup>5</sup> *Id.* at 2180. (citing *Burlington N. & S.F.R. Co. v. U.S.*, 556 U.S. 599, 602 (2009)).

<sup>6</sup> *Id.*

<sup>7</sup> *CTS Corp.*, 134 S.Ct. at 2181. (See Sen. Comm. on Env. & Pub. Works, 97th Cong., *Injuries and Damages From Hazardous Wastes—Analysis and Improvement of Legal Remedies* 97-571 (Sen. Comm. Print 1982)).

<sup>8</sup> *Id.* at 2180-81.

<sup>9</sup> *Id.* at 2181.

landowners now bringing suit.<sup>10</sup> The landowners learned from the Environmental Protection Agency in 2009 that their well water was contaminated, allegedly stemming from CTS' ownership of the land.<sup>11</sup> Thus, in 2011 they sued CTS alleging damage from contaminants on the land and seeking remediation and compensation for current and future losses.<sup>12</sup>

### **III. PROCEDURAL BACKGROUND**

The District Court for the Western District of North Carolina dismissed the claim on the grounds that North Carolina's statute of repose prevents suits against a defendant more than 10 years after the defendant's last culpable act.<sup>13</sup> The Fourth Circuit Court of Appeals reversed, ruling that § 9658 pre-empted the statute of repose, as was consistent with CERCLA's "remedial purpose."<sup>14</sup> The Supreme Court granted certiorari to resolve a split in the circuit courts.<sup>15</sup>

### **IV. ANALYSIS**

Statutes of limitations and statutes of repose have distinct purposes, yet the phrases are often used interchangeably. A statute of limitations begins to run when the cause of action accrues in order to encourage plaintiffs to pursue "diligent prosecution of known claims."<sup>16</sup> In comparison, statutes of repose bar suits from being brought after "a legislatively determined period of time" in order to provide defendants with "a fresh start or freedom from liability."<sup>17</sup> Additionally, statutes of limitation provide for equitable tolling which pauses the running of the statute of limitations if the litigant has "pursued his rights diligently but some extraordinary

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *CTS Corp.*, 134 S.Ct. at 2181 (citing N.C. Gen. Stat. § 1-52(16) (Lexis 2013)).

<sup>14</sup> *Id.* at 2181-82.

<sup>15</sup> *Id.* at 2182.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2183.

circumstance prevents him from bringing a timely action.”<sup>18</sup> Conversely, statutes of repose are not tolled for any reason.<sup>19</sup>

CERCLA § 9658(a)(1) articulates that if the applicable state limitations period is earlier than federally required, the federally required commencement date is to be adhered to in personal injury and property damages cases. Further, § 9658(b)(2) defines “applicable limitations period” as “the period specified in a statute of limitations” but makes no mention of whether statutes of repose are included under the umbrella of statutes of limitations in § 9658 and thereby preempted.

In the Report Congress commissioned, the Committee recommended repealing both state statutes of repose and state statutes of limitations in the context of injuries caused by hazardous waste because both can potentially “[bar] a plaintiff’s claim before he knows he has one.”<sup>20</sup> However, when Congress crafted § 9658, there was no mention of statutes of repose.<sup>21</sup> The Court reasoned that the language describing the “applicable limitations period” is in the singular and would thus be awkward if it were meant to include two different time periods.<sup>22</sup> Additionally, § 9658(b)(2) mentions the “applicable limitations period” as the time during which a civil action under state law “may be brought.”<sup>23</sup> Justice Kennedy, writing for the majority, points out that a statute of repose determines when a cause of action may no longer be brought, not when a cause of action accrues.<sup>24</sup>

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<sup>18</sup> *Id.* (citing *Lazona v. Montoya Alvarez*, 134 S.Ct. 1224, 1231-1232 (2014)).

<sup>19</sup> *CTS Corp.*, 134 S.Ct. at 2183 (citing *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991)).

<sup>20</sup> *Id.* at 2181-82.

<sup>21</sup> *Id.* at 2186-87.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 2187.

<sup>24</sup> *Id.*

The Court used the distinct nature of statutes of repose, the definition of “applicable limitations period,” and the discussion about when a suit accrues in § 9658 to support its decision that statutes of repose are not intended to be encompassed in § 9658.<sup>25</sup> The Court concluded that Congress intended CERCLA to work comprehensively with state law. Here, where Congress did not alter state law, the landowners did not show that the North Carolina statute of repose impedes the work of CERCLA.<sup>26</sup>

### **A. Dissent**

Justice Ginsburg, writing for the dissent, found that the majority needed to look farther in the CERCLA amendment to § 9658(b)(4)(A) to find that “commencement date” means “the date the plaintiff knew (or reasonably should have known) that [her] injury . . . [was] caused . . . by the hazardous substance.”<sup>27</sup> She argues that this definition is supposed to apply “in lieu of” a state statute commencing a cause of action when the state limitation is less than what is federally required under § 9658(a)(1).<sup>28</sup> The dissent goes on to discuss the issue posed by North Carolina’s 10 year statute of repose because many of the injuries from CERCLA sites will have a latency period of decades and the Statute gives contaminators an incentive to conceal.<sup>29</sup>

## **V. Conclusion**

The Court found that in a state action brought for injury or damages due to exposure to hazardous substances, CERCLA § 9658 does not preempt state statutes of repose for a federally required commencement date. North Carolina has a statute of repose of 10 years and thus, when

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<sup>25</sup> *CTS Corp.*, 134 S.Ct. at 2187.

<sup>26</sup> *Id.* at 2188.

<sup>27</sup> *Id.* at 2196.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 2191.

landowners brought their suit more than 20 years after CTS sold the contaminated property, their suit was properly dismissed for timeliness.