



News Release

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For more information, contact:

Tim Kolly 312-698-6220 | tkolly@dri.org

Supreme Court Decision Aligns with DRI Amicus Brief in *CTS Corporation v. Waldburger*

Case Involves Federal Preemption of State Limitations Periods in Environmental Tort Suits

CHICAGO – (June 10, 2014)—By a 7-2 vote, the U.S. Supreme Court’s decision in *CTS Corporation v. Waldburger* aligned with an amicus brief submitted by DRI’s Center for Law and Public Policy. The Court held that state statutes of repose applicable to environmental and toxic tort suits serve an important function that counterbalances state statutes of limitations. Reversing a lower court ruling, the Supreme Court rejected arguments that such statutes of repose are preempted by federal law.

In the case, plaintiffs claimed that their well water and residential property was contaminated by chemical solvents stored and used by a North Carolina manufacturing plant until 1987. The homeowners filed suit in 2011, and CTS moved to dismiss, arguing that the claims were barred by North Carolina’s 10-year statute of repose—a limitations period that normally begins to run when a cause of action arises (e.g., when property is contaminated), not when a plaintiff discovers property damage or its alleged cause.

The district court disagreed with plaintiffs and granted the motion to dismiss. On appeal, the United States Court of Appeals for the Fourth Circuit reversed in a 2–1 decision. The court of appeals held that in keeping with the Comprehensive Environmental Response, Compensation, and Liability Act’s (CERCLA) remedial purpose, section 9658 of CERCLA applies to state statutes of repose in addition to state statutes of limitations. Section 9658 explicitly preempts applicable state statutes of limitations by replacing their normal “discovery-of-injury” rule with a much more lenient, “federally required commencement date” that begins to run when a plaintiff not only has discovered property damage or personal injury, but also its alleged cause. Although that provision nowhere mentions state statutes of repose, the plaintiffs argued that the federally required commencement date also applies to statutes of repose.

DRI’s amicus brief argues that section 9658 means what it says, i.e., that it applies only to statutes of limitations. The brief further explains that statutes of repose promote fairness in the civil justice system by helping to maintain a level playing field in environmental/toxic tort suits governed by statutes of

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limitations that benefit from section 9658's lenient commencement date. Without the counterbalancing effect of statutes of repose, plaintiffs' attorneys may be able to file suits for property damage, or personal injuries or deaths, decades after alleged hazardous substance contamination occurs. Due to the passage of time, evidence needed to defend against such suits is often no longer available.

In its decision, the Supreme Court explained that statutes of repose reflect a state legislative judgment that a defendant should have "freedom from liability" after a specified time period (normally a number of years) regardless of when a statute of limitations for filing a tort suit begins to run.

Justice Kennedy's majority opinion follows the approach that DRI advocated. The opinion focuses on the plain text and structure of Section 9658. The opinion further relies on a congressionally mandated study group report which acknowledged the distinction between statutes of limitations and statutes of repose. Consistent with DRI's position, the Court held that "[i]n light of the distinct purpose for statutes of repose," Section 9658 is "best read to encompass only statutes of limitations."

DRI amicus brief author and appellate attorney Lawrence S. Ebner of McKenna Long & Aldridge LLP in Washington, D.C., is available for interview or for expert comment through DRI's Communications Office.

For the full text of the amicus brief, [click here](#).

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