



News Release

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For more information, contact:

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

DRI Submits High Court Brief in *CTS Corporation v. Waldburger*

Involves Federal Preemption of State Limitations Periods in Environmental Tort Suits

CHICAGO – (March 4, 2014)—DRI—The Voice of the Defense Bar has filed an amicus brief on merits with the US. Supreme Court in the case of *CTS Corporation v. Waldburger*. The brief was submitted by DRI's Center for Law and Public Policy.

In the case, plaintiffs claim 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.

(A statute of limitations terminates a claimant's right to pursue a cause of action after a certain period of time following accrual, i.e., discovery of injury or damage, whereas a statute of repose extinguishes cause of action a set period of time after it arises, regardless of whether the plaintiff's claim has accrued.)

The plaintiffs countered, citing Section 9658 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). That provision explicitly preempts applicable state statutes of limitations by replacing their normal "discovery-of-injury" rule with a much more expansive, "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. According to the plaintiffs in the *Waldburger* suit, Section 9658 also applies to statutes of repose (which are not mentioned in Section 9658).

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 concluded that in keeping with CERCLA's remedial purpose, Section 9658 applies to state statutes of repose in addition to state statutes of limitations.

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 limitations that benefit from Section 9658's lenient commencement date. Without the counter-

balancing 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. Allowing such "stale" claims to proceed would create evidentiary nightmares for attorneys, and could bankrupt companies that have been in operation for many years.

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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