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Lawyers React To High Court's CERCLA Preemption Ruling

Law360, New York (June 09, 2014, 6:03 PM ET) -- The U.S. Supreme Court found Monday that the Comprehensive Environmental Response, Compensation and Liability Act does not preempt a North Carolina law prohibiting claims related to pollution that occurred more than 10 years ago. Here, attorneys tell Law360 why CTS Corp. v. Waldburger is significant.

Sarah Bell, Farella Braun & Martel LLP

“The Supreme Court’s holding in CTS Corp. v. Waldburger is a significant win for companies facing potential legacy liability from historic environmental contamination. In deciding that CERCLA’s preemption of statutes of limitations in state law toxic tort actions does not extend to statutes of repose, the Supreme Court cut off a potentially significant source of litigation against companies associated with decades-old historic contamination. For companies with legacy sites in states with statutes of repose, today’s holding provides certainty of their right not to be sued after the applicable period of time has elapsed, and likely makes business transactions involving legacy properties easier.”

Timothy Bishop, Mayer Brown LLP

"The decision confirms that statutes of limitation and repose serve different functions and are subject to different tolling rules, and establishes that state statutes of repose have to be specifically preempted when that is Congress’s intent — statutory language talking about limitations in general is not enough to preempt a statute of repose. As a policy matter this is the correct decision. When state legislatures adopt statutes of repose it is with the intent of providing complete protection from litigation. The decision ensures that this protection cannot be easily overcome and provides certainty for businesses and landowners who otherwise might face suit indefinitely."

Jeff Civins, Haynes and Boone LLP

"CERCLA section 309 preempts state statutes of limitations for causes of action for personal injury or property damage relating to the release of hazardous substances and other contaminants, applying a discovery rule to them. In CTS Corp. v. Waldburger, the Supreme Court held that section does not apply to statutes of repose. As a result, in states with statutes of repose, potential defendants will have some assurance that once that time period expires, they are protected from liability. On the flip side, plaintiffs in states with statute of repose will be disadvantaged as compared to those in states with statutes of limitation."

Lawrence A. Demase, Reed Smith LLP

"This ruling makes it clear that the provisions of CERCLA that preempt statutes of limitations do not apply to state statutes of repose, which have deadlines often tied to a specific action by the defendant — known or unknown — rather than an injury and the discovery of it by the plaintiff. This means that state claims arising from historical acts of negligence or nuisance, which would otherwise still be actionable under many state laws, can be cut off by state statutes of repose. This is a clear victory for business which generally dislikes the so-called 'discovery rule.'"

Jim Dickson, Adams and Reese LLP

"The Supreme Court's 7-2 decision in CTS Corp. v. Peter Waldburger et al, is neither surprising nor should it substantially impact environmental litigation. The court held that preemption provisions of CERCLA did not apply to statutes of repose which barred tort damages asserted by property owners for events occurring more than 24 years previously. The court, applying statutory language, reversed the 4th Circuit while following most lower court rulings. This holding has limited impact because few states have repose statutes for such environmental injuries. Moreover, the decision has no effect on federal claims or on state claims not subject to repose statutes."

Richard O. Faulk, Hollingsworth LLP
"Today the Supreme Court vindicated the right of states to protect defendants from open-ended tort liability for exposure to hazardous substances. The high court's decision properly recognized that Congress did not intend to implicitly repeal state statutes that grant 'repose' after a designated time period has passed since the defendants' alleged wrongful act. In a term when federalism has not fared well before the court in environmental cases, it is refreshing to see that a significant majority of the court is still willing to recognize that, at least in some areas, Congress did not intend to preclude states from setting their own standards for applying their own laws. Although comparatively few states have passed statutes of repose, the Supreme Court's decision could prompt many more states to do so — and not only in environmental cases, but in a variety of areas where the ambitious federal government might intrude. Tort law is a 'core' interest of the states — constitutionally protected from all but the most explicit forms of preemption — and if Congress wishes to preempt state law, it's entirely reasonable to require them to do so explicitly. It may be easier to get federal laws passed if they are vague and ambiguous regarding their preemptive impact, but since the states are, as Justice Kennedy wrote today, 'independent sovereigns in our federal system,' they are entitled to all the respect their status confers."

Ira Gottlieb, McCarter & English LLP

"The Supreme Court's opinion is important to Superfund practitioners because it clarifies, if not firmly establishes, the existence of an important potential defense in private party contribution actions — namely the availability of state statutes of repose as a bar to claims after a defined period of time lapses. State statutes' periods of repose generally vary. But environmental claims almost always have a long fuse and latency period, so the availability of a period of repose may be a welcome relief to claims that emerge from historical and sometimes cloudy past events. The court's decision presents a potential final day for claims that allows potentially liable parties to retire old properties and potential claims off their books. Of course, there may be many factual scenarios and uncertainties that might affect the survival of claims."

Jaclyn S. Levine, Miller Canfield PLC

"This Supreme Court decision will make it more difficult for plaintiffs to bring tort lawsuits to recover damages for historical pollution in states that have a statute of repose without a discovery rule or other equitable tolling principles independent from the text of CERCLA. For transactions involving property with suspected contamination, buyers must now give careful consideration to whether serious historical contamination discovered for the first time through due diligence will be actionable under tort law. In short, this decision puts pressure on potential tort

plaintiffs to discover their claims quickly and to sue quickly, or risk sustaining uncompensated damages."

Ben Lippard, Vinson & Elkins LLP

"Those following the Supreme Court's recent CERCLA jurisprudence expected the court would apply the statutory text as written. It reversed — again — a lower court that strained the statutory language in the direction of liability to remedy alleged environmental injury. One hopes this thoughtful opinion will end arguments that the 'remedial purpose' of CERCLA mandates something other than rigorous judicial application of principles of statutory interpretation. On the merits, states remain free to provide repose to defendants facing environmental property damage claims, in keeping with the fact that these causes of action are creations of state law in the first place."

Christopher Marraro, BakerHostetler

"Today's ruling is likely to have a significant impact on plaintiffs in state tort litigation but is unlikely to affect the majority of cost recovery claims which are brought in federal court under CERCLA. With nearly universal focus on environmental due diligence by lenders and buyers alike over the last 20 years, it is rare when contamination is not timely discovered. However, where CERCLA is inapplicable or state tort law is invoked, the CTS Corp. decision could pose a substantial hurdle, particularly in personal injury claims. Forty-six states have statutes of repose ranging from 4-20 years with the vast majority being 10 years after the last culpable act of the defendant."

Duke McCall, Bingham McCutchen LLP

"The immediate impact of the Supreme Court's decision will be to allow defendants facing toxic tort claims arising from historical releases of hazardous substances, such as vapor intrusion claims, to seek to dismiss such claims, if applicable state law includes a statute of repose. Because many

states do not have statutes of repose that would apply to such claims, the court's decision could prompt tort-reform-minded states to enact statutes of repose. The court's decision also clarifies that the 'remedial purpose' of the Superfund law, which courts frequently rely on in extending the reach of Superfund, is not without limits."

Pete Nyquist, Alston & Bird LLP

"The court's decision conclusively terminates the injury claims of the plaintiffs — which the Fourth Circuit had reinstated — under North Carolina's statute of repose. Beyond this, although CERCLA actions are litigated in all 50 states, this decision is actually quite limited in its application, since only several states have relevant statutes of repose. Potentially, however, the court's decision opens the door for additional states to enact statutes of repose that could preclude toxic tort claims after a specified time period, such as 10 years, even if the alleged harm is not discovered until many years, or even decades, later."

Stacy Watson May, Holland & Knight LLP

"In states with a statute of repose on tort claims under state law, defendants will have a strong basis to seek dismissal of property damage and personal injury claims with long latency periods. Plaintiffs will face an uphill battle in cases alleging harm from hazardous substances, especially for contamination emanating from closed facilities. Plaintiffs will wish that they had been more diligent in investigating the commercial and industrial activities near their property, particularly where the facility closed before or during their ownership. There may be congressional debate about whether this ruling improperly shifts the burden away from the polluter."

--Editing by Emily Kokoll.

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