Washington Legal Foundation

On the Merits:

CTS CORPORATION,

Petitioner,

v.

PETER WALDBURGER, ET AL.

Respondents.

No. 13-339

U.S. Supreme Court
Oral Argument: April 23, 2014

Question Presented: Did the U.S. Court of Appeals for the Fourth Circuit correctly interpret the preemption provision of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 9658, to apply to state statutes of repose in addition to state statutes of limitations?

Summary of the Case: Respondents, a group of individuals who purchased houses on or near property formerly owned by Petitioner, filed a state common law nuisance action seeking compensation for real property damage caused by alleged dumping of toxic chemicals. CTS Corporation moved to dismiss the complaint on the ground that North Carolina's 10-year statute of repose had eliminated Respondents' nuisance claim. The federal district court rejected Respondents' argument that CERCLA § 9658 preempted the state statute of repose, and granted CTS Corporation's motion. The Fourth Circuit reversed, holding that the remedial nature of CERCLA favored a broad judicial interpretation of § 9658, which supported the preemption provision's application not just to statutes of limitations, but to statutes of repose as well.

ON THE MERITS:
Judgment for Petitioners
Professor Scott R. Bauries
University of Kentucky
College of Law

In 1980, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.* The provision of CERCLA at issue in this case, 42 U.S.C. § 9658, establishes for state-law toxic tort cases a "federally required commencement date" (FRCD) for the running of state statutes of limitations. 42 U.S.C. § 9658(a)(1); (b)(4).

In state tort cases arising out of exposure to hazardous materials, the moment when a cause of action accrues (and therefore the moment when the statute of limitations begins to run) is either the triggering time provided in the state statute of limitations, or if later, the FRCD provided in § 9658. The FRCD is the date on

which "the plaintiff knew (or reasonably should have known) that the personal injury or property damages [to the plaintiff] were caused or contributed to by the hazardous substance or pollutant or contaminant concerned." 42 U.S.C. § 9658(b)(4)(A).

So, in a toxic tort case covered by CERCLA, if a state statute of limitations provides that a plaintiff's cause of action for personal injury or damage to property accrues at some point earlier than the plaintiff's actual or constructive discovery of the cause of the injury or property damage, then the federally required later accrual date of discovery applies. Otherwise, the state statute of limitations applies, as it typically does in diversity cases. *See Guaranty Trust v. York*, 326 U.S. 99, 109-110 (1945). Section 9658 of CERCLA does nothing to alter the length of the state statute of limitation once it begins to run, nor does it have anything to say about whether a tort cause of action exists at all under state law. It simply provides a method that must be used in determining the date on which the statute of limitations begins to run if the state in question recognizes the claim under its statutory or common law.

Respondents, eliding the narrow focus of § 9658, contend that it preempts not only state statutes of limitation, but also state statutes of repose. In support of their contention, they claim that the "remedial purpose" of CERCLA justifies applying a broad reading to § 9658. But § 9658 clearly limits its application to statutes of limitation, failing to even mention statutes of repose. We do not generally look to a statute's overall purpose, or any other extrinsic evidence of meaning, when the statutory terms are clear, as they are in § 9658. *See, e.g.*, *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Moreover, the mechanism through which Section 9658 preempts state law (establishing a favorable accrual date for state law tort actions) would not even make sense in the context of a statute of repose.

Unlike a statute of limitations, which determines how long a party has to file an action once the cause of action has accrued, a statue of repose fixes a date beyond which a cause of action can no longer accrue at all. *See, e.g.*, N.C. Gen. Stat. § 1-52(16) (providing that "no cause of action shall accrue" after the statutory repose period). Thus, unlike a statute of limitations, which provides an affirmative defense to an otherwise valid claim, a statute of repose extinguishes a party's substantive right of action altogether.

CERCLA cases affected by Section 9658 come to the federal courts through diversity jurisdiction—they are state-law claims. *See Freier v. Westinghouse Elec. Corp.*, 303 F.3d 176, 183 (2d Cir. 2002); *see also* 28 U.S.C. § 1332(a). To preempt state statutes of repose, then, Congress would have had to establish a federal substantive tort claim that might accrue beginning on the date that a state tort claim ceases to exist and for some defined "federal repose period" thereafter. It has not done so in § 9658. Thus, where state law has extinguished a claim, it no longer exists under CERCLA either.

It is clear from the text of § 9658 that Congress preempted state statutes of limitations in certain instances. But that is all that Congress did. Accordingly, North Carolina's statute of repose is not preempted by CERCLA, and because Respondents' discovery of harms happened after the expiration of the North Carolina repose period, Petitioner's motion to dismiss should have been granted.

For the reasons given above, the decision of the Fourth Circuit is REVERSED, and the case is REMANDED for further proceedings consistent with this opinion.

Dissenting View:
Professor Michael Burger
Roger Williams University
School of Law

Section 9658 imposes a discovery rule on state limitations periods in order to ensure that those suffering the latent effects of exposure to hazardous pollution have access to the courts for redress. Today, the majority holds that so-called "statutes" or "periods" of repose are saved from the preemptive reach of this provision. This decision is contrary to the plain meaning of § 9658 and to Congressional intent, and creates a loophole in CERCLA's discovery rule big enough to drive a truck loaded with leaking drums of toxic waste through it. I dissent.

This case is about the scope of express preemption. Accordingly, the Court employs traditional tools of statutory construction to delimit § 9658's preemptive effect. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995). As in every such case, "[t]he purpose of Congress is the ultimate touchstone." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484-85 (1996).

Section 9658(a)(1) provides that if the "applicable limitations period…(as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement." 42 U.S.C. § 9658(a)(1). An "applicable limitations period" is "the period specified in a statute of limitations during which a civil action…may be brought." 42 U.S.C. § 9658(b)(2). The "commencement date" is "the date specified in a statute of limitations as the beginning of the applicable limitations period." 42 U.S.C. § 9658(b)(3). The "federally required commencement date" is "the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages…were caused or contributed to by the hazardous substance or pollutant or contaminant concerned." *Id*. at 9658(b)(4).

The North Carolina statute of limitations at issue does two things. First, it establishes a discovery rule for commencement of a nuisance claim. N.C. Gen. Stat. §1-52(16). Second, it limits the discovery rule, requiring that any action be brought within 10 years of the "last act or omission of the defendant giving rise to the cause of action." *Id*. Thus, the provision is an "applicable limitations period." It (1) establishes a 10-year period (2) in a statute of limitations (3) during which a civil action may be brought. It establishes a "commencement date" because it (1) specifies a date (the date of the last act or omission) (2) as the beginning of the 10-year period. It is preempted because that commencement date is earlier than the federally required commencement date.

This plain-meaning reading of the statute is consistent with legislative intent. Section 9658 was created to preserve access to the courts for those suffering the latent effects of exposure to hazardous pollution. *See McDonald v. Sun*, 548 F.3d 774, 783 (9th Cir. 2008) ("Congress's primary concern…was to adopt the discovery rule in situations where a plaintiff may lose a cause of action before becoming aware of it"). Indeed, § 9658 was expressly created to address procedural barriers imposed by both state statutes of limitations *and periods of repose*. H.R. Conf. Rep. No. 99–962, at 261. These procedural barriers were detailed at length in the study that formed the basis for Section 9658. *See* Injuries and Damages from Hazardous Wastes—Analysis and Improvement of Legal Remedies; A Report to Congress in Compliance with Section 301(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510). The study and Congressional reliance upon it make clear that Congress did not intend to save from preemption periods of repose that would have the same exact effect as statutes of limitations lacking a discovery rule.

Nonetheless, the majority, under the guise of federalism, seeks to impose a sweeping rule saving all periods of repose from preemption. But to distinguish between statutes of limitations and periods of repose that have the same debilitating effect on plaintiffs suffering the same latent harm, simply by virtue of the name used by a State legislature (or, more likely—and as here—a court of law) is wrong, insensible, and unnecessary. *See Burlington Northern & Santa Fe Railway Co. v. Poole Chemical Co.*, 419 F.3d 355 (5th Cir. 2005) (distinguishing repose period for product liability suit where cause of action accrued prior to expiration from

cases involving latent harms).

Moreover, today's decision will produce results contrary to CERCLA's purposes. First, it will prevent the reclamation of toxic pollutants and the remediation of contaminated sites by responsible parties. *See Burlington Northern & Santa Fe Railway Co. v. United States*, 556 U.S. 599, 602 (2009) (describing CERCLA as a remedial statute, created to promote efficient and equitable responses to hazardous pollution). *See also* H.R. Rep. No. 96–1016, pt. 1, at 22 (1980) and S. Rep. No. 96–848, at 13 (1980) (describing how CERCLA achieves goals by shifting costs of cleanup to responsible parties). Second, it will encourage the dissemination of false information regarding contamination by landowners and their agents because periods of repose ordinarily cannot be tolled for equitable reasons. Finally, today's decision will undermine the uniformity sought by § 9658's discovery rule, and may well reproduce the race to the bottom that contributed to CERCLA's enactment in the first place. *See, e.g.,* 126 CONG. REC. H31,965 (daily ed. Dec. 3, 1980) (statement of Rep. Florio) (one of CERCLA's primary purposes was "[t]o insure [sic] the development of a uniform rule of law, and to discourage business [sic] dealing in hazardous substances from locating primarily in States with more lenient laws").

Accordingly, I would dismiss the petition, and affirm the court below.

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