

# **Supreme Court Rules Against Tort Plaintiffs, Holding Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Does Not Preserve Property Contamination Claims Barred by State Statutes of Repose**

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The U.S. Supreme Court has put to rest a longstanding legal question affecting the deadline for plaintiffs to bring toxic tort and contamination claims stemming from contaminated sites. *CTS Corp. v. Waldburger*, 2014 U.S. LEXIS 3992 (June 9, 2014). Specifically, the Court considered whether Section 309 of the Comprehensive Environmental Response, Compensation, and Liability Act (commonly known as the Superfund law or CERCLA), which preempts a state “statute of limitations,” also preempts a state statute of repose. In a 7-2 decision, the Court held it does not, reversing a Fourth Circuit ruling and resolving a split in the lower courts.

The *Waldburger* decision provides an additional tool for companies defending personal injury and property value damage claims based on long-ago events. Counsel for all parties should look to state statutes of repose that may provide an absolute bar to liability, regardless of when the plaintiff alleges discovery of injury and its cause. The opinion also fuels ongoing controversies regarding preemption doctrine generally, with a four-Justice concurrence arguing against any “presumption against preemption,” a frequently cited proposition by groups seeking to exact more stringent requirements than prescribed under federal law.

## **Background**

Congress passed CERCLA in 1980 to ensure the timely cleanup of hazardous waste sites by parties responsible for the pollution. State law, however, generally governs private claims for property damage or personal injury caused by contamination. State law, which is not uniform, may provide for a short statute of limitations that is not tolled until the plaintiff identifies the alleged cause of injury. Section 309 of CERCLA (added in the 1986 SARA amendments) superimposes an automatic discovery rule (called the “federally required commencement date”) that trumps any conflicting state statute of limitation for “any action brought under State law for personal injury, or property damages,

which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.” 42 U.S.C. § 9658. Under the federally required commencement date, the state cause of action accrues, and the state statute of limitations begins to run, when the plaintiff “knew (or reasonably should have known)” that the personal injury or property damage was caused by pollution.

Section 309 of CERCLA, however, only mentions “statutes of limitations.” It nowhere mentions statutes of repose. Unlike statutes of limitation, statutes of repose impose an absolute temporal limit on a party’s potential liability; whether the injury was discovered is irrelevant.

## Supreme Court Opinion and Implications

The Supreme Court took jurisdiction to resolve a split in the Courts of Appeal on this distinction. In supporting *certiorari*, the United States also argued that statutes of repose survive CERCLA.

*Waldburger* leaves no doubt regarding the distinction between state statutes of limitation and repose going forward. Justice Kennedy reasoned that Congress only intended to supersede state authority where it clearly did so. The Court then found that that the text Congress enacted did not mention statutes of repose, while the legislative history suggested that term was deliberately excluded. While there is considerable overlap between statutes of limitation and repose, their purposes and operation are distinct. The Court held that “[t]he result of respondents interpretation would be that statutes of repose would cease to serve any real function.” Because CTS’s last act occurred in 1987 when it sold its still-contaminated electronics plant, and North Carolina has an applicable 10-year statute of repose, the plaintiffs’ state-law tort claim filed in 2011 was untimely.

The practical consequences of *Waldburger* may be limited as only a handful of states currently have relevant statutes of repose. The opinion does underscore that CERCLA, like other federal statutes, should be interpreted through a close focus on the text; the Court implicitly rejected the view of the Fourth Circuit (and many courts over the years interpreting CERCLA) that the statute’s remedial purpose requires a “liberal interpretation.” Importantly for the preemption debates that are a staple of Supreme Court jurisprudence, the Court’s four leading conservatives joined in a separate concurrence to disavow any presumption against preemption.

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