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Decisions of Note: Court Issues First of Many Rulings in the Camp Lejeune Toxic Tort Litigation

On September 29, the U.S. District Court for the Northern District of Georgia handed down the first significant ruling of many expected to come out of the Multi-District Litigation involving contaminated drinking water at North Carolina's Camp Lejeune Marine Corps Base. Judge J. Owen Forrester, who is presiding over what may end up to be thousands of lawsuits alleging illness or death associated with the tainted water, held that the United States could not rely on North Carolina's 10-year statute of repose to obtain dismissal of a plaintiff's claims – even though the contamination occurred well more than 10 years prior to the filing of suit.

The reason? In an environmental contamination case, section 9658 of the federal Comprehensive Response, Compensation and Liability Act, commonly referred to as CERCLA or the Superfund, tolls the otherwise "applicable limitations period" until the date the plaintiff knew or reasonably should have known that the contamination caused the injury. It is fairly well established that this federal tolling provision can operate to preempt state statutes of limitation in cases involving releases of hazardous substances, but the law is not yet settled on whether it also extends to preempt state statutes of repose. In a lengthy opinion, Judge Forrester ultimately concluded that it can – so that the time period for North Carolina's 10-year repose period would begin to run not when the contamination occurred, but when the former Camp Lejeune residents knew or reasonably should have known that their injuries were caused or contributed to by the contamination.

This is an interesting opinion to read, not only for its ultimate holding, but for the way the court got there. Reading the first 21 pages of the 24-page opinion, you would rightly presume that the government was going to win its motion. Indeed, in a lengthy analysis, Judge Forrester concluded that the statutory language unambiguously referred only to statutes of limitation, and further found that nothing in the legislative history supported the application of section 9658 to

supplant statutes of repose. And what is more, the court noted that a statute of repose, unlike a statute of limitation, actually acts as a condition precedent to bringing an action – so that if no action is filed within the specified time period, there is, quite literally, no action to bring. For all these reasons, Judge Forrester wrote that, "if the court were left to its own devices, it would find that statutes of repose do not come within the scope of § 9658."

In the end, however, the court apparently wasn't left to its own devices, or to the plain, unambiguous language of the statute. As is frequently heard in Superfund litigation, "CERCLA is a remedial statute whose terms should be construed liberally to carry out its purposes." And so, according to Judge Forrester, § 9658 must be read broadly to encompass both statutes of limitation and repose, so that in situations covered by CERCLA, plaintiffs will "have an opportunity to know they have a case before any state limitations period precludes their claims."

It is unclear how a court could construe – liberally or otherwise – unambiguous statutory language to mean anything other than what the court found it to mean, but Judge Forrester did so here. This litigation is certainly one to watch.

This update is intended as information for clients and other interested parties. It is not intended as legal advice. Readers should not act upon the information contained herein without individual legal counsel.