

## [Products Liability Law Daily Wrap Up, TOP STORY—STATUTES OF LIMITATIONS AND REPOSE—9th Cir.: Oregon high court asked to clarify repose period in auto defect case, \(May 30, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Susan Engstrom

In a products liability action brought by a vehicle owner against an automobile manufacturer, the U.S. Court of Appeals for the Ninth Circuit has certified a question to the Oregon Supreme Court asking whether that state's ten-year statute of ultimate repose applied when the state of manufacture had no relevant statute of repose. Because the vehicle in this case was manufactured in Missouri, which has no statute of repose for products liability actions, the district court had concluded that Oregon's repose period did not apply to the owner's suit (*Miller v. Ford Motor Co.*, May 26, 2017, Bybee, J.).

The owner of a Ford Escape filed a products liability action against Ford Motor Company for damages arising from a fire that allegedly originated in the vehicle and spread to her dwelling, causing property damage. The vehicle owner also claimed that she had fractured her heel when she fell while trying to escape the fire. The vehicle was manufactured in Missouri and was purchased by the owner in 2001. The alleged fire occurred in 2012. The action, which was filed in an Oregon state court in 2014, was removed to federal court on the basis of diversity. Ford moved for summary judgment on the ground that Oregon's ten-year statute of ultimate repose for products liability actions (Or. Rev. Stat. §30.905(2)) barred the claim.

**Statute of repose.** Oregon law provides that a products liability action "must be commenced before the later of: (a) Ten years after the date on which the product was first purchased for use or consumption; or (b) The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured." The district court ruled that the Oregon statute did not apply because its "look-away" provision required the court to apply the repose period of the state of manufacture [see *Products Liability Law Daily's* October 29, 2014 [analysis](#)]. Because Missouri has no statute of repose for products liability actions, the district court concluded that no such limitation applied to bar the vehicle owner's claims.

On appeal, Ford argued that there was only one way to interpret the Oregon statute—namely, that a products liability action in Oregon is subject to a period of ultimate repose of either (1) ten years or (2) the period of repose of the state of manufacture, whichever is longer. According to Ford, the statute did not authorize an unlimited period in which to bring suit. The manufacturer asserted that the look-away provision did not apply in this case and that the statutory period of ultimate repose defaulted to ten years. The vehicle owner, on the other hand, contended that the plain language of the statute was neither clear nor dispositive and did not explicitly require courts to "look back" to Oregon law if the state of manufacture had no relevant period of repose. The owner also cited several excerpts from the statute's legislative history suggesting that the Oregon legislature intended to allow plaintiffs to bring suit within the time permitted in the state of manufacture, however long that may be.

**Certified question.** In the Ninth Circuit's view, the text of the statute appeared to predicate application of the look-away provision on the existence of an equivalent statute of repose in the foreign state. However, the legislative history suggested that Oregon lawmakers may not have intended to impose this limitation. Because the court was aware of no controlling precedent in the state on this issue, and because resolution of the case turned solely on Oregon law, the Ninth Circuit certified the following question to the state's highest court:

Oregon's statute of repose for products liability actions (Or. Rev. Stat. § 30.905(2)) provides that a civil action "must be commenced before the later of ... ten years ... or ... the expiration of any statute

of repose for an equivalent civil action in the state in which the product was manufactured[.]" If the state of manufacture has no relevant statute of repose, is a plaintiff entitled to an unlimited period (subject to the statute of limitations) in which to bring suit in Oregon court?

Further proceedings in the case have been stayed pending the Oregon Supreme Court's response or notification from the court that it declines to answer. If the court declines certification, the Ninth Circuit will resolve the question according to its best understanding of Oregon law.

The case is No. [14-36001](#).

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Companies: Ford Motor Co.

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