



Oregon Supreme Court Limits the Applicability of Oregon's Statute of Repose in Product Liability Actions

From the desk of Matthew G. Ukishima: Oregon limits the timeframe for initiating a product liability civil action for personal injury or property damage to ten years from the date of purchase (statute of ultimate repose). In cases where the product was manufactured in a different state with a longer statute of repose, plaintiffs may sue in Oregon and get the benefit of the longer limitations period. But, what happens if the manufacturing state has no statute of repose for product liability claims? Read on to find out.

Claims Pointer: The Oregon Supreme Court determined that, while Oregon imposes a statute of repose of 10 years for product liability claims, when the product is manufactured in a state with no applicable statute of repose, then the claim is not subject to any repose period. In effect, this ruling expands the potential liability exposure for manufacturers, sellers, distributors, and others in the chain of manufacturing and sale for products and components manufactured in the 32 states that do not employ product liability statutes of repose.

[Miller v. Ford Motor Co., 363 Or 105 \(June 7, 2018\).](#)

In this matter, Aline L. Miller ("Plaintiff") owned a Ford Escape, first sold in June 2001 and manufactured in Missouri. In May 2012, the Escape caught fire in Miller's garage due to a faulty engine sensor. Plaintiff's home was damaged and Plaintiff was injured when she fled the fire. In April 2014, Plaintiff filed a product liability lawsuit against Ford Motor Company ("Ford") in Oregon State Court. Ford removed the case to Federal District Court and moved for summary judgment based on Oregon's statute of repose for product liability actions. After the District Court denied Ford's motion, the case was appealed to the Ninth Circuit Court of Appeals, which then turned to the Oregon Supreme Court with a certified question about whether a product liability action in Oregon is subject to any statute of repose when the state of manufacture has no statute of repose. The Oregon Supreme Court answered, "Under ORS 30.905(2), when an Oregon product liability action involves a product that was manufactured in a state that has no statute of repose for an equivalent civil action, then the action in Oregon also is not subject to a statute of repose."

The pertinent portion of ORS 30.905 states:

- (1) Subject to the limitation imposed by subsection (2) of this section, a product liability civil action for personal injury or property damage must be commenced not later than two years after the plaintiff discovers, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the product, or the causal relationship between the injury or damage and the conduct of the defendant.
- (2) A product liability civil action for personal injury or property damage 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, or, if the product was manufactured in a foreign country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported.



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Oregon Case Update



The issue in this case concerns Subsection (2), which sets forth a statute of repose establishing the maximum time allowed to bring a claim regardless of a discovery rule (10 years for products sold in Oregon or expiration of the statute of repose in the state of manufacture for an equivalent action, whichever is later).

ORS 30.905(2) does not explicitly state what should occur when a manufacturing state does not have a statute of repose that would govern an equivalent civil action. Ford argued that when the manufacturing state lacks an equivalent statute of repose, then Oregon's 10-year limitation applies. Conversely, Plaintiff argued that the "equivalent civil action" in the manufacturing state should apply which, in this matter, would mean that no statute of repose should apply.

Having carefully read the statute and the competing arguments, the Oregon Supreme Court determined there is a textual ambiguity and turned to the legislative history of ORS 30.905.

The case opinion discussed the origins of the statute of repose, beginning in 1967 for tort actions, then in 1977 the Legislature enacted a specific statute of repose for product liability cases. The Legislature's intent was to "fix a limited and predictable time period in which a manufacturer..." can be sued, and in doing so, decrease the costs of liability insurance.

Notably, in 2009 the Oregon legislature made an important revision to its statute of repose. First, the legislature extended the repose period from 8 years to 10 years. Second, and more importantly, the legislature added a "look away" provision, which created a special exception allowing a claimant to extend the statute of repose if the state where the product was manufactured is longer than 10 years.

Following a thorough review of the legislative history, including audio recordings of testimony from House floor debates, the Oregon Supreme Court found the purpose behind the "look away" provision in ORS 30.905(2)(b) was to allow Oregon plaintiffs to litigate their claims without having to leave Oregon to file a lawsuit in the state of manufacture. More specifically, the discussions and debates regarding the effect of ORS 30.905(2)(b) indicate an understanding that the "look away" provision could be utilized by Oregon plaintiffs involving products manufactured in states with no statute of repose.

Ultimately, the Oregon Supreme Court concluded the context for interpreting the statute together with the legislative history showed the Legislature intended to allow Oregonians the option to bring suit in Oregon courts when the product is manufactured out-of-state, rather than requiring them to travel to the state in which the product was manufactured, even when the manufacturing state has no statute of repose.

It should be noted that Defendants argued this interpretation of the statute of repose could not have been intended by the Legislature because it would "significantly expand liability exposure for out-of-state manufacturers, in-state manufacturers who utilize component parts manufactured in other states, and in-state suppliers, sellers, distributors, and lessors." The Court disagreed with this assessment, declaring that it did not actually expand liability because a plaintiff would have had a cause of action in the state of manufacture. All the statute did, according to the Court, was to provide plaintiffs with an option to bring suit in Oregon rather than in the state of manufacture.

In conclusion, the Oregon Supreme Court has granted plaintiffs a greatly expanded timeframe in which to commence a suit based in product liability in Oregon when the product at issue was manufactured in one of the 32 states that do not have an equivalent statute of repose.

View full opinion at: <https://cdm17027.contentdm.oclc.org/digital/pdf.js/web/viewer.html?file=/digital/api/collection/p17027coll3/id/6792/download#page=1&zoom=auto>



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