IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008-CA-02045

REBEKAH ANGLE — APPELLANT-PLAINTIFF

VS.

KOPPERS, INC. ET AL — APPELLEES-DEFENDANTS

APPEAL FROM THE CIRCUIT COURT OF
GRENADA COUNTY
HONORABLE JOSEPH H. LOPER, JR., CIRCUIT JUDGE

BRIEF OF APPELLANT REBEKAH ANGLE

ORAL ARGUMENT REQUESTED

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NO. 2008-CA-02045

REBEKAH ANGLE	APPELLANT-PLAINTIFF
VS.	
KOPPERS, INC. ET AL	APPELLEES-DEFENDANTS

Appeal from the Circuit Court of Grenada County
Honorable Joseph H. Loper, Jr., Circuit Judge

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Interested Parties:

1. Rebekah Angle, Appellant-Plaintiff

2. The Colom Law Firm, Counsel for Rebekah Angle

3. Lundy & Davis, Counsel for Rebekah Angle

4. Jerry P. 'Jay' Hughes, Jr., Counsel for Rebekah Angle

5. Carter C. Hitt, Counsel for Rebekah Angle

6. Koppers, Inc., f/k/a Koppers Industries, Inc.

7. Beazer East, Inc., f/k/a Beazer Materials and Services

8. Hanson, PLC

9. Hanson Building Material Limited, f/k/a Hanson, PLC

10. Hanson Holdings, Limited

11. Hanson holdings Basalt, Inc.

12. Hanson Holdings Aragonite, Inc

13. HBMA Holdings, Inc.

14. Three Rivers Management

15. Illinois Central Railroad Company, f/k/a Illinois Central Gulf Railroad Co.

16. Glenn F. Beckham, Counsel for Illinois Central Railroad Co.

17. Jay Gore III, Counsel for Koppers Inc, Three Rivers Management, Beazer East, Inc.

18. Christopher A. Shapley, Counsel for Koppers Inc, Three Rivers Management, Beazer East, Inc.

19. William "Trey" Jones III, Counsel for Koppers Inc, Three Rivers Management, Beazer East, Inc.

20. Reuben V. Anderson, Counsel for Koppers Inc, Three Rivers Management, Beazer East, Inc.

21. Robert L. Gibbs, Counsel for Koppers Inc, Three Rivers Management, Beazer East, Inc.

22. Harris Frederick Powers III, Counsel for Koppers Inc, Three Rivers Management, Beazer East, Inc.

In addition to the above-listed persons having a specific interest in this case, this Court has on file before it appeals in other cases involving the same defendants. All of these cases are currently stayed pending the outcome of this case. The attorneys for these cases are the same as for this case, and are listed above. The appellants in these cases are: Billy W. McKinney, Jessica McRee, John F. Bailey on Behalf of the Estate of Frankie Lynette Bailey, Linda Bailey, Anthony Barnes, Rhonda Michelle Herbert, S.D. Bobby Booker, Lewis Brooks, Edward Merriman, Ceola Moore on Behalf of the Estate of Tanzil Barnes, Lillie M. Burgess, Willie Collins Butler, Ethel Hooper Conley, Richard Crenshaw, Gloria Mae Beck Muhammad, Edward M. Penn III, Tondria Dent, Willie M. Rhodes, Trebia Rogers, Emma Doris Johnson, James

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Johnson, Angela M. Skidmore, Wanda C. Sparks, Mary Carl Vann, Cussie A. Walker, Margaret Johnson, Wallace Johnson, Larry Watt, Arthur O. Williams, Christy Jourdan, Sammie Knox, Stella Mae Mack, Frank P. Marscalco, Bettye McGee, Estate of Lloyd McGee on behalf of Bettye McGee, Mattie A. Williams, Joyce A. Williamson, Khalim Khalis, Arneada Beck, and Richard Crenshaw on Behalf of the Estate of Linda C. Crenshaw.

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[redacted]

STATEMENT REGARDING ORAL ARGUMENT

This case presents an important question concerning both the application of Mississippi's statute of limitations and the applicability of CERCLA[1]'s special discovery rule to this action. Oral argument would assist the court in resolving these issues.

STATEMENT OF ISSUES

1. Did the limitation period provided in Miss. Code Ann. §§15-1-35 and 15-1-49 run during the period between the date of the plaintiff's injury and the date she discovered that the injury was caused by the wrongful acts of the defendants?

2. Does 42 U.S.C. §9658[2] pre-empt Mississippi's statutes of limitation by inserting into those statutes a "discovery rule" when the alleged injury is caused, in whole or in part, by exposure to hazardous substances, pollutants and contaminants released into the environment?

STATEMENT OF THE CASE

Rebekah Angle, the plaintiff-appellant, has suffered numerous physical injuries from her long-term exposure (by inhalation, skin contact, and ingestion) to the toxic chemicals used at the wood treatment plant operated by defendants-appellees. Her problems began with headaches in 1984. In 1994, she underwent a dilation and curettage (D&C) operation necessitated by exposure-related symptoms. This was followed, in 1994, by a hysterectomy. She then developed ovarian cysts in 1999, and had her ovaries removed in 2000. That year, she also developed skin rashes. In 2001, she underwent a lumpectomy in her breast, resulting in a diagnosis of infiltrating ductal carcinoma.

[1] Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
[2] Miss. Code Ann. §§15-1-35 and 15-1-49 and 42 U.S.C. §9658 are included in the Addendum to this brief.

Her exposure to toxic chemicals was extensive. In 1980, treated wood from the facility was brought to her home, exposing her both to contact with the wood and fumes. From 1972-1990, Ms. Angle worked at an elementary school, Tie Plant Elementary, that is located in close proximity to the plant, and was exposed to airborne toxins including fumes and dust. She walked through the facility during 1990-1991, and was thus exposed to dust and other debris on the ground. In 1994, she moved to a home at 2627 Jackson Avenue near the plant, and lived there until 2005. She then moved to 85 Mimosa Drive. She was exposed to fumes and dust from the plant at both of these homes.

In 2006, after Ms. Angle learned that her medical problems were the result of exposure to the toxic chemicals, she filed suit. R. 2-39. In her complaint, she alleged that the defendants[3] were the owners and operators of a wood treatment facility. The plant is situated on approximately 171 acres and is located approximately five miles southeast of Grenada, Mississippi, between State highway 51 and Bogue Creek. West and northeast of the plant is a residential community known as Tie Plant.

The facility pressure treats railroad ties, poles and lumber with creosote and pentachlorophenol. The facility operates five retorts. Two are used to treat wood with pentachlorophenol and two with creosote. Dioxin is a constituent of pentachlorphenol and polyclyclic aromatic hydrocarbons (PAH's) are a constituent of creosote. The facility was built in 1904 by Ayer and Lord Tie Company for the treatment of railroad crossties for Illinois Central Gulf Railroad Company, and has operated ever since.

As a result of her proximity to the wood treatment facility, Ms. Angle's complaint and supporting information allege that she was exposed to:

[3] The wood treatment facility has changed hands several times. The sequence of ownership is alleged in the complaint, but is not relevant to this appeal and will not be repeated here. See R. 2-39.

a) Pentachlorophenol as well as its constituent and derivative chemicals and substances including, but not limited to, dioxins.

b) Creosote as well as its constituent and derivative chemicals and substances including, but not limited to, polyclyclic aromatic hydrocarbons (PARs).

c) Heavy metals including, but not limited to arsenic, zinc and chromium.

d) Unknown chemicals or substances (including their constituents or derivative forms) which were disposed of at the Grenada wood treatment facility.[4]

Toxic chemicals were released by the plant in the form of sediment, airborne dust and other pollutants, and pollution of the surface water and groundwater in the area near the plant where Ms. Angle lived and worked. The defendants' attempts to control the release of these pollutants were either nonexistent or grossly inadequate.

As a result of her injuries, Ms. Angle's complaint claimed damages for the following tortious acts: negligence, gross negligence, negligence per se, intentional tort, conspiracy, private conspiracy (42 U.S.C. §1985(3), strict liability, trespass, nuisance, and failure to warn.

The defendants responded with a motion for summary judgment, alleging that the complaint was barred by Mississippi's one (Ms. Stat. Ann. §15-1-35) and three year (Miss. Code Ann. §15-1-49) statutes of limitations because all of her illnesses were diagnosed no later than 2001, and suit was not filed until 2006. R. 127-180. The defendants contend that under these statutes, the limitation period began to run when Ms. Angle became aware of her injury, whether or not she was aware at that time that the injury was caused by the defendants' wrongful conduct. No evidence was presented by the defendants of the date that Ms. Angle learned of the connection between her injuries and the defendants' toxic chemicals.

[4] Ms. Angle continues to assert that there may be additional evidence regarding her modes of exposure and the chemicals to which she was exposed which will be developed during discovery upon remand.

The plaintiff responded that under Mississippi law, the limitation period was tolled until Ms. Angle discovered the cause of her injuries. In the alternative, she alleged that the Mississippi statute of limitations was pre-empted by 42 U.S.C. §9658. That statute governs personal injuries and property damage caused or contributed by exposure to hazardous substances, pollutants and contaminants released into the environment from a facility like the Defendants' and inserts a discovery rule into all state statutes of limitations for damages arising from the exposure.

The circuit court rejected these arguments and granted summary judgment on the ground that the suit was barred by the statute of limitations. R. 210-215. This appeal follows.

SUMMARY OF ARGUMENT

I. This Court should construe Miss. Code Ann. §15-1-49(2) and Miss. Code Ann. §15-1-35, to hold that the limitation period does not commence, for injuries resulting from environmental contaminants, until the plaintiff knows or reasonably should know that his injuries were caused by the defendant. The mere fact of injury should not start the running of the statute. To hold otherwise would contravene the policy that a plaintiff should not be required to file suit until he has sufficient facts to state a cause of action.

On motion for summary judgment, "the moving party has the burden of demonstrating that no genuine issue of material facts exists, and the non-moving party must be given the benefit of the doubt concerning the existence of a material fact." *Howard v. City of Biloxi*, 943 So. 2d 751, 754 ¶4 (Miss. App. 2006), quoting *City of Jackson v. Sutton*, 797 So. 2d 977, 979 ¶7 (Miss. 2001). Because the defendants did not present summary judgment proof that Ms. Angle knew or should have known of the cause of her injury before the limitation period, they have not met their burden on summary judgment.

II. In the alternative, if Mississippi law requires the filing of suit before the cause of the injury is discovered, it is pre-empted by 42 U.S.C. §9658(a)(1) (CERCLA), which provides for a "discovery rule" for all claims for "personal injury, or property damages" arising out of exposure to "hazardous substance(s) . . . pollutant(s) or contaminant(s), released into the environment . . . ." This is clearly such a case, and therefore the statute of limitations did not run until "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.* Again, since the defendants did not present summary judgment proof as to Ms. Angle's knowledge, the grant of summary judgment must be reversed.

ARGUMENT

I. Did the limitation period provided in Miss. Code Ann. §§15-1-35 and 15-1-49 run during the period between the date of the plaintiff's injury and the date she discovered that the injury was caused by the wrongful acts of the defendants?

Ms. Angle experienced health problems beginning in 1984. They gradually became more serious until she learned, in 2001, that she had breast cancer. The defendants seek to avoid liability by claiming that she filed suit too late under Miss. Code Ann. §§15-1-49(2) and 15-1-35.

A principled reading of these statutes and settled Mississippi law do not permit the limitations clock to begin to tick on a latent injury claim until the plaintiff knows or reasonably should know of facts that would enable her to file suit. This includes knowledge of the fact of loss, and, where practicably necessary to enable her to sue, the cause of the harm the plaintiff claims. This principle applies whether or not the statute of limitations applicable to the action contains an explicit "discovery rule."

In *Smith v. Sneed*, 638 So.2d 1252 (Miss. 1994), this Court considered the commencement of the limitation period in a legal malpractice action. The court held that the correct statute of limitations was Miss. Code Ann. §15-1-49, the same statute at issue here. That statute contains no explicit statement that the limitation period commences when the plaintiff discovers that the injury was caused by the defendant. However, the court construed the statute to require such a holding in a legal malpractice case. The plaintiff there had entered a plea of guilty on the advice of his attorney, not knowing that the autopsy report on the alleged victim of his offense would show that the victim died of natural causes. He alleged that he had asked his attorney about the autopsy report but that he had not received it. Mr. Smith filed suit after obtaining the report some years later.

Holding that the statute of limitations did not commence until Mr. Smith learned of the autopsy report, the Court noted that subsequent to the enactment of Miss. Code Ann. §15-1-49, the legislature had enacted Miss. Code Ann. §15-1-36, which provided that in a medical malpractice case, the limitation period did not begin until the plaintiff knew or reasonably should have known of his caused of action. The Court then reasoned, "It would be preposterous to think that the legislature would think that a cause of action for legal malpractice would accrue when the injured party could not know that he had a claim, but a claim for medical malpractice would accrue only when the injured party knew of his claim." *Smith v. Sneed*, 638 So.2d 1252, 1256 (Miss. 1994). The Court then cited its decision in *Owens-Illinois, Inc. v. Edwards*, 573 So.2d 704 (Miss. 1990).

In *Edwards*, the Court considered whether the statute of limitations for an injury caused by exposure to chemicals commenced at the time of the last exposure to the chemicals. The Court declined to so find, holding,

> Illogical results, such as the finding that plaintiffs are barred from seeking relief from injuries which are undiscoverable until the pertinent time for seeking such relief has passed, would not only undermine the purposes for which statutes of limitations exist, but would also engender disrespect for our civil justice system."

Edwards, 573 So.2d at 708-709, cited in *Smith v. Sneed*, 638 So.2d 1252, 1257 (Miss. 1994). The *Smith v. Sneed* court further cited the decision in *Staheli v. Smith*, 548 So.2d 1299 (Miss.1989), where it had been held that the limitations period for defamation did not begin until the plaintiff discovered the defamatory material, since he could not have filed suit until he knew that he had been defamed. Thus, the court rejected the lower court holding that the statute commenced when the defamatory material was placed in Mr. Staheli's tenure file. The *Smith v. Sneed* court concluded, "In sum, we believe that any burden placed upon an attorney by application of the discovery rule is less onerous than the injustice of denying relief to unknowing victims." *Smith v. Sneed*, 638 So.2d 1252, 1258 (Miss. 1994).

This Court similarly grafted a "discovery rule" onto a limitation statute in *Donald v. Amoco Production Co.*, 735 So.2d 161, 168 ¶¶18-19 (Miss. 1999). There, the plaintiff alleged injury as a result of radioactive waste which was not detected until some time after he sustained the injury he complained of. The Court held that:

> Donald is a layman who realistically could not be expected to perceive the secret injury to the subject property until it was readily apparent as traceable radioactive waste by use of a survey meter.
>
> Recognizing Donald's allegations as true and with this logic in mind, it only seems equitable that the discovery exception should apply in the unique facts of the instant case.

While the court referred to the facts in *Donald* as "unique," the same factual issue occurs in Ms. Angle's case. Like Mr. Donald, she is a layperson, incapable of readily perceiving that her

injuries were the result of her long-term exposure to the toxic chemicals released by the defendants. The same result should apply here.

Thus, under Mississippi law, legal, actionable injury includes both knowledge of the loss, and the actionable activities giving rise to the loss:

> There may be . . . cases where the patient is aware of his injury prior to the [expiration of the limitations period], but does not discover and could not have discovered with reasonable diligen the act or omission which caused the injury. In such cases, the action does not accrue until the latter discovery is made.

Smith v. Sanders, 485 So. 2d 1051, 1052-53 (Miss. 1986).

Other cases decided by this Court have also recognized the rule that the limitation period does not commence until the plaintiff learns that his injury was caused by the act or omission of the defendant. In *Punzo v. Jackson County*, 861 So. 2d 340, 346, ¶19 (Miss. 2003), the court held that the one-year statute of limitations did not commence until the plaintiff learned that the floods which damaged his home were caused by the county's negligent rebuilding of a bridge. Citing *Barnes v. Singing River Hospital Systems*, 733 So. 2d 199, 205-06, ¶20 (Miss. 1999), the court held that a contrary construction was "not consistent with this Court's prior holdings as in *Barnes*, 733 So.2d 199, and *Sweeney v. Preston*, 642 So.2d 332 (Miss. 1994)." *Punzo*, 861 So.2d at 344, ¶16.

In *PPG Architectural Finishes, Inc. v. Lowery*, 909 So. 2d 47, 50-52, ¶¶ 9-18 (Miss. 2005), this Court acknowledged that the plaintiff did not have to file suit until she discovered that her injuries were caused by exposure to paint fumes. However, in that case the court held that because she was aware of that fact at the time of the injury, and the statute of limitations began to run at that time. *See also, Pickens v. Donaldson*, 748 So. 2d 684, 690, ¶26 (Miss. 1999).

This Court's approach to limitations law focuses upon not only a principled reading of text, but also the purpose imbedded in the text, at times going beyond "the letter of the law," to give the statute "the most coherent and principled reading available," *City of Jackson v. Williamson*, 740 So. 2d 818, 821, ¶12 (Miss. 1999); *Stuart's, Inc. v. Brown*, 543 So. 2d 649, 651 (Miss. 1989), "given the statutory scheme and the other valid rules in the field." *Estate of Davis*, 706 So. 2d 244, 247, ¶12 (Miss. 1998); *MIGA v Vaughn*, 529 So. 2d 540, 542 (Miss. 1988).

Statutes of limitations are based on the principle that litigants should be diligent in prosecuting their claims against others. But that policy must give way when the cause of the injury cannot be discovered until after the limitation period, dated from the injury, has run. When it enacted CERCLA, Congress recognized that injuries from environmental pollution require a "discovery rule" to start the running of the statute of limitations. This is because, as a result of modern medicine and scientific methods, we now know that diseases may be latent and not known for long periods of time.

A further reason why a discovery rule is appropriate in this area is that pollution control statutes are largely dependent upon self reporting. If an industry does not report the pollution, then no one would know the cause. And a layperson is unlikely to know that his injury stemmed from pollution without specific reporting. Therefore, this Court should recognize the insight of Congress and the Environmental Protection Agency and hold that the traditional rules regarding the triggering of the statute of limitations should not apply to environmental torts. It should be noted, however, that this rule applies only to those who, like Ms. Angle, are harmed by discharge of pollutants into the environment. Employees who are injured by workplace exposure would not be affected by this rule.

If Ms. Angle did not know, and reasonably could not have known, that the pollution of her environment with toxic chemicals had caused or contributed to her injuries at the time they occurred or for three years afterwards, then she could not possibly have sued these defendants during that time. The construction of Mississippi's statute of limitations as requiring suit within three years of injury thus operates, not to prevent *untimely* claims, but to prevent the assertion of Ms. Angle's claims at *any* time. While statutes of limitations protect a defendant's legitimate interest in avoiding stale claims, they must always be construed strictly to prevent injustice. The construction urged here would deny Ms. Angle her rights completely, and must be rejected by this Court. This result is both illogical and unjust.

The defendants presented no evidence supporting their motion for summary judgment showing when Ms. Angle discovered that her injuries were caused by environmental contamination by the defendants. On motion for summary judgment, "the moving party has the burden of demonstrating that no genuine issue of material facts exists, and the non-moving party must be given the benefit of the doubt concerning the existence of a material fact." Miss. R. Civ. P. 56, *Howard v. City of Biloxi*, 943 So. 2d 751, 754 ¶4 (Miss. App. 2006), quoting *City of Jackson v. Sutton*, 797 So. 2d 977, 979 ¶7 (Miss. 2001). The burden is on the summary judgment movant to establish each element of his motion by competent evidence. Since no proof was presented by the defendants here that Ms. Angle was aware of the cause of her injuries before the limitations period, the defendants have not met their burden and reversal is required.

II. Does 42 U.S.C. §9658 preempt Mississippi's statutes of limitation by inserting into those statutes a "discovery rule" when the alleged injury is caused, in whole or in part, by exposure to hazardous substances, pollutants and contaminants released into the environment?

In *Donald v. Amoco Production Co.*, 735 So.2d 161, 168 ¶20 (Miss. 1999), this Court declined to decide whether Mississippi limitations law is preempted by federal law in environmental pollution cases, since it applied the federal discovery rule in the case and therefore the issue was moot. Should the Court here find that *Mississippi* law requires that Ms. Angle file suit before she discovered that her injuries were caused by the defendants' pollution of her environment, then Mississippi law must yield to federal law.

Under 42 U.S.C. §9658[5], state court actions for "personal injury, or property damages" arising out of exposure to "hazardous substance(s) . . . pollutant(s) or contaminant(s), released into the environment . . . ." are governed by a "discovery rule" under which the statute of limitations does not begin to run until "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.* This provision was enacted (in 1986) in part to address the inadequacy of some state laws in dealing with the delayed discovery of toxic substance pollution. H.R. Conf. Rep. No. 99-962, 99th Cong., 2d Sess. 261 (1986) reprinted in 1986 U.S.C.C.A.N. 2835, 3276, 3354. In applying §9658, a court should bear in mind that CERCLA is a remedial statute that should be construed liberally in order to effectuate its goals. *U.S. v. Alcan Aluminum Corporation*, 964 F.2d 252 (3rd Cir. 1992).[6]

Ms. Angle clearly alleged that her injuries arose out of the discharge into the environment of numerous harmful chemicals. The allegations of her complaint make clear that she is not

[5] The section is also cited as §309 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

[6] It should also be noted that the definition of "release" in 42 U.S.C. §9601(22) specifically excludes "any release which results in exposure to persons solely within a workplace."

claiming a workplace injury excluded from 42 U.S.C. §9658. Thus, the CERCLA statute of limitations applies to Ms. Angle's case.

In *Tucker v. Southern Wood Piedmont Co.*, 28 F.3d 1089 (11th Cir. 1994), the court held that 42 U.S.C. §9658 preempted the Georgia statute of limitations, and that the statute did not begin to run until the plaintiffs knew or reasonably should have known that their injuries were caused by the defendants' environmental contamination. See also *McDonald v. Sun Oil Co.*, 548 F.3d 774 (9th Cir. 2008) (CERCLA pre-empts Oregon statute of repose); *Kowalski v. Goodyear Tire and Rubber Co.*, 841 F.Supp. 104 (W.D.N.Y. 1994) (statute of limitations extended by §9658 to the time plaintiff knew or should have known that injury resulted from exposure).

As noted above, the defendants presented no summary judgment proof as to the time Ms. Angle discovered that her injuries were caused by exposure to environmental contaminants. Nor did they prove that her injuries did not arise out of out of exposure to "hazardous substance(s) . . . pollutant(s) or contaminant(s), released into the environment . . . ." Therefore, they have not met their burden under Miss. R. Civ. P. 56, and reversal is required.

CONCLUSION

The failure to recognize the fact that this suit could not be maintained until Ms. Angle discovered both her injury and its cause will leave her, and others similarly situated, with no remedy at law for serious injuries caused by environmental pollution. For the reasons above, the court's grant of summary judgment must be reversed and the case remanded for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elizabeth Unger Carlyle, an attorney for Rebekah Angle, do hereby certify that I have this day caused to be served by United States Mail, postage prepaid, two (2) true and correct copies of the foregoing instrument to the following persons:

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Miss Code Ann. §15-1-49. Actions without prescribed period of limitation; actions involving latent injury or disease

(1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.

(2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury.

(3) The provisions of subsection (2) of this section shall apply to all pending and subsequently filed actions.

[redacted]

Miss. Code Ann. §15-1-35. Actions for certain torts

All actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one (1) year next after the cause of such action accrued, and not after.

42 U.S. §9658. Actions under State law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substance cases

(1) Exception to State statutes

In the case of 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, if the applicable limitations period for such action (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 date in lieu of the date specified in such State statute.

(2) State law generally applicable

Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions 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.

(3) Actions under section 9607

Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions

As used in this section--

(1) Subchapter I terms

The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period

The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought.

(3) Commencement date

The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general

Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) Special rules

In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.