

Oregon Legislature Breathes New Life Into Dead Product Liability Claims

— by Julie E. Dutton

On September 17, 2003, Governor Ted Kulongoski signed into effect House Bill No. 2080. This bill changes the statutes of limitations and repose governing claims for product liability and went into effect on January 1, 2004. Included in this new version of the statute is an extension of the statute of ultimate repose and a revival clause. A revival clause allows claims that were previously barred by a statute of limitations to be brought back to life. The following is a summary of former ORS 30.905, how it differs from the newly enacted form of the statute and how the new statute may affect you and your insureds.

Under the prior rule, ORS 30.905(1) provided that product liability civil actions were not to be commenced later than eight years after the date on which the product was first purchased for use or consumption. That section of the statute was a “statute of ultimate repose” that barred claims that did not arise within the statutory period. Border v. Indian Head Industries, Inc., 101 Or. App. 556, 560, 792 P.2d 111 (1990), rev. den., 310 Or. 475, 799 P.2d 646 (1990). This was an “absolute period within which the plaintiff must [have been] ... injured in order to have a claim at all.” Id. at 563. A plaintiff who was injured more than eight years after the first purchase of the product for use or consumption simply did not have a claim. Id. at 560.

The new statute, however, does not draw such a deep line in the sand. Under the new version of ORS 30.905, product liability claims must still “accrue” within 8 years from the date the product was first purchased. 2003 Oregon Laws Ch. 768,

Sec. 1 (H.B. 2080). This means that the death, personal injury or property damage caused by the product must actually occur within those 8 years. However, under the new statute, a plaintiff now has an additional 2 years from the date the plaintiff discovers “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...” to bring his claim. Id. Under no circumstances, however, may a claim be brought more than 10 years from the date the product was first purchased. In other words, the statute of repose for product liability claims has been extended from eight years only, to eight years for the claim to accrue plus two years to bring the claim for a total of 10 years from the date of purchase of the product. This bar does not apply to claims based on asbestos related disease or claims based on silicone breast implants. Id.

Another change in the statute is that under the old law, wrongful death claims arising out of product liability were governed by the product liability statute and were required to be brought within two years from discovery of the claim and not more than eight years from the date of first purchase. According to the 2003 revisions, however, a wrongful death claim is now limited by either the time allowed under the wrongful death statute (three years) or 10 years from the first date of purchase of the product, whichever is earlier. Id.

Finally, for the pièce de résistance, the Oregon legislature has seen fit to add a revival clause in the

new product liability statute, breathing new life into dead claims. In this case, the clause states that the statute revives product liability causes of action seeking damages for death, personal injury or property damage that were filed before January 1, 2004 (the effective date of the statute) if:

“(a) The civil action was filed within the time provided by ORS 30.905 as amended by section 1 of this 2003 Act;

(b) The civil action was adjudicated based on the provisions of ORS 30.905 as in effect immediately before the effective date of this 2003 Act; and

(c) A final judgment was entered in the civil action on or after June 8, 2001, and before the effective date of this 2003 Act.”

2003 Oregon Laws Ch. 768, Sec. 2 (H.B. 2080). In other words, claims that were filed within 10 years from the date of purchase, but dismissed or adjudicated based on the statute of limitation and/or statute of repose contained in the former version of the statute (i.e., eight years), and the final judgment was entered in the court record after June 8, 2001, but before January 1, 2004, may be resurrected. Claims that fit into this category may be re-filed within one year from the effective date of the statute; i.e., before January 1, 2005. Of course, this revival clause has not yet been tested in the courts and, therefore, it is too early to determine, with any certainty, how cases re-filed under the revival clause will be treated. ❖

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