

COMMONLY ASKED QUESTIONS ABOUT A FEDERAL STATUTE-OF-REPOSE

Is there any precedent for a federal statute-of-repose, and do statutes-of-repose create the benefits that their proponents promise?

On August 17, 1994, former President Clinton signed into law the General Aviation Revitalization Act (GARA), which created an 18-year federal statute-of-repose for the general aviation industry. Since GARA's enactment, over 25,000 new U.S. manufacturing jobs were created in the general aviation industry. U.S. aircraft production is up 100 percent since 1994; exports have more than doubled; and research and development expenditures are up by more than 150 percent. A federal statute-of-repose has brought a once moribund industry back to life, without sacrificing safety. As former Federal Aviation Administration head Jane Garvey stated, "Thanks in large part to the General Aviation Revitalization Act, the general aviation industry is now in better shape than it has been in more than a decade." Based on GARA's success, similar benefits for the U.S. manufacturing equipment sector from the enactment of a federal statute-of-repose for durable goods can be expected.

Why is a federal statute-of-repose relevant to questions of international competitiveness?

Product liability costs are just like any other costs that must be accounted for when pricing a product. Our foreign competitors' product liability costs are significantly lower than that of U.S. firms. Our major international competitors all have the benefit of statutes-of-repose in their home markets. For example, Japan and the European Union have a 10-year statute-of-repose. While foreign companies that export to the U.S. are subject to U.S. law, the significant impact of foreign capital goods exports has been within the last 25 years. Our foreign competitors do not have the exposure of thousands of "overage" machines present in the U.S. market and, therefore, do not have the same open-ended product liability exposure that U.S. manufacturers have. A federal statute-of-repose would eliminate this disadvantage to U.S. firms and even the playing field.

Will injured parties go uncompensated because of the federal statute-of-repose created by H.R. 3509?

No. H.R. 3509's statute-of-repose only applies to durable goods used in the workplace, when the claimant is eligible for workers' compensation. Thus, injured parties, whose claims are barred by the statute-of-repose, will always be compensated through state workers' compensation law.

If manufacturers always win lawsuits involving overage products, why is a statute-of-repose important?

Very few injured parties recover damages in product liability litigation based on an injury involving equipment over 12 years old. Defendants almost always win such cases if they go to trial, because juries understand that if a durable good has not caused injuries for a very long period of time (e.g., 12 years), there is no inherent design defect in the machine. The overwhelming amount of money spent in such cases goes to legal fees and other transaction costs related to the litigation. The federal statute-of-repose eliminates most legal fees and transaction costs associated with overage products, while ensuring that the injured party is always compensated under state workers' compensation law.

How does the preemption standard contained in H.R. 3509 work?

H.R. 3509 preempts all state statutes-of-repose covering durable goods in the workplace. Eleven states currently have fixed-term statutes-of-repose, ranging from six to 15 years. The average term of current states' statutes-of-repose is about 12 years. As a result, the states with their own statutes-of-repose less than 12 years will be preempted in favor of a 12-year federal statute-of-repose. In every instance, this preemption will result in claimants in these states having a longer period of time to bring their lawsuits. For those states that do not have statutes-of-repose, the federal statute-of-repose will now apply. However, the federal statute-of-repose

will only affect state law regarding durable goods in the workplace. If a state statute-of-repose covers other types of products, state law will continue in full force and effect. Similarly, litigation in those states, which have no statute-of-repose, will be unaffected, except with respect to workplace durable goods.

If a worker is injured on an overage machine because it has not been properly maintained, does the worker have a remedy?

Yes, an injured worker will receive workers' compensation for all work-related injuries. The injured worker may also have a cause of action for the negligent maintenance of the machine. State workers' compensation laws preclude an action against the employer, even though the employer often is best situated to ensure safety in the workplace. H.R. 3509 does not preclude a negligence action under state law against a third party repair or maintenance person nor against a prior owner of the machine. However, such an action would not lie after the expiration of 12 years against original manufacturers or sellers, since they should not be expected to be insurers in perpetuity for product-related injuries – the vast majority of which are due to improper alteration, maintenance, or training rather than product defects. A court could determine, however, that a company that both manufactures and subsequently assumes significant responsibility for repairs and/or maintenance of the machine could be held liable for negligent repair and/or maintenance, not in their capacity of manufacturer but of repair person. Similarly, if the manufacturer so significantly alters the machine that it would be regarded as a new product for purposes of tolling the statute-of-repose, an action could then be brought within the new 12-year period.

When does an overage machine become a new machine?

Normal repairs and replacement of component parts do not restart the federal statute-of-repose. However, if an overage machine is totally rebuilt, then the rebuilt machine becomes a “new” machine for purposes of the statute-of-repose.