VERMONT SUPERIOR COURT
CHITTENDEN UNIT
CIVIL DIVISION

SHIRLEY ANN CARPIN, as Independent Executor of the Estate of Shirley A. Hillster, Plaintiff v. VERMONT YANKEE NUCLEAR POWER CORPORATION, et al., Defendants	Docket No. 21-CV-1818

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff brings this negligence, wrongful death, and survivor's action on behalf of decedent Shirley A. Hillster, who died of mesothelioma in 2020. Plaintiff alleges that Ms. Hilster's mesothelioma was caused by her husband's exposure to asbestos at the Vermont Yankee nuclear power plant in the early 1970s. Defendant Vermont Yankee now moves for summary judgment on the grounds that the statute of repose in 12 V.S.A. § 518(a) bars this action.[1]

I. Undisputed Facts

Plaintiff is the executor of the Estate of Shirley A. Hilster. Ms. Hilster was diagnosed with mesothelioma in July 2020 and died in October 2020. Plaintiff alleges that Ms. Hilster's mesothelioma was caused by her husband's exposure to asbestos at the Vermont Yankee nuclear power plant in the early 1970s.

[1] Plaintiff also brings product liability claims against the manufacturer, Clifton Associates, Inc. Those claims are not at issue in this motion. Clifton filed a separate motion for summary judgment on April 5, 2023, but that motion is not yet ripe.

Mesothelioma caused by exposure to asbestos has a prolonged latent development, recognized to be between 10 and 80 years from exposure to manifestation of illness. Plaintiff alleges that Ms. Hilster developed mesothelioma approximately 50 years after her exposure to asbestos from Vermont Yankee. Ms. Hilster's husband, who worked for Vermont Yankee at the time, came home with asbestos-contamination of his clothes, person, and automobile on an almost daily basis from at least 1957 to 1975, if not longer. Plaintiff alleges that Mr. Hilster was exposed to asbestos throughout his career from numerous sources. His career ended in 1995 with his last employment as a maintenance superintendent at Seminole Electric in Palatka, Florida.

II. Discussion

Vermont Yankee contends that this action is barred by the statute of repose:

> An action to recover for ionizing radiation injury or injury from other noxious agents medically recognized as having a prolonged latent development shall be commenced within three years after the person suffering the injury has knowledge or ought reasonably to have knowledge of having suffered the injury and of the cause thereof, *but in no event more than 20 years from the date of the last occurrence to which the injury is attributed*.

12 V.S.A. § 518(a) (emphasis added). In other words, even if a plaintiff does not discover an injury until 25, 50, or more years after the "last occurrence," the claim is barred because it comes more than 20 years after that occurrence. There is no real dispute that asbestos is a "noxious agent" that falls under the purview of the statute. *See* Campbell v. Stafford, 2011 VT 11, ¶ 15, 189 Vt. 567 (citing Lapka v. Porter Hayden Co., 745 A.2d 525, 531 (N.J. 2000) (noting that a letter chronicling plaintiff's history included the fact he was "exposed to asbestos as well as *other noxious agents* " (emphasis in original))). Vermont Yankee argues that because Ms. Hilster's husband last worked for Vermont Yankee in

1975, and because his last potential exposure to asbestos was when his career ended in 1995, this action (filed in 2021) is barred by the statute of repose.

A. Applicability of Statute of Repose

Plaintiff contends that the statute of repose does not apply here because "the date of the last occurrence to which the injury is attributed" is not the last exposure to asbestos, but rather "those cellular injuries, multiplications, and reproductions of injured cells which occur immediately prior to the onset of symptoms and/or diagnoses of cancer." Pl.'s Objection ¶ 18; Staggs Aff. ¶ 14; *see also* Pl.'s Opp'n at 8–10 (describing the "last occurrence" as "the last cellular damage which formed into her cancerous tumor"). Plaintiff relies on Cavanaugh v. Abbott Lab'ys, 145 Vt. 516, 530 (1985). There, the plaintiff alleged that she was exposed to a synthetic estrogen while in utero, and that this drug—along with other factors such as puberty and menarche—proximately caused a form of vaginal cancer that did not manifest until 22 years after the estrogen exposure. Id. at 516. Plaintiff filed suit when she was 25. Id. at 520–21. The Court held that the statute of repose in 12 V.S.A. § 518 did not bar plaintiff's claim because "the date of the last occurrence to which the injury is attributed" was when plaintiff experienced menarche at age 12 or 13, which was less than 20 years before plaintiff commenced the action. Id. at 528–30. The Court rejected the defendant's argument that the applicable "last occurrence" had to be an event "directly attributable to some negligent act on the part of the defendants." Id. at 529.

Unlike Cavanaugh, however, in which the claim was that puberty and menarche triggered the illness, Plaintiff here points to the decades-long ongoing process of cellular damage that culminated in cancer as the relevant "occurrence." This contention rests on flawed logic. In effect, Plaintiff is framing the injury itself as a cause of the injury. Under

that logic, given that mesothelioma can manifest up to 80 years after exposure to asbestos, one could bring a claim 100 years after the last exposure. Plaintiff's proposed interpretation would essentially eviscerate the statute of repose. In Cavanaugh, menarche was an independent event that, along with plaintiff's mother's ingestion of a drug when plaintiff was in utero, proximately caused the injury.[2] Here, Plaintiff's claimed "last occurrence" is really just a step in the gradual formation of the injury that had continued since the last asbestos exposure. In other words, the proximate cause of the mesothelioma was asbestos exposure, which could have occurred no later than 1995. That set in motion the cancer formation process, which manifested with the mesothelioma diagnosis 25 years later, in 2020. Plaintiff identifies no other event independent from the asbestos exposure that proximately caused the mesothelioma.

The court recognizes that this result understandably seems harsh to Plaintiff. Statutes of repose are necessarily harsh in their application. "[T]he enactment of statutes of repose reflects a balance in reconciling the interests of those favoring or opposing such legislation." Cavanaugh, 145 Vt. at 531. Such policy questions in the context of product liability include "'whether the benefits of encouraging diligence, eliminating potential abuses from stale claims, and fostering personal certainty offset the effects of denying certain plaintiffs a remedy at common law for injury from a product.'" Id. (quoting

[2] Cavanaugh did not offer much analysis to support its conclusion that the act of an entity entirely unrelated to the defendant can be the "last occurrence." It is hard to see the logic behind extending one party's liability based upon another's actions years later, at least in the absence of proof that the two acts combined to create the harm. It does not appear that other states with similarly worded statutes of repose have ever interpreted their respective statutes this way. *See*, *e.g.*, Idaho Code Ann. § 5-243; Kan. Stat. Ann. § 60-513b; *see also* Annotation, Validity and Construction of Statute Terminating Right of Action for Product-Caused Injury at Fixed Period After Manufacture, Sale, or Delivery of Product, 30 A.L.R.5th 1, § 46. The usual approach appears to be to run the period of repose from the defendant's last act. *See*, *e.g.*, Dobbs, The Law of Torts § 244 (2d ed.)("Statutes of ultimate repose provide a counter-rule to the accrual-discovery rule by adding an alternative prescriptive period which begins running at the time of the defendant's act rather than at the time harm was inflicted or discovered.").

McGovern, The Variety, Policy and Constitutionality of Product Liability Statutes of Repose, 30 Am. U. L. Rev. 579, 588 (1981). The legislature reconciled those policy considerations through section 518. Notably, the Cavanaugh Court observed that while the statute of repose did not protect the defendants in that case, "it clearly limits such liability in many other cases, and provides far more protection than no statute of repose at all." 145 Vt. at 531 (emphasis added). This is such a case.

B. Constitutional Challenge

Plaintiff argues alternatively that the statute of repose violates the Vermont Constitution's Remedies Clause and Common Benefits Clause. *See* Vt. Const. ch. I, art. 4 & 7.[3] The court notes at the outset that other courts have previously considered the constitutionality of various statutes of repose. "Most of the decided cases have upheld the constitutionality of statutes of repose," and thus "[t]he cases taken as a whole present a relatively firm picture of general support for the statutes. . ." D. Dobbs, The Law of Torts § 244 (2d ed.) (footnote omitted); *see also* J. Eggen, It's About Time: The Long Overdue Demise of Statutes of Repose in Latent Toxic Tort Litigation, 68 Case W. Res. L. Rev. 23, 39 (2017) ("for the most part . . . statutes of repose have withstood constitutional challenges."). That said, "[a] different and substantial group of jurists have roundly condemned the statutes for barring the claim before it accrues" and "[a] number of courts have held some version of the statutes to be unconstitutional, frequently under state constitutional provisions that require open courts or that guarantee a remedy." Dobbs, supra, § 244; *see also* J. Eggen, supra, 68 Case W. Res. L. Rev. 23, 37–40, 44.

[3] As required by 12 V.S.A. § 4721 and V.R.C.P. 24(d), the court notified the Attorney General's office that this case involves a constitutional challenge to a statute. In a letter dated March 1, 2023, the State declined the opportunity to intervene in this action.

i. Remedies Clause

Article 4 provides:

> Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably to the laws.

Vt. Const. ch. I, art. IV. Though Article 4 "does not create substantive rights, it does ensure access to the judicial process." Shields v. Gerhart, 163 Vt. 219, 223 (1995). At least two other states have found statutes of repose to violate their respective remedies clauses. *See*, *e.g.*, Hazine v. Montgomery Elevator Co., 861 P.2d 625, 630 (Ariz. 1993) (12-year statute of repose violated Arizona constitution's remedies clause); Kennedy v. Cumberland Eng'g Co., 471 A.2d 195, 198 (R.I. 1984) (finding that 10-year statute of repose for products liability claims violated Rhode Island constitution's remedies clause).

Like all constitutional rights, the right of access to the courts "is not unlimited, however." Zorn v. Smith, 2011 VT 10, ¶ 16, 189 Vt. 219; Fox v. Fox, 2022 VT 27, ¶ 46. Our Supreme Court has already rejected an Article 4 challenge in a similar context. In Carter v. Fred's Plumbing & Heating Inc., 174 Vt. 572 (2002) (mem.), the plaintiff was diagnosed with asbestosis 18 years after his last exposure to asbestos and filed a workers' compensation claim, but his claim was barred by a five-year statute of repose then in effect for workers' compensation claims. Id. at 572–74. He then argued that "any statutory interpretation which denie[d] his claim violate[d] his right to a remedy" under Article 4. Id. at 575. The Court held: "The claim that plaintiff has been denied a constitutional right to a remedy is without merit as it is within the Legislature's authority to define and limit a cause of action." Id. The absence "of a statutory or common law cause of action did not

in itself violate Article 4." Id. There was no constitutional deprivation of the plaintiff's Article 4 rights "[i]n the absence of a vested cause of action." Id.; *see also* Lillicrap v. Martin, 156 Vt. 165, 178 (1989) ("While the legislature may impose reasonable limitations on rights of action, due process does not permit the legislature to annul vested rights."). Here, the alleged asbestos exposure from Vermont Yankee occurred in the early 1970s, after the statute of repose in 12 V.S.A. § 518(a) became effective in 1967. Thus, Plaintiff had no "vested cause of action" that could form the basis for a Remedies Clause violation.

ii. Common Benefits Clause

Plaintiff's Article 7 challenge, however, presents more complex issues and requires a more nuanced analysis. "The purpose of the Common Benefits Clause is to ensure that protections conferred by the State are for 'the common benefit of the community' and not just a part of the community." Brown v. State, 2018 VT 1, ¶ 16, 206 Vt. 394 (quoting Baker v. State, 170 Vt. 194, 212 (1999)).[4] In Baker, our Supreme Court "detailed the history of this constitutional provision, its historical context, the evolution of our caselaw interpreting this provision, and the relationship between our inquiry under this clause to that under the Fourteenth Amendment's Equal Protection Clause." Badgley v. Walton, 2010 VT 68, ¶ 21, 188 Vt. 367 (citing Baker, 170 Vt. at 202–11). The Court "rejected the rigid, multi-tiered analysis of the federal Equal Protection Clause analysis in favor of 'a relatively uniform standard, reflective of the inclusionary principle at [the Common Benefit Clause's] core.'" Id. (quoting Baker, 170 Vt. at 212):

> When a statute is challenged under Article 7, we first define that "part of the community" disadvantaged by the law. We examine the statutory basis that distinguishes those protected by the law from those excluded from the state's protection. . .

[4] *See* Vt. Const. ch. I, art. VII ("That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community . . . .").

> We next look to the government's purpose in drawing a classification that includes some members of the community within the scope of the challenged law but excludes others. Consistent with Article 7's guiding principle of affording the protection and benefit of the law to all members of the Vermont community, we examine the nature of the classification to determine whether it is reasonably necessary to accomplish the State's claimed objectives.

Id. ¶ 21 (quoting Baker, 170 Vt. at 212–14). Ultimately, a court must "ascertain whether the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose." Id. (quoting Baker, 170 Vt. at 212–14). Factors to be considered in this determination may include: "(1) the significance of the benefits and protections of the challenged law; (2) whether the omission of members of the community from the benefits and protections of the challenged law promotes the government's stated goals; and (3) whether the classification is significantly underinclusive or overinclusive." Id. (quoting Baker, 170 Vt. at 212–14).

Plaintiff highlights two distinct classifications inherent in the statute. First, those who become sick within 20 years of exposure to "ionizing radiation . . . or . . . other noxious agents" can pursue their claims, while those who become sick after more than 20 years cannot. Second, the statute applies only to cases where latent injuries are caused by "ionizing radiation . . . or . . . other noxious agents," and not to cases with latent injuries from other causes. *See* Pl.'s Opp'n at 12. Thus, the "part of the community" disadvantaged by the statute is those who suffer a latent injury more than 20 years after exposure to "ionizing radiation . . . or . . . other noxious agents." Id. at 11.

Vermont Yankee does not dispute that the statute contains these classifications, but argues that the legislature had "ample, legitimate purposes" in enacting it. Def.'s

Reply at 5. Vermont Yankee does not point to any specifics such as legislative history for section 518(a), but instead relies on the well-established rationales behind statutes of limitations generally. *See*, *e.g.*, Vermont Hum. Rts. Comm'n v. State, Agency of Transp., 2012 VT 88, ¶ 14, 192 Vt. 552 ("Limiting the amount of time in which an action can be brought is a long-standing legislative prerogative. Statutory time limits reflect legislative judgments concerning the relative values of repose on the one hand, and vindication of both public and private legal rights on the other. They serve several governmental purposes, including fairness to defendants, protecting the court's interest in reliance and repose, and guarding against stale demands.") (citations and quotation omitted). It further notes that evidence of the circumstances of exposure from the 1970s is now likely stale or nonexistent, and that "open-ended liability would create a rash of insurance problems for putative defendants." Def.'s Reply at 6 (citing 16B C.J.S. Constitutional Law § 1393).

There is no question that the statute of repose at issue here serves legitimate governmental purposes. "Courts and legislatures have long recognized that timely claims and the statutes of repose which enforce them are critical to the proper administration of justice." Ahern v. Mackey, 2007 VT 27, ¶ 10, 181 Vt. 599. As our Supreme Court has explained, "such provisions 'protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, . . . death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.'" Id. (quoting Inv. Props., Inc. v. Lyttle, 169 Vt. 487, 492 (1999)); *see also* Bd. of Regents of Univ. of State of N.Y. v. Tomanio, 446 U.S. 478, 487 (1980) (noting that statutory time limits "are not simply technicalities" and "have long been respected as fundamental to a well-ordered judicial system."). This case presents a prime example of

those policy concerns. Mr. Hillster worked at Vermont Yankee in the early 1970s, about 50 years ago. The fear of "loss of evidence, . . . death or disappearance of witnesses, fading memories, [and] disappearance of documents" is not unfounded.

Moreover, a 20-year statutory repose period "bears a reasonable and just relation to the governmental purpose." Baker v. State, 170 Vt. 194, 214 (1999). A 20-year period advances the governmental interests in predictability, certainty, and finality by eliminating causes of action more likely to impose stale demands, fading memories, and loss of evidence, while at the same time preserving claims less likely to involve such evidentiary hurdles. *See* 2 Owen & Davis on Prod. Liab. § 14:12 (4th ed.) ("[S]tatutes of repose have a much greater *duration* than statutes of limitations, varying in length from state to state, from five or six years to as long as 10, 12, or even 20 years. The much longer periods within which a claim may be filed under statutes of repose reflects a deference to the discovery rule's objective of providing most persons injured by most defective products with an opportunity to assert their claims once they discover their injuries."). Notably, in rejecting an equal protection challenge to a much shorter statute of repose, the Massachusetts Supreme Judicial Court held that "[i]n establishing the six-year limit, the Legislature struck what it considered to be a reasonable balance between the public's right to a remedy and the need to place an outer limit on the tort liability of those involved in construction." Stearns v. Metro. Life Ins. Co., 117 N.E.3d 694, 699 (Mass. 2019) (quotation omitted). A number of other courts have also rejected equal protection challenges to statutes of repose. *See, e.g.*, Branson v. O.F. Mossberg & Sons, Inc., 221 F.3d 1064, 1065 (8th Cir. 2000) (rejecting equal protection challenge to Iowa's 15-year statute of repose for products liability actions); Brown v. Exactech, Inc., 376 F. Supp. 3d 811, 819–20 (E.D. Tenn. 2019) (Texas law) (holding that 15-year Texas statute

of repose did not violate "fundamental fairness" principles inherent in U.S. and Texas constitutions); Olsen v. J.A. Freeman Co., 791 P.2d 1285, 1293 (Idaho 1990) (rejecting equal protection challenge to Idaho's 10-year statute of repose); O'Brien v. Hazelet & Erdal, 299 N.W.2d 336, 342–43 (Mich. 1980) (rejecting equal protection challenge to Michigan repose statute); Tetterton v. Long Mfg. Co., 332 S.E.2d 67, 70–72 (N.C. 1985) (rejecting equal protection challenge to six-year products liability statute of repose); Groch v. Gen. Motors Corp., 883 N.E.2d 377, 406 (Ohio 2008) (10-year statute of repose for products liability actions did not facially violate Ohio constitution's equal protection clause); Kohn v. Darlington Cmty. Sch., 698 N.W.2d 794, 808–17 (Wis. 2005) (rejecting equal protection challenge to statute of repose).

Plaintiffs cite several cases where courts have struck down statutes of repose as unconstitutional. These cases, however, are distinguishable from the present case or otherwise fail to persuade the court that Vermont's statute of repose violates the Common Benefits clause. In Dickie v. Farmers Union Oil Co. of LaMoure, 611 N.W.2d 168, 171–72 (N.D. 2000), the North Dakota Supreme Court held that a statute of repose prohibiting products liability actions brought where "injuries incurred more than 10 years from initial purchase or 11 years from manufacture of defective products" violated the North Dakota constitution's equal protection clause. The court found no "close correspondence" between the classification and the proffered legislative purposes of providing certainty and predictability and reducing insurance premiums. Id. at 171–73. The court looked behind the legislation to the evidence presented to the legislature and found it wanting—an approach this court finds unusual. Id. at 171–72. In addition, North Dakota's statute of repose was significantly less favorable to plaintiffs than is Vermont's: 10 years after the

initial purchase or 11 years after manufacture, whereas Vermont's is 20 years after "the date of the last occurrence to which the injury is attributed." 12 V.S.A. § 518(a).

In Myers v. Crouse-Hinds Div. of Cooper Indus., Inc., 53 N.E.3d 1160, 1166 (Ind. 2016), the Supreme Court of Indiana held that a statute that disparately treated plaintiffs exposed to raw asbestos and those exposed to asbestos-containing products for purposes of statutes of limitations and repose violated the Indiana constitution's privileges and immunities clause. The disparate treatment was "not reasonably related to an inherent difference of the unequally treated classes," nor was the preferential treatment "uniformly applicable and equally available to all persons similarly situated." Id. at 1166 (quotation omitted). The court observed that "[b]oth classes of asbestos victims are victims of similar injuries, and it is happenstance that some victims trace their injury to a tortfeasor that mined and sold asbestos while other victims trace their injury to a tortfeasor that sold asbestos-containing products." Id. Thus, the statute "create[d] a preference, and establishe[d] an inequality among a class of citizens all of whom are equally meritorious." Id. While the Indiana statute's classification was based on the type of asbestos business in which the defendant was engaged, Vermont's statutory classification is based purely on time. Although the length of time an asbestos-related injury takes to manifest after exposure is unfortunately a result of happenstance, is it plainly and closely related to the statutory purpose of preventing stale claims, in stark contrast with the Indiana statute. Additionally, the Indiana repose period was "10 years after the delivery of the product to the initial user or consumer," much less favorable to plaintiffs than Vermont's.

The New Hampshire Supreme Court also struck down a 12-year statute of repose for products liability actions as unconstitutional under equal protection principles. Heath v. Sears, Roebuck & Co., 464 A.2d 288, 295–96 (N.H. 1983) ("We do not believe that the

legislature may constitutionally bar suits against manufacturers by products liability plaintiffs, as a class, twelve years after the manufacturer sold or parted with control of the product, while allowing other plaintiffs to recover for personal injuries not related to a defective product, at any time within six years after the cause of action accrues"). The court observed the "unreasonableness inherent in a statute which eliminates a plaintiff's cause of action before the wrong may reasonably be discovered" and reprinted a dissent from former Second Circuit Judge Jerome Frank:

> "Except in topsy-turvy land, you can't die before you are conceived, or be divorced before ever you marry, or harvest a crop never planted, or burn down a house never built, or miss a train running on a non-existent railroad. For substantially similar reasons, it has always heretofore been accepted, as a sort of logical 'axiom,' that a statute of limitations does not begin to run against a cause of action before that cause of action exists, *i.e.,* before a judicial remedy is available to a plaintiff."

Id. at 295–96 (quoting Dincher v. Marlin Firearms Co., 198 F.2d 821, 823 (2d Cir. 1952) (Frank, J., dissenting)). That analysis would bar *any* statute of repose.

Like the statutes struck down in Dickie and Myers, the New Hampshire statute was also much less favorable to plaintiffs than the Vermont statute. The statute of repose there was only 12 years, and ran from the time the manufacturers sold or parted with control of the product. The Heath court also cited a state commission report concluding that the New Hampshire statute of repose likely had no effect on insurance premiums, so the primary stated purpose behind the statute was thus unfounded. Heath, 464 A.2d at 293–94, 296. Other cases finding statutes of repose constitutional are similarly distinguishable, or rely on different constitutional provisions. *See*, *e.g.*, Lankford v. Sullivan, Long & Hagerty, 416 So. 2d 996, 1001–04 (Ala. 1982) (statute required that a "product liability action must be brought within ten years after the first use of the

product"); Battilla v. Allis Chalmers Mfg. Co., 392 So. 2d 874, 874 (Fla. 1980) (statute barred suits brought more than 12 years after sale of product)[5]; Bolick v. Am. Barmag Corp., 284 S.E.2d 188, 190–92 (N.C. Ct. App. 1981), modified and affirmed, 293 S.E.2d 415 (N.C. 1982) (six-year repose statute barred claims more than six years after purchase of product).

Statutes are presumed to be reasonable and constitutional. Badgley v. Walton, 2010 VT 68, ¶ 20, 188 Vt. 367. A plaintiff has the burden to prove a statute's unconstitutionality. Boyd v. State, 2022 VT 12,¶¶ 20, 23, 32. Plaintiff has not met that burden here. The court recognizes the apparent unfairness to Plaintiff and others similarly situated that results from the statute at issue here. That is the nature of all such repose statutes. "Although such statutes may cause some hardship to plaintiffs, that hardship is not one of constitutional dimension," however. Godbout v. WLB Holding, Inc., 997 A.2d 92, 94–95 (Me. 2010) (quotation omitted). Rather, "[l]imiting the amount of time in which an action can be brought is a long-standing legislative prerogative." Vermont Hum. Rts. Comm'n v. State, Agency of Transp., 2012 VT 88, ¶ 15, 192 Vt. 552. The Wisconsin Supreme Court aptly summarized the rationale behind this judicial deference to the legislature:

> Courts may shudder at the unfairness visited by statutes of repose, but we generally acknowledge the policies underlying these limiting statutes. . . . The question of what the statute of limitations or the statute of repose for a particular action should be is a fundamental question of public policy.
> . . .
> This court has concluded many times that the legislature may sever a person's claim by a statute of limitations or a statute

[5] The Florida Supreme Court apparently later overruled this decision and further held that the repose statute did not violate equal protection principles. Pullum v. Cincinnati, Inc., 476 So. 2d 657, 659–60 (Fla. 1985) ("The legislature, in enacting this statute of repose, reasonably decided that perpetual liability places an undue burden on manufacturers, and it decided that twelve years from the date of sale is a reasonable time for exposure to liability for manufacturing of a product.").

> of repose when the person has had no possibility of discovering the injury—when the person has been blameless in every respect. These decisions represent judicial deference to the stated policy of the legislature. Protecting the interests of those who must defend claims based on old acts or omissions is a policy concern that legislative bodies have weighed for centuries. . . .
>
> Statutes limiting the time period for filing actions historically have been policy decisions within the province of the legislature. . . . [Statutes of repose] reflect the legislature's view that prompt litigation ensures fairness to the parties. . . . We remain persuaded that the time limitation periods articulated by statutes of repose inherently are policy considerations better left to the legislative branch of government. . . . Were we to extend a remedy outside the limits of these recognized rights, we effectively would eviscerate the ability of the legislature to enact any statute of repose.

Aicher ex rel. LaBarge v. Wisconsin Patients Comp. Fund, 613 N.W.2d 849, 863–65 (Wis. 2000); *see also* Marzolf v. Gilgore, 914 F. Supp. 450, 454 (D. Kan. 1996) ("Statutes of repose impose an outside limitation on claims. Were this court to accept plaintiffs' theory, no meaningful outside limitation would exist. Conceivably, treatments could last a lifetime. Permitting such claims would defeat the purpose of a statute of repose. Health care providers would be exposed to the very long tail claims that the legislature [intended] to curtail.") (quotation and citation omitted); Stearns v. Metro. Life Ins. Co., 117 N.E.3d 694, 702 (Mass. 2019) ("Although the six-year time limit is in some manner arbitrary, it is the Legislature's task to draw the line, not ours.") (quotation omitted).

Vermont's 20-year statute of repose is a balanced policy determination that represents the legislature's decision "to continue its responsibility to maintain a well-ordered system of judicial vindication of legal rights." Vermont Hum. Rts. Comm'n, 2012 VT 88, ¶ 15. While one cannot help but have sympathy for those who have suffered from diseases caused by asbestos, that is not the only consideration a legislature must weigh.

The 20-year period strikes a reasonable balance between the competing interests of those injured by products such as asbestos and those who must defend against claims based upon events from decades ago--such as the 50-year-old events at issue here. This court's "function is not to substitute [its] view of the appropriate balance for that of the Legislature," and thus, in a Common Benefits Clause inquiry, it "do[es] not judge whether the policy decision made by the Legislature was wise, but rather whether this decision . . . was reasonable and just in light of its purpose." Id. (quoting Badgley, 2019 VT 68, ¶ 24). In "accord[ing] deference to the policy choices made by the Legislature," the court concludes that the statute of repose in 12 V.S.A. § 518(a) does not violate the Common Benefits Clause. Id.

III. Order

The court grants Defendant's motion for summary judgment.

Electronically signed on April 13, 2023 pursuant to V.R.E.F. 9(d).

Helen M. Toor
Superior Court Judge