

Products Liability Litigation

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Emerging Issues in Microplastics Litigation

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The use of plastics in both industrial processes and ordinary life has risen significantly since the 1950s. The first patent for a plastic shopping bag occurred in the 1960s, and plastic bottles for beverages became common shortly thereafter. In subsequent years, the types of plastics used have multiplied. In 2004, the term *microplastics* was coined to describe small pieces of plastics—whether manufactured to be minuscule or degraded from larger plastics—that are currently defined by U.S. regulatory agencies as typically measuring less than five millimeters in at least one dimension. *See Microplastics and Nanoplastics in Foods*, U.S. Food & Drug Admin. (last visited Dec. 8, 2025); *Microplastics Research*, U.S. Env’t Prot. Agency (last visited Dec. 8, 2025). The EPA notes that microplastics have been detected in every ecosystem on Earth, including the Antarctic tundra, and have been found in many foods and food sources such as seafood, other animal tissue, honey, and sea salt, among many others. *See Microplastics Research, supra*; *see also Microplastics and Nanoplastics in Foods, supra*.

Regulatory Agency Perspectives on Microplastics

U.S. regulatory agencies describe the potential impacts of microplastics somewhat differently. According to the U.S. Environmental Protection Agency (EPA), “the accumulation of microplastics in sediments likely has ecological and human health ramifications, but much is still unknown about how much microplastic is out there and its impact on human health and the environment.” EPA, Making Microplastic Identification More Accessible (last visited Dec. 8, 2025). The position of the U.S. Food and Drug Administration (FDA) is more definitive, noting that “[c]urrent scientific evidence does not demonstrate that levels of microplastics or nanoplastics detected in foods pose a risk to human health” and that “[t]here is not sufficient scientific evidence to show that microplastics and nanoplastics from plastic food packaging migrate into foods and beverages.” *Microplastics and Nanoplastics in Foods, supra*.

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Microplastics-Based Products Liability Claims

Perhaps not surprisingly, given reports of plastic pollution and allegations that exposure to microplastics creates health risks, microplastics-based products liability claims are an emerging area of litigation. A review of Lexis® and Westlaw® dockets between January 2024 and December 2025 found at least 18 microplastic-related cases filed in federal court and at least five in state courts in jurisdictions designated by the American Tort Reform Foundation as “judicial hellholes.” Am. Tort Reform Found., *Judicial Hellholes (2025–2026)*. However, additional cases may not be reflected in the available records. In comparison, the same sources report only one similar case filed between 2018 and 2023. Most of the cases to date involve allegations that the defendants’ single-use plastic water bottles, sandwich bags, baby wipes, and reusable baby bottles increased the plaintiffs’ exposure to microplastics and caused a variety of alleged harms ranging from developmental delays to cancer.

Most of these cases have been resolved at the motion to dismiss stage. In doing so, courts have generally identified two primary recurring deficiencies: (1) plaintiffs’ inability to identify a particular defendant’s product as the source of exposure and (2) insufficient allegations to support scientific causation. Product identification is a crucial element for prevailing on any claim but is particularly challenging in the microplastics context, given the wide variety of plastics in everyday life. Further, the properties of “plastics” are generally not uniform. Plastics are manufactured with different chemical formulations and designed for a wide variety of applications. This variety and widespread use make it difficult for plaintiffs to connect an alleged injury to a specific defendant’s product.

Plaintiffs also must establish a plausible connection between microplastics and the harm claimed. To date, they have struggled to establish either general causation (that microplastics from a particular product can cause the alleged harm) or specific causation (that microplastics from a specific product caused the plaintiff’s harm). However, in *Miller v. Philips North America LLC*, the court denied a motion to dismiss, finding that general scientific literature was sufficient to support claims that exposure to microplastics created an unreasonable safety hazard. No. 24-CV-03781-RFL, 2025 WL 582160 (N.D. Cal. Feb. 20, 2025).

These differing outcomes suggest that microplastics litigation is likely to expand, with product identification, general causation, and specific causation remaining critical issues in future cases. Below, we highlight the relevant facts in three 2025 decisions, followed by a discussion of how courts have addressed the interplay among these elements.

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Miller v. Philips N. Am. LLC

In February 2025, a U.S. District Court for the Northern District of California judge denied a motion to dismiss involving claims of various injuries—including damage to infants’ digestive and reproductive systems—allegedly resulting from exposure to microplastics via baby bottles. *Miller*, 2025 WL 582160, at *1. The court held that the general scientific literature cited by the plaintiffs sufficiently supported (at least at the motion to dismiss stage) that the defendant’s products likely contained microplastics that constituted an unreasonable safety hazard. This included citing one paper claiming that a “single infant consuming formula from polypropylene bottles ingests between 14,600 and a staggering 4.55 million microplastic particles every single day.” *Id.* at *3 (citation omitted).

Notably, the opinion does not point to any connection between these “staggering” levels and the defendant’s product. Instead, it relies on the plaintiffs’ citations to literature asserting that microplastics are toxic to the digestive tract, can cause chronic pulmonary disease, and impact “critical periods of development” in infants and young children. *Id.* The court also held that the plaintiffs’ failure to provide any evidence related to the amount of microplastics in the defendant’s products was not fatal to their claims. According to the court,

[t]hough Defendant argues that Plaintiffs failed to test the *specific products* at issue in the case—i.e., those manufactured by Defendant—the studies that measure microplastic release rates of similar polypropylene products provides [*sic*] sufficient circumstantial evidence to infer that similar rates of release occur during the course of use of Defendant’s Products.

Id. at *3 (emphasis in original).

The plaintiffs dismissed the case before any merits determination.

Cortez v. Handi-Craft Co. Inc.

In April 2025, a different Northern District of California court dismissed portions of a complaint alleging that baby bottles and sippy cups promoted and sold by the defendant released microplastics when heated, which leached into the bottles’ contents, leading to various injuries and damages. *Cortez v. Handi-Craft Co.*, No. 4:24-CV-3782-YGR, 2025 WL 1452561 (N.D. Cal. Apr. 29, 2025). The plaintiffs, one of whom was also a plaintiff in the *Miller* case, similarly asserted that the released microplastics accumulated in the body when repeatedly consumed, causing damage to infants’ “digestive, reproductive, central

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nervous, immune, and circulatory systems.” *Id.* at *1. The plaintiffs brought various common-law and statutory claims, all of which centered around allegations that the defendant’s products presented an unreasonable safety hazard and that the defendant failed to warn about the risks associated with consuming microplastics.

The court dismissed the statutory-based claims, noting that, in California, litigation involving allegedly hazardous substances requires plaintiffs to plausibly assert the levels at which those substances are dangerous. The court found that while the plaintiffs alleged that heating the bottles released “copious amounts of microplastics,” they failed to identify the level at which microplastic exposure became dangerous to children. *Id.* at *5. The plaintiffs’ general allegation that “the greater the amount of microplastics in one’s body, the greater the harm” was not sufficient as it required the court to “guess (1) the amount of microplastics that are released by defendant’s Products, exposed to children, and ultimately remain and bioaccumulate in their bodies, (2) the negative health effects risked by that amount, and, consequently, (3) whether that amount is unreasonable.” *Id.*

Similarly, both the unfair competition and the false advertising claims require a showing of industry knowledge of the product’s risk of harm. To satisfy this requirement, the plaintiffs alleged that some studies conclude that heating certain products can cause microplastics to leach into the liquid contents, thereby posing a risk to consumers of adverse health impacts. In dismissing these claims, the court noted that “[t]hese studies do not make specific references to defendant’s Products, nor do they draw conclusions beyond the general, *potential* health risks associated with microplastics.” *Id.* at *7 (emphasis in original).

Daly v. Wonderful Co.

In May 2025, the U.S. District Court for the Northern District of Illinois dismissed a request for a nationwide consumer class as well as subclasses of consumers in four states who purchased Fiji Water between December 2022 and March 2024. *Daly v. Wonderful Co.*, No. 24 C 1267, 2025 WL 1331750 (N.D. Ill. May 7, 2025). The plaintiffs claimed that the defendants’ references to Fiji Water as “Natural Artesian Water” were misleading and false because the bottled water contained microplastics. However, the plaintiffs did not test any Fiji Water—much less the Fiji Water that the plaintiffs allegedly consumed—to determine the level of exposure (if any). Instead, the plaintiffs’ complaint included references to studies testing other brands of water for microplastics.

Given the lack of a connection between the plaintiffs’ claims and the content of their complaint, the court held that the plaintiffs failed to adequately allege that the water that

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they consumed contained microplastics. The court also found that the plaintiffs' reliance on testing of other water was "less than definitive." *Id.* at *2. The court noted that

[a]llowing a suit of this type to proceed on this basis would basically open the door to enabling any purchaser of any consumable product to file a lawsuit simply saying, "I bought product X, and it contains microplastics" (or "forever" chemicals, or heavy metals, or whatever) and thereby get past a motion to dismiss and into discovery and class certification proceedings. Given the context (consumable products claimed to include contaminants), plausibility requires more.

In dicta, the *Daly* court noted that "contemporaneous tests of other bottles of Fiji Water," which were not the bottles to which the plaintiffs were exposed, "would perhaps be sufficient." *Id.* at *2.

Analysis

Each of the above decisions highlights the challenges that courts and litigants in microplastics cases face in establishing general and specific causation, as well as product identification. As the court recognized in *Cortez*, plaintiffs must prove that a substance can cause a particular harm before moving to the question of specific causation. *Cortez*, 2025 WL 1452561, at *4. That requirement is not unique to microplastics. *See, e.g., Wells v. SmithKline Beecham Corp.*, 601 F.3d 375, 378 (5th Cir. 2010) ("Sequence matters: a plaintiff must establish general causation before moving to specific causation."); *see also Norris v. Baxter Healthcare Corp.*, 397 F.3d 878, 881 (10th Cir. 2005) ("Plaintiff must first demonstrate general causation because without general causation, there can be no specific causation.").

Of course, establishing general causation in these cases will require reliable scientific evidence. As noted above, the science surrounding alleged adverse health effects from exposure to microplastics varies in its quality and in the studies' conclusions. As the FDA has noted, existing science does not support a finding of human health risks from exposure to microplastics.

Even if general causation could be established, plaintiffs must also show that the requirements for specific causation are satisfied. *See In re Rezulin Prods. Liab. Litig.*, 441 F. Supp. 2d 567, 575 (S.D.N.Y. 2006) (noting that "specific causation addresses whether, in the particular instance, the injury *actually was caused or exacerbated by* the defendant's product" (emphasis in original) (internal citations omitted)).

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In cases involving microplastics, establishing specific causation is a significant hurdle due to the ubiquitous presence of plastics in the environment. *See, e.g., Microplastics Research, supra*. In fact, in the *Miller* and *Cortez* cases discussed above, the same plaintiff (represented by the same counsel) sued two different defendants, alleging the same injuries from alleged exposures to microplastics in two different products. This is an implicit admission that the plaintiffs could not distinguish one defendant's microplastics from the other's microplastics. As the *Cortez* court noted, the plaintiffs' failure to specify "the amount of microplastics that are released by defendant's Products" contributed to dismissal of their unreasonable safety hazard claim. *Cortez*, 2025 WL 1452561, at *5.

The *Miller* court's acceptance of the plaintiffs' failure to show that the defendant's products emitted injury-causing microplastics and the *Daly* court's theory that testing other products might be sufficient to support such claims run afoul of existing specific causation case law. To prevail in cases based on exposure to harmful substances, a plaintiff must demonstrate that the claim is tied directly to the product that the plaintiff actually used, not similar products or even other products made by the same defendant. *See, e.g., In re Darvocet, Darvon, & Propoxyphene Prods. Liab. Litig.*, 756 F.3d 917, 938 (6th Cir. 2014) ("[I]t is well-settled law that the threshold requirement of any products-liability claim is that the plaintiff assert that the defendant's product caused the plaintiff's injury."). This is especially critical in the context of microplastics, where potential plaintiffs likely have been exposed to multiple sources. Allowing contemporaneous testing of other products to substitute for testing of the defendants' actual product that the plaintiff used could result in assigning liability to the defendants without ever showing that their products actually and specifically caused the plaintiffs' harm.

Conclusion

Litigation regarding microplastics is a potential emerging tort. As is often the case with emerging torts, the available science is of widely varying quality and in its infancy. Whether large-scale litigation develops is dependent on multiple factors, including scientific developments and regulatory actions. As microplastics litigation develops, many other everyday items made of plastic could become targets for future litigation. If that occurs, the existing case law demonstrates that causation and product identification issues should be expected to play a prominent role.