BREAKING DOWN MICROP

By || **Coral M. Odiot-Rivera and Paul J. Napoli**

Microscopic plastic particles are damaging the environment—and our health. Emerging litigation seeks to hold corporations accountable.

PLASTICS LITIGATION

"I just want to say one word to you. Just one word. Plastics. There's a great future in plastics."[1] That iconic line from the 1967 film "The Graduate" proved prophetic.

Since then, plastics have revolutionized modern life—making packaging less costly, products more durable, and manufacturing more efficient. But they've also unleashed an environmental crisis, prompting scientists and activists to sound the alarm.

The most insidious threat from plastics comes from microplastics—tiny plastic fragments typically smaller than five millimeters.[2] They fall into two categories.

Primary microplastics. Manufactured for use in everyday products, primary microplastics include microbeads in facial scrubs and toothpaste, shedding from synthetic fabrics like polyester and nylon, plastic coatings on packaging, and particles used in sandblasting and industrial cleaning abrasives.[3]

Secondary microplastics. These result from the decomposition of plastic items like bottles, bags, fishing nets, and packaging. Sunlight, wind, and water speed up the process.[4]

Microplastics have been found in oceans, fresh water, soil, air—even inside humans and animals. They damage the environment and pose health risks. Scientists and regulators are working to understand their long-term impact and find ways to reduce their spread and limit their harm.[5]

According to the American Chemical Society, we eat, breathe, and absorb microplastics through our skin—often without knowing it.[6] Studies have linked microplastics to numerous health issues, such as cell damage, inflammation, and problems with metabolism and the immune system.[7]

One of the most significant sources is ingestion via bottled water, which has been shown to contain tens of thousands of plastic particles per liter, including nanoplastics shed from packaging and the bottling process.[8]

Airborne exposure and inhalation represent another major route, as synthetic fibers from textiles and urban air pollution contribute to microplastics found in both indoor and outdoor air.[9] Lung biopsies and autopsy samples have confirmed that these inhaled particles get stuck in our lungs.[10]

Although scientific understanding is still evolving, consistent findings across studies have raised red flags. Researchers call for better studies and testing methods to fully understand how microplastics affect human health.[11]

Moreover, microplastics contaminate water, soil, air, and wildlife, disrupting ecosystems. In aquatic systems, they carry toxic pollutants into food webs and accumulate in fish, shellfish, and zooplankton, leading to bioaccumulation.[12]

On land and in the atmosphere, these plastics alter soil health, impair plant growth, and travel long distances through airborne fibers, even reaching Arctic ice where it settles and accelerates melting.[13] Wildlife also mistakes plastics for food, resulting in malnutrition, digestive harm, and chemical exposure, and threatens biodiversity and ecosystem stability.[14]

The Case Against Plastics

Environmental science and legal accountability are converging. As evidence of microplastics contamination in drinking water, soil, food, and our bodies grows, plaintiffs—particularly municipalities and states—are turning to traditional tort doctrines and consumer protection laws to hold corporations liable for plastic pollution.[15]

Two key legal theories have emerged: consumer fraud and public nuisance.

Consumer fraud. At the heart of these consumer fraud claims are allegations that companies have misled consumers about the recyclability, safety, and environmental impact of plastic products.[16] Plaintiffs argue that corporations label packaging as "recyclable," "eco-friendly," and "green," although only a small fraction of plastic can be recycled—and an even smaller portion of that recyclable plastic is actually recycled.

In Baltimore, for example, 2.2% of plastics are actually recycled.[17] Nevertheless, companies market their packaging as sustainable, claiming it is made from recycled plastics—although surely there isn't enough recycled material to produce all those bottles.[18]

Plaintiffs claim this representation violates state consumer protection laws and causes economic harm: Consumers believe they are making environmentally responsible purchases and pay more for products they believe are green, a cost known as a "green premium."[19]

Corporations typically raise a few common defenses.

Materiality. Companies argue that terms like "recyclable" and "sustainable" are too vague or irrelevant to influence consumer decisions and therefore can't form the basis of a fraud claim.

Federal preemption. Some contend that state-level consumer protection claims conflict with federal labeling laws, including the Federal Food, Drug, and Cosmetic Act.[20]

Two federal cases illustrate how courts are wrestling with these arguments. In *Slowinski v. BlueTriton*

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Brands, Inc., the plaintiffs alleged that labeling Ice Mountain water as "100% natural spring water" was misleading because microplastics—introduced through packaging, bottling, or the source environment—contaminate the water.[21]

The court ruled that the FDA has exclusive authority to define terms like "spring water" and dismissed the claims on federal preemption grounds.[22] Requiring additional microplastics labeling, the court said, would conflict with existing federal standards.[23]

In contrast, in *Daly v. The Wonderful Company LLC*, the plaintiffs brought a similar claim involving Fiji Water.[24] The court rejected the preemption defense, noting that no FDA regulation addresses microplastics in bottled water.[25] Although the case was ultimately dismissed for insufficient testing evidence, the court allowed state consumer claims to proceed in principle, signaling an avenue for future litigation.[26]

Public nuisance. Municipalities are also pursuing public nuisance claims, arguing that companies designed and marketed plastic products knowing they would become litter, pollute waterways, and contaminate drinking supplies. Courts have upheld public nuisance claims in other products liability cases, such as opioids and lead paint litigation. In those cases, the issue wasn't the legality of the products, but the foreseeable harm in how they were marketed, distributed, and used.[27]

Applying the same logic, plaintiffs contend that plastic manufacturers should bear the responsibility for environmental damage their products cause. Courts have interpreted "public nuisance" not as a legal tool to ban products, but as a way to allocate cleanup costs and hold corporations accountable. There is a split among the courts, with some rejecting this argument and others endorsing it.[28]

However, a significant hurdle remains: establishing corporate liability for third-party actions, such as consumer littering. Courts have been reluctant to hold companies accountable when consumers pollute by disposing of products irresponsibly.[29]

For example, in *People v. PepsiCo, Inc.*, the New York attorney general alleged that PepsiCo and others contributed to plastic pollution in the Buffalo River.[30] The court likened the case to gun litigation, where courts generally refuse to hold manufacturers liable for the misuse of their products.[31]

This line of reasoning has its limits. For instance, if a company falsely markets a product as recyclable and consumers dispose of it improperly because of that claim, the company may have created a foreseeable causal chain. In such cases, consumer actions may not break the causal chain of liability but enforce it.

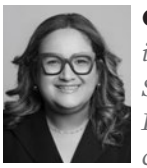
Who Pays?

Microplastics litigation signals a turning point in environmental law. Courts are increasingly applying established legal doctrines—consumer fraud and public nuisance—to contemporary environmental challenges that the laws didn't anticipate.

Meanwhile, scientific research continues to uncover the extent of microplastics contamination and its potential health consequences. Judges and juries are now asked to answer a central question: Who should bear the cost of plastic pollution? Consumers and cities? Or the corporations that produce and profit from these materials?

We can expect a wave of lawsuits from municipalities, states, and environmental organizations seeking compensation for cleanup, deceptive marketing, and long-term public health risks. From dredging plastic-filled riverbeds to installing filtration systems, cities are spending millions to address this crisis. These lawsuits aim to shift the financial burden from the public to the manufacturers who created the problem.

In doing so, they challenge a longstanding economic model—one where corporations offload pollution costs and the public bears the burden. Now, in the face of an environmental emergency, the legal system is being called on to redefine corporate responsibility. T



Coral M. Odiot-Rivera *is a partner with Napoli Shkolnik in San Juan, Puerto Rico, and can be reached at codiot@nsprlaw.com.*

Paul J. Napoli *is a founding partner of the firm and can be reached at pnapoli@nsprlaw.com.*

Notes

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16. *Mayor and City Council of Baltimore v. PepsiCo, Inc.*, No. 24-cv-24-001003 (Balt. Cty. Cir. Ct. 2024).

17. In *Mayor and City Council of Baltimore v. PepsiCo, Inc.*, the city alleges that PepsiCo and others falsely marketed nonrecyclable packaging as "eco-friendly," misleading consumers and shifting plastic cleanup costs to the city. (The authors represent the city in this litigation.)

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22. *Id.*

23. *Id.*

24. No. 24 C 1267, 2025 WL 672913 (N.D. Ill. Mar. 3, 2025).

25. *Id.*

26. *Id.*

27. *See State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021); *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio Sept. 8, 2021); *People v. ConAgra Grocery Prods. Co.*, 17 Cal.App.5th 51 (Cal. Ct. App. 2017), reh'g denied (Dec. 6, 2017), review denied (Feb. 14, 2018); *State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428 (R.I. 2008).

28. *See People v. ConAgra Grocery Prods. Co.*, 17 Cal.App.5th 51 (Cal. Ct. App. 2017). The defendants filed a writ of certiorari to the U.S. Supreme Court, which was denied.

29. *People v. PepsiCo, Inc.*, 222 N.Y.S.3d 907, at 972 (N.Y. Sup. Ct. Erie Cnty. 2024). This case is pending appeal.

30. *Id.*

31. *Id.*