May 29, 2025

Toxic product cases: Northern District of Illinois rules that expert testimony is required to prove product defect

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Takeaway: We have discussed the pleading requirements that apply to cases alleging that products are toxic or otherwise contaminated with some sort of harmful substance or chemical. *See* *Federal court dismisses false advertising claims, ruling that studies cited in complaint did not plausibly support allegation that "Natural Artesian Water" was contaminated with microplastics* (March 28, 2025). That article discussed a recent case from the Northern District of Illinois demonstrating that, in any effort to base a claim on science, the alleged scientific tests or studies must plausibly support the contamination theory of the case. Another recent case from the Northern District of Illinois, *Zurbriggen v. Twin Hill Acquisition Co.*, No. 1:17-cv-5648, 2025 WL 1092973 (N.D. Ill. Apr. 11, 2025), sets out a related rule at the summary judgment stage: where a claim depends on proof that a product is toxic and capable of causing personal injury, a plaintiff must present reliable expert testimony.

In *Zurbriggen*, a "toxic uniform" case, current and former pilots, flight attendants, and customer service agents of American Airlines ("American") filed a putative class action against American and Twin Hill, the clothing manufacturer it hired to produce a new line of uniforms (other defendants were named, as well). The plaintiffs alleged that chemicals on the uniforms caused a number of symptoms for those wearing them, including rashes, hives, headaches, and throat swelling. The plaintiffs alleged claims for battery, intentional infliction of emotional distress, and strict and negligent products liability, based on both direct contact with the uniforms and "proximity exposure." Though filed as a class action, the named plaintiffs did not move for class certification, instead proceeding on a "bellwether basis" as trying claims of the individual plaintiffs in two separate "flights." 2025 WL 1092973, at *4.

The defendants moved for summary judgment, arguing (among other things) that each of the claims required a finding that the plaintiffs were "exposed to harmfully defective uniforms" and that, to prove product defect, admissible expert testimony was required. *Id.* at *5. The district court addressed this expert testimony requirement first, given that there was substantial evidence in the record of employees' complaints about the uniforms and the symptoms they reportedly caused.

The court concluded that an essential element of each of the plaintiffs' claims was proof of a product defect. *Id.* at *5-9. The district court then ruled that the plaintiffs needed expert testimony to prove product defect. *Id.* at *9-11. The evidence of employee complaints alone was insufficient to support an inference that the uniforms were defective: "At best, those complaints illustrate a correlation between uniform exposure and the onset of symptoms. That alone is not enough for a jury to conclude that the uniforms were, in fact, harmfully defective. To reach that conclusion, a jury must find that the Twin Hill uniforms caused, not merely coincided with, [American] employees' symptom reports—a difficult epidemiological question requiring specialized expertise." *Id*. at *10. The district court had summarized this conclusion in its introduction as follows: "the raw non-opinion evidence in the record cannot sustain an inference of defectiveness by itself." *Id*. at *1.

The district court then proceeded, in a detailed ruling, to disqualify the plaintiffs' proffered expert witnesses—including an expert physician and toxicologist and an expert in textile chemistry—on the grounds that (a) their testimony was insufficiently reliable and (b) even if the testimony was reliable, it failed to establish that the *specific uniforms* at issue were defective. *Id*. at *11-23 (concluding, among other things, that "[n]either expert identified a chemical, dosage, environment, proximity, or duration of exposure that could have plausibly caused the plaintiffs' symptoms").

The district court granted the defendants' *Daubert* motions, thereby excluding the plaintiffs' experts, and granted summary judgment to the defendants "in full" as to both groups of individual plaintiffs constituting the "bellwether" claimants. *Id.* at *23. The *Zurbriggen* court further stated in a footnote that, if the parties did not reach an "agreed resolution of the entire case," it anticipated entering summary judgment as to the "non-movant plaintiffs" under Rule 56(f)(1). *Id.* at *23 n.23.