

Insights: Publications

5 Key Takeaways | Federal Court Standing in Cases Alleging Consumer Products that Contain Harmful Chemicals (like PFAS or BPA) or Fail to Contain the Advertised Level of Key Compounds

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Kilpatrick's [Evan Nadel](#) recently presented at the [2025 ANA Masters of Advertising Law](#) Conference on the topic of “**Federal Court Standing in Cases Alleging Consumer Products That Contain Harmful Chemicals (like PFAS or BPA) or Fail to Contain the Advertised Level of Key Compounds.**”

Evan's key takeaways from his presentation include:

1. Federal court standing requires a concrete and real (not abstract) injury. A plaintiff cannot sue over alleged harmful chemicals in a product that the plaintiff did not buy or use.
2. If the complaint does not allege that the plaintiff's **own product** was tested and showed unsafe levels of the compound (or levels differing from the amount claimed on the packaging), some courts hold it inadequate to plead standing.
3. Other courts have found sufficient standing allegations even if the plaintiff's actual product was not tested as long as the complaint alleges results from statistically valid testing of the specific product challenged in the case in temporal proximity of plaintiff's purchase.
4. Standing can be challenged when plaintiffs rely on non-specific third-party testing with an uncertain methodology, different products, insufficient quantities tested and/or unclear timing.
5. Key considerations include who commissioned or performed the test (third party or plaintiff's counsel)? Was the specific challenged product tested? If so, which varieties and lots? What time period? Did the test have clear results consistent for all of the challenged product samples?

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Related People



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