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Toxic product class actions: Seventh Circuit addresses CAFA jurisdiction and res ipsa loquitor in affirming summary judgment for defendants

by James F. Bogan III

Takeaway: In *Zurbriggen v. Twin Hill Acquisition, Inc.*, No. 25-1963, --- F.4th ----, 2026 WL 1732248 (7th Cir. June 16, 2026), the Seventh Circuit affirmed summary judgment for defendants in a mass toxic-product case involving allegedly contaminated airline uniforms. In a prior article, we reported on the summary judgment grant by the district court. *See Toxic product cases: Northern District of Illinois rules that expert testimony is required to prove product defect* (May 29, 2025).

In *Zurbriggen*, the Seventh Circuit affirmed the district court's ruling that the plaintiffs could not prove product defect or causation without admissible expert testimony, further ruling that CAFA jurisdiction existed and also that the tort doctrine of *res ipsa loquitur* could not remedy the evidentiary gap. The decision reinforces that employee complaints and subjective symptoms, standing alone, are insufficient to establish liability in chemical-exposure and product-contamination cases.

Background

In 2015, American Airlines contracted with Twin Hill Acquisition, Inc. to manufacture new uniforms for its "above the wing" employees. *Zurbriggen*, 2026 WL 1732248, at *1. After the rollout, hundreds of workers—pilots, flight attendants, and customer service agents—reported health problems ranging from rashes, hives, and itchy eyes to headaches, throat swelling, and severe allergic reactions. Some employees even claimed "proximity reactions" from merely being near others wearing the uniforms. *Id*.

Current and former employees filed suit under the Class Action Fairness Act (CAFA), asserting products-liability theories (strict liability and negligent manufacturing) against Twin Hill and intentional tort theories (battery and intentional infliction of emotional distress) against both Twin Hill and American Airlines.

Multiple independent testing programs—including an analysis by the National Institute for Occupational Safety and Health (NIOSH)—found that while certain chemicals were present in the uniforms, the detected doses were too low to cause the range of reported symptoms. NIOSH further concluded that testing did not reveal a pattern of contamination indicating a cause for the widespread complaints and that proximity reactions were "highly unlikely." *Id*.

District Court Proceedings

The Northern District of Illinois excluded plaintiffs' expert witnesses—Dr. Carson and Dr. Hauer—under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), finding their methodologies unreliable.

In particular, both experts conceded that no identifiable chemical or group of chemicals in the uniforms could trigger the wide range of alleged reactions. Without admissible expert testimony, the district court granted summary judgment for defendants on all claims.

The Seventh Circuit's Decision

On appeal, the Seventh Circuit—in an opinion by Chief Judge Brennan, joined by Judges Hamilton and Scudder—affirmed on all grounds. The panel adopted the district court's analysis regarding the expert exclusions and intentional tort theories (which the panel described as a "first-rate opinion"), then addressed the issue of federal subject matter jurisdiction on its own as well as the *res ipsa loquitur* argument emphasized by the plaintiffs in their appellate briefing. *Id*.

CAFA Jurisdiction. In the plaintiffs' third amended complaint, they expressly dropped all of their class claims for the stated purpose of "proceed[ing] to bellwether trials." *Id*. at *4. But the abandonment of the class claims stripped the district court of CAFA jurisdiction. The district court identified this issue and directed the parties to address it (citing the Supreme Court's decision in *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025), which noted that CAFA requires an action to be filed as a "class action" under Rule 23). The plaintiffs then filed a fourth amended complaint reinstating the class claims. The district court concluded that it had CAFA jurisdiction by virtue of the filing of the fourth amended complaint, and the Seventh Circuit affirmed. The panel concluded that the case had effectively been re-filed as a class action, re-securing federal jurisdiction.

Res Ipsa Loquitur. On appeal, the plaintiffs emphasized the *res ipsa loquitur* issue they had raised below, which the district court had rejected in a footnote. This argument sought to shift the burden of proof from the plaintiffs to the defendants.

Their first argument focused on the "*Tweedy* doctrine," named after the Illinois Supreme Court's decision in *Tweedy v. Wright Ford Sales, Inc.*, 64 Ill. 2d 570 (1976). Under Illinois law, the *Tweedy* doctrine permits a plaintiff to bypass proof of a specific defect where a product fails to perform as expected and no better explanation exists for the failure. In other words, *Tweedy* applies where "the connection between the alleged defect and the injury is usually obvious." *Id*. at *6. But unlike typical *Tweedy* cases such as a brake failure or structural collapse, the panel concluded that it does not logically follow that uniforms could cause the wide range of health symptoms alleged by the plaintiffs. The uniforms did not "break, collapse, or malfunction," and the plaintiffs could not exclude reasonable alternative causes, given their differing theories of harm and underlying medical conditions. *Id*. Accordingly, the panel concluded, the "*Tweedy* doctrine [was] a poor fit for this case." *Id*.

The panel also rejected the plaintiffs' invocation of *res ipsa loquitur* to support their negligent manufacturing claim against Twin Hill (which requires a more demanding showing than with respect to a strict liability claim). Under Illinois law, *res ipsa* requires (1) an occurrence that ordinarily does not happen absent negligence and (2) an instrumentality within the defendant's exclusive control. *Id*. at *7. The panel concluded that no evidence supported the probability element—*i.e.*, that the alleged symptoms ordinarily do not occur absent negligent manufacturing. The plaintiffs also did not establish exclusive control: the uniforms were manufactured in multiple factories, shipped across the world by numerous

intermediaries, and many had been washed and worn by the time they were tested.

Practical Implications

Zurbriggen is a significant decision for defendants in toxic-product and product-contamination cases. Key takeaways include:

- **Expert testimony remains essential.** In cases involving alleged chemical exposure, plaintiffs must present reliable expert testimony identifying the specific defect and establishing a causal link between the product and claimed injuries. Subjective complaints and temporal correlation are not enough.
- ***Res ipsa loquitur* is context-specific and faces hurdles in modern supply chains.** The *Tweedy* doctrine under Illinois law applies where a product manifestly fails to perform its basic function (e.g., a mechanical failure) and will not salvage a claim alleging diffuse chemical injuries where the product did not visibly malfunction. And where products pass through multiple manufacturers, shippers, and intermediaries, plaintiffs will struggle to establish the exclusive-control element necessary for a *res ipsa* showing.
- **Independent testing is important.** Third-party testing (including by NIOSH) finding no contamination pattern proved important to the defendants' success in obtaining summary judgment. Companies facing similar claims should consider early testing programs.

The Seventh Circuit's opinion reinforces that courts will rigorously police the line between correlation and causation in toxic-product litigation. For defendants, *Zurbriggen* provides strong authority for challenging speculative causation theories at summary judgment.