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Same Plume, Different Elements: What Brown v. Saint-Gobain Teaches About Element-Driven Predominance in Environmental Class Actions

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Takeaway: In *Brown v. Saint-Gobain Performance Plastics Corp.*, --- F.4th ----, No. 24-1869, 2026 WL 3536039, at *1 (1st Cir. Nov. 17, 2026), the First Circuit reversed certification of the plaintiffs' negligence and negligent-failure-to-warn claims but affirmed certification of their trespass claim, even though all three claims involved the same facts, experts, class definition, and alleged contamination. The *Brown* decision emphasizes that predominance—and thus class certification—must be decided on an elemen by element basis under governing state law.

The property owner plaintiffs in *Brown* alleged that Saint-Gobain's Merrimack, New Hampshire facility released airborne "forever chemicals" – notably, PFOA – from its stacks and that the chemicals settled on the ground, seeped into groundwater, and contaminated both the municipal water supply and private wells. 2026 WL 3536039, at *1. Testing found PFOA at varying levels. In the municipal system, readings ran from "non-detect" to 141 parts per trillion (ppt). In private wells, they ran from non-detect to 1,600 ppt, and concentrations generally decreased with distance from the facility. *Id.* at *2.

The district court certified a Rule 23(b)(3) class on liability for negligence, negligent failure to warn, and trespass. It denied certification of plaintiffs' nuisance claim as well as their claims for compensatory damages, and it bifurcated the case so that classwide liability would be tried first, followed by damages. *Id.* at *5. The First Circuit granted Saint-Gobain's Rule 23(f) petition for interlocutory appellate review. *Id.* at *6.

The *Brown* court analyzed the elements of the claims. Under New Hampshire law, negligence requires duty, breach, injury, and causation. *Id.* at *8. The Court of Appeals agreed that duty and breach could be tried on common proof because both focus on Saint-Gobain's conduct rather than on any class member's particular circumstances. *Id.* at *8. But certification failed on injury and causation.

Injury. The plaintiffs planned to prove injury by having experts map the geographic scope of contamination and then limiting the class to properties inside that map. *Id.* at *8. Even assuming every class property was contaminated with at least some PFOA, however, negligence liability requires harm and not just intrusion. Under the Restatement (Second) of Torts § 165 (1965), negligently causing a substance to enter another's land creates liability only if the substance harms the land or the possessor of it. *Id.* at *9. Contamination levels varied across properties, and neither the plaintiffs nor the district

court explained how anyone could determine on a common basis which properties had actually been harmed, "particularly among those with little but not negligible contamination." *Id.* Answering that question would require looking at the extent and effect of contamination at each property, which the district court had already characterized as individualized when it addressed the issue of damages. Thus, the Court of Appeals held that a class cannot be certified on the assumption that injury-in-fact could be established as to the entire class. *Id.*

Causation. The First Circuit also rejected the district court's rulings that causation was unlikely to raise individual issues and that any such issues would not overwhelm the common questions of duty and breach. *Id.* New Hampshire requires both but-for causation and legal cause, meaning the negligence must be a "substantial factor" in the harm. *Id.* The substantial-factor test requires weighing the number and effect of other contributing causes, and those causes can be strong enough to make the defendant's contribution insignificant. The district court itself found, and the plaintiffs' own experts agreed, that sources other than the facility may have contributed to localized PFOA contamination. The plaintiffs never showed how that could be addressed on a common basis. *Id.*

The district court had reasoned that Saint-Gobain's experts offered no property-by-property method for identifying where its emissions were not a substantial factor. On that view, Saint-Gobain's attack on the plaintiffs' modeling was itself a common challenge that did not defeat predominance. *Id.* at *10. The First Circuit held that this put the analysis in the wrong order. Under *Tyson Foods*, a court may discount the likelihood of individual issues based on a defendant's litigating position only after the plaintiffs have carried their burden of offering sufficient common evidence on the element. *Id.* (citing *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 457 (2016)). Where the plaintiffs have not done so, and the defendant shows that the gaps in their evidence would require individualized inquiries, the defendant's choice not to build a parcel-by-parcel rebuttal does not cure the plaintiffs' failure of proof. *Id.*

The Court of Appeals also rejected the district court's view that individualized causation does not prevent certification when the other elements can be proved class-wide. The *Brown* court emphasized that harm and causation constitute essential liability elements, and thus the plaintiffs could not show that negligence liability could be fully decided on a common basis. *Id.* The panel relied on Judge Posner's opinion in *Rhone-Poulenc*: a class phase that decides only whether the defendant was negligent does not decide liability. *Id.* (citing *Matter of Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995)). After any class-wide finding on duty and breach, the case would be "overwhelmed" by property-by-property questions about harm, but-for causation, and whether other PFOA sources made Saint-Gobain's contribution insignificant. *Id.*

In contrast to the negligence-based claims, a trespass claim only requires an "intentional invasion of the property of another," and thus liability arises whether or not the invasion harms any legally protected interest. *Id.* at *11. Under Restatement § 165 cmt. b and § 163 cmt. d, the presence of the foreign substance is itself the legal injury, even if the intrusion is "transitory or harmless or even beneficial." *Id.* That made the plaintiffs' class-wide liability proof sufficient.

Plaintiffs' meteorology expert testified that at least some PFOA from the facility fell on every property in the class area. *Id.* Saint-Gobain disputed that opinion, but the validity of the expert's opinion itself constituted a "fatal similarity" rather than a reason to deny certification. *Id.* Because the amount of PFOA on a given property has no bearing on trespass liability, variation in contamination levels did not defeat predominance.

The First Circuit then briefly addressed three issues Saint-Gobain said required individual proof: alternative sources, proximate cause of economic loss, and whether class members were injured at all given rising property values. If Saint-Gobain caused PFOA to enter a property, it is liable for trespass even if other polluters also contributed, and even if the owner suffered no additional injury. *Id.* at *12. The alternative-source evidence that defeated the negligence class therefore carried no weight on the trespass claim.

With liability established on common proof, the panel affirmed bifurcation, citing the long line of cases that allow individualized damages adjudications to follow a class-wide liability determination. Saint-Gobain had conceded at oral argument that once all elements of liability are established, damages can vary from person to person, and it did not argue that damages issues predominated. *Id.* at *13 & n.12. Its Seventh Amendment "reexamination argument" likewise failed, because the negligence claims had been decertified and, on the trespass claim, a later damages jury would not revisit any issue decided by the liability jury. *Id.* at *13–14.