

Microplastics Can Lead to Big Lawsuits

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Microplastics are small plastic particles released from plastic products as they break down over time, and they are present everywhere in the environment.¹ Although there is not yet conclusive scientific evidence demonstrating how microplastics affect human health, increased focus has been placed on potential health effects from microplastics.² Lawyers for class action plaintiffs are paying attention too.

Plaintiffs have recently brought claims against large manufacturers alleging that their products contain harmful microplastics. These lawsuits typically allege that a product's labeling and branding is misleading because it does not disclose that the products contain microplastics. For example, one lawsuit, *Daly v. Danone Waters of America, LLC*, alleged that the labeling of bottled spring water was misleading because the label referred to the water as "natural" even though it contained microplastics. The court explained that federal regulations define "spring water" as water that, for example, comes from a "natural spring." Because the defendant's labeling complied with this definition, the Court found the plaintiffs' claims to be preempted and dismissed the action.³

Plaintiffs in putative class actions have also brought claims against manufacturers of baby bottles alleging that the bottles were deceptively labeled and failed to disclose that they leach microplastics when heated. In a recent decision, *Miller v. Philips North America LLC*, the Northern District of California dismissed claims that a "BPA Free" label conveyed to consumers that microplastics were not present in the product because "BPA Free" said nothing about microplastics. However, the court allowed plaintiffs to proceed with their claims that the defendant failed to disclose that microplastics are leached when the baby bottles are heated.⁴

Companies that become involved in litigation related to labeling and microplastics have a variety of potential defenses. For example, as in *Daly*, companies may be able to successfully argue that a plaintiff's claims are preempted, particularly if the product at issue is defined by federal regulations. And as in *Miller*, companies may be able to successfully challenge claims on the basis that the labeling of a product is clear and does not communicate any message about microplastics. Ultimately, the defenses available will depend on the specific facts of the case.

It is likely that plaintiffs will consider new products to target with claims related to the presence of microplastics. Companies that manufacture plastic products—particularly where that product is used in connection with food and beverages—may benefit from reviewing their labels to consider whether any affirmative statements on the labels make representations about the presence of microplastics. These companies should also stay informed of any proposed government regulations (such as from the Food and Drug Administration) related to microplastics in order to minimize potential risks.

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Footnotes

[1] <https://www.fda.gov/food/environmental-contaminants-food/microplastics-and-nanoplastics-foods>; <https://magazine.hms.harvard.edu/articles/microplastics-everywhere>.

[2] <https://magazine.hms.harvard.edu/articles/microplastics-everywhere>;
<https://www.cnn.com/2024/12/09/health/microplastic-risk-reduce-exposure-wellness/index.html>.

[3] See *Daly v. Danone Waters of America, LLC*, No. 24 C 2424, 2024 WL 4679086 (N.D. Ill. Nov. 5, 2024).

[4] See generally *Miller v. Philips North America LLC*, No. 24-cv-03871 (N.D. Cal.), Dkt. 46.

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