NYAG's PFAS Suit: Lessons for Investors

August 7, 2026

On July 9, 2026, New York Attorney General Letitia James filed suit against chemical and agricultural companies (the "Complaint"), alleging that they are responsible for harms resulting from the sale and distribution of per- and polyfluoroalkyl substances ("PFAS"), commonly referred to as "forever chemicals." The Complaint alleges that the defendants, 3M Company, EIDP Inc., The Chemours Company, Inc., Corteva, Inc., and DuPont de Nemours, Inc., concealed the harms resulting from PFAS exposure, manufactured supposedly "toxic" PFAS and sold PFAS-containing consumer products. The suit seeks relief under multiple legal theories, including public nuisance and violations of consumer protection statutes. It employs strategies designed to pursue large-scale recoveries for alleged consumer and environmental harm—without requiring proof of the elements typically needed in individual lawsuits (including causation, reliance and harm). Investors should take note: while suits against PFAS manufacturers are not new, the theories employed by the New York AG could be employed by attorneys general in New York or elsewhere to seek large recoveries from consumer product manufacturers (and their predecessor entities) that sold consumer products that contained PFAS and marketed those products for consumers.

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The Complaint follows the typical mass tort playbook for consumer fraud allegations: it alleges that the PFAS manufacturers knew their products were harmful, concealed that information from regulators and the public, and falsely represented that the products were safe.

The Complaint begins with allegations that the defendants were aware that PFAS were harmful decades ago. These allegations appear to be based on selective excerpts from a relatively small number of uncited documents—relying principally on conclusions from laboratory animal studies and concerns about exposure at PFAS manufacturing sites. For example, the Complaint cites a 1963 3M report describing PFAS as "toxic" and "completely resistant to biological attack"; a 1978 internal report stating that PFOS and PFOA (certain types of PFAS) "should be regarded as toxic" based on a 90-day rat study showing liver discoloration; and a 1978 monkey study in which "all monkeys died within the first few days of being given food contaminated with PFOS." Tellingly, the Complaint does not allege that the defendants had knowledge that PFAS used in products described in the Complaint, *i.e.*, carpets, bedding, food wrappers, or rain jackets, posed a meaningful health risk to consumers. Nor does the Complaint otherwise plead facts that attempt to show that consumers who are exposed to PFAS as a result of using PFAS-containing products actually suffered harm (although it alleges that PFAS exposure could cause New York to face between $2.7 billion and $4.4 billion in additional healthcare costs).

The Complaint further alleges that the defendants "continued their deception" by "repeatedly reassuring consumers and the public that their consumer products were safe for household and family use and concealing the risks to the environment and human health." In support, the Complaint points to a small number of advertisements, including a picture of a woman sitting in bed covered with bedding protected by a PFAS-containing substance and a baby lying on a PFAS-containing carpet. The Complaint alleges that exposure to these types of consumer products could result in contamination of indoor air and household dust, direct ingestion through food packaging when food is heated, and absorption through the skin from cosmetics and personal care products. The Complaint also notably asserts that the defendants' PFAS-containing products were used in cosmetic and personal care products sold by third parties and that even after phasing out these chemicals, defendants failed to warn consumers against using products already in their homes or still on store shelves.

Based on these allegations, the Complaint asserts violations of New York's consumer protection statute (among other provisions). Consumer protection laws have become a favored tool for attorneys general because they provide for large statutory fines—typically thousands of dollars per violation—and allow the state to seek disgorgement of profits. Importantly, the AGs take the position that need only show that the defendants' statements had a tendency to mislead and were material to consumer decisions without proving that any individual consumer actually relied on the statements or suffered a specific injury as a result.

The Complaint also makes sweeping allegations of environmental harm. Critically, the AG's principal theory is not the traditional environmental claim—that a company discharged a harmful substance at a specific manufacturing site. Instead, it alleges that every PFAS-containing consumer product is itself a source of contamination: that PFAS gradually wear off, migrate out of, and are released from every product in which they are used, causing environmental harm statewide. As a result, the Complaint seeks a broad abatement fund to address PFAS exposure everywhere, untethered from any particular discharge site or demonstrable harm to any particular community.

Diligence Implications for Consumer Manufacturers and Investors. To date, private lawsuits against consumer product manufacturers involving PFAS have largely taken the form of class actions alleging economic loss from misleading labeling. But state AG suits of the kind filed by New York, as well as other states including Indiana, California, and Texas, pose substantially greater financial risk and warrant careful diligence attention. By combining claims that product marketing violated consumer protection laws, potentially combined with broad environmental theories seeking extensive remediation costs, attorneys general can pursue recoveries far exceeding anything available in private class actions.

Private equity sponsors evaluating companies that either manufacture or have made use of PFAS—now or at any time in the past—should carefully assess the degree of PFAS-related risk and exposure. While New York's lawsuit targeted familiar defendants in PFAS litigation, any companies that sell consumer products could potentially be subject to similar claims brought by attorneys general in New York or elsewhere. Companies in the cosmetics, food and beverage, and retail sectors face particular risk of claims that they misled consumers by selling PFAS-containing products while representing (implicitly or explicitly) that they were safe. Because the Complaint's theories reach back decades, acquirers must consider not only a target's current operations but also liabilities inherited from or created by predecessor entities. Diligence should include assessing whether a target or any predecessor manufactures, uses, or distributes PFAS-containing products; the extent of any known contamination; pending or threatened litigation or regulatory inquiry; and compliance with applicable environmental and consumer protection requirements. Any potential deals should be evaluated in light of the evolving enforcement landscape, including consideration of the following issues:

- Assess whether the company has sold PFAS products currently or in the past, and if so, the amount of PFAS in the products.

- Monitor PFAS regulations at both the federal and state level, as they are rapidly evolving and may both have implications for what products can be sold and set "safety" thresholds that form the basis for future litigation.

- Carefully assess current and prior claims that the company has made with respect to PFAS-containing consumer products. That review should cover two core questions: First, have any product claims (*e.g.*, the product is "all natural" or "PFAS-free") been substantiated? Second, as illustrated by the Complaint, even what could at most be characterized as an implicit representation about a product's safety, *i.e.*, a display of a PFAS-containing product in a domestic environment, could give rise to a litigation claim. Therefore, it is important to assess whether current or prior consumer advertisements could give rise to such a claim.

- To the extent that a target is already subject to a lawsuit by an attorney general or is the recipient of a civil investigative demand that portends such litigation, it is important for the potential buyer to consult with their own litigation counsel to assess the strength (or lack thereof) of the attorney general's allegations and the exposure resulting from the litigation. The potential buyer should also assess the risk of potential parallel proceedings, including other state enforcement actions, multidistrict litigation and class actions.

- Conduct a full environmental review to assess whether the manufacturer has PFAS contamination that could give rise to future remediation efforts.

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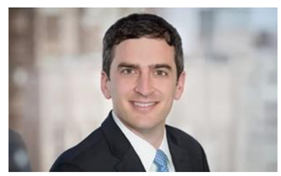

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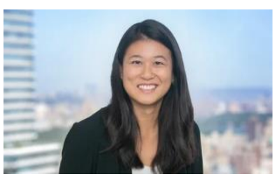

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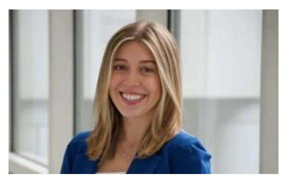

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