NYAG's PFAS Suit: Litigation Defense Strategies for Consumer Product Manufacturers

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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"), which detractors refer 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 Complaint seeks relief under a variety of theories, including public nuisance and violations of consumer protection statutes. Critically, this is not a traditional products liability case. It adapts well-honed tactics of the mass tort bar to seek large-scale recoveries arising from alleged consumer and environmental harm—without the need to prove traditional tort-law elements (including causation, reliance and harm). As we'll discuss, consumer product manufacturers that are subject to this type of lawsuit should adopt strategies that are uniquely tailored to this type of AG litigation.

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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 the government and the public, and falsely represented that the products were safe.

The Complaint begins with allegations that the defendants were aware that PFAS was harmful decades ago. The allegations appear to be based on selective excerpts from a relatively small number of uncited documents—and rely principally on the conclusions supposedly reached from laboratory studies of animals and concerns about exposure at the site of PFAS manufacturing. For example, the Complaint alleges that a 1963 3M report described PFAS as "toxic" and "completely resistant to biological attack"; a 1978 internal report noted that PFOS and PFOA "should be regarded as toxic" based on a 90-day rat study showing liver discoloration; and a 1978 monkey study that found that "all monkeys died within the first few days of being given food contaminated with PFOS." Tellingly, the Complaint does not allege that manufacturers 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 consumers who are exposed to PFAS as a result of using PFAS-containing products actually suffered harm (although the Complaint alleges that according to an analysis from an unnamed party, PFAS exposure will cause New York to face between $2.7 billion and $4.4 billion in additional healthcare costs).

The Complaint next alleges that the defendants supposedly "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 of this allegation, the Complaint includes excerpts from 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 that were sold by third parties. The Complaint further alleges that even after phasing out these chemicals, defendants failed to warn consumers against using products that were already in their homes and that remained on store shelves.

Based on this alleged deception, the Complaint alleges violations of New York's general consumer protection statute (among other provisions). Consumer protection statutes have become a preferred vehicle for litigation by attorneys general because they provide for large statutory fines—typically thousands of dollars per violation—and equitable remedies including disgorgement of ill-gotten gains. Additionally, attorneys general take the position that they need only show that defendants' statements have a tendency to mislead and are material to consumers' decisions. Therefore, they believe they circumvent the challenges individual plaintiffs would face if they sought to bring claims, i.e., that they relied on alleged misrepresentations and that PFAS exposure caused whatever medical conditions they have suffered.

The Complaint also makes sweeping allegations of environmental harm—which form the predicate for public nuisance allegations. Critically, the AG's theory is not the traditional environmental tort—i.e., that defendants discharged a harmful substance at the site of manufacture or at a particular location. Instead, the Complaint effectively alleges that every PFAS-containing consumer product is itself a source of environmental contamination—that, in essence, PFAS gradually wears off, migrates out of, and is released from every product in which it is used, causing environmental harm across the entire state. 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.

The New York Lawsuit in the Context of Other State Enforcement Actions

The Complaint reflects a broader trend of PFAS enforcement actions nationwide. Although private PFAS litigation has existed for two decades, state attorneys general's enforcement has accelerated since around 2020, particularly following the EPA's adoption of nationwide drinking water standards. More than half of state attorneys general have taken legal action against PFAS manufacturers, seeking cleanup costs and damages for environmental contamination. States including Indiana, California and Texas have filed similar suits, and additional AG actions are likely. In recent years, state AGs have posted requests for proposals to formally solicit bids from plaintiffs' firms for PFAS litigation. For example, Utah posted a solicitation in March 2026 for legal services to assist the AG with PFAS litigation and Florida similarly issued a request for proposal for legal services asking "private law firm or firms to serve as co-counsel to the State in various potential legal matters" relating to PFAS in 2025.

Litigation Implications for Consumer Product Companies

To date, private litigation against consumer product manufacturers involving PFAS has largely taken the form of class actions alleging economic loss resulting from allegedly misleading labeling. But state AG suits of the kind filed by New York pose substantially greater risk. By asserting that product advertising and marketing violated consumer protection laws and by coupling those claims with sweeping public nuisance theories seeking limitless environmental remediation, attorneys general can pursue recoveries that dwarf anything available in private class actions. These suits are not traditional products liability claims: they do not require proof that a specific product caused a specific injury to a specific plaintiff. For that reason, companies facing such claims need experienced litigation counsel who know how to defend a product in a lawsuit that is not really about the product itself.

Consumer product manufacturers should, with the input of experienced litigation counsel, take the following steps to protect themselves:

Evaluate Current Marketing Regarding Any PFAS-Containing Product

Companies should critically review the statements they are currently making about products containing PFAS in advertising, marketing, product labeling and public communications and assess whether they should be revised in light of potential litigation risk. As the Complaint illustrates, even what could at most be characterized as an implicit representation about a product's safety—such as a display of a PFAS-containing product in a domestic environment—can give rise to an AG action. Even if the AG's allegations are meritless, the cost of defending against such a claim can be significant.

Develop a Litigation Strategy That Builds a Compelling Product Narrative

If a consumer product manufacturer is sued, it should work with experienced defense counsel to develop a strategy that is tailored to explaining the value of the product and the lack of any meaningful risk to consumers and defending whatever challenged statements the company has made. Among other things, if the complaint includes quotations from company documents that are misconstrued or taken out of context, it may be prudent to draft a motion to dismiss that attaches full copies of the applicable documents (which are incorporated by reference) and debunks the myths underlying the complaint. It may also be prudent to begin working with focus groups early on in the litigation to hone the messaging underlying defense strategy.

Challenge Efforts to Circumvent Traditional Tort Requirements

Counsel should be prepared to respond to the use of novel legal theories that are designed to minimize the elements the AG has to prove and to maximize recoveries. For example, it may be possible to take advantage of rulings by federal, state and appellate courts that have rejected attempts to apply the public nuisance doctrine in connection with the sale of lawful consumer products. Similarly, attempts to assert a cause of action based on truthful public statements may be challenged not only on the merits but may also be subject to First Amendment defenses.

Please do not hesitate to contact us with any questions.

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