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Quinn Emanuel Obtains Landmark En Banc Opinion Setting Important Class Action Precedent

In a closely watched decision, Quinn Emanuel recently won a groundbreaking class certification victory in *Speerly v. General Motors, LLC*, No. 23-1940 (6th Cir. June 27, 2025). In a 9-7 *en banc* decision, the Sixth Circuit vacated the district court's certification of 26 state-wide subclasses involving approximately 800,000 individual car buyers and 59 state-law claims arising from alleged automatic transmission defects in GM cars. The Court's detailed analysis of the commonality and predominance requirements for class certification under Federal Rule of Civil Procedure 23 sets important precedent that will inform class certification practice throughout the United States.

Class Certification Under Federal Rule 23

Federal Rule of Civil Procedure 23 provides an avenue for individual plaintiffs to litigate claims on behalf of classes of unnamed individuals who are similarly situated. In deciding whether to certify a class, the trial court must evaluate whether the putative class meets all of Rule 23's requirements. Given the exponential impact a class action can have on a defendant's exposure as compared to a suit by an individual, certification is a critical, often dispositive stage of litigation.

For a class to be certified, Rule 23 requires that the class be "so numerous" that joinder of all the individual plaintiffs is impracticable; it must involve "questions of law or fact common to the class;" the claims or defenses of the class representatives must

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INSIDE

Quinn Emanuel Featured in ALM Law.com Article About Client Expansion into India

ALM | Law.com has featured the Firm in an article about strategic expansion into key global markets, highlighting India. Several partners, including John Rhie, Joanne Strain, and Rajat Rana are pioneering the approach to complex disputes involving Indian businesses and investments globally.

Law360 Recognizes Four Quinn Emanuel Rising Stars

We are proud to announce that four Quinn Emanuel partners have been named to Law360's prestigious Rising Stars list for 2025. Sara Clark (Trials), Nasser Alrubayyi (Construction), Julianne Jaquith (International Arbitration), and Frank Calvosa (Life Sciences) have each been recognized for demonstrating exceptional legal expertise and leadership that rival those of seasoned practitioners, despite being under 40 years of age.

Quinn Emanuel Litigating Three of Year's Most Tracked High Court Cases of 2025

Quinn Emanuel London is representing clients in three of 2025's most closely-watched commercial disputes, as recognized by Solomonic UK's Most Tracked High Court Cases list. The firm is litigating *Aabar Holdings v Glencore*, *Public Institution for Social Security v Al-Rajaan*, and *Magomedov v TPG Group Holdings*. These complex, high-value cases are shaping the commercial litigation landscape in 2025 and beyond.

be "typical of the claims or defenses of the class;" and the trial court must find that the class representatives "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). In addition, a putative class must also satisfy at least one of the requirements set out in Rule 23(b). The relevant Rule 23(b) requirement in the *Speerly* decision was predominance, namely, that "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

The *Speerly* decision focused on commonality and predominance, which involves "address[ing] issues that overlap with the merits inquiry." *Speerly* at 9. Accordingly, where merits questions regarding a plaintiff's claims bear on commonality and predominance, a district court will need to assess those issues to some extent at the class certification stage. *Id.*

Factual Background of the *Speerly* Case

Starting in 2015, General Motors ("GM") sold cars that utilized eight-gear Hydra-Matic transmissions, commonly referred to as "8Ls." In 2019, individual car purchasers sued GM on behalf of a putative class, alleging the transmissions were defective.

The plaintiffs alleged two separate defects: an issue with the transmission fluid that led to vibrations akin to driving over rough pavement when the fluid was exposed to moisture; and an issue when changing gears that led to consumers experiencing a range of effects, from nothing at all, to hesitation when first shifting from park into drive, to the car jerking as it shifted gears. Beginning in December 2018, GM began providing dealers with a replacement fluid to flush the transmission of cars whose owners had reported the first issue, and most such customers never again complained about the issue.

The plaintiffs—from 32 states—asserted 104 claims against GM for breach of express warranty, breach of implied warranty, violation of state consumer protection statutes, and fraudulent omission. The United States District Court for the Eastern District of Michigan certified a class composed of 26 statewide subclasses representing roughly 800,000 people in total. That class included class members who had never experienced either of the alleged defects.

With respect to commonality, the district court ruled that the commonality standard was not demanding, and was satisfied because all plaintiffs asserted some form of warranty and consumer fraud claims, and all of those claims demand proof of a defect in the vehicles' transmission design. As for predominance, the district court ruled that the class had established predominance because three common questions were central to the causes of action in each jurisdiction: (1) whether the transmission design had one or more defects that rendered the vehicles unsuitable for the ordinary use of providing safe and reliable transportation, (2) whether GM knew about the defects and concealed its knowledge, and (3) whether the information withheld would have been material to a reasonable buyer. The district court found that these issues were each amenable to proof by common evidence on a class-wide basis, and that the answers to each would feature predominantly in the case's disposition.

Appeal to Sixth Circuit and *En Banc* Opinion

GM, represented by Quinn Emanuel, appealed the district court's certification order. After a three-judge panel of the Sixth Circuit initially affirmed, GM petitioned for rehearing *en banc*, which was granted. On June 27, 2025, the Sixth Circuit's *en banc* panel reversed the district court and the original Sixth Circuit opinion, vacated class certification, and remanded to the district court to reassess certification.

<u>*Commonality*</u>

The Sixth Circuit found that the district court had erred in finding that commonality was satisfied because three common questions—whether the transmissions had defects; whether GM knew about them; and whether the defects were material—"len[t] themselves to a common answer and featured prominently in the disposition of the case." *Id.* at 11 (citation and quotation marks omitted) (quoting district court). As the Sixth Circuit explained in reversing this finding, "that does not suffice. A court may not simply ask whether generalized questions yield a common answer. That would undermine the bedrock principle that courts must identify common questions with respect to concrete elements of each claim. By hitching all 59 claims to a question about 'defect' in the abstract, the [district] court overlooked how significant differences across each cause of action raise serious commonality concerns." *Id.* Indeed, whereas the district court had pointed to "defect" as a common issue, the Sixth Circuit noted that "defect" means different things in connection with different causes of action. And the 59 claims at issue in *Speerly* implicated different definitions of "defect." *Speerly* at 13-14.

The Sixth Circuit further explained that "a court might find that the element of breach in an express-warranty claim asks a common question: Does a problem exist in each transmission that GM promised to fix? But the element of breach in an *implied*-warranty claim asks a different question: Does a problem in each transmission amount to a defect that makes the car unfit for its ordinary purpose?" *Speerly* at 11-12 (emphasis added). The court concluded that the latter may not be common among the class, since some class members did not experience one or both of the alleged defects, and experienced different effects of the same alleged defect. Similarly, the court explained that the element of GM's "knowledge" differed between claims. As a result, "without an element-by-element commonality analysis," the court could not "effectively review which questions are truly central to which claims"; the Sixth Circuit and vacated and remanded for the district court to conduct "an element-by-element analysis that assesses how each question is common by fitting it into each claim." *Speerly* at 12.

Predominance

The predominance analysis "requires a district court to make a claim-by-claim comparison" of common and non-common questions to see which, if any, predominate. *Speerly* at 14. As the majority put it, "[a] subclass with highly individualized issues may not ride the coattails of another subclass without them." *Id.* at 17. "An element-by-element comparison of a cause of action to determine whether common questions do, or do not, predominate *requires* a consideration of all of the elements of *each* legal claim at the outset. Any other approach does not come to grips with the central point of the predominance inquiry and subverts the fairness and efficiency considerations underlying Rule 23." *Id.* at 20 (emphasis in original).

The Fifth Circuit in *Speedy* explained that whereas benefits to class members of certification are generally small, the consequences to a defendant can be catastrophic, so much so that class actions where a class is certified almost always resolve through settlement rather than trial on the merits. This means that class certification is "too often the main event" in a class action. *Id.* at 20 (citation and quotation marks omitted). The court also noted that improper certification of a class creates a situation in which defendants enter into costly settlements rather than betting the company on the uncertainties of trial, the costs of which then raise the cost of doing business, which is in turn passed on to consumers, investors, and workers. *Id.* (internal quotation marks omitted). The court explained that the predominance analysis avoids these risks "by focusing on whether the class action would lead to a fair and efficient trial, not a settlement." *Id.*

The court then walked through each of the four types of causes of action at issue, analyzing whether any common questions predominated for each:

- <u>Breach of Express Warranty:</u> The court rejected the lower court's predominance finding as to plaintiffs' express warranty claims. The question of breach "overwhelm[ed]" any efficiency gains of common questions, as GM could only be said to have "breached" the contracts at issue if and when it refused or failed to repair the customer's car. That is a highly individualized inquiry—individual class members will necessarily differ as to whether they brought their cars in for repair at all, if they did so during or after the warranty period, what types of repairs they received, and what effect the repairs had. "All of this means that the substance or quantity of evidence offered varies among unnamed class members. That is a problem." *Id.* at 18 (citations and internal quotation marks omitted).
- <u>Breach of Implied Warranty:</u> The Court also rejected the district court's predominance finding for the implied warranty claims, as the alleged defects presented differently to different class members and to different degrees, and did not present to some class members at all. The Court noted that "[s] uch variations make it difficult to conclude that the common questions predominate." *Id.* at 21.
- <u>Consumer Protection Statutory Claims:</u> With respect to consumer protection claims, the Court noted that some of the states at issue required that a defect manifest before the consumer could sue, whereas others did not. Similarly, some states required a consumer to show actual reliance on a merchant's misrepresentation or omission, whereas others did not. Both inquiries are highly individualized to each class member and not conducive to finding predominance.
- <u>Fraudulent Concealment:</u> Similarly, the court stated that it did not appear that any of the five state subclasses involving fraudulent concealment claims had common questions that predominated over individualized ones, as the claim under each state's laws requires reliance, which is a highly individualized showing.

Implications of the *Speerly* Decision for Class Action Practice

Beyond *Speerly* itself, the Sixth Circuit's *en banc* opinion has broader implications for class action practitioners, both in the Sixth Circuit (which includes Kentucky, Michigan, Ohio, and Tennessee) and beyond. It is one of the most comprehensive circuit court opinions discussing Rule 23 and class certification in recent years, and its analysis of commonality and predominance is sure to feature prominently in class certification briefing throughout the United States going forward.

A district court in Montana has already relied on *Speerly* extensively in denying certification of a class in *Nelson v. Forest River, Inc.* No. CV-22-49-GF-BMM, 2025 WL 2197262 (D. Mont. Aug. 1, 2025). And the

Seventh Circuit recently cited *Speerly*'s "reasoning that a court can only assess commonality and predominance after 'identifying the relevant elements of each cause of action'" in its opinion reversing certification of a class action brought by car owners against insurers. *Schroeder v. Progressive Paloverde Ins. Co.*, No. 24-1559, 2025 WL 2083855, at *4 (7th Cir. July 24, 2025).

And although *Speerly* did not turn on the issue of standing, the Court's discussion of class member standing (as well as Judge Nalbandian's concurrence, which discusses standing at length) nonetheless provides important guidance on the issue. For example, the Sixth Circuit in *Tapply v. Whirlpool Corp.* recently cited to *Speerly*'s consideration of whether named plaintiffs in a consumer class action had suffered a concrete injury-in-fact, and its conclusion that when a consumer buys a defective product and the defect manifests, the consumer has suffered a concrete injury-in-fact, in support of the *Tapply* court's finding that the *Tapply* plaintiffs had Article III standing. *Tapply v. Whirlpool Corp.*, No. 23-1666, 2025 WL 2237654, at *3 (6th Cir. Aug. 6, 2025); *see also Pacheco v. Ford Motor Co.*, No. 2:22-CV-11927, 2025 WL 2255623, at *4 (E.D. Mich. Aug. 7, 2025) (citing both the *Speerly* majority's and Judge Nalbandian's concurrence's discussion of standing in finding that at the pleading stage, plaintiffs had plausibly pleaded injury-in-fact for standing purposes).

In short, *Speerly* contains important guidance for class action practitioners, both in the Sixth Circuit and around the country. Q

NOTED WITH INTEREST

New State-Level Safe Harbor Statutes Attempt to Curb Data Breach Litigation Risks

It is well known that data breaches and associated litigation are on the rise. The number of data breach incidents in the United States more than doubled over five years, from 1,278 incidents in 2019 to 3,158 in 2024. Identity Theft Resource Center, *2024 Data Breach Report* 9 (Jan. 2025). The harm associated with these breaches is increasing as well—in 2024, the average cost of a data breach in the US surged to $10.2 million, its highest ever. IBM, *Cost of a Data Breach Report 2025* (2025).

One driver of these increased costs is litigation by private plaintiffs in the wake of a data breach. In 2024 alone, data breach litigation led to a $350 million settlement with Alphabet, the parent company of Google, a $65 million settlement with the hospital network Lehigh Valley Health Network, and a $30 million settlement with the genetic testing service 23andMe. *See In Re Alphabet Inc. Sec. Litig.*, No. 18-CV-6245 (N.D. Cal. Sept. 30, 2024); *Doe v. Lehigh Valley Health Network Inc.*, No. 23-CV-1149 (Penn. Commw. Ct. Nov. 15, 2024); *In Re 23andMe Inc. Customer Data Sec. Breach Litig.*, Case No. 24-MD-3098 (N.D. Cal. Dec. 4, 2024).

The increasingly large litigation costs are due in part to a greater willingness by courts to recognize harms like identify theft or identity fraud as adequate injuries to support a lawsuit. They are also due to new state data privacy legislation. There are now 19 state-enacted comprehensive data privacy laws, some of which, like California's, explicitly grant consumer-victims of a data breach a private right of action in certain circumstances. IAPP, *US State Comprehensive Privacy Laws Report* (2024).

Confronted with the increasing costs of data breach litigation, some states have begun implementing safe harbor statutes that shield businesses from liability for data breaches when those businesses haven taken certain affirmative steps to protect their customers' data before the breach. These safe harbor laws offer the possibility of substantial protection to organizations that implement reasonable industry-standard cybersecurity measures. However, their nascent stage and relative diversity across different states will require practitioners to analyze each law's specific requirements carefully to ensure protection.

Ohio's 2018 Data Protection Act was the first state data privacy law to include a safe harbor provision, and has served as a model for subsequent state safe harbor laws. The Act provides an affirmative defense to data breach tort claims to any entity that "create[s], maintain[s], and compl[ies] with a written cybersecurity program" that "reasonably conforms" to one of several recognized industry or government data security frameworks. *See* Ohio Rev. Code §§ 1354.01–1354.05. The entity's written cybersecurity program must reasonably conform to the current version of certain recognized industry cybersecurity frameworks (or to certain federal data security frameworks if the entity is regulated by the state or federal government), and to any revised version of the entity's chosen framework within one year. *See id.* § 1354.03. The Ohio legislature anticipated that the Act would "reduce the likelihood that certain plaintiffs file [a data breach] action" and would allow "court[s] . . . to more promptly dispose of [data breach] case[s]." Ohio Legislative Service Commission, *Fiscal Note & Local Impact Statement* (September 2018).

Several other states have begun following Ohio's lead. Utah's Cybersecurity Affirmative Defense Act, adopted in 2021, largely tracks the Ohio Data Protection Act, but with some differences that on balance could lead to slightly increased protection for covered entities. *See* Utah Code Ann. §§ 78B-4-701 to 78B-4-706. First, while the Utah safe harbor does not apply if the entity had actual notice of a data breach threat and did not take remedial efforts, *id.* § 78B-4-702(5)(a), it also, in addition to providing a safe harbor to entities whose cybersecurity protocols reasonably conform to the same industry and government data security frameworks included in Ohio's Data Protection Act, provides protection to entities who utilize a "reasonable security program" meeting certain requirements. *Id.* § 78B-4-703(1)(b)(i) & (2). This change allows entities that wish to follow their own reasonable cybersecurity frameworks to do so and still receive safe harbor protection. Finally, whereas Ohio's safe harbor law requires entities to "comply" with their cybersecurity programs to receive protection, Utah requires only that an entity "reasonably complies" with its program to receive protection. *Id.* § 78B-4-702(1). It is possible that this difference in language between the Ohio and Utah laws could provide broader safe harbor protection to covered entities under Utah's law.

Connecticut also passed a safe harbor law in 2021, but with significant differences from Ohio's that make it less protective. *See* Conn. Gen. Stat. § 42-901. First and most importantly, Connecticut's law only protects entities from liability for punitive damages in an action alleging a failure to implement reasonable cybersecurity controls. *See id.* § 42-901(b). Second, the law provides no safe harbor if the alleged failure to implement cybersecurity controls was the result of "gross negligence or wilful or wanton conduct." *Id.* Finally, entities are given only six months, rather than one year; to conform to the revised version of their chosen cybersecurity framework. *Id.* § 42-901(c).

Iowa's safe harbor law, passed in 2023, largely follows the Ohio model, but with one key difference. *See* Iowa Code §§ 554G.1–554G.4. Whereas Ohio's, Utah's, and Connecticut's safe harbor laws employ a multi-factor approach to determining the appropriate size and scope of an entity's cybersecurity program that depends on things like the sensitivity of the covered data and the entity's size and complexity, *see, e.g.*, Ohio Rev. Code § 1354.02(C), Iowa's safe harbor law states that an entity may assert an affirmative defense to a data breach action only "if the cost to operate [its] cybersecurity program is no less than the covered entity's most recently calculated maximum probable loss value," Iowa Code § 554G.2(c)(3). Thus an entity that expects $5 million in probable losses from a data breach would need to spend at least $5 million on its cybersecurity program to qualify for safe harbor protection under Iowa's law, in addition to following the same types of requirements common to the other safe harbor laws. Such a costly requirement is likely to reduce the practical utility of Iowa's safe harbor law significantly.

Tennessee has taken a more protective approach, establishing a willfulness standard for any data breach class action. Its 2024 safe harbor law provides simply that a "private entity is not liable in a class action lawsuit resulting from a cybersecurity event unless the cybersecurity event was caused by willful and wanton misconduct or gross negligence on the part of the private entity." Tenn. Code § 29-34-215(b). By limiting businesses' liability in class action lawsuits to data breaches resulting from gross negligence or willful or wanton misconduct, Tennessee's safe harbor law is likely the most protective in the nation.

Whether this trend continues remains to be seen. Just this year, Texas passed a bill providing safe harbor protection for small and mid-sized businesses with fewer than 250 employees. *See* 2025 Tex. Sess. Law Serv. Ch. 1029 (S.B. 2610). But in 2024, the Florida and West Virginia legislatures passed safe harbor laws only to see them vetoed by their respective governors. *See* R. DeSantis, Letter to Sec. of State Byrd, June 26, 2024; J. Justice, Letter to Sec. of State Warner, Mar. 27, 2024.

This patchwork of state safe harbor laws offers some protection to businesses looking for solutions to the ever-increasing wave of data breaches and associated litigation. As the legislative landscape continues to evolve, one thing is clear: a proactive approach to data protection and cybersecurity, especially that which conforms to recognized industry and government cybersecurity frameworks, will provide the maximum protection to businesses and other entities in the event of a data breach. Q

Mass Torts Litigation Update:

Microplastics Litigation: The Next PFAS?

With the recent uptick in lawsuits alleging harm caused by microplastics, many are wondering whether there will be another sprawling litigation similar to that regarding Per- and Polyfluoroalkyl Substances (PFAS). Just like PFAS (typically referred to as "forever chemicals"), microplastics are ubiquitous and non-degradable. They are in the water we drink, the food we eat, and the consumer products we use. According to the EPA, "[m]icroplastics have been found in every ecosystem on the planet, from the Antarctic tundra to tropical coral reefs, and have been found in food, beverages, and human and animal tissue." But a critical question is: how much microplastic exposure is unsafe for humans? Although there is not yet a clear answer, the plaintiffs' bar has taken an aggressive stance against manufacturers, marketers, and sellers of consumer products containing microplastics, and this will continue as more evidence concerning the dangers of microplastic exposure is discovered.

Microplastics are plastic particles ranging in size from 5 millimeters (about the size of a pencil eraser) to 1 nanometer (a sheet of paper is about 100,000 nanometers thick). They can be manufactured for use in consumer products (primary microplastics) or they can be shed from larger plastic materials, like food wrapping or plastic bottles (secondary microplastics). The scientific community has been researching the potential harmful effects of microplastics on the environment and our health. Microplastics, like forever chemicals, have been found in virtually all freshwater sources on earth, and have seen detected in human bodily fluids, organs, and bones. Relationships are being investigated between microplastics exposure and serious medical conditions, including blood vessel dysfunction, dementia, strokes, heart attacks, and certain types of cancer, but to date there are no conclusive findings of a causative link to such conditions. The numerous types and sizes of microplastics, a lack of data regarding harmful dosage rates, and the presence of confounding factors are obstacles to this ongoing research. It has also been posited that microplastics act in conjunction with other factors harming different bodily systems over many years, making it more difficult to tie microplastic exposure to a specific illness or condition.

The federal government has regulated some forms of microplastics, *e.g.*, the Microbead-Free Waters Act is aimed at protecting aquatic life by prohibiting the use of microplastics in personal care products like toothpaste. Additionally, California, New Jersey, and Washington have enacted laws requiring reductions of "unnecessary" plastic packaging, and for such packaging to be recyclable. However, more expansive legislation that would prohibit the discharge of microplastics into water bodies throughout the U.S. has stalled in Congress.

Enter the plaintiffs' bar. To date, microplastics litigation has largely centered on "greenwashing" consumer protection claims stemming from alleged misrepresentations of the quality and composition of consumer products, and public nuisance claims brought against businesses allegedly contributing to plastic pollution that harms the environment.

Bottled water companies were an initial target of greenwashing claims, with consumers alleging that the marketing of water as "natural," "pure," and/or "100% natural spring water" violated state consumer protection laws due to the presence of microplastics. The consumer class actions were largely brought in Illinois and California, but the claims were dismissed at the pleading stage based on: failure plausibly to allege the water contained in the Fiji bottles contained microplastics (*Daly v. Wonderful Co., LLC*, 2025 WL 1331750 (N.D. Ill. May 7, 2025)); express federal preemption by the Food, Drug and Cosmetic Act's regulation of "spring water" (*Slowinski v. BlueTriton Brands, Inc.*, Case No. 1:24-cv-00513, Dkt. 23 at *23-24, (N.D. Ill. August 9, 2024); *Bruno v. BlueTriton Brands, Inc.*, 2024 U.S. Dist. LEXIS 98451, at *2 (C.D. Cal. 2024)); and failure to allege that a reasonable consumer would be deceived by the presence of a microscopic amount of plastic in "100% natural" water (*Slowinski*, Case No. 1:24-cv-00513, Dkt. 23 at *27).

In an attempt to avoid the federal preemption issue, greenwashing lawsuits have expanded to other consumer products, including infant-care products. A recent nationwide consumer class action was brought against WaterWipes, a baby wipes manufacturer, alleging the presence of a high amount of microplastics in its baby wipes marketed as "pure," and plastic free. *Devery Merlo v. Water Wipes (USA) Inc.*, Case No. 3:25-cv-04640 (N.D. Cal. 2025). This lawsuit follows the dismissal of false advertising claims brought against the maker of plastic baby bottles, primarily on the grounds that plaintiffs failed to show that the amount of microplastics leaching into the warmed-up baby bottles was unsafe. *Cortez v. Handi-Craft Co., Inc.*, 2025 WL 1452561, at *5 (N.D. Cal. Apr. 29, 2025). Additionally, a similar class action was brought against the maker of Ziploc bags, which marketed its bags as "microwave safe." Although microplastic greenwashing claims have been largely unsuccessful so far, companies that sell consumer products in plastic packaging are likely to face similar lawsuits going forward.

The plaintiffs' bar is also following the PFAS playbook in bringing public nuisance lawsuits against microplastic polluters. After surviving demurrer in California Superior Court on its nuisance claims against

Coca-Cola and others, a not-for-profit organization has begun entering into settlements with defendants aimed at "reducing plastic and plastic pollution." Further, the City of Baltimore has pending claims against Coca-Cola and others, alleging that their distribution of single-use plastic packaging has cost the city "tens of millions of dollars" in clean-up costs and that the environmental and health impact from microplastics is harming the general public.

If microplastics litigation continues to follow the PFAS framework, the next shoe to drop may be personal injury lawsuits alleging that the accumulation of microplastics in the body was a cause of a plaintiff's serious medical conditions. If and when these claims are brought will depend on the outcome of continuing research in the area of microplastics.

Product Liability Update:

Does Product Liability Have Physical Boundaries?

Plaintiffs are increasingly advancing product liability theories in the digital sphere, targeting social media platforms and service-oriented applications. Courts faced with these claims are addressing novel questions about whether, and to what extent, product liability principles developed for tangible goods apply to digital platforms. Two key threshold issues frequently arise: whether the claims concern a "product," and whether they assert plausible product defect theories.

Service Issue or Product Defect?

In traditional product liability cases, the questions whether a claim concerns a "product" and whether it alleges a product defect are often readily answeres. However, in cases involving online platforms and digital technologies, these interrelated issues have become central. Courts, particularly in the Ninth Circuit, have rejected categorical classifications of online platforms or applications as either products or services. Instead, they have adopted a more nuanced approach that considers the nature of the alleged defect, its similarities and differences to physical products, and whether it aligns with the types of issues traditionally addressed by product liability law.

For example, in *In re Social Media Adolescent Addiction/Personal Injury Product Liability Litigation*, a series of cases brought on behalf of minors against operators of social media platforms (including Facebook, Instagram, YouTube, TikTok, and Snapchat), plaintiffs alleged design defects based on platform features such as continuous content feeds, algorithmic content timing, content length limitations, notifications, filters, lack of parental controls, and the absence of time restrictions. The plaintiffs claimed these design choices contributed to deterioration in minors' physical, mental, and emotional health. The court rejected proposed categorical tests for determining whether these features constituted "products"—such as labels, tangibility, or similarities to software or expressive content—and instead analyzed whether the challenged aspects had tangible analogues. Applying this framework, the court found, for example, that parental controls and age verification systems had real-world analogues (such as physical parental locks on medications and software parental locks on televisions) and thus qualified as products. Likewise, time limits and restraints were analogized to tangible devices like timers and alarms.

Similarly, in *In re Uber Technologies, Inc., Passenger Sexual Assault Litigation*, 745 F. Supp. 3d 869 (N.D. Cal. 2024), passengers brought product liability claims alleging failures to mitigate risks of sexual harassment, assault, kidnapping, and other misconduct. Alleged defects included the absence of same-gender driver selection options, "safe ride" algorithmic matching, enhanced GPS-based safety alert systems, stricter driver background checks, and timely in-ride support. The court evaluated whether these claims targeted aspects of Uber's app that had "plausible analogues in tangible products." Allegations such as the lack of GPS-based alerts for route deviations or prolonged stops were considered product-focused because they paralleled features available in tangible devices, and the absence of gender-matching options was treated as a design-based defect in the app's user interface.

In contrast, the court determined that claims relating to Uber's background check practices, customer support, and zero-tolerance policy were tied to Uber's service operations, not the app itself, and thus fell outside the scope of product liability law. Additionally, the allegation that Uber failed to employ a predictive "safe ride" matching algorithm was found not to involve a feature with a tangible product analogue.

Unsettled Questions

The law in this area remains unsettled. Given the complex and multifaceted nature of digital platforms and applications, these threshold questions are likely to remain active areas of litigation until appellate courts provide binding guidance.

Quinn Emanuel Achieves Major Victory Preventing JP Morgan International Finance Limited from Pursuing Greek Claim for €917 million

Following an expedited trial in the English High Court (Commercial Court), Quinn Emanuel recently obtained anti-suit injunctive relief against JP Morgan International Finance Limited ("JPM") preventing JPM from wrongly pursuing a damages claim in Greek proceedings for €917 million against four directors of Viva Wallet Holdings Software Development Ltd ("Viva").

Quinn Emanuel represents WEREALIZE.COM Limited ("WRL") and four directors of Viva (the "Directors").

WRL (a Cypriot company) is a holding and investment company, whose areas of investing activity include cutting-edge technology and the payments market. WRL is the majority shareholder of Viva (a Greek company), and JPM is the minority shareholder. Viva is the world's only pan-European "neobank" (a bank that operates exclusively using online banking, without traditional bank branches) licensed to provide cloud-based banking services in 24 different countries (including Viva's innovative "Tap on Phone" technology). At the time of the acquisition by JPM, Viva was heralded as Greece's first "fintech unicorn"—*i.e.*, a privately owned start-up company valued at over $1 billion.

The relationship between JPM and WRL is governed by a shareholders' agreement ("SHA"). The SHA contains an exclusive jurisdiction agreement in favor of the English courts, and a "no liability" clause in favor of the Directors.

However, on January 2, 2025, JPM commenced proceedings against the Directors before the Multi-Member Court of First Instance of Athens under Article 919 of the Greek Civil Code ("GCC") for allegedly intentionally causing damage contrary to good morals (the "Greek Proceedings"). JPM claimed in the Greek Proceedings that its shareholding rights in Viva had been rendered effectively worthless by the Directors' conduct, and sued them for €917 million in damages (the total amount invested by JPM in Viva).

The effect of Article 332 of the GCC is that liability under Article 919 cannot be excluded as a matter of Greek law. Article 332 of the GCC provides "any agreement made in advance which excludes or limits liability from intentional conduct or gross negligence shall be null and void."

JPM's position in the Greek Proceedings, and in the English proceedings, was that the Greek Court will apply Greek law to its claims in the Greek Proceedings, and that under Greek law, the Greek Court would not give effect to the liability limitations to when JPM had contractually agreed to under clause 33 of the SHA because the Greek Court would treat Articles 919 and 332 of the GCC as mandatory provisions of law out of when parties cannot contract.

Following a three-day expedited trial, Mr. Justice Foxton granted anti-suit injunctive relief, finding that the Greek Proceedings were in breach of an obligation to be implied into the SHA not to bring proceedings in jurisdictions where the "no liability" provision would be ineffective.

This dispute is the latest round in a broader shareholder dispute concerning Viva, with this decision marking the third round of the legal battle between JPM and WRL.

Victory for James River Group in Complex Securities Fraud Dispute

The firm recently secured a complete victory for James River Group Holdings, Ltd. and its executives in a high-stakes federal securities fraud action brought by Fleming Intermediate Holdings LLC in connection with its $300 million acquisition of a James River subsidiary. On July 17, 2025, the U.S. District Court for the Southern District of New York granted James River's motion to dismiss in its entirety, dismissing all federal securities claims with prejudice and declining to exercise supplemental jurisdiction over the remaining state law claims.

The dispute arose from Fleming's November 2023 acquisition of JRG Reinsurance Company Ltd., a Bermuda-based reinsurance subsidiary of James River. Fleming, a Cayman Islands insurance company majority-owned by private equity firm Altamont Capital Partners, alleged that James River made material misrepresentations in the Stock Purchase Agreement and breached various covenants. Fleming brought claims under Sections 10(b) and 20(a) of the Securities Exchange Act against James River and its CEO and CFO, along with state law fraud and breach of contract claims.

The Court's decision rested on the extraterritoriality doctrine established by the Supreme Court in *Morrison v. National Australia Bank* and refined by the Second Circuit in subsequent cases including *Parkcentral Global Hub Ltd. v. Porsche Automobile Holdings SE* and *Cavello Bay Reinsurance Ltd. v. Stein*. Although Fleming argued that the transaction was sufficiently domestic because James River was headquartered in North Carolina and the agreement was negotiated and executed in the United States, the Court found that Fleming's claims were "so predominantly foreign as to be impermissibly extraterritorial."

The Court emphasized several key factors that rendered the case predominantly foreign: (1) the transaction involved foreign parties on both sides and shares of a privately held Bermuda company not traded on any U.S. exchange; (2) many of Fleming's alleged misrepresentations were premised on purported violations of Bermuda law; (3) the entire transaction was conditioned on approval by the Bermuda Monetary Authority; and (4) there were parallel foreign regulatory proceedings involving the same conduct alleged in the complaint. The Court noted that Fleming's Exchange Act claims would require this Court "first [to] have to find a predicate violation of Bermuda's Insurance Act, Insurance Code, or Companies Act," creating exactly the type of "potential for incompatibility between U.S. and foreign law" as in *Morrison* and *Parkcentral*.

The Court found the Second Circuit's decision in *Cavello Bay* directly on point. Like *Cavello Bay*, this case involved "a private agreement for a private offering between a Bermudan investor … and a Bermudan issuer," with shares "not listed on a U.S. exchange and not otherwise traded in the United States." The Court rejected Fleming's attempts to distinguish *Cavello Bay*, noting that Fleming's arguments about U.S.-based executives, negotiations, and financing were "remarkably similar to the allegations deemed inadequate in *Cavello Bay*."

Having dismissed all federal claims with prejudice based on extraterritoriality, the Court declined to exercise supplemental jurisdiction over Fleming's state law fraud and breach of contract claims. The Court noted that "the case is at a relatively early stage" and "there are already pending state law proceedings," concluding that "holding parallel state and federal proceedings would not serve judicial economy or convenience."

This victory demonstrates the continued vitality of *Morrison*'s extraterritoriality doctrine in complex cross-border transactions and provides important guidance on how courts will analyze cases involving foreign parties, foreign securities, and claims that depend on alleged violations of foreign law—even where significant negotiation and execution activities occur in the United States. Q

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business litigation report
quinn emanuel urquhart & sullivan, llp

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