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Issue 1, 2020

● Welcome

Welcome to our first *Product Lines* issue of 2020. *Product Lines* is our quarterly e-newsletter that focuses on toxic torts and product liability issues.

For this edition, we are reporting on several important and timely legal issues. As you will see, we strive to make these e-blasts both informative and valuable by having our attorneys comment on WHY these issues are important and how they could affect your business.

As always, if you have a particular topic you would like to hear more about, please let us know. Thank you for reading.

The [Toxic Tort Litigation](#) and [Product Liability Litigation](#) Practice Groups

● **FDA Warns Purell Its Products Can't Treat or Prevent Viruses**

"While it is considered 'generally safe,' Purell's key ingredient, alcohol, is not proven to treat more serious viruses."

Why this is important: Overzealous marketing, puffery, false or deceptive advertising should be on manufacturers' radar after the U.S. Food and Drug Administration ("FDA") issued a warning to Purell, the leading manufacturer of hand sanitizer. Purell was warned after it made statements its advanced hand sanitizer is effective at killing or inactivating viruses, such as Ebola virus, norovirus, and influenza. The FDA found none of the products at issue had been tested against such viruses. The hand sanitizer can be properly marketed as Generally Recognized as Safe ("GRAS"), but not as preventative against viruses, according to the FDA. This is important to public health and safety because when consumers make choices to rely on products instead of making healthier choices, like hand washing, they may be unwittingly spreading germs and viruses. Making inaccurate statements leaves manufacturers at risk for legal action as well. --- [Heather Heiskell Jones](#)

● **The Energy 202: Youth Climate Lawsuit Dismissal Shows**

Challenge of Using Courts to Tackle Climate Change

"That's a wrench in the plans of environmental advocates and their Democratic allies who are frustrated with Congress's failure to pass major climate legislation — and have increasingly turned to the court system to stop what they see as the pressing ecological and economic crisis of rising global temperatures."

Why this is important: After promising the "Trial of the Century," the plaintiffs in a climate change lawsuit against the federal government failed to survive even a motion to dismiss. A divided Ninth Circuit panel held that the plaintiffs lacked standing to assert their claims because the complex policy decisions that would be required to afford them relief belong to the legislative and executive branches, rendering the case non-redressable. Whether this decision signals the case's end, or is just a bump in the road on the way to the Supreme Court of the United States, public polling suggests the plaintiffs have helped shift public opinion about global warming—which was likely the goal all along. --- [Joseph V. Schaeffer](#)

● **Supreme Court Won't Block Lawsuit Brought by Flint Water Crisis Victims**

"Lawyers for the city asked the justices to step in and block the lawsuit, claiming their clients had immunity from such suits."

Why this is important: In late January, the Supreme Court of the United States refused to intervene in some of the many lawsuits arising from the Flint, Michigan water crisis. The cases at issue could potentially hold liable city officials, and others, for the damages allegedly incurred by Flint water customers. The Flint water crisis will be a high-profile test of the scope and strength of sovereign immunity in public toxic exposure cases, and also provide an interesting look into the procedural breadth, depth, and flexibility of complex litigation mechanisms involving state and federal courts. --- [Clifford F. Kinney, Jr.](#)

● **Brad Pitt, Others Can be Sued Over New Orleans Homes, Judge Says**

"A judge has denied actor Brad Pitt's request to be taken off a lawsuit that says his Make It Right Foundation built shoddy homes in the New Orleans area that was hit hardest by Hurricane Katrina."

Why this is important: Good Samaritans need to be aware that, no matter their good intentions, they can be held legally responsible when they engage in efforts outside of their ability. In the aftermath of Hurricane Katrina, celebrity Brad Pitt and his Make It Right Foundation engaged in the ambitious project of rebuilding homes in New Orleans. After construction was finished, the homeowners soon became aware that certain construction products used by Pitt's foundation were causing serious structural issues. (Click [here](#) to read a background article regarding this issue.) Litigation ensued, resulting in Brad Pitt being personally added as a defendant in 2018. At the end of 2019, a federal judge denied Brad Pitt's motion to dismiss the claims brought against him. Although Brad Pitt acted with altruistic intent, he publicly admitted that he started the project "incredibly naive." In this case, that naiveté has resulted in potential personal liability. --- [James E. Simon](#)

● **Flight Attendants Sue Boeing Over Design They Say Causes 'Toxic' Cabin Air**

"Chicago-based Boeing Co. is being sued by flight attendants who say they were made sick by toxic air that leaked onto a company-built airplane because of what they say is a design flaw."

Why this is important: Following a turbulent 2019 filled with safety concerns over the Boeing 737 MAX, Boeing now faces litigation involving an alleged design flaw in its airplanes that use its "bleed air system." The plaintiffs allege the system's air intake is located near the engines, which allows air contained with various chemicals to enter the cabin. Although Boeing has faced similar allegations in the past, if the current plaintiffs' theory gains traction, Boeing may see a wave of similar claims and class actions filed across the country. --- [Joseph A. "Jay" Ford](#)

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If you have any toxic tort or product liability questions, please feel free to contact our [Toxic Tort Practice Group](#) or our [Product Liability Litigation Practice Group](#).



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