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CLASS ACTIONS AND MULTI-PARTY LITIGATION AND PRODUCT LIABILITY

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**IN THIS ISSUE**

*Elizabeth Sorenson Brotton, Shelley K. Napolitano, and Kyle R. Heim provide insight on the Martinez v. Kraft Heinz Company Inc., et al., case and preview a new area of litigation that food product manufacturers and their counsel should monitor.*

# Food for Thought: A New Frontier of Product Liability Litigation for Ultra-Processed Foods

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On August 25, 2025, Judge Mia Perez of the U.S. District Court for the Eastern District of Pennsylvania dismissed a first-of-its-kind lawsuit in which a plaintiff alleged injuries from so-called "ultra-processed foods" (UPFs).[1] Plaintiff Bryce Martinez, in *Martinez v. Kraft Heinz Company, Inc., et al.*, sued 11 food manufacturers, alleging that he developed type 2 diabetes and non-alcoholic fatty liver disease ("NAFLD") by the age of 16 as a result of consuming UPFs.[2] According to Martinez's Complaint, which was 668 paragraphs and 147 pages long, these UPFs included several popular snack foods, cereals, sodas, and other flavored beverages.[3] Martinez claimed that the manufacturers of these food products use the "Big Tobacco Playbook" by engineering and introducing "addictive substances" into their products to hook consumers.[4] Food product manufacturers, Martinez alleged, do this by using "predatory" marketing practices geared towards children to create "lifelong, loyal customers."[5] Although the court dismissed Martinez's Complaint, that ruling is being challenged, and similar lawsuits may follow. Food manufacturers and their counsel need to be aware of the theories plaintiffs are likely to assert, strategies for defending UPF claims, and an evolving regulatory scheme.

## I. *Martinez:* The First Bite of a New Mass Tort

Martinez's lawsuit centers around UPFs and the alleged adverse health effects that they cause. To date, there is no legal definition of UPFs, and even the scientific community is not yet in agreement on a definition. The first use of the term UPF appeared in a 2009 publication by Carlos Augosto Montiero. In this publication Montiero developed the "NOVA" classification, a system for classifying food into groups according to the extent of processing. The NOVA system classifies foods into the following categories: (1) unprocessed and minimally processed foods, (2) processed culinary ingredients, (3) processed foods, and (4) ultra-processed foods.[6]

Martinez relied on Monteiro's most recent definition of UPF: "industrially produced edible substances that are imitations of food. They consist of former foods that have been fractioned into substances, chemically modified, combined with additives, and then reassembled using industrial techniques such as molding, extrusion and pressurization."[7] Martinez's apparent goal was to establish a wide-net definition for UPFs that could reasonably include *any* food that has additives or has had any modification processes used during its manufacture. This could include substances such as high fructose corn syrup, acetic acid, or citric acid, and foods that undergo processes such as fermentation, carbonization, or caramelization. In fact, Monteiro's critics caution that his

[1] Order, *Martinez v. Kraft Heinz Co., Inc.*, No. 2:25-cv-00377 (E.D. Pa.) (Aug. 25, 2025).
[2] Compl., *Martinez v. Kraft Heinz Co., Inc.*, No. 241201154 (Phila. C.P.) (Dec 10, 2024), removed to No. 2:2025-cv-00377 (E.D. Pa.) (Jan.22, 2025).
[3] *Id.* at 114.
[4] *Id.* at 26-46.
[5] *Id.* at 92.
[6] Carlos A. Monterio, et al., *Ultra-processed foods, diet quality, and health using the NOVA classification system*, Food & Agric. Org. of the United Nations (2019).
[7] Compl., *supra* note 2, at 5.

classifications lack precision and cannot be scientifically quantified.[8]

In his Compliant, Martinez also made repeated references to "Big Tobacco" companies, and how food product manufacturers used the "Big Tobacco Playbook" to develop, market, and distribute their food products.[9] Specifically, Martinez alleged that food product manufacturers, like "Big Tobacco," created a food product that is so addictive to the point that individuals will not recognize satiety and also marketed directly to children to "make UPF more profitable by driving consumption in ever increasing volumes."[10] Despite its extensive claims about the UPF industry, Martinez's Complaint contained few details about Martinez, the specific UPFs he consumed, or his alleged diagnoses. Although Martinez identified numerous brands of claimed UPFs that he had consumed, he did not identify the specific *products* he allegedly consumed, when or how often he consumed them, or the quantity he consumed. These flaws would ultimately prove fatal to Martinez's claims.

## II. A Sweet Win for Food Manufacturers

The *Martinez* case was initially filed in Philadelphia County Court. The Philadelphia Court of Common Pleas has the dubious honor of being ranked as a top judicial "hellhole."[11] Philadelphia can also claim a number of recent nuclear verdicts, including a $2.25 billion verdict to a Pennsylvania man in a glyphosate lawsuit.[12] This is partially attributed to its laxer standards regarding the admission of expert opinions.[13] As seen in other mass tort and pharmaceutical litigation, the application of rules governing the admissibility of expert opinions can significantly affect the outcome of a case.

Shortly after its commencement, a defendant removed *Martinez* to federal court on diversity of citizenship grounds. Following removal, the defendants filed an omnibus motion to dismiss plaintiff's complaint on numerous grounds, including federal preemption, lack of causation, and failure to state a claim upon which relief may be granted.[14] Despite noting "deep[] concern[] about the practices used to create and market UPFs, and the deleterious effect UPFs have on children and the American diet," the court dismissed Martinez's lawsuit.[15] The Honorable Judge Mia R. Perez

[8] Jimmy Chun Yu Louie, *Are all ultra-processed foods bad? A critical review of the NOVA classification system*. Cambridge University Press (Aug. 4, 2025).
[9] *See generally* Compl., *supra* note 2.
[10] *Id.* at 36.
[11] ATR Foundation, Judicial Hellholes 2024-2025 Executive Summary, https://judicialhellholes.org/reports/2024-2025/2024-2025-executive-summary/.
[12] ATR Foundation, Philadelphia Court of Common Pleas & Pennsylvania Supreme Court, https://judicialhellholes.org/hellhole/2024-2025/philadelphia-court-of-common-pleas-and-pennsylvania-supreme-court/.
[13] *See, e.g. Zak v. Prudential Prop. & Cas. Ins. Co*., 713 A.2d 681 (Pa. Super. Ct. 1998) (holding that witness qualifies as expert if the witness has any reasonable claim to have specialized knowledge on the subject that is relevant to the case).
[14] Memorandum of Law in Support of Defendants' Omnibus Motion to Dismiss Plaintiff's Complaint, *Martinez v. Kraft Heinz Co., Inc.*, No. 2:25-cv-00377 (E.D. Pa.) (Mar. 31, 2025).
[15] Order, *supra* note 1, at 2.

of the Eastern District of Pennsylvania granted this motion on August 25, 2025, notably without leave to amend, citing plaintiff's failure to identify the specific products he claimed caused his illness and his failure plead with enough specificity to show a plausible link between his illness and food products.

The court identified two key deficiencies supporting its ruling. First, the court noted Martinez's failure to plead sufficient facts to put forth a plausible argument as to specific causation, i.e., that the defendants' products actually caused his alleged harm. Martinez offered only one substantive fact regarding the development of his illnesses, which is that he was diagnosed with type 2 diabetes and NAFLD at 16 years old. The court noted that although it pressed Martinez's counsel for more details at oral argument, the information provided in response was still deficient. The court further noted that Martinez's alleged diseases have multiple potential causes. Ultimately, the Court concluded that "there are simply not enough facts to suggest that Defendants' products caused Plaintiff's harm."[16]

Second, the court noted Martinez's failure to identify the specific products he consumed. While Martinez had identified over 100 food brands in his Complaint, he failed to identify the specific foods that he claims to have consumed. Citing the basic premise of product liability law that a plaintiff must at least identify the allegedly defective product, the Court determined that Martinez had no good faith assertion that the harm was caused by any of the defendants.[17] Noting that one of the manufacturer defendants' brand includes at least 111 products, and another defendants' brand includes at least 246 products, the court concluded it was "unacceptable" that Martinez put "thousands" of products at issue without identifying which allegedly caused his harm.[18] Because Martinez failed to identify specific products, he was unable to allege a causal connection between the unspecified products and his injuries. Without appropriate identification of the products at issue, the Court determined that the defendants had insufficient notice of the claims against them, mandating dismissal.[19]

The *Martinez* decision provides significant guidance as to the pleading standard for future UPFs cases. A plaintiff cannot simply assert vague group claims against food manufacturers without providing specificity in the factual allegations against each manufacturer. A plaintiff must identify the alleged injury-causing product to plausibly allege a causal connection between the product and the alleged illness. A plaintiff must also plead with enough specificity, facts such as when these products were consumed, how often they were consumed, and the amount of the product consumed, to establish what products are at issue.

The Court did not address the additional arguments defendants raised in support of dismissal, including: (1) federal preemption under USDA and FDA regulations; (2) a First Amendment challenge to the use of litigation to require Defendants to make statements not supported by science; and (3) failure to meet pleading requirements as to the negligence, failure to warn, and breach of warranty claims.

[16] *Id.* at 4.
[17] *Id.* at 4-5.
[18] *Id.* at 5.
[19] *Id.*

In September 2025, Martinez filed a motion for leave to amend his complaint and, asserting that the proposed amended complaint cures the pleading deficiencies identified by the court, further moved for reconsideration of the order dismissing his complaint.[20] Martinez's proposed amended complaint, at 473 pages and including 2,619 paragraphs of allegations, contains more detail than the initial complaint. Further, it purports to specifically identify each of the UPFs he allegedly consumed as well as when and how often he consumed each product.[21]

On October 27, 2025, the defendants collectively filed an opposition to Martinez's motions.[22] First, the defendants argue that Martinez acted with undue delay in requesting leave to amend, noting that his "new" allegations regarding the food and beverages he allegedly consumed predate the initial complaint by at least three years.[23] Martinez provided no rationale for his failure to raise these allegations earlier. Second, defendants assert that amendment would be futile because the proposed amended complaint cures neither the identified causation flaws nor the "shotgun" approach to pleading.[24] Defendants specifically note that the proposed amended complaint still fails to allege adequate details about Martinez's alleged consumption or plead any details about his own health. Further, the defendants argue, Martinez has only substituted each defendant's name in place of collective allegations, while simply maintaining the same generic allegations.[25] Martinez will have an opportunity to submit a reply in support of motions before the issues are fully briefed and ripe for the court's consideration.

## III. A Fork in the Road: Where Do We Go from Here?

### A. The Next Course in Court

While it remains to be seen whether Martinez will have an opportunity to revive his claims, the court's order in *Martinez* still provides guidance for the defense of future UPF claims. First, food manufacturer defendants facing UPF claims should evaluate the alleged basis for jurisdiction and venue in their case, and whether there is an opportunity to seek a change of venue, remove the case to federal court, or seek dismissal based on lack of jurisdiction. Second, defendants should challenge any claims that fail to plead specific allegations that a defendant's products were a plausible cause of the alleged injuries. Under *Martinez*'s rationale, a motion to dismiss for failure to state a claim is appropriate when a plaintiff fails to assert specific allegations about the foods consumed, when and how often they were consumed, as well as allegations indicating that those specific foods were a plausible cause of the alleged health conditions.

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[20] Plaintiff's Motion for Leave to Amend the Complaint and For Reconsideration of the Order Granting Defendants' Omnibus Motion to Dismiss, *Martinez v. Kraft Heinz Co., Inc.*, No. 2:25-cv-00377 (E.D. Pa.) (Sept. 22, 2025).

[21] *Id.* at 4.

[22] Defendants' Opposition to Plaintiff's Motion for Leave to Amend the Complaint and for Reconsideration of the Order Granting Defendants' Omnibus Motion to Dismiss, *Martinez v. Kraft Heinz Co., Inc.*, No. 2:25-cv-00377 (E.D. Pa.) (Oct. 27, 2025).

[23] *Id.* at 7-8.

[24] *Id.* at 8-9.

[25] *Id.* at 9-12.

There are several additional potentially applicable defenses for food product manufacturers facing UPF product liability claims. As noted above, the *Martinez* court did not have an opportunity to consider whether numerous federal regulations preempt certain aspects of UPF claims, or the claims in their entirety. Given the numerous regulations that currently apply to the food industry and additional potential regulations under consideration, a defendant may have multiple grounds on which to assert preemption. Defendants may also challenge claims on First Amendment grounds, arguing that attempts to compel warnings about UPFs through litigation, in the absence of scientific consensus, violates protections against compelled commercial speech.

Food manufacturers and their counsel must also prepare for the prospect of UPF claims surviving early efforts for dismissal. While plaintiffs' counsel in this litigation are expected to continue to draw on the playbooks of established litigation, including tobacco litigation, defense counsel can also benefit from lessons learned in prior longstanding mass tort and pharmaceutical litigation. First, as noted by the *Martinez* court, several factors can cause alleged injuries like type 2 diabetes and NALFD, including lifestyle, genetics, and use of certain medications. Defendants must be prepared to mount challenges to specific causation theories and point to medically credible alternative causes of the alleged injuries. Retention and development of medical experts who specialize in the etiology of the claimed injuries, and who can challenge plaintiffs' causation theories, will be essential.

Defense counsel must also be prepared to challenge purported definitions of UPFs, and whether their specific products at issue actually qualify as UPFs. These efforts may soon be helped, or hindered, as the government seeks to develop a definition of UPFs. Meanwhile, defendants must be prepared to challenge, with science and product-specific information, plaintiffs' definitions and classifications of UPFs.

Food manufacturer defendants and their counsel can further prepare by:

- Developing marketing, advertising, and branding experts who can testify as to the strategies used to bring new foods to market and to promote them. Consider whether a company employee could, and should, serve in this role.

- Preparing corporate witnesses who are competent to address reptile tactics in their testimony, and who can adequately provide the company's story.

- Anticipating documents and electronic data that plaintiffs are likely to request. Identify, locate, and preserve all potentially relevant information, develop a full understanding of what it contains, and anticipate how the plaintiffs will attempt to use it to portray the company. Defense counsel must also consider strategies and evidence to counter efforts to paint the company in a negative, unfair light. Pointing out company efforts to promote community and individual health

through campaigns, donations, and research can help counter allegations of bad corporate conduct.

- Using strategic, but aggressive, motion practice. As *Martinez* demonstrates, early motion practice has already proven to be a successful strategy. Additionally, motions to strike inflammatory portions of a plaintiff's complaint can force plaintiffs to narrow their claims, making the litigation more efficient and cost-effective to defend. Defendants should anticipate that plaintiffs will employ "reptile" litigation tactics and be prepared to neutralize them. Defendants can use opportunities such as motions for protective orders or motions in limine to not only attempt to exclude reptile tactics completely, but also to educate the judge on how to recognize reptile tactics and how they impact the fair administration of justice.

While the dismissal of the *Martinez* case represents an early win for food manufacturers, as Martinez's post-dismissal motion practice demonstrates, plaintiffs will adjust their pleading strategies to attempt to survive future motions to dismiss. As plaintiffs are sure to refine their approaches, food manufacturers must be prepared to address allegations directed toward specific products, challenge causation, and shift to address an ever-evolving regulatory landscape.

### B. The Regulatory Mix

UPF litigation coincides with a consumer shift towards health-conscious foods and higher awareness of the substances they are consuming. It is widely reported that Americans are increasingly concerned with the relation between processed foods and their health.[26]

Furthermore, pending legislation seeks to impose additional regulations on food and advertising. The Childhood Diabetes Reduction Act, which would require additional warning labels on certain foods, expand the National Institutes of Health research of the health effects of UPFs, ban advertisements for "junk food" directed at children, and require the CDC to develop a national public health campaign, has been referred to committee in both houses.[27] Notably, the proposed legislation does not define "UPFs." If the bill passes, food product manufacturers may have to alter their labeling, advertisements, and product formulations to ensure compliance, all of which could impact available arguments and defenses as to whether a particular food product manufacturer violated a duty of care, failed to appropriately warn, or breached a warranty in UPF product liability claims. Future legislation could also create additional grounds for defendants to assert that UPF claims are preempted.

[26] Sandee LaMotte, *America's diet quality moved from an F to a D. Here's how to turn yours into an A* (June 17, 2024) https://www.cbsnews.com/video/ultra-processed-how-food-tech-consumed-the-american-diet-cbs-reports/; Sara Moniuszko, *Ultraprocessed foods linked to over 30 health issues, from diabetes to heart trouble to cancer, research finds*, CBS News (Feb. 29, 2024), https://www.cbsnews.com/news/ultra-processed-food-health-issues-cancer-early-death-research/.

[27] 2024 H.R. 10199; 118 H.R. 10199.

The FDA and the Department of Agriculture also recently issued a Joint Request for Information to attempt to establish a federally recognized definition for UPFs. A federal definition is imminent. The approach the government takes to defining UPFs is important not just for its regulatory aspects but also because it is likely to be the definition courts adopt, setting the standard for what food products may be subject to UPF litigation in the future.

Additionally, individual states have enacted legislation regarding UPFs amidst consumer pressure. Florida, Louisiana, North Carolina, South Carolina, Kentucky, Pennsylvania, Massachusetts, Alabama, Arkansas, California, Texas, and Arizona have passed or introduced bills that seek to define UPFs.[28] Further attempts to define and regulate UPFs are sure to follow. Food manufacturers must closely monitor the progress of this legislation and assess how it could impact not only a regulatory response, but also strategies for defending future UPF claims in litigation.

[28] *See, e.g.*, S.B. 117, 2025 Leg., 844th Sess. (La. 2025).

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