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LESSON LEARNED: APPLYING A FAILED ASBESTOS RESOLUTION APPROACH TO PFAS PERSONAL INJURIES

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ABSTRACT

This Comment critiques the litigation-based approach to resolving mass PFAS personal injury claims and argues for an administrative alternative that is more efficient. Part I briefly explains what PFAS is and its impact. Part II provides an overview of current PFAS litigation, highlighting issues with the status quo. Then, Part III evaluates mass asbestos litigation as a case study for how to address mass PFAS personal injury claims. Finally, Part IV outlines a privately-funded, publicly-administered PFAS Claims Resolution Fund—modeled after the failed Fairness in Asbestos Injury Resolution Act—to expedite compensation, promote public health, and ensure industry accountability. The key takeaway, as made clear in Part V, is that we do not have to repeat the claim management mistakes made by our asbestos predecessor.

TABLE OF CONTENTS

I. INTRODUCTION: WHAT IS PFAS?

Over the past two decades, scientific research has uncovered the harmful effects of many chemicals embedded in everyday life.[1] Despite a lack of public awareness,[2] per- and polyfluoroalkyl substances ("PFAS") have been the focus of numerous complex litigation claims.[3] PFAS are a class of over 10,000 man-made "forever chemicals" that bioaccumulate naturally, and studies estimate that nearly the entire U.S. population has been exposed.[4] In 2024, the Environmental Protection Agency ("EPA") classified two widely used PFAS, perfluorooctanoic acid ("PFOA") and perfluorooctane sulfonic acid ("PFOS"), as *hazardous substances* under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").[5] Yet thousands of unregulated PFAS-class chemicals continue to be used in everyday products, likely with similar dangerous effects.[6] Furthermore, due to delays in regulatory action, the United States serves as the de facto PFAS

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1. *See generally* Ravi Nadiu et al., *Chemical Pollution: A Growing Peril and Potential Catastrophic Risk to Humanity*, 156 ENV'T INT'L 106616, 106616 (2021) (discussing widespread societal impacts of cumulative chemical pollution).

2. *See* T. Allen Berthold et al., *Let's Talk About PFAS: Inconsistent Public Awareness About PFAS and its Sources in the United States*, 18 PLOS ONE 1, 6–7 (2023) (45.1% of respondents had no knowledge of what PFAS is).

3. Scott Summy & Carla Pickrel, *The United States Leads on PFAS Litigation: Will Other Countries Follow?*, INNOVATION NEWS NETWORK (Dec. 18, 2025), https://www.innovationnewsnetwork.com/united-states-leads-on-pfas-litigation-will-other-countries-follow/64878/ [https://perma.cc/N8CK-NMM7].

4. *See* U.S. DEP'T OF HEALTH & HUM. SERV., PFAS INFORMATION FOR CLINICIANS 2 (2024).

5. U.S. ENV'T PROT. AGENCY, OFF. OF LAND USE & EMERGENCY, EPA 505-F-17-001, TECHNICAL FACT SHEET – PERFLUOROOCTANE SULFONATE (PFOS) AND PERFLUOROOCTANOIC ACID (PFOA) 1–2 (2017); Press Release, U.S. Env't Prot. Agency, Biden-Harris Administration Finalizes Critical Rule to Clean up PFAS Contamination to Protect Public Health (Apr. 19, 2024), https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-critical-rule-clean-pfas-contamination-protect [https://perma.cc/2ALB-NWG5].

6. *See* Emma L. Schymanski et al., *Per- and Polyfluoroalkyl Substances (PFAS) in PubChem: Seven Million and Growing,* 57 ENV'T SCI. TECH. 16918, 16925 (2023).

dumping ground for international companies.[7] In light of ongoing scientific advances and regulatory stagnation, there is a growing public health demand for an efficient, cost-effective solution that will provide PFAS personal injury claimants with vital recoveries.[8]

II. LITIGATION: THE DEFAULT OPTION

The EPA's chemical regulations "provide limited assurance that health and environmental risks are identified before … chemicals enter commerce."[9] Until 2016, the Toxic Substances Control Act ("TSCA") regulated chemicals under a "least burdensome" standard for industry, thereby hindering the potential of any PFAS regulation.[10] Currently, the TSCA follows an "honor code" system that relies on industries' self-reporting *new* chemicals, making required chemical testing wholly ineffective where new chemicals go unreported.[11] As the Trump Administration terminates PFAS research grants and proposes to weaken PFAS recordkeeping,[12] scientists are forced to rely on limited

7. Sharon Lerner, *Chemours Is Using the U.S. as an Unregulated Dump for Europe's Toxic GenX Waste*, INTERCEPT (Feb. 1, 2019), https://theintercept.com/2019/02/01/chemours-genx-north-carolina-netherlands/ [https://perma.cc/55TW-KE6J].

8. *See* Lawrence O. Gostin, *Mapping the Issues: Public Health, Law and Ethics*, *in* PUBLIC HEALTH LAW AND ETHICS: A READER 5–7 (2nd ed. 2010).

9. U.S. GOV'T ACCOUNTABILITY OFF., GAO-05-458, CHEMICAL REGULATION: OPTIONS EXIST TO IMPROVE EPA'S ABILITY TO ASSESS HEATH RISK AND MANAGE ITS CHEMICAL REVIEW PROGRAM (2005). The EPA has limited statutory authority to fully regulate chemicals. *See* Melissa Lee Phillips, *Obstructing Authority: Does the EPA Have the Power to Ensure Commercial Chemicals Are Safe?*, 114 ENV'T HEALTH PERSP. 706, 707 (2006).

10. 60,000 chemicals already in commerce were "grandfathered in" and presumed safe under the TSCA. Donald B. Meyers Jr. & Paul A. Locke, *Modernizing U.S. Chemicals Laws: How the Application of Twenty-First Century Toxicology Can Help Drive Legal Reform*, 20 N.Y.U. ENV'T L. J. 46 (2012); 15 U.S.C. §§ 2601–2609 (amended 2016); Corrosion Proof Fittings v. EPA, 947 F.2d 1201, 1207–08, 1213–14 (5th Cir. 1991) (finding that asbestos regulations are not the "least burdensome alternative" for industry). *See generally* Swati D. Rayasm et al., *Toxic Substances Control Act (TSCA) Implementation: How the Amended Law Has Failed to Protect Vulnerable Populations from Toxic Chemicals in the United States*, 56 ENV'T SCI. & TECH. 11969, 11971–74 (2022) (questioning the effectiveness of the 2016 amendment).

11. Industry often manipulates privatized scientific studies to show less severe impacts from chemicals. *See* William Boyd, *De-Risking Environmental Law*, 48 HARV. ENV'T L. REV. 155, 157–60 (2024).

12. Anna Clark, *Trump's First EPA Promised to Crack Down on Forever Chemicals. His Second EPA Is Pulling Back.*, PROPUBLICA (July 2, 2025, 06:30 ET), https://www.propublica.org/article/trump-epa-pfas-drinking-water [https://perma.cc/422H-XAUP]; Att'ys Gen. of 15 States, Comment Letter on Proposed Revisions to PFAS Data Reporting and Recordkeeping Under the TSCA (Dec. 22, 2025), https://oag.ca.gov/system/files/attachments/press-docs/PFAS%20Comment%20Letter.pdf

available data to identify PFAS exposure sites and those at risk.[13] While litigation may yield PFAS studies that prove (or disprove) a defendant's connection to a particular site,[14] such studies require oversight to reduce bias and may further delay claimants receiving their awards. With such limited data, PFAS actions tend to prioritize remediation of shared public resources rather than compensation for individual injury.[15]

Both class action[16] and multi-district litigation ("MDL")[17] proceedings are shaped by the unique circumstances surrounding PFAS exposure. For example, despite varying lengths of exposure among members, a class was certified where PFAS exposure (1) resulted from the *same water source*; (2) occurred within a specified time frame and geospatial area; and (3) class members provided documentation of increased PFAS concentrations in their blood.[18] Similarly, the Aqueous Film Forming Foams ("AFFF") MDL has streamlined over 15,000 PFAS

[https://perma.cc/9CAF-XPV6] (commenting on proposed rule change to PFAS recordkeeping).

13. Researchers adhere to a "presumptive" approach" to prioritize limited research resources. Derrick Salvatore et al., *Presumptive Contamination: A New Approach to PFAS Contamination Based on Likely Sources*, 9 ENV'T SCI. & TECH. LETTERS 984, 984–85 (2022).

14. A settlement required parties to agree on scientists selected for research. *E.g.,* C8 SCIENCE PANEL (Jan. 22, 2020), http://www.c8sciencepanel.org/ [https://perma.cc/HRZ9-ECXH].

15. Most PFAS actions are either consumer fraud class actions for PFAS contaminated products (food, cosmetics, apparel, etc.) or nuisance class actions seeking damages for contaminated water supplies. *See, e.g.*, Severa v. Solvay Specialty Polymers USA, 524 F. Supp. 3d 381, 387–91, 393–97 (D.N.J. 2021) (public and private nuisance); Consolidated Class Action Complaint at 1, Parish v. Hershey Co., No. 1:24-cv-01868 (M.D. Pa. Oct. 29, 2024) (contaminated products); Class Action Complaint at 3, Gonzalez v. Samsung Electronics America, No. 2:24-cv-11234 (C.D. Cal. 2025) (same).

16. A class action requires (1) numerosity of class members such "that joinder of all members is impracticable," (2) common "questions of law or fact" as to all class members, (3) the "claims or defenses" are "typical" among all members, and (4) adequacy of representation by the representative parties." FED. R. CIV. P. 23(a).

17. MDL consolidation is permitted where there is at least one "common question," it is "convenien[t] [for the] parties and witnesses," and "promote[s] the just and efficient conduct of such actions.'" Multidistrict Litigation Act of 1968, 28 U.S.C. § 1407 (a) (2022).

18. Baker v. Saint-Gobain Performance Plastics Corp., 632 F. Supp. 3d 19, 51 (N.D.N.Y. 2022); 5 MOORE'S FEDERAL PRACTICE § 23.80 (3d ed. 2024) (Article III standing).

claims[19] where they raised the same questions of liability against the *same defendants*.[20]

When filing a complaint, plaintiffs must show a "personal injury *fairly traceable* to the defendant's allegedly unlawful conduct [that is] likely to be redressed by the requested relief."[21] The New Jersey District Court found sufficient pleadings for a personal injury claim[22] where the plaintiff alleged that each manufacturer released PFAS into the plaintiffs' water supply.[23] Such allegations outlined a "plausible pathway" between the products manufactured by the defendants and the plaintiffs' bodies by identifying the PFAS manufacturer and showing either an increased risk of future health harms or a current manifestation of illness.[24] The onus is then placed on PFAS defendants to determine which defendant's conduct was a "substantial factor" in causing the plaintiffs' injuries and, therefore, which defendants may ultimately be held liable.[25]

Causation, often the heaviest burden in toxic torts, requires plaintiffs to "initially show that the *level of the toxin* [they were] exposed to *can* cause the illness [they] contracted."[26] Currently, no illnesses are *directly*

19. AFFF claims span natural resources, property and water systems damage, and personal injury. CHEYANNE SHARP, NOAA, NAT'L SEA GRANT L. CTR., NSGLC-24-05-06, THE AQUEOUS FILM-FORMING PRODUCTS LIABILITY MULTIDISTRICT LITIGATION: THE BASICS 5–6 (Sept. 2024); Christian Simmons, *Aqueous Film-Forming Foam (AFFF) Lawsuit*, THE WILSON FIRM, LLP (Apr. 2, 2026), https://www.drugwatch.com/pfas-lawsuits/afff/ [https://perma.cc/PUW9-VJ6F] (identifying "15,232 claims pending in the South Carolina federal court" as of April 2026).

20. *See, e.g.*, In re Aqueous Film-Forming Foams Prods. Liab. Litig., MDL No. 2873, 669 F. Supp. 3d 1375, 1380–81 (J.P.M.L. Apr. 10, 2023) (transferring nine new actions sharing "common questions of fact" to the rest of the actions in the AFFF MDL).

21. Allen v. Wright, 468 U.S. 737, 751 (1984).

22. New Jersey has accepted medical monitoring as a personal injury claim. Ayers v. Jackson Township, 106 N.J. 557, 604–11 (1987) ("allow[ing] post-injury, pre-symptom recovery in toxic tort litigation for reasonable medical surveillance costs is manifestly consistent with the public interest in early detection and treatment of disease.").

23. Giordano v. Solvay Specialty Polymers USA, 522 F. Supp. 3d 26, 28 (D.N.J. 2021). A combination of market share liability and burden shifting has been used in place of "traditional" causation where the injury alleged has an "extended latency period." William D. Wilson, *Market Share Liability–Did New York Go Too Far?:* Hymowitz v. Eli Lilly & Co., 64 ST. JOHN'S L. REV. 363, 365–70 (1990); Rutherford v. Owens-Illinois, Inc., 941 P.2d 1203, 1206–07 (Cal. 1997).

24. *See* Michael R. Blumenthal, *Establishing and Challenging Standing in PFAS Litigation*, A.B.A. BUS. L. TODAY (Feb. 14, 2024), https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-february/establishing-challenging-standing-pfas-litigation/ [https://perma.cc/3RUU-7TUQ].

25. *See* David E. Bernstein, *Getting to Causation in Toxic Torts Cases*, 74 BROOK. L. REV. 51, 51–58 (2008) (discussing different applications of the "substantial factor" test).

26. *Id.* at 53–54.

linked to PFAS.[27] To allow extra flexibility for claimants, courts have held that compliance with contamination standards is not a bar to suit.[28] For example, the Seventh Circuit found that plaintiffs could sue under the Resource Conservation and Recovery Act §7002(a)(1)(B), even if the alleged contamination did not exceed current regulatory standards.[29]

Those exposed to PFAS often seek both fiscal and medical monitoring damages. Courts cannot assign a dollar value to compensate for PFAS exposure injuries without necessarily overcompensating "those who do not develop more severe subsequent illnesses and undercompensat[ing] those who do."[30] Medical monitoring damages offers a middle ground for exposure-only claimants by allowing recovery without present injury, aiming to prevent future harm through early detection.[31] Many jurisdictions recognize ongoing medical testing as damages without "present physical injury."[32] However, some courts view medical monitoring damages as economic losses, conflicting with the tort principle that there is "no *general* duty to avoid the unintentional infliction of economic loss on another,"[33] resulting in a fracture among federal courts for PFAS claimants.

27. *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, NAT'L INST. OF ENV'T HEALTH SCIS. (Dec. 22, 2025), https://www.niehs.nih.gov/health/topics/agents/pfc [https://perma.cc/3GFT-ZRJ2] (listing "possible links between human exposures to certain PFAS and some adverse health outcomes.").

28. *See, e.g.,* Liebhart v. SPX Corp., 917 F.3d 952, 959–61 (7th Cir. 2019).

29. *Id.*

30. John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L. REV. 1343, 1432 (1995).

31. Medical monitoring is a relatively new concept in torts. *See* Megan Noonan, Note, *The Doctor Can't See You Yet: Overcoming the "Injury Barrier" to Medical Monitoring Recovery for PFAS Exposure*, 45 VT. L. REV. 287, 301–02, 314, 321 (2020) (arguing that courts should rely on subcellular injuries as "[t]his definition of injury serves to exclude frivolous claims without barring legitimate claims.").

32. *Id.* at 290, 306 (identifying courts in California, Utah, Pennsylvania, Florida, West Virginia, Missouri, Maryland, and Nevada); *see also* Benoit v. Saint-Gobain Performances Plastics Corp., 959 F.3d 491, 501 (2020) (citing Caronia v. Philip Morris USA, Inc., 22 N.E.3d 11, 16–17 (N.Y. 2013) (governing law for medical monitoring in New York)); Noonan, *supra* note 31, at 309 (highlighting Vermont's exposure metrics requirement and noting the Second Circuit's physical manifestations standard is difficult in the PFAS context).

33. *See* RESTATEMENT (THIRD) OF TORTS: LIAB. FOR ECON. HARM § 1(1) (A.L.I. 2020) (emphasis added); Mark A. Geistfeld, *The Equity of Tort Claims for Medical Monitoring*, 52 SW. L. REV. 493, 494 (2024) (analyzing tort law's general requirement of a physical manifestation of harm).

III. LESSONS FROM A CASE STUDY: ASBESTOS

Many scholars have deemed PFAS litigation to be the "new asbestos" due to its strong chemical makeup and widespread impact.[34] Though there are marked differences between man-made PFAS and naturally occurring asbestos, such as the potential to pinpoint where the asbestos originated and its "signature diseases" (e.g., asbestosis), both are used in a laundry list of everyday products and pose significant health concerns.[35]

A. Asbestos Litigation

By 2002, approximately 730,000 individuals had brought asbestos exposure claims, many filed as class actions or consolidated with sister cases.[36] Similar to PFAS cases, consolidation of asbestos claims was difficult because exposure varied, illnesses were under study, and the defendant pool included anyone whose product or property could be traced to plaintiffs' exposure.[37] To resolve claims efficiently, courts often utilized mandatory liability classes with individualized damage determinations, effectively transforming the process into an administrative one.[38] Classes were usually split between exposure-only and present injury claims to ensure their respective counsels advocated for their competing interests.[39]

Evidence that manufacturers knew asbestos had harmful effects provided plaintiffs' counsel with leverage to reach settlements.[40] Despite this, settlements often failed to account for inflation or shifts in medical

34. *See, e.g.*, Gregory P. Gaines, *Are PFAS the Next Asbestos? How and Why the Emergence of PFAS as a Mass Tort Could Impact the Insurance Industry*, 36 ENV'T CLAIMS J. 115, 116–20 (2024).

35. Michelle J. White, *Asbestos and the Future of Mass Torts*, 18 J. ECON. PERSPS. 183, 183–84 (2004). PFAS can be found in many common day products from hygiene, food, clothing, and more. *See* Gaines, *supra* note 34, at 116–18 (finding asbestos in various building materials and PFAS in, inter alia, cosmetics, food packaging, and firefighting foam).

36. STEPHEN J. CARROLL ET AL., ASBESTOS LITIGATION 29–45, 62, 71 (2005).

37. *Id.* at 30–45; White, *supra* note 35, at 187.

38. *See* Joan Steinman, *Law of the Case: A Judicial Puzzle in Consolidation and Transferred Cases and in Multidistrict Litigation*, 135 PA. L. REV. 595, 622–27 (1987) (discussing the complexities of litigating consolidated cases); Christoper J. O'Malley, *Breaking Asbestos Litigation's Chokehold on the American Judiciary*, 3 U. ILL. L. REV. 1101, 1118–20 (2008) (recommending an administrative process modeled after the Black Lung Benefits Act to fairly compensate asbestos claimants and offer stability to asbestos manufacturers facing bankruptcy).

39. *See* Coffee, *supra* note 30, at 1443–46.

40. White, *supra* note 35, at 186–87.

knowledge, with undercompensation intensified by plaintiffs' counsel pursuing claims for any remote asbestos-related injury, like pleural thickening,[41] regardless of the actual health impact.[42] As manufacturers went bankrupt, compensation trusts were created to pay for current and future asbestos claims; thus, those with manifested injuries were now functionally competing with exposure-only claimants in a limited funding pool.[43]

Industry attempted to settle impending asbestos claims proactively. For example, the Georgine Class Action defendants agreed to settle 14,000 claims for approximately $215 million.[44] Given the high risks of challenging the settlement, most of the plaintiffs' steering committee agreed.[45] Plaintiffs' committee members who opposed the settlement cited issues such as the limits on compensation to severely ill claimants, insufficient damages, annual claim caps, and a twenty-year stay on inflation adjustments.[46] Such strict limitations hampered the effectiveness of many asbestos settlements. Furthermore, courts increasingly faced criticism for improperly certifying class actions or MDLs based on prearranged settlements that promised to clear crowded dockets.[47]

B. Asbestos Claims Resolution

Despite pleas for a statutory compensation system,[48] the industry and plaintiffs' steering committee failed to reach a "national settlement

41. *See, e.g.,* Gregory M. Lee & Christoper M. Walker, *Pleural Thickening: Detection, Characterization, and Differential Diagnosis*, 58 SEMINARS IN ROENTGENOLOGY 399, 403–04 (2023).

42. Knowledge of harmful effects resulted in a preference for more intensive subclassing. *See* Amchem Prods. v. Windsor, 521 U.S. 591, 625–629 (1997) (rejecting class certification on Rule 23(a)(4) grounds where a proposed class lumped present injury and exposure-only claimants together); *see* Coffee, *supra* note 30, at 1396, 1398; White, *supra* note 35, at 187. At least one federal circuit has declined to recognize pleural thickening on one's lungs as an injury. James A. Henderson, Jr. & Aaron D. Twerski*, Asbestos Litigation Gone Mad: Exposure-Based Recovery for Increased Risk, Mental Distress, and Medical Monitoring*, 53 S.C. L. REV. 815, 831 (2002).

43. *See* S. Todd Brown, *How Long is Forever This Time? The Broken Promise of Bankruptcy Trusts*, 61 BUFF. L. REV. 537, 556–58 (2013).

44. Coffee, *supra* note 30, at 1392–93.

45. *Id.* at 1394. Asbestos steering committees formed after federal district judges "pressure[d] . . . global settlement discussions" between defendants and plaintiffs. *Id.* at 1391–92.

46. *Id.* at 1388–89, 1395–96.

47. *See* Howard M. Erichson, *The Problem of Settlement Class Actions,* 82 GEO. WASH. U. L. REV. 951, 957–61 (2014).

48. Ortiz v. Fibreboard Corp., 527 U.S. 815, 821 (1999) ("[T]he "elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national

that would provide an alternative resolution mechanism for [current and future] asbestos claims," leaving traditional litigation and settlements to dominate asbestos resolution.[49] Industry formed groups, such as the Center for Claims Resolution ("CCR"), to manage and settle asbestos claims quickly with minimal legal fees.[50] The CCR, a partnership of twenty recurring asbestos defendants, operated on a grid system that specified award amounts depending on a claimant's "compensable medical category."[51] However, the adversarial nature of the CCR process stunted its success from a plaintiff's standpoint.[52] Similar to CCR, the Fairness in Asbestos Injury Resolution Act ("FAIR Act") was Congress's attempt to "provide the necessary resources for a fair and efficient [administrative] system to resolve asbestos injury claims."[53] Despite nearly 150 amendments, the FAIR Act failed due to insufficient industry funding and lawmakers' hesitancy to increase the national debt.[54]

PFAS has the potential to trigger frenzied litigation that could drive industries into bankruptcy,[55] leaving plaintiffs with inadequate compensation, if any. Thus, the current approach of mass litigation should proceed with extreme caution, if at all. With slow-moving regulations,[56] congested court dockets,[57] and PFAS remediation still under scientific study,[58] a nationwide solution is necessary to avoid harms like those experienced during mass asbestos litigation.

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legislation."); Norfolk & W. Ry. v. Ayers, 538 U.S. 135, 166 (2003) (reiterating earlier calls for legislative handling on the issue).

49. Industry made more than one attempt to settle mass asbestos claims. *See* Georgine v. Amchem Products, Inc., 157 F.R.D. 246, 264–66 (Asbestos Claims Facility); Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 600 (1997) (Center for Claims Resolution).

50. *See* Coffee, *supra* note 30, at 1388–89.

51. *Id.* at 1394–95; O'Malley, *supra* note 38, at 1115.

52. Some scholars argue CCR's adversarial proceedings resulted in damages approximating what a plaintiff would receive at trial. Mark A. Peterson, *Giving Away Money: Comparative Comments on Claims Resolution Facilities,* 53 L. & CONTEMP. PROBS. 113, 115, 126 (1990).

53. FAIR Act of 2005, S. 852, 109th Cong. § 2(b)(1) (2005) (prescribing administrative processes to resolve asbestos claims and fairly allocate damage-related costs for industry).

54. *See, e.g.*, Letter from Douglas Holtz-Eakin, CBO Dir., to Don Nickles, Chairman, Sen. Comm. on the Budget (Apr. 20, 2004).

55. Thomas O. McGarity, *Some Thoughts on "Deossifying" the Rulemaking Process*, 41 DUKE L.J. 1385, 1408–11 (1992); White, *supra* note 35, at 195–96.

56. ROBERT POOL & ERIN RUSCH, IDENTIFYING AND REDUCING ENVIRONMENTAL HEALTH RISKS OF CHEMICALS IN OUR SOCIETY 27–30 (2014).

57. *See* Debra Cassens Weiss, *US Court System is Facing Delays, Backlogs and Workforce Shortages*, *Report Says*, ABA JOURNAL (Feb. 17, 2023, at 10:20 CST), https://www.abajournal.com/web/article/us-court-system-is-facing-perfect-storm-of-delays-backlogs-and-workforce-shortages-report-says [https://perma.cc/W5L3-NPGC].

58. *See* Ian James, *'This is Taking too Long': California Community Awaits Cleanup of PFAS-Contaminated Wells*, L.A. TIMES (Aug. 5, 2023, at 3:00 PT),

IV. ADMINISTRATIVE SOLUTION

This Comment proposes a PFAS Claim Resolution Fund (the "Fund") to streamline PFAS personal injury claims for industry and injured parties alike. As research advances and public awareness rises, the number of meritorious PFAS personal injury claims can only grow.[59] While litigation may appear to be a costly yet powerful "sword" for plaintiffs, it has historically provided defendants with a "shield" to cap unpredictable liability.[60] Furthermore, because most plaintiffs' attorneys work on contingency,[61] a significant percentage of any recovery ends up lining plaintiffs' counsel's pockets.[62] A PFAS Claim Resolution Fund would provide injured parties with a structured claims process and quick award disbursements in place of lengthy and expensive litigation.

A. Stop Industry Self-Regulation

Scientific advances in identifying chemical risks have yielded little meaningful change.[63] Within the EPA, the Office of Chemical Safety and Pollution Prevention ("OCSPP") assesses risks through chemical testing and promulgates regulations where necessary.[64] Under the Trump Administration, OCSPP has proposed easing PFAS reporting requirements,[65] but this is only the latest in a decades-long effort to restrict the EPA's authority to regulate chemicals.[66] For example, in

https://www.latimes.com/environment/story/2023-08-05/california-community-awaits-cleanup-of-pfas-in-water [https://perma.cc/43KE-FKL8].

59. Craig T. Liljestrand, *PFAS Exposure: A Comprehensive Look at Emerging Facts and Studies, Risk and Liability Assessment, Litigation History, Evolving Regulations and Future Predictions*, 79 DEF. CONS. J. 2, 14–15 (2022).

60. Coffee, *supra* note 30, at 1350 (noting that plaintiffs "aggregat[e] their claims . . . to make litigation more economically feasible").

61. *See, e.g.*, Lester Brickman, *Contingency Fee Abuses, Ethical Mandates, and the Disciplinary System: The Case Against Case-by-Case Enforcement*, 53 WASH. & LEE L. REV. 1339, 1345–49 (1996).

62. White, *supra* note 35, at 195 (attorney's fees in asbestos); AMERICAN TORT REFORM ASSOCIATION, THE PLAINTIFFS' LAWYER QUEST FOR THE HOLY GRAIL: THE PUBLIC NUISANCE SUPER TORT 16 (2025).

63. Maricel V. Maffini & Laura N. Vandenberg, *Science Evolves but Outdated Testing and Static Risk Management in the US Delay Protection to Human Health*, 6 FRONTIERS IN TOXICOLOGY 1, 2–3 (2024).

64. 40 C.F.R. § 1.43 (2012).

65. *See* Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Data Reporting and Recordkeeping Under the Toxic Substances Control Act (TSCA); Revision to Regulation, 40 Fed. Reg. 705 (proposed Nov. 13, 2025).

66. Corrosion Proof Fittings v. EPA, 947 F.2d 1201, 1215–20 (5th Cir. 1991) (holding that EPA's regulation of asbestos under the TSCA was not the "least burdensome" approach for industry).

Corrosion Proof Fittings v. EPA, the court imposed a prohibitively high agency burden to outright ban chemicals, finding that high industry costs must be justified by substantial decreases in public health risks.[67] Congress responded by amending the TSCA to require that environmental and health risks be evaluated independently from potential economic impacts.[68] Such uncertainty in balancing risk has long characterized chemical regulation in the United States.[69]

Even still, the EPA operates under the presumption that chemicals are safe until proven otherwise.[70] Given the knowledge asymmetry between industry and government, Congress should grant EPA the statutory authority to regulate chemicals under the precautionary principle.[71] Rather than retrospective chemical regulation, the precautionary principle is centered around "the need for environmental protection; the presence of threat or risk of serious damage; and the fact that a lack of scientific certainty should not be used to avoid taking action to prevent that damage."[72] This framework would allow the EPA to adequately respond to an industry that develops "replacement" chemicals faster than a regulatory comment period.[73] For example, the European Union's "hazard-based" chemical compliance process operates under a risky until proven safe mindset as well as placing the burden on companies to identify and mitigate risks.[74] Such heightened

67. *See id.* at 1229–30; Rachel Rothschild, *Unreasonable Risk: The Failure to Ban Asbestos and the Future of Toxic Substances Regulation*, 47 HARV. ENV'T L. REV. 529, 533–35 (2022).

68. *See* Rothschild, *supra* note 67, at 535–36. The Lautenberg Amendment also relieved OCSPP from making a threshold showing of health risks before requiring chemical testing. Act of June 22, 2016, Pub. L. No. 114–182, 2016 U.S.C.C.A.N. (130 Stat. 448).

69. Letter from Marty Durbin, Senior Vice President, U.S. Chamber of Com., to Brett Guthrie, Chairman, Comm. on Energy, and Gary Palmer, Chairman, Subcomm. on Env't (Jan. 22, 2026).

70. *See* Valerie J. Brown, *Chemicals Policy Gap: Toward Stronger Regulation in the United States*, 117 ENV'T HEALTH PERSP. A358, A358 (2009); Neil Bedi et al., *Why the U.S. Is Losing the Fight to Ban Toxic Chemicals*, PROPUBLICA (Dec. 14, 2022, at 7:00 ET), https://www.propublica.org/article/toxic-chemicals-epa-regulation-failures [https://perma.cc/H5JG-3TZZ].

71. *See* Noah M. Sachs, *Rescuing the Strong Precautionary Principle from Its Critics*, 2011 ILL. L. REV. 1285, 1307–11, 1327–37 (2011) (arguing for "persistent scientific uncertainty about the nature or extent of the risk [to be] be resolved against the chemical").

72. Jose Felix Pinto-Bazurco, *The Precautionary Principle*, INT'L INST. FOR SUSTAINABLE DEV. (Oct. 23, 2020), https://www.iisd.org/articles/deep-dive/precautionary-principle [https://perma.cc/2WED-VQRS].

73. *See, e.g.,* Giordano v. Solvay Specialty Polymers USA, LLC, 522 F. Supp. 3d 26, 30 (2021).

74. Camille Siefridt, *Classification, Labelling and Packaging of Chemicals: Rules and Outlook*, PARL. EURO. DOC. (PE 779.192) 2–6 (2025); *Understanding REACH*, ECHA,

accountability encourages EU industries to conduct legitimate research into chemical risks to maintain market access.[75] A strengthened approach to chemical regulation would allow agency-led administrative solutions to respond quickly as scientific developments continue to flesh out PFAS causation issues.

B. Establish A National PFAS Resolution Fund

This Comment's proposed PFAS resolution draws on the FAIR Act of 2005, which set forth a no-fault, administrative system to address asbestos claims.[76] More specifically, a privately-funded, publicly-run administrative fund will clarify industry liability regarding PFAS and provide compensation to those affected.

Rather than wait for judicial pleas for an administrative PFAS resolution,[77] Congress should enact legislation that protects claimants and manages chemical manufacturers' liability. Through this Comment's proposed Fund, an interagency office between the EPA and the United States Department of Health and Human Services ("HHS") should be established. Similar to the interagency approach to lead, an Office of PFAS Injury Compensation ("the Office") would leverage agency expertise and coordinate shared priorities.[78] The Office would (1) process and payout PFAS claims;[79] (2) assess, collect, and manage industry

https://echa.europa.eu/regulations/reach/understanding-reach [https://perma.cc/VQ7B-XCXN] (last visited Jan. 26, 2026).

75. *REACH Explained*, EUR. COMM'N, https://single-market-economy.ec.europa.eu/sectors/chemicals/reach/reach-explained_en [https://perma.cc/3UJU-JPE2] (last visited Jan. 26, 2026).

76. FAIR Act of 2005, S. 852, 109th Cong. (2006).

77. *See* Ortiz v. Fibreboard Corp., 527 U.S. 815, 821 (1999) ("elephantine mass of . . . cases . . . defies customary judicial administration and calls for national legislation.").

78. *See*, *e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105520, GOVERNMENT PERFORMANCE MANAGEMENT: LEADING PRACTICES TO ENHANCE INTERAGENCY COLLABORATION AND ADDRESS CROSSCUTTING CHALLENGES 10 (2023) (explaining how the Department of Energy's Office of Environmental Management collaborates with working groups on nuclear waste cleanup research); *see* Press Release, *EPA, EPA, HUD and HHS Announce Interagency Commitments to More Robust Collaboration on Addressing Risks of Exposures to Lead* (Feb. 26, 2024), https://www.epa.gov/newsreleases/epa-hud-and-hhs-announce-interagency-commitments-more-robust-collaboration-addressing [https://perma.cc/VD4S-JF8T]; Notice, 89 Fed. Reg. 82236 (Oct. 10th, 2024) (planning collaborative efforts across the EPA, HHS, and Department of Agriculture to assess the risks pesticides pose to drug efficacy).

79. *See, e.g., How to Apply for Assistance*, FEMA (Sept. 19, 2025), https://www.fema.gov/fact-sheet/how-apply-assistance [https://perma.cc/99BH-LC8F] (example of an agency administered claims process).

funding;[80] (3) comply with fraud or claim management audits;[81] (4) invest in PFAS research and fund-managed medical screenings or diagnostics;[82] and (5) suggest necessary regulations to accomplish such.[83] Similar to the FAIR Act,[84] the Office would have the authority to take a comprehensive approach and avoid delays currently plaguing PFAS litigation.

1. Claims

To bring an eligible claim, claimants should be required to (1) file timely and (2) prove by a *preponderance of the evidence* (i.e., blood samples) that they were exposed to a significant level of PFAS. Additionally, claimants would be required to disclose any potentially related diagnoses, prior or ongoing litigation related to their PFAS injury, including recoveries, and the exposure location, duration, or other relevant known factors.[85] Given the limited public awareness of PFAS,[86] a "timely claim" should be measured by reasonableness. Thus, a claimant who (1) received a diagnosis or (2) discovered facts that would lead a reasonable person to inquire about a potential medical diagnosis, such as high estimates of PFAS concentration in one's blood,[87] is one whose time to file a claim has begun.[88]

Due to the prohibitively high costs of healthcare,[89] uninsured claimants who can identify an exposure location should have the

80. Some agencies are primarily funded by "assessments" imposed on the industry they oversee or regulate. *See*, *e.g.,* OFF. OF THE COMP. OF THE CURRENCY, *Program Summary by Budget Activity* (2024).

81. The EPA's Office of Inspector General conducts audits to identify programmatic abuse and fraud. 40 C.F.R. § 1.29 (Jan. 3, 2017).

82. *See, e.g.,* Notice of Proposed Rulemaking, 66 Fed. Reg. 46742 (Sept. 7, 2001) (example of how medical panels are used in an agency's workers' compensation).

83. For example, OCSPP publishes National Program Guidance each fiscal year with regulatory suggestions and policy goals. *See*, *e.g.*, OFF. OF CHEM. SAFETY & POLLUTION PREVENTION, EPA PUB. NO. 740B24009, FISCAL YEARS 2025-2026: NATIONAL PROGRAM GUIDANCE 22 (2024).

84. FAIR Act of 2005, S. 852, 109th Cong. (2006).

85. *See id.* at sec. 111, 113.

86. Kelly L. Smalling et al., *Per- and Polyfluoroalkyl Substances (PFAS) in United States Tapwater: Comparison of Underserved Private-well and Public-supply Exposures and Associated Health Implications*, 178 ENV'T INT'L 1, 1–2 (2023) (noting that public or agency knowledge of heavily contaminated areas is currently low).

87. *PFAS Blood Estimation Tool*, ATSDR: PER- & POLYFLUOROALKYL SUBSTANCES (PFAS) & YOUR HEALTH (Nov. 12, 2024), https://www.atsdr.cdc.gov/pfas/blood-testing/estimation-tool.html [https://perma.cc/JB9T-9F4P].

88. *See*, *e.g.*, FAIR Act of 2005, S. 852, 109th Cong., sec. 113(b)(1) (2006) (noting that individuals would have five years to file a claim after a medical diagnosis or being aware of facts that would lead to a medical diagnosis).

89. *See* Gary Branning & Martha Vater, *Healthcare Spending: Plenty of Blame to Go Around*, 9 AM. HEALTH DRUG BENEFITS 445, 445–47 (2016).

preliminary testing costs necessary to file a claim covered by the Office.[90] Given that PFAS-related risks and illnesses are still under extensive research,[91] present injury and medical monitoring claims should be distinct to allow those who develop PFAS-related conditions to recover their full compensation.[92] This distinction, which affords claimants two opportunities to seek recovery, must be paired with a strict filing deadline (i.e., two years).[93]

2. Processing and Administering Claims

Claims must be processed promptly to ensure the Office's effectiveness. Within ninety days of filing a claim,[94] the Office shall provide claimants with a proposed decision accepting or rejecting the claim, in whole or in part, with an explanation and an initial recovery amount, if applicable.

If dissatisfied with their initial award, claimants may file for a due process hearing within ninety days of the decision.[95] At the due process hearing, claimants may present new oral or medical evidence or request a review of the written record by the Office.[96] Thus, balancing the increased efficiency of an administrative Fund with claimant autonomy.

Though standardized award calculations may ease administrative burdens, they are often critiqued for failing to account for all the factors

90. For example, the Occupational Safety and Health Administration requires employers to cover medical examination costs where claimants cannot pay. Occupational Safety and Health Admin., Letter of Interpretation on OSHA Policy Regarding Medical Surveillance Requirements (Aug. 6, 1987), https://www.osha.gov/laws-regs/standardinterpretations/1987-08-06 [https://perma.cc/84EQ-Q5XU].

91. REV U.S. DEPT OF HEALTH & HUMAN SERVICES: NAT'L TOXICOLOGY PROGRAM, STUDY REPORTS, https://ntp.niehs.nih.gov/go/750897 [https://perma.cc/C7F8-MRA2] (last updated Sept. 15, 2025).

92. FAIR Act of 2005, S. 852, 109th Cong., sec. 113, 131–132 (2006) (accounting for any recovery already received through litigation or settlement).

93. Many state and federal administrative schemes follow strict filing deadlines. *See, e.g.,* N.J. REV. STAT. § 2A:14-2 (2004).

94. Many federal agencies must respond to claims within specified time frames. *See, e.g.,* 2 U.S.C. § 1977 (ninety days for resolution proposal under Federal Tort Claims Act).

95. Due process hearings are a frequently used procedural safeguard. *See, e.g.,* 20 U.S.C. § 1415; A. Dan Tarlock, *Administrative Law: Procedural Due Process and Other Issues*, 56 CHI.-KENT L. REV. 13, 20–23 (1980) (highlighting procedural safeguards where government is heavily involved in "private" matters).

96. Claimants that are displeased with their initial award may request a hearing where they are "entitled to present oral evidence and written testimony in further support of that claim." FAIR Act of 2005, S. 852, 109th Cong. 58, sec. 114 (2006); BEN HARRINGTON & DANIEL J. SHEFFNER, CONG. RSCH. SERV., R46930, INFORMAL ADMINISTRATIVE ADJUDICATION: AN OVERVIEW 15 (2021) (explaining that due process concerns are generally low for "benefit" applicants).

contributing to a claimant's "real harm."[97] Therefore, the Office should utilize a "point system" to schedule claimants into an approximate award valuation.[98] As a baseline, all claimants should be scheduled according to the percentage of PFAS in the bloodstream.[99] Claimants may receive additional "points" for having manifested a PFAS-related illness, with higher award valuations for more severe illnesses.[100] Awards should be annually adjusted for inflation and work with claimants to provide flexible, periodic funding.[101]

3. Industry Funding

The Office must establish a trust to collect industry funding and ultimately disburse awards to claimants. Given the current infeasibility of tracing PFAS sources, proportionate liability would best ensure fair cost allocation among liable parties.[102] Each party's contribution shall be calculated based on the estimated amount of PFAS they released and their annual expenditures on such.[103] Furthermore, all parties will be responsible for a minimum payment based on the estimated number of claims to ensure adequate funding.[104] To avoid a wave of PFAS-related bankruptcies, the Office should exempt small businesses from minimum

97. *See* Bin He et al., *Avoiding Real Harm but False Good: The Influence Mechanism of Political Relations on the Effectiveness of Environmental Regulation Policies*, 19 INT'L J. OF ENV'T RSCH. & PUB. HEALTH 15953, 15966 (2022).

98. FAIR Act of 2005, S. 852, 109th Cong., sec. 131–132 (2006).

99. Points systems are common in MDLs and other large payouts. *See, e.g.,* Kimm Massey & Michelle Llamas, *Roundup Settlement*, THE WILSON FIRM, LLP (Mar. 11, 2026), https://www.drugwatch.com/legal/roundup-settlements/ [https://perma.cc/6TJW-PQG3] (assigning higher point values "based on factors like the seriousness of the injury and the age of the person"); BOLCH JUDICIAL INSTITUTE, GUIDELINES AND BEST PRACTICES FOR LARGE & MASS TORT MDLS 110 (2nd ed. 2018).

100. This is similar to the allocation of damages in certain workers' compensation cases based on the severity of the injury suffered. *See, e.g.,* Longshore and Harbor Workers' Compensation, 33 U.S.C.A. § 908 (West 1984).

101. *See* FAIR Act of 2005, S. 852, 109th Cong., sec. 131, 133 (2006); Irving Bert Levinson, *Future Inflation and the Undercompensated Plaintiff*, 4 LOY. UNIV. CHI. L. J. 359, 365–66 (1973); Marcus L. Plant, *Periodic Payment of Damages for Personal Injury*, 44 LA. L. R. 1327, 1327 (1984).

102. Proportionate liability is appropriate for widespread environmental contamination where there is "certainty [that] the company caus[ed] at least some harm . . . . . [This] can step in to replace the requirement of a concrete endangerment of the actual victim in the overall assessment." BERNARD A. KOCH, PROPORTIONAL LIABILITY FOR CAUSAL UNCERTAINTY: HOW IT WORKS ON THE BASIS OF A 200-YEAR OLD CODE* 82–83 (Miquel Martín-Casals & Diego M. Papayannis eds., 2015).

103. *See* FAIR Act of 2005, S. 852, 109th Cong., sec. 202–203 (2006) (calculating a liable party's annual contribution through liability tiers and subtiers which account for "prior asbestos expenditures").

104. *See* FAIR Act of 2005, S. 852, 109th Cong., sec. 204(h) (2006).

payments into the fund and work with companies that are considering bankruptcy.[105]

V. CONCLUSION

It is in the best interest of the public, industry, and the judiciary to pursue litigation alternatives for PFAS personal injury. Current PFAS litigation highlights the risks of relying on traditional tort systems to address widespread, scientifically complex environmental harms. Like asbestos before it, PFAS exposure is diffuse, difficult to trace, and likely to generate massive volumes of claims that strain courts, delay compensation, and risk uneven or inadequate recoveries.

Administrative solutions like the one proposed provide a stable and equitable alternative. More specifically, the PFAS Claim Resolution Fund would streamline claims processing, reduce litigation costs, and ensure more consistent compensation based on exposure and injury. By centralizing funding and incorporating scientific updates over time, such a system would better balance well-being of claimants and industry liability. Hopefully, government and industry leaders will choose to learn their lesson and move to establish an administrative process that balances stability for liable parties with public health.

105. The top twelve PFAS producers are all international companies with revenues that easily justify a policy decision to exempt small businesses. *See* Press Release, ChemSec, *The Global Societal Costs of PFAS Chemicals Amount to Sixteen Trillion Per Year* (May 22, 2023), https://chemsec.org/chemsec-identifies-the-top-12-pfas-producers-in-the-world-and-reveals-shocking-societal-costs/ [https://perma.cc/DEK8-2YQE]. "[S]mall businesses account for only 20 percent of the revenue, [but] they bear 48 percent of commercial tort costs." DAVID MCKNIGHT & PAUL HINTON, TORT LIABILITY COSTS FOR SMALL BUSINESS 13 (2023) (rising costs of torts on small businesses); FAIR Act of 2005, S. 852, 109th Cong., sec. 2 (2006).