

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD A. BLOUCH, JR.,

Plaintiff,

v.

NSF INTERNATIONAL; UL SOLUTIONS INC.;
SGS NORTH AMERICA INC.; SMART EPD LLC;
and ANNA LASSO,

Defendants.

Case No. _____

MEMORANDUM IN SUPPORT OF COMPLAINT
THE CONTROLLING CASE LAW: THE AUTHORITIES ESTABLISHING
CERTIFIER LIABILITY

Prepared in support of the Complaint. Published for parties litigating certifier liability. Not filed with the Court.

Every authority below supports Plaintiff. Each is presented with its citation, what it holds and does in this action, and how it connects to the others. The cases are grouped by the doctrinal step each one builds, in the order the case is argued; within each step, the strongest authority comes first. Read together, the steps tell one story in law: a certifier is answerable for its own certifications, that answerability runs to the user, and every element the law requires is already settled.

FRONT MATTER — HOW TO READ THIS DOCUMENT

The master proposition. A certifier is answerable for its own certifications. Not for the manufacturer's product — that question is settled, and Plaintiff does not disturb it. For the certifier's own representations: the standard it wrote, the test it specified, the record it created, and the mark it placed on the product to induce reliance. Those are the certifier's products.

What a certification is: it confers status. A certified device is a different device than an uncertified device. A testing service that contracts to measure the performance of a machine *as-it-is* supplies information. A certification defines a product *as-it-must-be* — it confers a status the product did not otherwise hold, and in doing so alters the product's value and marketability. That conferral of status is the certifier's act, and it is the act for which the certifier answers. The law reaches it through the tort of one who supplies information for the guidance of others (§552): the representation that confers the status is, in the language of the Restatement, information supplied for the guidance of others in their transactions. The status is what the certification does in

commercial substance; the information is the form the law recognizes. Both are true at once, and the certifier is answerable for both.

The parties, and where each stands in the chain. Four roles recur, and the case keeps them distinct:

- the **manufacturer** builds the machine (Excel, Dyson, World Dryer) — not the subject of the certifier theory;
- the **standards body / certifier** writes the standard, runs the test, issues the certificate, and licenses the mark (NSF, UL, SGS, Smart EPD, Lasso) — the Defendants;
- the **purchaser** buys the certified product in reliance on the certification (the establishment) — to whom the certification runs as a contract;
- the **user** encounters the mark and relies on it (Plaintiff) — to whom the certification runs as a duty.

The spectrum of obligation. The obligations run along a single spectrum: from the duty of reasonable care owed to foreseeable relying parties (§552), through the duty assumed by voluntary undertaking (§324A), to the strict-liability consumer-protection duty (UTPCPL) — with the contract analysis (Movement Eight) showing how completely the mark binds, so that the duty is the inevitable floor beneath it.

A word on scope. Each Defendant is measured only by the document it chose. All five are bound by the drying time. Only UL, Smart EPD, and SGS are bound by the energy and environmental claims derived from it; NSF's Protocol P335 prescribes no power test, states no energy figure, and makes no environmental claim, and none is advanced against NSF. SGS answers only for the testing it performed — the times it reported. The case holds each Defendant to its own undertaking, and no further.

How the cases connect. Each entry ends with its links to the others. Read together, the links show the case assembling itself: the gate opens, the certifier passes through it, the duty extends to the user, the mark carries it, custom is no excuse, the statute names the conduct, the knowing violation escalates, the injury is concrete, and the contract chain proves the whole of it was inevitable.

TABLE OF AUTHORITIES

Cases. An asterisk marks the authorities binding in this District (Pennsylvania Supreme Court on state-law questions; the Third Circuit and the Supreme Court of the United States on federal questions).

*Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270 (Pa. 2005)

*Brand Marketing Group LLC v. Intertek Testing Services, N.A., Inc., 801 F.3d 347 (3d Cir. 2015)

Cantor v. Beech-Nut Nutrition Co., No. 25-821-cv (2d Cir. Feb. 5, 2026) (summary order; nonprecedential, cited in accord)

*Cantwell v. Allegheny County, 506 Pa. 35, 483 A.2d 1350 (1984)

Carlill v. Carbolic Smoke Ball Co., [1893] 1 QB 256 (C.A.) (historical origin; persuasive)

Cobaugh v. Klick-Lewis, Inc., 385 Pa. Super. 587, 561 A.2d 1248 (1989)

*Cottrell v. Alcon Laboratories, 874 F.3d 154 (3d Cir. 2017)

*Czyzewski v. Jevic Holding Corp., 580 U.S. 451 (2017)

Espenshade v. Espenshade, 729 A.2d 1239 (Pa. Super. 1999)

*Farabaugh v. Pennsylvania Turnpike Commission, 590 Pa. 46, 911 A.2d 1264 (2006)

FNS Mortgage Service Corp. v. Pacific General Group, Inc., 24 Cal. App. 4th 1564 (1994)

*Gregg v. Ameriprise Financial, Inc., 664 Pa. 567, 245 A.3d 637 (2021)

Hanberry v. Hearst Corp., 276 Cal. App. 2d 680 (1969)

Hempstead v. General Fire Extinguisher Corp., 269 F. Supp. 109 (D. Del. 1967)

*Huertas v. Bayer US LLC, 120 F.4th 1169 (3d Cir. 2024)

*Hutchison v. Luddy, 582 Pa. 114, 870 A.2d 766 (2005)

Idaho Potato Commission v. M & M Produce Farm & Sales, 335 F.3d 130 (2d Cir. 2003)

Ingrassia Construction Co. v. Walsh, 337 Pa. Super. 58, 486 A.2d 478 (1984)

John v. Whole Foods Market Group, Inc., 858 F.3d 732 (2d Cir. 2017)

*Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)

O'Brien v. Nationwide Mutual Insurance Co., 455 Pa. Super. 568, 689 A.2d 254 (1997)

*Rempel v. Nationwide Life Insurance Co., 471 Pa. 404, 370 A.2d 366 (1977)

Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 666 A.2d 327 (1995)

*Spokeo, Inc. v. Robins, 578 U.S. 330 (2016)

The T.J. Hooper, 60 F.2d 737 (2d Cir. 1932)

Toman v. Underwriters Laboratories, Inc., 532 F. Supp. 1017 (D. Mass. 1982), rev'd in part on other grounds, 707 F.2d 620 (1st Cir. 1983)

*Warren Technology, Inc. v. UL LLC, 962 F.3d 1324 (11th Cir. 2020) (binding as to nothing; identifying, for the Defendants' own category, the grounds of answerability)

Statutes and Regulations. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. · 28 U.S.C. § 1332 · 29 C.F.R. § 1910.7.

Restatements. Restatement (Second) of Torts § 552 · Restatement (Second) of Torts § 324A · Restatement (Second) of Contracts (formation).

MOVEMENT ONE — §552: THE CERTIFIER CONFERS STATUS, AND ANSWERS FOR IT

The gate. A certifier does not build the machine; it confers a status upon the machine — certified, listed, hygienic — that the machine did not otherwise hold. Pennsylvania has a cause of action for exactly that: the tort of one who, in the business of supplying information for the

guidance of others, supplies it without reasonable care. The status the certifier confers is, in the law's language, the information on which others rely.

Bilt-Rite Contractors, Inc. v. The Architectural Studio — 866 A.2d 270 (Pa. 2005)

Analysis. The Pennsylvania Supreme Court adopted Restatement (Second) of Torts § 552 as the law of Pennsylvania for those “in the business of supplying information to others for pecuniary gain,” and held the duty runs to foreseeable users with no privity requirement — and that “the economic loss rule does not apply to claims of negligent misrepresentation sounding under Section 552.” This is the gate. A certifier is the purest occupant of the category the statute names. An architect supplies information alongside a building; a certifier supplies the status itself — the certification is the entire product, sold for a fee, wanted for one reason: what others will do when they see it. The representation that confers the status is information supplied for the guidance of others, and § 552 governs it.

Links. Opens the gate that Brand Marketing walks the certifier through. Runs parallel to FNS Mortgage (Movement Two): two independent doctrinal roads — § 552 and § 324A — reaching the same relying party. Rempel is its Pennsylvania predecessor, applying § 552 to a consumer decades earlier.

Brand Marketing Group LLC v. Intertek Testing Services, N.A., Inc. — 801 F.3d 347 (3d Cir. 2015)

Analysis. The Third Circuit, applying Pennsylvania law, affirmed a negligent-misrepresentation verdict — \$6,045,000, including \$5,000,000 in punitive damages — against a Nationally Recognized Testing Laboratory, the same category of defendant as UL. The laboratory certified a product, was wrong, and was held liable on negligence alone, with no proof of intent. The court held the certifier “needed to know only that somebody aside from” its client would rely on the certification, and confirmed that under Bilt-Rite the certifier need not know the specific plaintiff would rely. This is the spine: it is binding on this Court, it involves a certifier, and it establishes that the entire claim succeeds on negligence. Everything after it is addition.

Links. Operationalizes Bilt-Rite — cites it by name to hold that § 552 does not require knowledge of the specific relying party. Carries the Pennsylvania punitive standard into the certifier context (Movement Six). And it establishes the causal mechanism the injury depends on: the Third Circuit accepted that the certification cost “was passed through ... as part of the per-unit price” — binding authority that the premium travels down the chain to the price the consumer pays. Paired with the standing anchors of Movement Seven, the causal line from certification to Plaintiff's dollar is complete and traced, not speculative.

Rempel v. Nationwide Life Insurance Co. — 471 Pa. 404, 370 A.2d 366 (1977)

Analysis. The Pennsylvania Supreme Court applied § 552 to sustain a consumer's recovery — decades before Bilt-Rite — and held that a recipient is under no duty to read the document, and

may rely in good faith on the representation as made, without being charged with knowledge of the fine print. The user who never read the certificate is, like the insured who never read the policy, a good-faith relier. Justifiable reliance was a question for the factfinder even though the plaintiff could have read the document.

Links. An early Pennsylvania § 552 application, consistent with Bilt-Rite. Its no-duty-to-read holding meets, in advance, any suggestion that the user's reliance fails because he did not read the certification — and mirrors, from the relying party's side, the objective principle Ingrassia states from the maker's side (Movement Eight).

Toman v. Underwriters Laboratories, Inc. — 532 F. Supp. 1017 (D. Mass. 1982), rev'd in part on other grounds, 707 F.2d 620 (1st Cir. 1983)

Analysis. A negligence claim arising from UL's own certification activity was addressed on the rule that "if UL is liable for anything it will be for its own negligence only, in causing its label to be affixed." That is the master proposition stated in UL's own case: the certifier is answerable for its own conduct — the placing of its label — and Plaintiff adopts exactly that rule and pleads no product defect. The partial reversal reached only third-party indemnity counts; the own-conduct principle stands.

Links. UL-specific statement of the master proposition. Corroborates that UL's certification conduct — its own negligence in causing its label to be affixed — is the actionable subject, and confirms the discipline of the whole case: the certifier answers for what it did, not for the build.

Warren Technology, Inc. v. UL LLC — 962 F.3d 1324 (11th Cir. 2020)

Analysis. The Eleventh Circuit recognized that a Nationally Recognized Testing Laboratory is answerable where it failed to meet its own standards for testing, interpreted the standard inconsistently, or lacked independence. It identified those as bases on which an NRTL may be held answerable. All three are present here. The certified products do not meet the certified specification. The same drying-time method produced eight seconds for one manufacturer and thirty to thirty-five seconds for another. And the rule was written by a committee the manufacturers controlled, then verified by the programme operator's own employee.

Links. Federal appellate recognition of the same conduct Brand Marketing held actionable, stated in the certifier's own vocabulary. The opinion identifies the certifier's own escape condition — that a standards interpretation is opinion rather than falsity only where "made in good faith and in accordance with OSHA's criteria for independence, procedural regularity, etc.," 962 F.3d at 1329 (citing 29 C.F.R. § 1910.7(b)). That condition is the case: ten of the twelve seats on the Product Category Rule committee were held by manufacturers, the declaration was verified internally where the governing standard requires a third party, and one person held three roles the standard requires to be independent.

MOVEMENT TWO — §324A: THE DUTY RUNS TO THE USER

The undertaking reaches the party it was meant to protect — the user — without privity and without a reading.

Farabaugh v. Pennsylvania Turnpike Commission — 590 Pa. 46, 911 A.2d 1264 (Pa. 2006)

Analysis. The Pennsylvania Supreme Court set out Restatement § 324A and applied it, holding that “the plain language of Section 324A merely requires an undertaking to ‘render services to another,’ which we find to encompass the rendering of inspection services,” and rejecting the suggestion that § 324A cannot apply to the negligent performance of a contractual inspection obligation. This is the binding Pennsylvania anchor for the negligent-undertaking count: § 324A is Pennsylvania law, and it reaches a party who undertakes to evaluate for the protection of others.

Links. The binding Pennsylvania anchor beneath FNS Mortgage and Hempstead, which apply the same § 324A undertaking to certifiers specifically. Rests on the Otis Elevator line — the scope-of-undertaking principle — that Cantwell confirms has been Pennsylvania law for decades.

Cantwell v. Allegheny County — 506 Pa. 35, 483 A.2d 1350 (1984)

Analysis. The Pennsylvania Supreme Court’s foundational § 324A decision, stating that the essential provisions of that section have been the law of Pennsylvania for many years, and setting out § 324A’s requirement that the defendant have undertaken “to render services to another which he should recognize as necessary for the protection of a third person” — “essentially a requirement of foreseeability.” It settles the age of the rule: the negligent-undertaking count asks this Court for nothing new. Pennsylvania has applied § 324A for four decades.

Links. The pedigree beneath Farabaugh, which applies the same section to a party undertaking safety-related evaluation. Together they establish § 324A as long-settled Pennsylvania law before FNS Mortgage and Hempstead apply it to certifiers specifically.

FNS Mortgage Service Corp. v. Pacific General Group, Inc. — 24 Cal. App. 4th 1564 (1994)

Analysis. The court applied § 324A to hold a certifier answerable for negligent performance of services it undertook, where those services were “necessary for the protection of third persons, consumers who will acquire” the product; summary judgment for the certifier was reversed. A private standards body that promulgated a code and listed conforming products — whose mark controls marketability, so that “an unlisted [product] is unmarketable” — was held answerable to the downstream consumers who relied on its listing when a product it certified failed. This is the keystone of the undertaking theory: the duty attaches to the undertaking itself, not to any contract with the plaintiff, and not to the plaintiff’s having read the certification. That standards body is UL and NSF exactly.

Links. Applies Farabaugh’s § 324A to a certifier. Expressly builds on Hempstead as its UL-specific foundation and quotes Hanberry’s mark-is-a-representation language. Runs parallel to Bilt-Rite (Movement One): the § 324A road and the § 552 road reach the same relying user.

Hempstead v. General Fire Extinguisher Corp. — 269 F. Supp. 109 (D. Del. 1967)

Analysis. The court denied UL’s summary judgment and held that a certifier that places its listing on a product adopts that product’s representation as its own: “It is straining at words to say that Underwriters does not approve the design of a product ... when Underwriters lists it, it thereby tacitly impresses its approval upon the design.” Directly on point — the defendant is a certifier of UL’s character (it is UL), and the holding is that the act of listing (the mark) is itself the assumption of a duty to the foreseeable user. The court rejected the very “we don’t approve designs” argument today’s UL makes.

Links. The UL-specific foundation FNS Mortgage builds upon. Connects forward to Hanberry (Movement Three): the listing/mark is the representation that reaches the user.

MOVEMENT THREE — THE MARK IS THE REPRESENTATION THAT REACHES THE USER

The certificate sits in a drawer; the mark travels with the product into public use. The mark is how the representation reaches the person who never read the certificate.

Hanberry v. Hearst Corp. — 276 Cal. App. 2d 680 (1969)

Analysis. The Good Housekeeping Seal case. An endorser that lends its reputation to a product, to induce the public to buy and use it, owes a duty of reasonable care to consumers who rely on the endorsement: “Implicit in the seal and certification is the representation [the endorser] has taken reasonable steps to make an independent examination of the product endorsed, with some degree of expertise, and found it satisfactory.” Because “the very purpose of [the] seal and certification is to induce consumers to purchase,” the endorser owes a duty “to use ordinary care ... so that members of the consuming public ... are not unreasonably exposed to the risk of harm.” The certifier’s demurrer on this exact claim was overruled and the dismissal reversed. This is the mark case — the act of placing a trusted name on a product creates a duty to the foreseeable relying user, and no privity is required.

Links. Completes Hempstead’s listing-is-approval principle (Movement Two) by naming the mark as a representation to the public. The Good Housekeeping Seal is the operating analogue for the contract reach (Movement Eight) — a certifier’s seal run as an enforceable promise to consumers. Pairs with Ingrassia (Movement Eight): the mark speaks, and what it speaks is judged objectively, not by the certifier’s private intention. NSF’s relationship is stronger than the implied endorsement in Hanberry — the P335 mark reads “TESTED. CERTIFIED. HYGIENIC,” an explicit consumer-facing promise.

Idaho Potato Commission v. M & M Produce Farm & Sales — 335 F.3d 130 (2d Cir. 2003)

Analysis. The Second Circuit vacated an order that had barred a licensee from seeking cancellation of a certification mark, holding a no-challenge provision in the licensing agreement unenforceable because it violated the public policy embodied in the Lanham Act, and remanded for consideration on the merits. The counterclaims the court sent back for merits consideration alleged that the mark owner had discriminatorily refused to certify products meeting its standards, imposed standards beyond those the marks were registered to certify, and lacked the independence necessary for certification-mark owners under the Lanham Act. Independence is not a courtesy the certifier extends; it is a condition of holding the mark, and a licensee cannot be made to contract away the right to say so. (Those three are the allegations remanded — the appellate posture — not appellate holdings; the holding is that the no-challenge clause is unenforceable and the challenge must be heard.)

Links. This is the case the Eleventh Circuit reached for in Warren Technology when naming what an NRTL may be answerable for — the bridge between NRTL liability and certification-mark independence, drawn by a federal appellate court. It applies directly to the Smart EPD declaration, on which one person occupies the programme-operator, independent-critical-reviewer, and independent-external-verifier roles that ISO 14025 requires to be independent of one another. And its no-challenge holding answers any licensing provision or protocol disclaimer that purports to foreclose challenge to the mark itself — including P335’s “NSF shall not be responsible to anyone for the use of or reliance upon this protocol.”

MOVEMENT FOUR — CUSTOM IS NO DEFENSE

That the whole industry certifies this way is not an excuse. It was foreclosed a century ago.

The T.J. Hooper — 60 F.2d 737 (2d Cir. 1932)

Analysis. Judge Learned Hand held that an entire industry may be negligent in failing to adopt an available precaution: “a whole calling may have unduly lagged in the adoption of new and available devices. ... Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission.” 60 F.2d at 740. Twice devastating here. It forecloses the defense that no certification evaluates the use-stage effects — universal disregard is no excuse. And because the certifiers are the test-setters, it answers “we met our own standard”: a calling “may never set its own tests, however persuasive be its usages,” which is precisely the self-serving usage the opinion rejects.

Links. Protects both Bilt-Rite / Brand Marketing (§ 552) and the Farabaugh / FNS / Hempstead undertaking (§ 324A) against the industry-custom defense. Pairs with the reasonable-care element of Movement One.

MOVEMENT FIVE — THE STATUTE NAMES THE CONDUCT

Beyond the common law, a Pennsylvania statute reaches the conduct directly, and without any requirement of intent.

Gregg v. Ameriprise Financial, Inc. — 664 Pa. 567, 245 A.3d 637 (Pa. 2021)

Analysis. The Pennsylvania Supreme Court held the UTPCPL catch-all imposes strict liability: deceptive conduct “is not dependent in any respect upon proof of the actor’s state of mind”; the test is whether the conduct has “the tendency or capacity to deceive.” The lowest mental-state bar in the case — none. A certification with the capacity to deceive the consuming public, justifiably relied upon, causing ascertainable loss, is enough. The private action retains its remaining elements — a household-purpose purchase, an ascertainable loss of money or property, causation, and justifiable reliance — each of which Plaintiff pleads; what the statute removes is any need to prove the certifier’s state of mind as to the deception.

Links. The purest fit with the no-intent discipline that runs through the whole case. Armed against the disclaimer defense by Ingrassia (Movement Eight): the objective-manifestation rule answers “our mark disclaims” for the UTPCPL count as it does for § 552. Justifiable reliance, the statute’s remaining element, is supported by Rempel’s no-duty-to-read holding (Movement One).

MOVEMENT SIX — THE KNOWING VIOLATION ESCALATES

Where the record shows the certifier appreciated the risk and proceeded, Pennsylvania permits punitive damages. This is an escalator, not an element; the negligence counts succeed without it.

Hutchison v. Luddy — 582 Pa. 114, 870 A.2d 766 (Pa. 2005)

Analysis. The Pennsylvania Supreme Court held a negligence plaintiff may pursue punitive damages — “neither is there anything in law or logic to prevent the plaintiff in a case sounding in negligence from undertaking the additional burden of attempting to prove ... that the defendant’s conduct ... was ... outrageous” — and set the standard: a subjective appreciation of the risk of harm and a conscious disregard of it; “having reason to know of a risk is not enough.” Exacting, and met only where the defendant’s own knowledge is in the record. The Court reinstated a punitive award the intermediate court had stripped, insisting the standard be applied faithfully.

Links. The standard Brand Marketing applied to affirm punitive damages against a certifier (Movement One). What it demands — the defendant’s own appreciation of the risk, appearing in the record — is exactly what the documentary proof is built to supply: the certifier’s own contemporaneous record identifying the specific provision and recording the specific deviation.

MOVEMENT SEVEN — THE INJURY IS CONCRETE AND PLAINTIFF HAS STANDING

The injury is economic, present, and particular: Plaintiff paid, in the price of goods, for a hand-drying service the certifications represented and the certified products did not deliver. The loss is money already spent for certified performance that was never received, in every transaction. Binding authority holds that injury concrete.

Huertas v. Bayer US LLC — 120 F.4th 1169 (3d Cir. 2024)

Analysis. The Third Circuit held, precedentially, that a consumer states a concrete economic injury at the pleading stage — with no physical injury required — where the product is worth less than what was bargained for; “economic injury is one of its paradigmatic forms” of injury in fact. The court explained that one way to show a product is worth less is to allege it did not perform as expected, and it partially reversed the dismissal to sustain that theory. That is Plaintiff exactly: the certified dryer did not perform to the certified specification in the use for which Plaintiff paid, so the drying he received was worth less than the certified drying he was charged for. Binding in this Circuit, and holding the economic injury concrete without any allegation of physical harm.

Links. The binding benefit-of-the-bargain anchor. Applies the injury-in-fact framework of Lujan and Spokeo to Plaintiff’s precise posture. Expressly relies on Cottrell, with which it pairs, and connects to Jevic (the size of the loss is immaterial).

Cottrell v. Alcon Laboratories — 874 F.3d 154 (3d Cir. 2017)

Analysis. The Third Circuit held, precedentially, that consumers who paid for a product a portion of which was impossible to use suffered a concrete injury in fact — they paid for a thing and could not use it. That is the structural match to Plaintiff’s injury: he paid, in the price of goods, for a certified hand-drying service and could not obtain the certified performance he paid for. The court held such a loss is “actual,” not speculative, because the money was already spent, and financial harm is “a classic and paradigmatic form of injury in fact.” Critically, it held the standing inquiry is separate from the merits: a court “assume[s] ... that a plaintiff has stated valid legal claims” for purposes of standing — so the certification’s ultimate merits cannot be bootstrapped into a standing dismissal.

Links. The binding paid-for-but-unusable anchor, and the closest structural analogue to Plaintiff’s injury. Establishes both that the loss is actual, not speculative, and that standing does not rise or fall with the merits. Pairs with Huertas and Jevic.

Czyzewski v. Jevic Holding Corp. — 580 U.S. 451 (2017)

Analysis. The Supreme Court stated the rule plainly: “For standing purposes, a loss of even a small amount of money is ordinarily an ‘injury,’” citing a five-dollar loss as sufficient. Whatever the per-transaction figure, Plaintiff’s monetary loss — aggregated across documented patronage — is a cognizable injury. Size is not a standing question; the Supreme Court has said so.

Links. The Supreme Court capstone on the size of the loss. Completes the standing showing with Huertas and Cottrell, which establish the injury’s shape — shape from the Third Circuit, size from the Supreme Court.

John v. Whole Foods Market Group, Inc. — 858 F.3d 732 (2d Cir. 2017)

Analysis. The Second Circuit, in a precedential decision, treated the point as settled: “no one disputes that overpaying for a product results in a ... particularized and concrete injury in fact.” Overpayment — paying for a represented characteristic the product lacks — is injury, full stop. Plaintiff overpaid for certified performance he did not receive. The court found injury in fact adequately alleged and reinstated the claim.

Links. Precedential appellate authority that overpayment-is-injury is beyond dispute. Reinforces Jevic and the binding Third Circuit anchors, and grounds the point in Spokeo’s concreteness test.

Cantor v. Beech-Nut Nutrition Co. — No. 25-821-cv (2d Cir. Feb. 5, 2026) (summary order)

Analysis. On facts closest of all to Plaintiff’s — a safety-and-quality misrepresentation, no physical injury, economic overpayment — the Second Circuit held that “the requirements for pleading an economic injury do not change simply because the source of the alleged overpayment was a misrepresentation related to a product’s safety,” and reversed the dismissal of standing. A hygiene misrepresentation is governed by the ordinary economic-injury standard; it does not require physical harm. Cited as a summary order, and as such not precedential, for the precision of its statement on the point most on-point to this case, in accord with the precedential authority above. Its deployment here is specific: the Defendants cannot convert an economic-injury case into an exposure case by pointing at the hygiene subject matter and then demanding physical-harm pleading — the requirements do not change because the misrepresentation concerns safety.

Links. The closest factual match on the safety/hygiene-misrepresentation point, in accord with the binding anchors Huertas and Cottrell and the precedential John.

Lujan v. Defenders of Wildlife — 504 U.S. 555 (1992)

Analysis. The three-element framework for Article III standing: injury-in-fact, traceability, and redressability. At the pleading stage, general factual allegations of injury from the defendant’s conduct suffice, because the court “presumes that general allegations embrace those specific facts that are necessary to support the claim.” And where the plaintiff is himself the object of the challenged conduct — here, the consumer the certification is directed to and who paid for it — standing is ordinarily self-evident. Plaintiff’s economic injury satisfies each element.

Links. The framework the standing anchors satisfy. Huertas, Cottrell, Jevic, John, and Cantor apply this test to Plaintiff’s economic-overpayment posture. Sets up Spokeo (concreteness).

Spokeo, Inc. v. Robins — 578 U.S. 330 (2016)

Analysis. The concreteness requirement: an injury must be concrete and particularized, and must actually exist — “‘de facto,’ that is, to actually exist,” “real, not abstract.” A present, out-of-pocket monetary loss is the paradigmatic concrete injury, and Plaintiff’s is exactly that: money paid, in the price of goods, for a certified service he did not receive. The concreteness bar is met head-on.

Links. Sharpens Lujan’s injury-in-fact element. The concreteness it requires is supplied by Jevic (a loss of even a small amount of money is an injury), Huertas (benefit-of-the-bargain, concrete without physical harm), and Cottrell (paid-for-but-unusable, actual not speculative).

MOVEMENT EIGHT — THE CONTRACT CHAIN PROVES THE DUTY WAS INEVITABLE

The mark is a representation (Movement Three). This movement shows how completely it binds — step by observable step, it behaves like a contract — so that the duty Plaintiff pleads is the modest floor beneath a far higher ceiling. Two things must be kept distinct throughout: the contract runs to the **purchaser**; the duty runs to the **user**. Plaintiff is the user, and pleads in tort. The contract analysis is presented as argument — it builds to duty and arms the misrepresentation counts against the disclaimer defense — and because this document is meant to be studied and modeled by others litigating certifier liability, the chain is set out in full.

Note for the purchaser plaintiffs. Plaintiff is the user and pleads no contract count; for him this chain is argument, building to the duty and arming the misrepresentation counts against the disclaimer defense. A purchaser plaintiff pleads it directly — contract and duty together and in the alternative, needing to prevail on only one — because the two theories reach different defendants, different damages, and different limitation periods, and nothing in the rules requires a choice.

Why the contract frame holds — three tiers of settled Pennsylvania law, then a reach. The certifier wants the benefits of a contract — the fee, the brand premium, the market’s trust — while denying one exists. Pennsylvania law forecloses that on three independent, settled grounds, and then the reach names what the whole structure is.

Ingrassia Construction Co. v. Walsh — 337 Pa. Super. 58, 486 A.2d 478 (1984)

Analysis — Tier A, the objective theory (the disclaimer-killer). “In ascertaining the intent of the parties to a contract, it is their outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter.” And it matters not whether a party believed no contract existed if its manifested conduct reasonably suggested the contrary. This is the answer to the certifier’s central position — that its mark “promises nothing.” That position is a statement of undisclosed subjective intention, which the law disregards. What governs is what the certifier’s conduct — creating, licensing, and charging for the mark — communicated to a reasonable person who saw it.

Links. Arms Bilt-Rite / Brand Marketing (§ 552) and Gregg (UTPCPL) against the disclaimer defense: the objective-manifestation rule defeats “our mark disclaims.” Pairs with Hanberry (Movement Three): the mark speaks, and it is read objectively. Mirrors Rempel (Movement One): the maker is bound by objective conduct, as the relier is protected though he did not read. Corroborated verbatim by Espenshade.

Espenshade v. Espenshade — 729 A.2d 1239 (Pa. Super. 1999)

Analysis. Quotes and applies the objective-manifestation rule verbatim, fifteen years after Ingrassia, confirming it as settled and followed Pennsylvania law.

Links. Direct corroboration of Ingrassia — deploy as a pair to show the rule is entrenched.

Schenck v. K.E. David, Ltd. — 446 Pa. Super. 94, 666 A.2d 327 (1995)

Analysis — Tier B, unjust enrichment (the law implies the contract). “Where unjust enrichment is found, the law implies a contract ... which requires that the defendant pay to plaintiff the value of the benefit conferred,” and the focus “is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched.” The certifier takes the benefit — the fee, the premium, the market’s trust — while disclaiming the obligation. The law implies the contract the certifier disclaims, and needs no bargain to do it, closing the “no bargain between certifier and user” gap that the objective theory alone leaves.

Links. The independent second road past the disclaimer: where Ingrassia holds the mark *is* an objective manifestation, Schenck holds that even absent any manifested agreement, the enrichment alone implies the obligation. As a cause of action this runs to the purchaser; in this chain it is argument building to the user’s duty.

O’Brien v. Nationwide Mutual Insurance Co. — 455 Pa. Super. 568, 689 A.2d 254 (1997)

Analysis — the offer definition. Pennsylvania’s definition of an offer: “a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” The mark meets it — the certifier manifests, by placing and licensing the mark, a willingness that justifies the market in understanding that acquiring the certified product concludes the assurance the mark represents.

Links. Supplies the offer definition that Cobaugh applies; the two are the offer-definition pair, Cobaugh the binding application (O’Brien draws the definition from Cobaugh itself).

Cobaugh v. Klick-Lewis, Inc. — 385 Pa. Super. 587, 561 A.2d 1248 (1989)

Analysis — the reach. A posted public offer — a prize for performing a stated feat — is a binding unilateral contract: the promoter “by making public the conditions ... makes an offer,” and “the only acceptance ... necessary is the performance of the act.” The “mere gift / no consideration” defense fails because “the offer specified the performance which was the price or consideration to be given,” and a person reading the sign would reasonably understand the terms.

This is the binding Pennsylvania anchor for the reach: the mark is the public offer; purchase and use is the performance that accepts; the certification premium is the consideration. (The application of this rule to a certification mark is the novel step — no court has yet held a certification mark is a Cobaugh offer — and the purchaser plaintiffs plead it directly; here it names the reach.)

Links. Applies O’Brien’s offer definition, favorably. Its objective-reader standard welds to Ingrassia: the mark is read by the person who encounters it, not by the certifier’s private intent. The Good Housekeeping Seal in Hanberry (Movement Three) is the operating analogue — the same structure run as an enforceable promise. Carlill is its recognized pedigree.

Carlill v. Carbolic Smoke Ball Co. — [1893] 1 QB 256 (C.A.)

Analysis. The foundational advertisement-as-offer case: a public offer is accepted by performance, no notice required, and an outward act of sincerity — there, a bank deposit “shewing our sincerity” — defeats the “mere puff” defense. The certifier’s deposit-equivalent is its fee, its licensing, and its brand-staking — outward acts of sincerity that negate “our mark means nothing.”

Links. The recognized origin of the unilateral-contract doctrine that Cobaugh carries as binding Pennsylvania law. Its “puff defeated by an act of sincerity” analysis is the unilateral-contract expression of Ingrassia’s objective principle.

The chain, stated as observable events (the inevitability engine). The certifier writes the standard → runs the test → issues the certificate → places the mark → the mark induces the purchase → the premium is paid → the product enters use → the user relies. Two subtraction tests prove the load-bearing parts. **Remove the sticker** and the certification never reaches the market — the certifier’s product vanishes. **Remove the user** and the whole chain collapses backward: no user, no reason to install, no purchase, no manufacture, no certification, no fee. The chain shows the mark forming a contract-like bond, step by step — and if the bond is that strong, the duty is undeniable. The certifier cannot take every benefit of the structure and disclaim the one obligation at its base.

THE COUNT MAP — WHERE EACH AUTHORITY DEPLOYS

The Movements above group the authorities by doctrine. This map regroups them by count, as pleaded, so that the answer to any motion aimed at a single count is one line away.

Count I — §552 negligent misrepresentation (all Defendants). Bilt-Rite (the gate) → Brand Marketing (the certifier through it, verdict affirmed) → Hanberry and Rempel (what the mark says; reliance without investigation) → Ingrassia and Espenshade (the private reservation disregarded) → Warren (the grounds, identified for this category).

Count II — §324A negligent undertaking. Cantwell (the rule is four decades old) → Farabaugh (inspection services are inside it, even under contract) → FNS and Hempstead (certifiers by name: the listing is the undertaking, the approval is the act). The measure of care is the Defendants' own documents.

Count III — UTPCPL. Gregg (objective capacity to deceive; reliance and ascertainable loss, not physical harm) over the enumerated certification subsections, §201-2(4)(ii), (iii), and (v) → Ingrassia (the disclaimer is an undisclosed subjective intention) → Rempel (the reliance element protected).

Count IV — NSF, breach of duty as accredited certification body. Hempstead and Hanberry (approval and endorsement carry the duty) → FNS (surveillance and delisting are the undertaking) → T.J. Hooper (the industry's uniformity is no shelter). The standard of care is Protocol P335 itself, with its own Annexes.

Count V — SGS, negligent testing. Toman (the testing is SGS's own conduct, and its own conduct is what a certifier answers for) → Warren (failure to meet its own standards for testing, identified as a ground) → Brand Marketing (test data supplied for others' reliance is actionable when wrong).

Count VI — UL, negligent standard creation. Warren (inconsistent interpretation and lack of independence, identified) → Idaho Potato (independence as a condition of holding the mark — the allegations the court remanded for merits) → T.J. Hooper (that every PCR is written this way excuses nothing). The measure is the PCR and the ISO 14025 system UL selected.

Count VII — Smart EPD and Lasso, EPD verification negligence. Idaho Potato (one person in the operator, reviewer, and verifier roles is the independence failure the Lanham Act names) → Warren (lack of independence, identified) → Hanberry (the verifier's signature is the endorsement that induces).

Count VIII — declaratory judgment. Rests on the whole: the declarations sought ask the Court to read the Defendants' own published documents against the measured performance of the products certified under them.

The punitive prayer. Hutchison (available in negligence; subjective appreciation and conscious disregard) → Brand Marketing (the standard applied to a testing laboratory and five million dollars of it affirmed).

Standing. Lujan and Spokeo (the test, stated and met) → Huertas and Cottrell (the binding anchors) → Jevic, John, and Cantor (size, overpayment, and safety recharacterization eliminated) → Brand Marketing (the pass-through is the traceability).

WHAT THIS COURT IS ASKED TO DO

Each authority above is settled, most of it binding, and each applies the rule that already governs. The certifier confers a status and answers for the representation that confers it (Bilt-Rite), and a certifier of this kind has been held liable on negligence alone in this Circuit (Brand Marketing). The undertaking extends the duty to the user who never read the certificate (Farabaugh, Cantwell, FNS, Hempstead), and the mark is the representation that reaches him (Hanberry), on terms that must be independent to hold at all (Idaho Potato). Industry custom is no excuse (T.J. Hooper). A Pennsylvania statute names the conduct without any requirement of intent (Gregg). Where the record shows the certifier appreciated the risk and proceeded, the exposure escalates (Hutchison). The injury is concrete, present, and binding authority in this Circuit says so: a consumer who pays for a certified characteristic the product lacks is worth-less by that much (Huertas), a consumer who cannot use what he paid for is injured in fact (Cottrell), and the size of the loss is immaterial (Jevic; John) — the framework of Lujan and Spokeo satisfied on Plaintiff's own facts. And the mark binds so completely — objectively (Ingrassia, Espenshade), by implied contract (Schenck), as a definite unilateral offer (O'Brien, Cobaugh, Carlill) — that the duty Plaintiff pleads is the inevitable floor beneath it.

No element requires a new rule. Each requires only that the Court apply the rule that already governs. That is what the Complaint asks.