# NOTES

## *Lurenz v. Coca-Cola Company*: Article III and the Obstacles to Environmental Accountability



### I. OVERVIEW

The case of *Lurenz v. Coca-Cola Company* was prematurely dismissed when the court decided the plaintiff lacked standing because an injury was not proven. Plaintiff Joseph Lurenz filed a complaint on December 28, 2022 with the United States District Court, S.D. New York, where he alleged three violations by the defendant involving breach of warranties, trade practices, and false advertising. The plaintiff alleges that the defendants, Coca-Cola Company and their brand Simply Orange Juice, mislabeled their Simply® Tropical juice drink (the Product). The Product is labeled as a drink that has been made "simply" and "all-natural," but, as alleged, it contains other non-simple substances including perfluorooctanoic acid and perfluorooctanesulfonic acid (PFAS), which have undisputed negative health effects, which were not listed as the

Product's ingredients.[1] The plaintiff independently tested the Product from a sample collected in July 2022, the same month in which he had purchased the Product.

The defendants initially sought leave for dismissal under 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction on May 22, 2023.[2] Following this the plaintiff amended the complaint according to the Federal Rules of Civil Procedure 15(a)(1)(B). The amended complaint was filed on July 17, 2023, which was opposed by the defense for lack of subject matter jurisdiction. The claim was dismissed for lack of subject matter jurisdiction due to a lack of standing under Article III of the United States Constitution. The court *held* that the plaintiff did not have standing to bring this case because the plaintiff did not plausibly allege any injury regarding the Product he purchased.[3] Although at this stage in the litigation, during a motion to dismiss for lack of subject matter jurisdiction, the court is to accept pleadings as true, the case was nonetheless dismissed.[4] The court allowed the plaintiff to file a second amended complaint, which was to be due July 10, 2024.[5]

## II. BACKGROUND

### *A. Article III Standing Must Be Found in Federal Court*

In all cases in federal court that present issues lacking Article III standing, plaintiffs must satisfy the three elements of standing.[6] The Constitution of The United States grants the judicial power to the federal courts to hear certain cases if they qualify as a case or controversy.[7] The Supreme Court case *Lujan v. Defenders of Wildlife*, set forth the requirements of Article III standing, which held that for standing the plaintiff must prove three elements. Under the *Lujan* test, the plaintiff must show an injury in fact, a causal connection between the injury and the conduct complained of, and redressability of the injury by a favorable decision.[8] The injury in fact must be "concrete and particularized, actual

1. *PFAS Explained*, ENVIRONMENTAL PROTECTION AGENCY, (last visited Oct. 3, 2024), https://www.epa.gov/pfas/pfas-explained ("PFAS are widely used, long lasting chemicals, components of which break down very slowly over time.").

2. Lurenz v. Coca-Cola Co., No. 22 Civ. 10941, 2024 WL 2943834, at *2 (S.D.N.Y. June 10, 2024).

3. *Id.* at *3.

4. *Id.* at *2, 5.

5. *Id.* at *4.

6. *Id.* at *2.

7. U.S. CONST. art. III.

8. *Lurenz*, 2024 WL 2943834, at *2.

or imminent invasion of a legally protected interest."[9] There must be a causal connection between the injury and the alleged conduct that is fairly traceable to the defendant, rather than to a third party not before the court.[10] Lastly, the injury must be likely to be remedied by a favorable court decision.[11] The Supreme Court determined that the plaintiff bears the burden of proof to support the three elements of standing.[12] The burden of proof standard is adjusted by courts based on the procedural stage of the litigation.[13] The Supreme Court held that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim."[14]

For an injury in fact, the Second Circuit recognizes the price premium theory of injury to satisfy the injury requirement of Article III standing.[15] Price premium injury occurs when a plaintiff sustains a financial injury, paying a premium, as a result of a defendant's deception.[16] In *Axon v. Florida's Natural Growers, Inc.*, the plaintiff brought the action against the defendant for deceptive business practices, false advertising, and unjust enrichment.[17] Florida's Natural Orange Juice (collectively, "Florida's Natural" or "defendant") contains the word "natural" in the name, but the plaintiff asserts this to be deceptive since the product contained traces of glyphosate, an herbicide used to kill weeds.[18] The court held that Axon's failure to identify the prices of competing products to establish the premium was not fatal at the stage of the proceedings. Article III standing was found in this case, accepting the price premium theory of injury.[19]

### *B. Within Article III Standing, the Injury Must be Proven to Avoid Dismissal*

Injury can be proven by alleging in sworn statements that illegal conduct by the defendant caused the plaintiff injury in the form of

9. Lujan v. Defs. of Wildlife, 504 U.S. 555, at 555 (1992).
10. *Id.* at 560.
11. *Id.* at 561.
12. *Id.* at 561.
13. *Id.* at 561.
14. *Id.* at 561.
15. Axon v. Florida's Natural Growers, Inc., 813 Fed. Appx. 701, 703 (2d Cir. 2020).
16. *Id.* at 703-704.
17. *Id.* at 703.
18. *Id.*
19. *Id.* at 703-704.

lessened aesthetic and recreational value.[20] The case *Friends of the Earth, Inc. v. Laidlaw Env't Services, Inc.*, was granted certiorari to resolve inconsistencies between the Fourth Circuit's decision and several other courts of appeals.[21] The Supreme Court in *Laidlaw* addresses Article III standing—which the Court of Appeals assumed without deciding that Friends of the Earth, Inc. (FOE) had standing, which has to be decided to evaluate if the case is moot.[22] Laidlaw attempted to argue that FOE lacked Article III standing because they did not show there was an injury in fact sustained from Laidlaw's activities.[23] However, the Court still found that the plaintiff had Article III standing and pleaded enough to survive a motion for summary judgment.[24] Plaintiff's sworn statements averred things like "Judy Pruitt averred that she lived one-quarter mile from Laidlaw's facility and would like to fish, hike, and picnic along the North Tyger River, but has refrained from those activities because of the discharges."[25] The Court determined that sworn statements alleging lessened aesthetic and recreational value due to the defendant's conduct were not conclusory or mere general averments and, therefore, were enough to adequately document injury in fact for Article III standing.[26]

In the case, *Hicks v. L'Oreal U.S.A, Inc.*, (hereinafter *Hicks I*), plaintiffs claimed the mascara was purchased at a premium with an alleged higher quality and safety than was provided to consumers.[27] *Hicks I* uses the price premium theory of injury, alleging an injury was caused by purchasing the product at a premium price.[28] The Second Circuit has also accepted the price premium theory of injury as part of the injury requirement for standing.[29] A price premium theory of injury is considered a monetary harm that is broadly accepted by the Second Circuit as a concrete injury.[30] The problem does not lie with whether price premium is an injury in this case, but whether sufficient facts have been alleged "[t]o allow the inference that the mascaras they individually

20. Friends of the Earth, Inc. v. Laidlaw Env't Services (TOC), Inc., 528 U.S. 167, at 183 (2000).
21. *Id.* at 179.
22. *Id.* at 180.
23. *Id.* at 181.
24. *Id.* at 184-85.
25. *Id.* at 182.
26. *Id.* at 183.
27. Hicks v. L'Oreal U.S.A., Inc., 22 Civ. 1989 (JPC), 2023 WL 6386847, at *4 (S.D.N.Y. 2023).
28. *Id.* at *7.
29. *Id.*
30. *Id.*

purchased in fact contained PFAS, or that there was a material risk that they did."[31] In the original *Hicks* opinion, the issue of alleging the material risk that the mascaras contained PFAS was not satisfied because it was too vague in describing how many products were tested and what percent of the products contained fluorine, and was not able to conclude that the presence of fluorine actually indicted a presence of PFAS.[32] Hicks' second amended complaint alleges the October 2023 testing, conducted by a different independent laboratory and more comprehensive than the late 2021 testing, helps address concerns about the earlier tests.[33] *Hicks'* (hereinafter *Hicks II*) complaint now details "how many products were tested (one tube for each of the five Products), whether the tests revealed the presence of PFAS (they did), the percentage of the tested samples that had PFAS (100 percent), and the general timeframe of the testing (late 2021)."[34] The results of the October 2023 tests support a plausible inference that PFAS contamination was widespread in the products as far back as late 2021.[35] In *Hicks II* the Southern District of New York (S.D.N.Y) concluded that Hicks did in fact have Article III standing on a price premium theory of injury.[36]

Injury can be proven and withstand dismissal for lack of standing at the pleading stage, by meeting the low threshold of injury since the pleadings at this stage of litigation are to be taken as true.[37] The Second Circuit held that Article III standing existed and remanded *John v. Whole Foods* for further proceedings after it was dismissed by the S.D.N.Y. due to a lack of standing.[38] It was concluded that the plaintiff, in fact, had Article III standing that made the case's previous dismissal improper.[39] Article III standing was satisfied when the plaintiff alleged that Whole Foods had been mislabeling their packaged food, which led to him purchasing products at a greater price under the price premium injury theory because he suffered a financial loss.[40] The complaint contained a press release from The Department of Consumer Affairs Investigation (DCA) stating their findings that eighty-nine percent of the packages they

31. *Id.*
32. *Id.*
33. Hicks v. L'Oreal U.S.A., Inc., 22 Civ. 1989 (JPC), 2024 WL 4252498, at *11 (S.D.N.Y. 2024).
34. *Id.* at *11.
35. *Id.*
36. *Id.*
37. John v. Whole Foods Mkt. Grp., Inc., 858 F.3d 732, 737-738 (2d Cir. 2017).
38. *Id.* at 735.
39. *Id.* at 735-36.
40. *Id.* at 734, 736.

tested failed the maximum weight test set by the federal government.[41] At the pleading stage, the court concluded that the plaintiff was not required to prove the accuracy of the DCA's findings that were included in his complaint for the court to hold there was Article III standing for an injury in fact.[42] The court found that there was no evidentiary burden on the plaintiff during this stage of the pleadings, which is why the court found that the general factual allegations of injuries resulting from Whole Foods' actions are enough at this stage.[43] When reviewing Article III standing, the court stated that the pleading "'must be supported . . . with the manner and degree of evidence required at the successive stages of the litigation.'"[44] Since the defendant Whole Foods brings only a facial challenge to the plaintiff's claims, there was no burden to provide evidence at that stage in the litigation.[45] The court ultimately held that the plaintiff had standing since he had met the threshold to plead injury in fact at the pleading stage of litigation.[46]

## III. COURT'S DECISION

In the noted case, the United States District Court for the S.D.N.Y. decided whether the elements of Article III Standing were present at the pleading stage and held that there was no injury in fact suffered by the plaintiff under the price premium theory.[47] The S.D.N.Y. reasons that even at this stage in the litigation, there were not enough facts pleaded by the plaintiff to plausibly allege he personally suffered any injury.[48] When determining Article III standing, which is a threshold matter, the court focused on the injury element of standing and determined it had not been met.[49] For Article III standing to be found, courts use the elements set forth by *Lujan* which state the "Plaintiff must establish: (1) an injury in fact, (2) causal connection between the injury and the conduct complained of; and (3) likely redressability of the injury by a 'favorable decision.'"[50]

The court took issue with the plaintiff's claim for an injury under the elements of standing because they concluded the testing was not sufficient

41. *Id.* at 734.
42. *Id.* at 737.
43. *Id.* at 736.
44. *Id.*
45. *Id.*
46. *Id.* at 737-38.
47. Lurenz v. Coca-Cola Co., No. 22 Civ. 10941, 2024 WL 2943834, at *2 (S.D.N.Y. June 10, 2024).
48. *Id.* at *3.
49. *Id.* at *4.
50. *Id.* at *2.

to show that it was meaningfully linked to the actual purchased Product.[51] When evaluating injury at the pleading stage, the court explains that the standard of review is lenient, but draws the line at conclusory allegations of injury or drawing unwarranted inferences.[52] To survive summary judgment, the court concluded it was not detrimental to Lurenz that he did not test the exact Product that he purchased.[53] The plaintiff provided evidence of independent testing conducted on a sample bought in July of 2022, the same month in which he purchased the Product that contained concerning levels of PFAS.[54] However, it was ultimately decided that the evidence of testing the plaintiff provides did not plausibly demonstrate that the presence of PFAS in the Product is so pervasive that it would be reasonable to conclude the plaintiff likely bought a mislabeled Product at least once.[55] Even though at the pleading stage the court must take the facts alleged by the plaintiff as true, the court held that the inferences to be drawn from the facts must be plausible.[56] Since the plaintiff failed to allege the tested sample was from a store he frequented and regularly made purchases of the Product, the court concluded that the evidence did not prove that the presence of PFAS was pervasive or systematic in order to prove an injury.[57] The court ultimately granted the defendant's motion to dismiss but gave the plaintiff the right to a second amended complaint.[58]

## IV. ANALYSIS AND CRITICISM

Environmental claims are brought by concerned plaintiffs impacted by contamination, damage, and other grave concerns impacting the environment and people's health. To bring such claims in federal court, Article III standing has long been a barrier to environmental legislation, as the nature of such claims can make it difficult to prove an injury in fact. The plaintiff has to suffer the injury in order to bring such claims.[59] In the noted case, the S.D.N.Y. incorrectly applied the threshold requirements

51. *Id.* at *4.
52. *Id.* at *2.
53. *Id.* at *3.
54. *Id.* at *1.
55. *Id.* at *3.
56. *Id.*
57. *Id.*
58. *Id.* at *5 (noting that the court permitted the plaintiff to file a second amended complaint, which was filed timely; the S.D.N.Y has yet to issue a decision on the second amended complaint).
59. Lujan v. Defs. of Wildlife, 504 U.S. 555, at 560 (1992).

for Article III standing at the pleading stage.[60] This Note argues that the court erred in dismissing the plaintiff's case for lack of Article III standing at the pleading stage, due to the court's improper application of the threshold required for an injury, and in ignoring precedent from relevant case law that supports the plaintiff's allegations meeting the requirements.

### *A. Misapplication of Pleading Standards: Demanding Proof Beyond the Plausibility Threshold*

The United States District Court for the Southern District of New York has had a history of dismissing environmental claims for lack of standing at the pleading stage as evidenced in *John v. Whole Foods*.[61] The S.D.N.Y. overlooked the low threshold required for injury when evaluating the plaintiff's alleged injury required for standing.[62] The Second Circuit concluded the plaintiff was not required to prove the accuracy of the evidence in their complaint at the pleading stage.[63] The plaintiff alleged the injury in fact was paying a higher price on mislabeled products at Whole Foods; however, he does not identify specific foods that were subsequently overcharged due to the mislabeling.[64] In the noted case, the plaintiff alleges the specific Product that was mislabeled, the Simply® Tropical juice drink, which asserts on the label that it was made "simply" with "all-natural" ingredients, but, if the plaintiff's testing results are taken as fact, contained PFAS.[65] The S.D.N.Y. looks at complaints through such a lens that it disregards the low threshold that has been set by courts for determining if a complaint has alleged an injury at the pleading stage.[66] As the Second Circuit stated, they are to take the allegations as true by drawing all reasonable inferences in the plaintiff's favor, which concluded that John had overpaid for at least one product.[67] In the noted case, the plaintiff alleged that he purchased both the original Product and the tested Product in July of 2022 on separate occasions.[68] There are two instances alleged in which the plaintiff purchased the product in just one month; however, the S.D.N.Y. concluded that it was likely that Lurenz only purchased mislabeled products and therefore this

60. *See Lurenz*, 2024 WL 2943834, at *2-4.
61. *John*, 858 F.3d at 735.
62. *Id.* at 737-38.
63. *Id.* at 737.
64. *Id.* at 734.
65. *Lurenz*, 2024 WL 2943834, at *1.
66. *See id.* at *1.
67. *John*, 858 F.3d at 737.
68. *Lurenz*, 2024 WL 2943834, at *4.

was not enough to meet the threshold for injury in fact at the pleading stage.[69] The S.D.N.Y. in *Lurenz* incorrectly determined that the plaintiff did not allege enough facts for the court to assume his case to be true.[70] If the claims made by Lurenz are to be taken as true, which is required of the pleading stage, it would be incorrect for the S.D.N.Y. to conclude that there were not enough facts alleged to meet the threshold for injury at this stage.[71] The pleading stage, being so early on in litigation, leads the courts to reach a lower threshold when determining if there is an alleged injury. When the courts apply different thresholds to finding Article III standing, it leads to inconsistent outcomes in caselaw, especially those arising from environmental litigation like the cases evidenced.

### *B. Rejecting Allegations When Claims Meet Requirements*

For courts to accept the allegations in the pleadings as true, the allegations cannot offer general averments and conclusory allegations.[72] The Supreme Court of the United States held in *Friends of the Earth v. Laidlaw* that sworn statements by residents of the community adequately documented injury in fact.[73] The Court held FOE had Article III standing because the statements swearing aesthetic and recreational values of the area were lessened by Laidlaw's conduct.[74] The Court refers to the holding in *Lujan*, which stated that plaintiffs could not survive summary judgment by simply offering general averments and conclusory allegations, which they determined was not the case for the sworn testimonies provided by FOE.[75] The sworn statements of residents provided by FOE aver that the affected area's aesthetic and recreational values had been lessened by Laidlaw's activities.[76] The Court found that it was correct of the District Court for the District of South Carolina to conclude it was not improbable that Laidlaw's continued discharge of pollutants would cause real economic and aesthetic harm.[77] Both the noted case and *Laidlaw* rely on economic injury to the plaintiffs to allege injury in fact.[78] In the noted case, the plaintiff asserts that by purchasing

69. *Id.*
70. *See id.*
71. *See John*, 858 F.3d at 737.
72. *Laidlaw*, 528 U.S. at 705.
73. *Id.* at 705.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.* at 706.
78. *Lurenz*, 2024 WL 2943834, at *1; *Laidlaw*, 528 U.S. at 698.

the mislabeled Product he suffered economic harm due to paying a heightened price for a product that purports to be "all-natural."[79] The tested Product, purchased in July 2022, contained multiple substances that are more commonly referred to collectively as PFAS[80]—specifically, the chemical compounds perfluorooctanoic acid and perfluorooctanesulfonic acid.[81]The noted case alleges an economic injury due to chemicals being present in the tested Product.[82] This can be paralleled to the situation in *Laidlaw*, where plaintiffs allege the pollutant discharged into the river had impacted them economically.[83] Applying the same standards as the Court in *Laidlaw*, it would be acceptable to conclude that Lurenz's allegations were not mere general averments or conclusory allegations.[84] As explained by the Court in *Lujan*, a general averment must specify facts of injury not to be deemed to constitute a general averment.[85] By the standards set by the Court in both *Lujan* and *Laidlaw*, it should have been concluded that Lurenz's pleadings included enough specific facts to withstand the motion for summary judgment.[86]

### *C. Recognizing Injury-in-Fact: Why the Plaintiff's Alleged Injury Qualifies Under Article III*

Courts often lack uniformity in applying Article III standing, leaving similar cases with inconsistent outcomes. In *Axon*, a case arising from the Eastern District of New York (E.D.N.Y), the United States Court of Appeals for the Second Circuit applies a lower threshold for showing a price premium theory of injury at the pleading stage. In *Hicks*, the S.D.N.Y holds there is Article III standing even though the products tested were not the same products used by the plaintiffs. By reviewing *Axon* and *Hicks* it is apparent that there are inconsistencies when applying Article III standing at the pleading stage as evidenced by the S.D.N.Y decision in the noted case.[87]

The United States Court of Appeals for the Second Circuit, reviewing the requirement of Article III standing, finds standing because, by purchasing products that bore misleading labels, the plaintiff sustained

79. *Lurenz*, 2024 WL 2943834, at *1.
80. *Id.*
81. *Id.*
82. *Id.*
83. *See Laidlaw*, 528 U.S. at 698.
84. *See id.*
85. Lujan v. Defs. of Wildlife, 504 U.S. 555, at 561 (1992).
86. *See id.* at 562; *see Laidlaw*, 528 U.S. at 705.
87. *See Lurenz*, 2024 WL 2943834, at *4.

a price premium injury.[88] By alleging that the defendant's deception led to the price of the product being inflated, the court decides that the threshold of a price premium theory of injury is satisfied.[89] In *Axon* the packaging does not describe it as "natural"; the term "natural" only occurred in the brand's name.[90] The court in *Axon* explained that even though the orange juice was not described as "natural" on a stand-alone label, that does not mean the brand's name cannot be considered misleading enough for the standing threshold.[91] Although it was the brand's name, rather than the label, that marked the product as Florida's "Natural" in *Axon*, the court still found it misleading enough for the plaintiff to establish injury under a price premium theory by having purchased the products.[92] In *Axon*, these factors are what led the court to determine that the plaintiff did have standing; however, the court in *Lurenz* applied these facts differently, and held there was no Article III standing.[93] In the noted case, the Product in fact on its stand-alone label is described as an "'All Natural' juice drink that is 'made simply' with 'all-natural ingredients.'"[94] In the noted case in an attempt to establish a price premium theory of injury, the plaintiff alleges he paid more for the product due to the Product bearing allegedly misleading labels.[95] The court in *Lurenz* failed to accept this argument.[96]

The price premium theory of injury was also accepted in *Hicks I*, decided by the S.D.N.Y. shortly after *Lurenz*, even though the products tested were not the actual product purchased by one of the plaintiffs.[97] *Hicks I* concludes that plaintiffs may establish the presence of a contaminant through indirect evidence, provided they adequately connect independent testing results from the same product line to the product they purchased.[98] This approach allows plaintiffs to assert an injury-in-fact without direct product testing.[99] However, to establish Article III standing, plaintiffs must establish a strong link between independent testing and the

88. *Axon*, 813 Fed. Appx. at 703-4.
89. *Id.* at 704.
90. *Id.* at 705.
91. *Id.*
92. *Id.* at 704.
93. *Axon*, 813 Fed. Appx. at 704; *see Lurenz*, 2024 WL 2943834, at *4.
94. *Lurenz*, 2024 WL 2943834, at *1.
95. *Id.* at *2.
96. *Id.* at *3.
97. *Hicks*, 2023 WL 6386847, at *10 (S.D.N.Y. 2023).
98. *Id.* at * 9.
99. *Id.*

purchased product, showing a meaningful connection.[100] A meaningful connection can be established by temporal proximity.[101] The S.D.N.Y. contends that temporal proximity is most significant when the products tested are not the actual product purchased.[102] However, the S.D.N.Y. in *Lurenz* contended that temporal proximity between the testing and the purchase is not sufficient to support an inference at the pleading stage that PFAS are pervasive enough in other Products.[103] Following the additions to the amended complaint in *Hicks II*, L'Oréal acknowledges that the plaintiffs has sufficient standing based on the subsequent testing.[104]

The noted case will impact Article III standing requirements for following PFAS and other environmental claims arising in the S.D.N.Y as well as other courts that may look to *Lurenz*'s strict interpretation of Article III standing at the pleading stage to dismiss environmental claims. The holding in the noted case further narrowed the injury requirements set forth by *Lujan*. The impact of these legislative decisions creates further difficulties for plaintiffs bringing environmental claims.

## V. CONCLUSION

The court in *Lurenz* has set a precedent that will further restrain environmental claims from surviving summary judgment at the pleading stage. At the pleading stage, where alleged facts are to be assumed true, the court raised its threshold and concluded that the allegations were not enough for the court to assume it was more than likely that one purchased product was mislabeled.[105] The threshold plaintiffs have to cross keeps moving further out of reach which is exacerbated by courts misinterpreting case law when requirements of standing were in fact shown by the plaintiff.[106] As threats and concerns for the environment

100. *Id.*
101. *Id.* at *10.
102. *Id.*
103. *Lurenz*, 2024 WL 2943834, at *4.
104. *Hicks II*, 2024 WL 4252498, at *8.
105. John v. Whole Foods Mkt. Grp., Inc., 858 F.3d 732, 737-738 (2d Cir. 2017).
106. *See Laidlaw*, 528 U.S. 167, at 183 (2000).

grow, it is imperative that courts consistently apply the elements of Article III standing to such cases that are brought in federal court. Without consistently applying the standards the difficulty of addressing environmental claims will only increase.[107]

Caroline L. Hicks*

107. *See generally Lujan*, 504 U.S. 555, 555 (1992).

* © Caroline Hicks, J.D. Candidate 2026, Tulane University Law School; B.A. International Studies 2023, The University of Alabama. The author would like to thank Professor Adam Babich and the editorial staff of the *Tulane Environmental Law Journal* for help on this piece.