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MAYOR AND CITY COUNCIL	*	
OF BALTIMORE	*	**IN THE**
Plaintiff,	*	**CIRCUIT COURT**
v.	*	**FOR**
PHILLIP MORRIS USA, INC.,	*	**BALTIMORE CITY**
R.J. REYNOLDS TOBACCO COMPANY,	*	**CASE NO: 24-C-22-004904**
LIGGETT GROUP LLC,	*	
AND	*	
THE GEORGE J. FALTER COMPANY	*	
Defendants.	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION AND COURT ORDER

INTRODUCTION

On or about November 21, 2022, this action was brought by Mayor and City Council of Baltimore (hereinafter "Plaintiff") against Philip Morris USA, Inc., Altria Group, R.J. Reynolds Tobacco Company, British American Tobacco P.L.C., Liggett Group LLC, and The George J. Falter Company (hereinafter "Defendants") The majority of Defendants advertise and sell cigarettes in the United States. The George J. Falter Company advertises, distributes, and sells cigarettes in Baltimore City.

In Count I through Count V, Plaintiff alleges that Defendants violate Baltimore City Health Code §§ 7-606, 7-607, 7-608, 7-609, and 7-702. They assert that Defendants knowingly choose to manufacture cigarettes with non-biodegradable filters, despite the harm cigarette filter litter causes to the environment. According to the Complaint, "an exorbitant amount of cigarette filters

are littered along sidewalks, streets, waterways, and other public areas." Complaint, *Mayor and City Council of Baltimore v. Phillip Morris, USA, Inc., et al.*, Case No. 24-C-22-004904 (hereinafter "Complaint") at 13. Plaintiff also claims the litter lowered property values leading to loss of income from property and sales tax. *Id.*

In Counts VII (Strict Liability for Design Defect) and VIII (Negligent Design Defect), Plaintiff claims the Defendants design, manufacture, and sell filtered cigarettes, knowing the long-lasting negative impact the components of the filters have on the environment and the rate at which smokers litter these filters. Complaint at 14-15. Plaintiff further explains that cigarette manufactures deliberately use cellulose acetate-based filters, which are non-biodegradable, because their customers preferred the "draw of the plastic filter." Complaint at 15. The Defendants' filter of choice lengthens the amount of time a cigarette filter will remain in the environment, and Defendants "knew that the plastic filter gave the appearance of biodegradability." Plaintiff claims that smokers litter filters on the ground because they "are under the impression that the wrappers and filters will decompose in the environment." Complaint at 15 -16.

Count X (Strict Liability Failure to Warn) and Count XI (Negligent Failure to Warn) allege that despite knowing that cigarette smokers will litter cigarette filters on the ground, due to their appearance, Defendants failed to educate the public about the danger discarded cigarette filters pose to the environment. Plaintiff further asserts that Defendants misrepresented to Baltimore City residents that the true compounds of the cigarette filters are toxic to the environment. Complaint at 15-16. "[I]nstead of addressing the problem at the source, Defendants directed modest efforts to "largely ineffective anti-littering campaigns." Complaint at 16. In addition, Plaintiff faults Defendants for failing to include warnings on cigarette packages that alert consumers that cigarette

filters are toxic to the environment and to inform the consumers that they "must properly dispose of them." Complaint at 16.

Plaintiff claims that cigarette filter litter costs millions of dollars to cleanup. Complaint at 18. Plaintiff uses resources, such as the Trash Wheel located in Baltimore City, to clean the streets, storm drains, sewers, and water. Since The Trash Wheel initiated operations in 2014, it has collected 11,935,098 cigarette filters and Plaintiff estimates that they have paid $32 million "on collecting and disposing litter into landfills." *Id.*

Counts IX (Public Nuisance) and Count VI (Continuing Trespass) will be discussed below.

PROCEDURAL HISTORY

On February 3, 2023, Defendant Philip Morris USA, Inc. filed a Notice of Filing of Removal to the United States District Court of Maryland. On January 19, 2024, the Honorable Judge Julie R. Rubin signed an Order remanding this case to the Circuit Court for Baltimore City. On February 5, 2024, a Stipulation of Dismissal was entered for Defendant Altria Group, Inc. On March 19, 2024, Defendant British American Tobacco P.L.C. filed a Motion to Dismiss the Complaint for lack of personal jurisdiction. The same day, Defendants Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; Liggett Group, LLC; and The George J. Falter Company jointly filed a Motion to Dismiss for failure to state a claim. On May 2, 2024, a Stipulation of Dismissal was entered against British American Tobacco Company. On May 10, 2024, Plaintiff filed an Opposition to Certain Defendants' Joint Motion to Dismiss. On July 17, 2024, there was a hearing on Defendants Motion to Dismiss. The Court gave counsel thirty days to file a supplemental argument.

On November 5, 2024, Defendants filed Notice of Supplemental Authority in Support of Motion to Dismiss for Failure to State a Claim. On November 14, 2024, Plaintiff filed a Response to Defendant's Notice of Supplemental Authority. On November 15, 2025, Defendants filed an Opposition to Plaintiff's Motion for Leave to file Memorandum in Support of Opposition to Notice of Supplemental Authority. On March 31, 2025, Defendants filed Notice of Certified Public Nuisance questions to be decided by the Supreme Court of Maryland.

This Order will address the Certain Defendants' Joint Motion to Dismiss for Failure to State a Claim filed on May 10, 2024, premised on the following issues before this court:

1) Whether Plaintiff's claims are preempted by State and Federal law
2) Whether the City's littering claims fail
3) Whether the City's tort claims are barred by the Master Settlement Agreement
4) Whether the City's tort claims are barred by the statute of limitations
5) Whether the City has adequately pled proximate causation
6) Whether the City has stated a claim for continuing trespass
7) Whether the City has stated a claim for design defect (Counts VII and VIII)
8) Whether the City has stated a claim for failure to warn (Counts X and XI)
9) Whether the City has stated a claim for public nuisance (Count IX).

LEGAL STANDARD

Maryland Rule 2-322(b)(2) permits a defendant to seek dismissal of a complaint if it "fails to state a claim upon which relief can be granted." Pursuant to Maryland Rule 2-322(c), the court may grant a motion to dismiss for failure to state a claim. While generally confining its analysis to the "four corners of the complaint and its incorporated supporting exhibits," if any, the trial

court may grant a motion "only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action for which relief may be granted." *Floyd v. Mayor and City Council of Baltimore*, 463 Md. 226, 241 (2019).

ANALYSIS

1. Whether Plaintiff's claims are preempted by state and federal law

a. State Law

Defendants argue that Plaintiff's Complaint seeks to "dictate cigarette design and labeling and punish Defendants for the sale of products that both the state and federal government have concluded may be sold in their current form without interference from local government." Motion to Dismiss, *Mayor and City Council of Baltimore v. Phillip Morris USA, Inc., et al.*, Case No. 24-C-22-004904 (hereinafter "Motion to Dismiss") at 6. Defendants assert that Maryland Code, Business Regulation § 16-602 preempts Plaintiff's claims relating to the design of cigarette filters. They further assert that the Complaint attempts to regulate cigarette filter design, because they are not biodegradable.

Maryland laws' ability to preempt local law has previously been addressed by a Maryland court. *Altadis U.S.A., Inc. et al. v. Prince George's County*, 431 Md. 307, 308 (2013). In *Altadis*, Petitioners challenged the validity of two Prince George's County ordinances regulating the packaging, sale, or other distribution of cigars. Those ordinances prohibited the sale, distribution, or gift, by a retailer, wholesaler, or their agent or employee, of individual or "unpackaged" cigars. *Id.*

The Court explained that "Maryland law may preempt local law in one of three ways: 1. preemption by conflict, 2. express preemption, or 3. implied preemption." Implied preemption or preemption by occupation, is the principle that the General Assembly may occupy a particular field

so extensively as to preclude local legislation. The defendant in *Altadis* contended that state law impliedly preempts local laws purporting to regulate the packaging and sale of tobacco products. *Id.* at 311.

Unlike the county government conduct in *Altadis*, Plaintiff has not enacted any new legislation or ordinances attempting to regulate the sale, manufacture, or distribution of cigarettes. Plaintiff's eleven (11) count Complaint is grounded in the following criminal and civil causes of action:

a. Count I: Violation of the Maryland Illegal Dumping and Litter Control Law, MD. CODE ANN., CRIM. LAW §10-110
b. Counts II, III, IV, and V: Violations of the Baltimore City Code §§ 7-606 and 7-607, 7-608, 7-609, and 7-702
c. Count VI: Continuing Trespass
d. Count VII: Strict Liability for Design Defect
e. Count VIII: Negligent Design Defect
f. Count IX: Public Nuisance
g. Count X: Strict Liability- Failure to Warn
h. Count XI: Negligent Failure to Warn

Further, the Maryland Code prohibits manufacturing, selling, or offering for sale cigarettes unless they have been tested in accordance with testing method and meet performance standards in the statute. MD. CODE, BUSINESS REGULATION § 16-602. These standards primarily address fire prevention and safety, not environmental concerns. Title 16 regulates business licenses, tobacco product vending machines, the tobacco product manufacturers escrow act, escrow requirements, and fire safety performance standards. The statute does not address environmental

standards, nor does it establish authority of a state agency to address environmental concerns or standards. There is simply no evidence that the state legislature has acted with such force in the area of cigarette filters and the environment that manifests an intent by the State to occupy the entire field. Maryland courts have previously ruled on the issue of preemption. *Fogle v. H&G Restaurant, Inc. et. al*, 337 Md. 441 (2005). In *Fogle*, the Supreme Court of Maryland declined to find that the regulation regarding smoking in the workplace was preempted by the General Assembly, because "it has not regulated smoking in a so all-encompassing a fashion as to suggest that it meant to reserve for itself for direct legislative action all regulation of smoking." *Id.* at 464.

This Court finds that the Complaint is not preempted by State law as Plaintiff does not seek to create new laws through this Complaint, and further the statute relied upon does not regulate environmental standards, or establish authority of a state agency to do so.

b. Federal Law

Defendants contend Plaintiff's actions are preempted by The Family Smoking Prevention and Tobacco Control Act of 2009, 21 U.S.C. § 387 (hereinafter "Tobacco Control Act") and the Federal Cigarette Labeling and Advertising Act.

The Tobacco Control Act states:

> Except as provided in paragraph (2)(A) nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to access to, advertising and promotion of, or use of tobacco products by individuals of any age…

21 U.S.C. § 387p.(a)(1).

The Tobacco Control Act further states:

> No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

21 U.S.C. § 387p.(a)(2)(A).

In light of the above provisions, Defendants assert Plaintiff's claims are preempted by federal law. However, Plaintiff does not seek to alter the current design or label on cigarettes. This Complaint does not establish a new requirement; it seeks compensatory damages for losses, past, present and future, for damage to Baltimore City's infrastructure, land, and natural resources, including the economic impact to Baltimore City from loss of environmental health. Plaintiff also seeks equitable relief, criminal penalties including fines for violations of the Annotated Code and Baltimore City Code, punitive damages, and injunctive relief in the form of court orders mandating the immediate and complete abatement and remediation of all Baltimore City property damaged by cigarette litter, and disgorgement of profits. The Complaint further seeks Plaintiff's attorneys' fees and costs of suit. Complaint at 46-47. There simply is no evidence that this Complaint seeks to regulate the manufacture, distribution, labeling, or design of cigarette filters.

Although the Tobacco Control Act precludes a state from establishing or continuing any requirement that is different from those established by the Tobacco Control Act related to tobacco standards, premarket review, labeling, etc., the Plaintiff's claims address the cost Baltimore City incurs as a result of the non-biodegradable filters used by Defendants. Plaintiff challenges the cigarette filter, because it allegedly contaminates the City's soil, and litters the City of Baltimore's property and water. The Tobacco Control Act does not address environmental claims, nor does it preclude state or local claims arising out of current product standards.

Defendants also contend that Count X (Strict Liability Failure to Warn) and Count XI (Negligent Failure to Warn) of the Complaint are preempted by the Federal Cigarette Labeling and Advertising Act 15 U.S.C. § 1331. The purpose of the Act is as follows:

> [to] establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby (1) the public may be adequately informed about any adverse health effects of cigarette smoking by the inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and (2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

15 U.S.C. § 1331.

Counts X and XI of the Complaint do not mention the warning labels on cigarette packages or advertisements. Rather, Count X (Strict Liability Failure to Warn) states

> Defendants, and each of them were required to issue adequate warnings to Baltimore City, the public, consumers, and public officials of the reasonably foreseeable or knowable severe risks posed by the inevitable use and litter of their filtered cigarettes, defective and dangerous products when used as intended or in a foreseeable manner.

Complaint at 42.

The Complaint goes further to assert that

> Defendants knew, based on information passed to them and/or from the scientific community, of the environmental consequences inherently caused by the normal use and operation of their filtered cigarettes, including the likelihood that discarded cigarette filters would contaminate the soil and groundwater, hamper plant growth, pollute waterways, deteriorate critical aquatic habitats and ecosystems, poison pets, wildlife, and fish, and the associated consequences of those physical and environmental changes . . . .

Id.

Defendants were required to warn of and instruct Plaintiff about dangers. Complaint at 42.

Count XI (Negligent Failure to Warn) of the Complaint is similarly worded.

> Throughout the times at issue, Defendants breached their duty of care by failing to adequately warn Baltimore City of the environmental consequences that would inevitably flow from the intended use of their filtered cigarettes.
>
> Given the probable losses presented by the environmental consequences that inevitably flow from the normal use of filtered cigarettes, a reasonable designer, manufacturer, marketer, seller, distributor, or other participant responsible for introducing filtered cigarettes into the stream of commerce, would have warned the City of those known, inevitable environmental consequences and financial loses.

Complaint at 45.

Counts X and XI of the Complaint do not discuss health consequences associated with warning labels or advertisements. Rather, the Complaint suggests that the Defendants failed to warn, in any manner, the City or public about the impact of nonbiodegradable cigarette filters on the environment. The Complaint does not implicate the adequacy of the warning labels on cigarette packages.

In addition, the Tobacco Control Act pertains to labeling and required warnings on cigarettes packages, as well as advertisements related to health concerns to include lung cancer, heart disease, emphysema, dangers to pregnant women, and carbon monoxide. 15 U.S.C. §1333. The current labeling requirements and warnings do not reference the environment. The Complaint focuses on environmental concerns and consequences arising out of non-biodegradable filters, not the health risks addressed in 15 U.S.C. §1333; therefore, the Complaint is not preempted by federal law.

2. Whether the City's littering claims fail

In Count I through Count IV, Plaintiff alleges violations of Maryland State littering codes and the Baltimore City Health Code.

a. Count I: Violation of Maryland Code Annotated, Criminal Law §10-110

In Count I of the Complaint, Plaintiff alleges that Defendants violated a portion of the Maryland Code which provides the following:

> A person may not: (1) dispose of litter on a highway or perform an act that violates the State Vehicle Laws regarding disposal of litter, glass, and other prohibited substances on highways; or (2) dispose or cause or allow the disposal of litter on public or private property unless: (i) the property is designated by the State for the disposal of liter and the person is authorized by the proper public authority to use the property; or (ii) the litter is placed in a litter receptacle or container installed on the property.

MD. CODE ANN., CRIM. LAW § 10-110(c).

Plaintiff argues Defendants are responsible for over 500 pounds of litter. Further, "the acts and omissions, including the release and migration of filtered cigarettes into and onto Baltimore City lands, violate that statute and constitute unlawful littering." Complaint at 20. Therefore, pursuant to MD. CODE ANN., CRIM. LAW § 10-110(2)(iii), if convicted, the Defendants, are guilty of a misdemeanor and subject to imprisonment not exceeding five years or a fine not exceeding $30,000 or both. In addition to the penalties listed in the previous sentence, a court may order the violator to:

> (i) remove or render harmless the litter disposed of in violation of this section; (ii) repair or restore property damaged by, or pay damages for, the disposal of the litter in violation of this section; (iii) perform public service relating to the removal of litter disposed of in violation of this section or to the restoration of an area polluted by litter disposed of in violation of this section; or (iv) reimburse the State, county, municipal corporation, or bi-county unit for its costs incurred in removing the litter disposed of in violation.

MD. RULES, RULE 4-202. Charging Documents – Use (a).

According to Maryland Rule 4-201, "an offense shall be tried only on a charging document." MD. RULES, RULE 4-201(a). It also provides:

> (b) In the District Court. In the District Court, an offense may be tried (1) on an information, (2) on a statement of charges filed pursuant to section (b) Rule 4-211, or (3) on a citation in the case of a petty offense when authorized by statute.
> (c) In the Circuit Court. In the Circuit Court, an offense may be tried (1) on an indictment, or (2) on an information if the offense is (A) a misdemeanor, or (B) a felony within the jurisdiction of the District Court, or (C) any other felony and lesser included offense if the defendant consents in writing to be charged by information, or if the defendant has been charged with a felony and a preliminary hearing pursuant to Rule 4-221 has resulted in a finding of probable cause.

MD. RULES, RULE 4-201(b)-(c).

There is no evidence that Plaintiff has filed a Statement of Charges, demonstrating probable cause, a criminal information, or indictment. In addition, the Maryland Rules set forth the contents of a charging document which include "the name of the Defendant, concise and definite statement of the essential facts of the offense with which the Defendant is charged, and with reasonable particularity, the time and place the offense occurred." MD. RULES, RULE 4-202. The rule also mandates that the charging document shall contain a notice to the defendant that explains the rights that accused has upon arrest or being served with a citation or summons.

The Complaint is not in compliance with the Maryland Rules, and thus Count I of the Complaint is dismissed.

b. Count II- Violation of the Baltimore City Health Code §§ 7-606 and 7-607

The Baltimore City Health Code states that "no person may dispose of any waste or other material except: (1) in a receptacle and at a location approved by law for waste disposal; (2) at a

licensed landfill; or (3) at any other disposal site authorized by law to receive waste." BALT. CITY CODE, HEALTH § 7-606.

The Baltimore City Health Code further provides:

> (a) In general. No person may dispose of or permit to discharge or flow onto any public or private property, with or without the owner's permission, any liquid or solid matter that is or that, after exposure to the atmosphere or otherwise, is likely to become offensive or otherwise a nuisance
> (b) Illustrations. This section applies to, among other things, any: (1) blood; (2) refuse coal oil; (3) dead animal or part of an animal; (4) domestic or sanitary sewage; (5) excrement; (6) filth; (7) foul or nauseous liquid.

BALT. CITY CODE, HEALTH § 7-607.

c. Count III: Violation of the Baltimore City Code § 7-608

In Count III of the Complaint, Plaintiff alleges a violation of another section the Baltimore City Health Code that specifically prohibits a person from dumping on public property. It states,

> No person may dump or dispose of any garbage, waste, wire, glass, nails, or any other matter (1) in or on any gutter, sidewalk, street, open space, wharf, or other public place; or (2) except for litter, as defined in Subtitle 7 of this title, into any public trash receptacle located on or along any sidewalk street, open space, wharf, or other public place.

BALT. CITY CODE, HEALTH § 7-608.

d. Count IV: Violation of the Baltimore City Code § 7-609

In Count IV of the Complaint, Plaintiff alleges a violation of a section of the Baltimore City Health Code that prohibits individuals from dumping on private property. The section provides that "no person may dump or otherwise dispose of any earth, dirt, sand, ashes, gravel, rocks, garbage, waste or any other matter on any private property, including in or near any waste

receptacle on the property, without the permission of the property owner or the owner's agent." BALT. CITY CODE, HEALTH § 7-609.

Pursuant to the Baltimore City Health Code,

> [a]ny person who, in violation of § 7-608 {"Dumping on public property"} of this subtitle, or in violation of any other provision of law, dumps or otherwise disposes of matter in or on property owned, leased, or controlled by the City is liable to the City for the costs of (1) removing the matter dumped or disposed of; and (2) repairing any damage caused by the dumping or disposal.

BALT. CITY CODE, HEALTH § 7-628.

According to Baltimore City Health Code § 7-631, the Baltimore City Code, Health Title 7, Subtitle 6 may be enforced by the issuance of (1) an environmental citation under City Code Article 1, Subtitle 40 {"Environmental Control Board"}; or (2) a civil citation under Baltimore City Code Article 1, Subtitle 41 {"Civil Citations"}.

There is no evidence that Plaintiff has complied with Baltimore Health Code § 7-631. There is no mention that Plaintiff issued a civil or environmental citation that would have placed the Defendants on notice of the violations. Contrary to Plaintiff's argument, while Baltimore City Health Code § 7-631(b) does not limit the civil or criminal remedies, or any other enforcement action authorized by law, the contents of the citation is not discretionary. Additionally, the Baltimore City Code requires that the citation include the following:

> (1) the name of the person cited (if known);
> (2) the violation with which the person is cited, including a reference to the specific law in question;
> (3) the manner and time in which the person must either; (i) pay the prepayable fine prescribed for the violation; or (ii) request a hearing on the violation;
> (4) the time within which the violation, if ongoing must be abated; and
> (5) a notice that failure to act in the manner and time stated in the citation may result in default decision and order entered against the person.

BALT. CITY CODE, ART. 1, §40-7.

The Article goes further to cite the manner by which an environmental citation must be issued.

Meanwhile, the Baltimore City Code also lists the mandatory contents of a civil citation.

> (1) The name and address, if known, of the person charged;
> (2) The violation with which the person is charged, including a narrative statement of the cause for issuing the citation;
> (3) The time when and place where the violation occurred;
> (4) The amount of the fine;
> (5) The manner and time within which the person must either:
> (i) Pay the fine specified in the citation; or
> (ii) Request a trail on the violation.

BALT. CITY CODE ART. 1, § 41.5(b).

It also requires a certification, signed by the issuing enforcement officer under the penalties of perjury, that the facts contained in it are true to the best of the officer's information, knowledge, and belief. BALT. CITY CODE, ART. 1, § 41.5(c)

e. Count V: Violation of the Baltimore City Code § 7-702

In Count V (Violation of the Baltimore City Code, Health §7-702) of the Complaint, Plaintiff assert Defendants violated this regulation which provides that "[n]o person may: (1) litter on any public or private property; or (2) permit the accumulation of litter on any property under that person's control." Plaintiff alleges that Defendants violated this regulation by their acts and omissions, "including the release and migration of cigarette filters into and onto Baltimore City lands."

However, the Baltimore City Health Code provides that "*in addition to* any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of: (1) **an environmental citation** under City Code Article 1, Subtitle 40 {"Environmental Control Board"};

or (2) **a civil citation** under City Code Article 1, Subtitle 41 {"Civil Citations"}. BALT. CITY CODE, HEALTH § 7-705 (emphasis added).

There is no evidence that the City has complied with the provisions of the Baltimore City Code requiring citations to contain the information specified in the regulation. Further, although the regulation states that any other civil or criminal remedy may be sought, the statute may only be enforced by an environmental or civil citation. As stated in Baltimore City Health Code § 7-631, Baltimore City Code, Article 1 §§ 40 and 41 require that environmental citations contain certain provisions. Once more, the contents of the citation are not discretionary, as evidenced by the word "shall."

f. Jurisdiction

In addition, a violation of Baltimore City Code, Health §§ 7-606, 7-607, 7-608, or 7-609 invokes the subsection on criminal penalties, which provides:

> **(a) Basic penalty; $1,000 and 90 days.**
> Except as specified in subsection (b) of this section, any person who violates any provision of this subtitle or who authorizes any employee or agent to violate any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to any one or more of the following for each offense:
> (1) a fine of not more than $1,000; and
> (2) imprisonment for not more than 90 days.
> **(b) Enhanced penalty: $1,000 and 12 months.**
> If the violation entails the disposal, in any 24-hour period, of material that weighs 25 or more pounds or material that comprises 10 or more cubic feet, the penalty for a violation of this subtitle is any one or more of the following for each offense:
> (1) a fine of not more than $1,000;
> (2) Imprisonment for not more than 12 months ; and
> (3) Revocation of the privilege of seeking a building permit in the City.

BALT. CITY CODE, HEALTH § 7-632.

The Maryland Code further provides the following:

(1) the District Court has exclusive jurisdiction in a criminal case in which a person at least 18 years old is charged with criminal violation of a State, county, or municipal rule or regulation, if the violation is not a felony,
(2) Doing or omitting to do any act made punishable by a fine, imprisonment, or other penalty as provided by the particular law, ordinance, rule, or regulation defining the violation if the violation is not a felony.

MD. CODE, CTS. & JUD. PROC. § 4-301(b).

A violation of Maryland Code, Criminal Law §10-110 (Count I), and Baltimore City Code, Health §§ 7-606, 7-607, 7-608, 7-609 (Counts II-V) is a misdemeanor. The penalty for a violation of Maryland Code, Criminal Law § 10-110 can be up to five (5) years and a violation of the Baltimore City Health Code excluding § 7-702 may be as much as twelve (12) months. Therefore, a *defendant* has the right to elect a jury trial. *See* MD. CTS. & JUD. PRO. § 4-302(e)(2)(i) (emphasis added). However, by proceeding in this manner, Plaintiff has "demanded a jury trial" and such action is precluded. MD. CTS. & JUD. PRO. § 4-302(e)(2)(iii). Furthermore, a violation of Baltimore City Code § 7-702 is a misdemeanor and, upon conviction, is subject to a fine of $500. Therefore, the District Court has exclusive original jurisdiction over this charge.

In light of the aforementioned jurisdictional challenges and other reasons cited above, the Motion to Dismiss for Count I through Count V is granted.

3. Whether the City's tort claims are barred by the Master Settlement Agreement

Defendants contend that Plaintiff's tort claims fail because they have been released pursuant to the Master Settlement Agreement (hereinafter "MSA") between Maryland and the manufacturer Defendants. According to Defendants, the MSA released "all monetary Claims…in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business." Motion to Dismiss at 21. In turn, Plaintiff

asserts that it is not a "Releasing Party," because (1) the Maryland Attorney General did not have the authority to litigate this claim on behalf of Baltimore City, and (2) these claims are not "released claims."

a. Whether the Attorney General had authority to litigate on behalf of Baltimore City

The Supreme Court of Maryland[1] has held that the Attorney General "possesses no common law powers." *Phillip Morris Inc. v. Glendening*, 349 Md. 660, 674, (1998) (citing *State v. Burning Tree Club*, 301 Md. 9 (1984)). Rather, "the Attorney General of Maryland has only such powers as are vested in him by the Constitution of Maryland and the various enactments of the General Assembly of Maryland. *Glendening*, 349 Md. at 675. Further, the Maryland Constitution states the following:

> (a) The Attorney General Shall:
>
> > Prosecute and defend on the part of the State all cases pending in the appellate courts of the State, in the Supreme Court of the United States or the inferior Federal Courts, by or against the State, or in which the State may be interested, except those criminal appeals otherwise prescribed by the General Assembly.
> >
> > Investigate, commence, and prosecute or defend any civil or criminal suite or action or category of such suits or actions in any of the Federal Courts or in Any court of this State, ...on the part of the State or in which the State may be interested, which the General Assembly by law or joint resolution, or the Governor, shall have directed or shall direct to be investigated, commenced and prosecuted or defended.

MD. CONST. art. V, § 3.

In *Glendening*, the Court acknowledged that the Attorney General received authorization from the Governor to enter into a contingency fee contract with a private law firm to provide

[1] Effective December 14, 2022, the name of the Court of Appeals of Maryland was changed to the Supreme Court of Maryland.

representation and litigation services to the Attorney General and the State of Maryland in connection with litigation against the tobacco industry. *Glendening*, 349 Md. at 663.

In this matter, the Governor authorized the Attorney General to pursue this litigation on behalf of the State. *State v. Maryland State Board of Contract Appeals*, 364 Md. 446 (2001). The State's litigation against the tobacco industry eventually settled in November 1998. *Id.* at 450. The settlement was "a 'Master Settlement Agreement' that disposed of the claims of the 40 states that had sued the tobacco industry." *Id.* However, there is no support for the assertion that the lawsuit contemplated claims made on behalf Baltimore City.

The Maryland Code lists the Baltimore City agencies and officials which the Attorney General represents by stating that "[t]he Attorney General is the legal adviser of and shall represent and otherwise perform all of the legal work for: (1) the Board of Supervisors of Elections of Baltimore City; (2) the Board of Liquor Commissioner of Baltimore City; and (3) the Sheriff of Baltimore City." MD. CODE, STATE GOVT. § 6-107.

The MSA also defines "releasing party" within the agreement itself by stating the following:

> (pp) "Releasing Party" means each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, and also means, **to the full extent of the power of the signatories hereto to release past, present, and future** claims, the following: (1) any Settling State's subdivisions (political or otherwise, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts), public entities, public instrumentalities and public educational institutions; and (2) persons or entities acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, tax payer or any other capacity, whether or not any of them participate in this settlement ...

The plain language of the MSA grants no more authority to the Attorney Generals than what they already possess: to release claims of a political subdivision. Based on the plain reading of the Maryland Constitution, MSA, and any related statutes, the Attorney General did not have the authority to act on behalf of Baltimore City, the City is not a "Releasing Party", and therefore, its claims are not released by the MSA.

4. Whether the City's tort claims are barred by the statute of limitations

Defendants argue that Plaintiff's claims are subject to a statute of limitations which requires that an action at law must be filed within three years from the date the action accrues. *Litz v. Maryland Dept. of Environment*, 434 Md. 623, 640 (2013) (citing MD. CODE, CTS. & JUD. PROC. § 5-101). Defendants assert that according to several statements made by Plaintiffs, the city knew of the conduct it challenges much more than three years ago. For example, Plaintiff claimed to have spent $32 million in collecting and disposing of litter, including 11, 935, 098 cigarette filters into landfills, since 2014. Motion to Dismiss at 26. Plaintiff counters that the subject matter of the lawsuit involves a strictly governmental function "to address a litter problem," and that the statute of limitations does not run against the state, nor its agencies, nor political subdivisions or municipalities exercising strictly governmental functions. *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 358-60 (2017).

In *Spaw*, the Maryland Supreme Court explained its holding in a previous case where the Court held that the statute of limitations was not a bar in an action growing out of the exercise of a governmental function by a political subdivision of the State. *Id.* (citing *Goldberg v. Howard County Welfare Board,* 260 Md. 351 (1971)).

> While the statute of limitations will bar the governmental unit where it is asserting a private or proprietary right, it will not apply where the right being asserted is public or governmental in nature. In other words, the governmental plaintiff in seeking to enforce a contract

> right or some right belonging to it in a proprietary since, may be defeated by the statute of limitations, but as to rights belonging to the public and pertaining purely to governmental affairs, and in respect of which the political subdivision represents the public at large or the state, the exempting in favor of sovereignty applies, and the statute of limitations does not operate as a bar.

Goldberg, 260 Md. at 258-59. Maryland courts have adopted and applied the concept *nullum tempus occurrit regi* (time does not run against the king) to the State or its agencies. However, courts have limited its application against municipalities. "In that instance, the municipality can only avoid the bar of the statute of limitations if the action asserted arises from the exercise of a governmental function as distinguished from a proprietary or corporate function. *Spaw*, 452 Md. at 359. In *Spaw*, the Court describes a governmental act as follows:

> Where the act in question is sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument incurring to the municipality, and tends to benefit the public health, and promote the welfare of the whole public, and has in it no element of private interest, it is governmental in its nature.

Id. at 359. The test is "whether the act performed is for the common good of all or for the special benefit or profit of the corporate entity." *Id.* (quoting *Tadjer v. Montgomery County*, 300 Md. 539, 547 (1984)).

At issue in *Spaw* was the City of Annapolis's desire to enforce historic preservation ordinances. The Supreme Court of Maryland found that its action, enforcing historic preservation ordinances, arises from the exercise of a governmental function. In the case *sub judice*, Plaintiff seeks multiple forms of relief.

1) Compensatory damages to pay for the losses, past, present and future for damage to Baltimore City's infrastructure, land and natural resources, including the economic impact to Baltimore City from the loss of its environmental health, and other losses resulting from the conduct alleged herein, including, but not limited to, the loss of value in Baltimore City's properties, the loss of tax, sales, and licensing revenue to Baltimore

City resulting from Defendant's actions and omissions, plus the costs to Baltimore City of cleaning up and disposing of the Defendant's litter, past, present and future;
2) Equitable relief, including investigation, abatement, remediation, and removal of the nuisances complained of herein;
3) Criminal penalties, including but not limited to, fines consistent with Maryland law and the Baltimore City Code;
4) Punitive damages in an amount reasonable, appropriate and sufficient given each Defendant's respective net worth to punish each Defendant for the good of society and deter Defendants from ever committing the same or similar acts in Baltimore City; and
5) Injunctive relief in the form of Court Orders mandating the immediate and complete abatement and remediation of all Baltimore City property.

Complaint at 46-47.

Plaintiff brings this case to enforce littering codes and to protect the environment, which are government functions. In addition, the relief requested is for the benefit of the citizens of Baltimore, not solely the Plaintiff. Therefore, the claims are not barred by the statute of limitations.

5. Whether the City has adequately pled its tort claims

Defendants contend that Plaintiff cannot maintain Count VI (Continuing Trespass) because manufacturing and distributing cigarettes does not amount to proximate cause. Additionally, Plaintiff does not plead exclusive possession of the littered public land and waterways, which is required to recover for trespass.

On the other hand, Plaintiff alleges that the conduct that amounts to continuing trespass is "knowing with substantial certainty at the time of their manufacture and sale of cigarettes, and then with their disposal and littering of these products and wastes, that such activities were likely, if not certainly, to result in contamination of the Baltimore City lands and waters." Complaint at 29. The City further states that the conduct caused, and continues to cause, permanent harm to and seriously damage the property values and utility of Baltimore City property, thereby causing Baltimore City to lose millions of dollars in sales and property taxes for decades.

a. Trespass

A trespass occurs "when a defendant interferes with a plaintiff's interest in the exclusive possession of the land by entering or causing something to enter the land." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 408 (2013) (quoting *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58 (1994). According to the Second Restatement of Torts:

> One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally
> 1) Enters land in the possession of the other, or causes a thing or a third person to do so, or
> 2) Remains on the land, or
> 3) Fails to remove from the land a thing which he is under a duty to remove.

Restatement (Second) of Torts § 158 (1965).

The Restatement further states

> *Causing entry of a thing.* ...In order that there may be a trespass under the rule stated in this Section, it is not necessary that the foreign matter should be thrown directly and immediately upon the other's land. It is enough that an act is done with knowledge that it will to a substantial certainty result in the entry of the foreign matter.

Restatement (Second) of Torts § 158 cmt. i (1965).

Plaintiff alleges that Defendants make cigarettes with plastic filters inserted into paper wrappers, giving the appearance to smokers and nonsmokers that the butt is "merely harmless paper and cotton that will easily degrade into the environment." Complaint at 15-16. According to Plaintiff, Defendants knew that smokers litter cigarette filters on the ground, because smokers are under the impression that the paper wrappers and filters will decompose in the environment. Complaint at 15. Despite knowing that smokers would dispose of the filtered cigarettes on the sidewalks, streets, waterways, and toilets, Defendants failed to include warnings about the harm

the filters cause to the environment, and warn consumers that they must properly dispose of them. Complaint at 16.

This is insufficient. There is no direct or indirect act that Plaintiff can attribute to Defendants trespassing. Although the Restatement doesn't require the act to be done directly or immediately, the trespasser must have performed it. In this case, the act (littering) is performed by the smoker not the manufacturer. There is no cause of action for trespass, if a third party actually performs the act, leading the object to invade the property of another. This is not to be confused with causing a *third person* to enter the land of another. This is further explained in the Restatement as follows:

> [I]f, by any act of his, the actor intentionally causes a third person to enter land, he is as fully liable as though he himself enters. Thus, if the actor has commanded or requested a third person to enter land in the possession of another, the actor is responsible for the third person's entry if it be a trespass.

Restatement (Second) of Torts §158 cmt. j (1965). In this case, there is no allegation that Defendants commanded or requested the smoker litter the cigarettes.

Plaintiff relies on *State v. Exxon Mobile Corp.*, 406 F. Supp. 3d 420, 467 (D. Md. 2019) to support its position that Defendants can be held liable for trespass. In *Exxon*, the State of Maryland filed a complaint against approximately 65 defendants who manufactured, distributed, or supplied MTBE gasoline. According to the State of Maryland, MTBE was responsible for widespread contamination of its waters. *Id.* at 471. Like Plaintiff, Maryland alleged that the defendants knew years before the claim was filed that MTBE was harmful and could cause environmental harm, involving the groundwater, but refused to warn the public. *Id.* at 435. Additionally, Maryland's complaint included claims for strict liability (defective design, failure to warn, abnormally dangerous activity), public nuisance, trespass, negligence, and violations of various State

environmental statutes. They also sought compensatory, punitive damages, and costs for testing, cleanup, monitoring, and restoration of State's natural resources, as well as an injunction. *Id.* at 436.

In *Exxon*, Defendants contended that the State's trespass claim fails because they did not have control over the underground storage tanks at the time the trespasses occurred. *Id.* at 471. The Honorable Judge Ellen L. Hollander rejected this argument because the Court could not "say in the record before it that defendants who manufactured and distributed MTBE gasoline lacked such control over the gasoline stations and storage equipment where MTBE releases occurred." *Id.*

However, this case is distinguishable from *Exxon*. Plaintiff contends that the harm to the environment occurs at the point when the filter is discarded or littered by the smoker. As stated earlier, the Complaint does not establish that Defendants forced or exercised control over the smoker at the time the cigarette filter made contact with the environment. Therefore, rationale for *Exxon* does not apply to this case and the Motion to Dismiss for Count V is granted.

Because the Court has determined that the Complaint fails to establish that Defendants had sufficient control over the filtered cigarettes to be liable for trespass, it is not necessary to determine whether Plaintiff has adequately alleged exclusive possession. But, out of an abundance of caution, the Court will address it.

In *Exxon*, the State of Maryland claimed it properly redressed injury for the widespread contamination of its waters in *parens patriae*. *Id.* at 470. However, in *Exxon*, the Court explained that Maryland courts have "never deviated from the rule that an action for trespass lies only 'when a defendant intrudes upon a plaintiff's interest in the exclusive possession of the land." *Id.* at 470 (citing *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 408 (2013)). However, the Court did find

"one court has found that the State's quasi-trustee interest in its natural waters could support recovery in *public nuisance* for an oil spill." *Id.* (citing *Maryland v. Amerada Hess Corp.*, 350 F. Supp. 1060, 1067 (D. Md. 1972)). As such, the Joint Motion to Dismiss was granted to the extent the claim was based on properties outside of its exclusive possession. The same logic and ruling would apply here, and the Motion to Dismiss would be granted to the extent the claim is based on properties outside of the City of Baltimore's exclusive possession.

b. Whether Plaintiff has adequately pled proximate causation in its tort claims

Proximate cause "involves a conclusion that someone will be held legally responsible for the consequences of an act or omission." *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009). To be a proximate cause for an injury "the negligence must be (1) a cause in fact, and (2) a legal cognizable cause." *Id.* The first step in the analysis is an examination of causation-in-fact to determine who or what caused an action. The second step is a legal analysis to determine who should pay for the harmful consequences of such an action.

Causation-in-fact concerns the threshold inquiry of "whether defendant's conduct actually produced an injury." *Id.* There are two tests to determine if causation-in-fact exists. The "but for" test and the "substantial factor" test. *Id.* The "but for" test applies in cases where only one negligent act is at issue, and causation-in-fact is found when the injury would not have occurred absent or "but for" the defendant's negligent act. *Id.* When two or more independent negligent acts bring about an injury, however, the "substantial factor" test controls. Causation-in-fact may be found if it is "more likely than not" that the defendant's conduct was a substantial factor in producing the plaintiff's injuries. *Pittway Corp.*, 409 Md. at 243. Further, the Supreme Court of Maryland adopted the test in the Second Restatement of Torts which provides the following:

> The actor's negligent conduct is a legal cause of harm to another if
> (a) his conduct is a substantial factor in bringing about the harm, and
> (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.

Restatement (Second) of Torts § 431.

In *Pittway*, the Court relied on the Restatement to provide considerations to determine whether the actor's conduct is a substantial factor in bringing about harm to another:

> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;
> b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces of which the actor is not responsible;
> c) lapse of time.

Id. at 245.

In this case, Plaintiff has adequately pled that but for the manufacturers choosing to use the plastic filter, the environmental harm would not have ensued. Complaint at 7. In addition, Plaintiff also alleges that manufacturing the cigarettes, that Defendants knew would be thrown to ground by smokers due to their paper like appearance, was a substantial factor in bringing about harm to Baltimore's natural resources.

Once causation-in-fact is established, the proximate cause inquiry turns to whether the defendant's negligent actions constitute a legally cognizable cause of the complainant's injuries. The Court should consider whether harm to a litigant falls within a general field of danger that the actor should have anticipated or expected. *Pittway*, 409 Md. at 246. The question of legal causation most often involves a determination of whether the injuries were a foreseeable result of the negligent conduct. When multiple negligent acts or omissions are deemed a cause-in fact of a plaintiff's injuries, the foreseeability analysis must involve an inquiry into whether a negligent

defendant is relieved from liability by intervening negligent acts or omissions. The Maryland Supreme Court has also noted the following:

> The defendant is liable where the intervening causes, acts, or conditions were set in motion by his earlier negligence, or naturally induced by such wrongful act, or omission, or even it is generally held, if the intervening acts or conditions were of a nature, the happening of which was reasonably to have been anticipated, though they have been acts of the plaintiff himself.

Pennsylvania Steel Co. v. Wilkinson, 107 Md. 574 (1908).

Liability is avoided only if the intervening negligent act or omission at issue is considered a superseding cause of the harm to the Plaintiff. *Pittway Corp.*, 409 Md. at 248. According to *Pittway*, the test in Maryland for determining when an intervening negligent act rises to the level of a superseding cause includes the following factors:

> a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;
> b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;
> c) The fact that the intervening force is operating independently of any situation created by the actor's negligence, or on the other hand, is or is not a normal result of such a situation;
> d) the fact that the operation of the intervening force is due to a third person's act or his failure to act;
> e) the fact that the intervening force is due to a act of a third person which is wrongful toward the other and as such subjects the third person to liability to him; and
> f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

Id. at 249.

Plaintiff correctly assesses the importance of foreseeability in determining legal causation. "Given that foreseeability is the touchstone in any determination of proximate, intervening and superseding cause, we first address the propriety of deciding foreseeability on a motion to

dismiss." *Collins v. Li*, 176 Md. App. 502, 536 (2007). Normally, the foreseeability inquiry is a question of fact to be decided by the trier of fact. *Id.* In addition, ordinarily the question of whether causation is proximate or superseding is a matter to be resolved by the jury. However, it becomes a question of law in cases where reasoning minds cannot differ. *Pittway Corp. v. Collins*, 409 Md. 218, 253 (citing *Segerman v. Jones*, 256 Md. 109, 135 (1969)).

Here, the facts asserted in the Complaint could lead to different conclusions. Plaintiff alleges that Defendants failed to properly educate the public about the danger discarded cigarette filters pose to the environment. Plaintiff describes the anti-littering campaigns as ineffective. One could also conclude that smokers litter the filters on the ground because the paper like appearance leads smokers to believe it is biodegradable. On the other hand, one could conclude that cigarette manufactures knowingly chose to produce the non-biodegradable plastic filter in their products because the customers preferred the draw of the plastic filter. If true, this could mean that no amount of education about the true composition of cigarette filters, or harm littered cigarettes cause to the environment, would prevent consumers from littering the filters on the ground. Given, the different conclusions one could reach, the issue of causation should be left to the trier of fact. The Motion to Dismiss, on the grounds that Plaintiff has not pled causation, is denied.

6. Whether the City has stated a claim for design defect (Counts VII and VIII)

The Defendants assert that the City has not stated a design defect claim under either a theory of strict liability or negligence because (1) it fails to plausibly allege either physical harm to the ultimate user, or that the products are unreasonably dangerous, and (2) it cannot show that the Defendant owed any duty to the city.

Maryland has adopted the theory of strict liability set forth in the Restatement (Second) of Torts §402A which provides:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer or to his property, if
(a) the seller is engaged in the business of selling such a product, and
(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold
(2) The rule stated in subsection (1) applies although
(a) the seller has exercised all possible care in the preparation and sale of his product, and
(b) the consumer has not bought the product from or entered into any contractual relation with the seller.

State v. Exxon Mobile Corp., 406 F. Supp. 3d 420, 459 (2019).

A plaintiff must establish the following elements to prevail in an action for strict product liability in Maryland:

(1) The product was in defective condition at the item that it left the possession or control of the seller
(2) That it was unreasonably dangerous to the user or consumer
(3) That the defect was the cause of the injuries
(4) The product was expected to and did reach the consumer without substantial change in its condition.

Id. (citing *Phipps v. General Motors Corp*, 278 Md. 337, 344 (1976)). A product defect may arise from the design of the product, a deficiency in its manufacturing, or from the absence or inadequacy of instructions or warnings as to its safe and appropriate use. "Maryland courts apply either the consumer expectation test or the risk-utility test to determine whether a product is defective and unreasonably dangerous for strict liability purposes." *Id.* at 460. The consumer expectation test applies to this case. Pursuant to this test, a defective condition is defined as a condition not contemplated by the ultimate consumer, which will be unreasonably dangerous to him. *Id.* According to the risk-utility test, a product is defective and unreasonably dangerous if the danger presented outweighs its utility. Maryland courts have held that the risk-utility test applies only

when the product "malfunctions in some way." There is no allegation that the cigarette filters have malfunctioned.

In *Exxon*, the Court explained that Maryland courts have "never limited recovery in strict liability for design defect to ultimate users of the product." *Id.* at 461. In fact, the Appellate Court of Maryland[2] held that bystanders may recover in strict liability for foreseeable injuries caused by the defective design of a product. *Id.* at. 462. (citing *Valk Manufacturing, Co.* v. *Rangaswamy*, 74 Md. App. 304 (1988)). The Supreme Court of Maryland has addressed the issue of bystander recovery in strict liability for defective design, and upheld bystander recovery in strict liability for failure to warn upon a sufficient showing of causation. Courts have also allowed bystanders to recover in strict liability against sellers for foreseeable injuries caused by defective products. *Id.* (citing *Berrier* v. *Simplicity Manufacturing, Inc.*, 563 F.3d, 54 (3d Cir. 2009)). In *Exxon*, the Court supported recovery for bystanders, because it placed the liability for the risk of harm on the entity most capable of controlling the risk.

In this case, while the City of Baltimore is not the end user, it alleges that the environmental harm caused by filtered cigarettes was foreseeable, and that the cigarettes have not performed as safely as an ordinary consumer would expect. They further assert that the consequence on the environment makes them unreasonably dangerous for their intended, foreseeable, and ordinary use. Complaint at 31.

In Count VII (Strict Liability for Design Defect) of the Complaint, Plaintiff alleges that Defendants manufactured cigarettes and placed those cigarettes into the stream of commerce. Further, Plaintiff alleges Defendants owed a duty to not market and distribute any product that is unreasonably dangerous for its intended or reasonably foreseeable use. Complaint at 30. Plaintiff

[2] Effective December 14, 2022, the name of the Court of Special Appeals of Maryland was changed to the Appellate Court of Maryland.

also alleges that Defendants "formulated, designed, manufactured, packaged, distributed, tested, constructed, fabricated, analyzed, recommended, merchandised, advertised, promoted, and/or sold filtered cigarettes, which were intended by Defendants, to be smoked in public and to become litter in the City of Baltimore." Complaint at 30-31. In addition, it is alleged that Defendants marketed, promoted, and advertised filtered cigarettes which were sold and used by the general public. The Defendants had control over, and a substantial ability to influence, the manufacturing and distribution processes that led to the littering of the streets of the City of Baltimore. Complaint at 31.

In *Exxon*, the State of Maryland alleged that contamination of its water was a foreseeable risk of the defendant's sale of its product. Plaintiff, in this case, alleges that the Defendants' individual and aggregate filtered cigarettes products were defective at the time of manufacturing, reached the consumer in a condition substantially unchanged from the time of manufacture, and were used in the manner intended to be used. Complaint at 32. As in *Exxon*, Plaintiff alleges that the Defendants' cigarettes were defective and unreasonably dangerous when they are used the way it was intended. According to Plaintiff, ordinary consumers did not and do not expect that cigarette filers would: (a) permanently contaminate the soil and ground water; (b) hamper plant growth; (c) pollute waterways; (d) deteriorate critical aquatic habitats; (e) kill fish; (f) poison cats, dogs and wildlife; and (g) cost Baltimore City millions of dollars in cleanup costs and reduce tax revenue. Complaint at 31.

Plaintiff has sufficiently pled that the cigarette filters are unreasonably dangerous. Furthermore, in light of the precedent allowing bystander recovery in defective design and strict liability, the Motion to Dismiss for Counts VII and VIII is denied.

7. Whether the City has stated a claim for strict liability failure to warn (Count X) and negligent failure to warn (Count XI)

As previously argued, Defendants believe Plaintiff's claims for relief for failure to warn should fail because the Complaint does not allege that Defendants owed a duty to Plaintiff, and Plaintiff fails to allege that the non-biodegradable filter has harmed any cigarette user. As such, a duty to warn does not exist, because the City was not a user.

When a product is alleged to be defective because of a failure to give an adequate warning, courts have relied on Restatement (Second) of Torts § 402A which explains that "the seller is required to give warning against [the danger], if he has knowledge, or by the application of reasonable, developed human skill and foresight should have knowledge, of the ...danger." Restatement (Second) of Torts § 402A cmt. j (1965). *See also Owens -Illinois, Inc. v. Zenobia*, 325 Md. 420 (1992). The seller is not strictly liable for failure to warn unless the seller has "knowledge, or by the application of reasonable, developed human skill and foresight should have knowledge, of the presence of the . . . danger." *Id.*

In a product liability claim for strict liability failure to warn, the Plaintiff must prove that the defendant's product was unreasonably dangerous as a result of the defendant's failure to warn, and that the plaintiff was injured as a proximate result of the failure to warn . *Phipps v. General Motors Corp.*, 278 Md. 337, 344 (1976). A negligent failure to warn claim requires proof of those two elements and proof of an additional element – that the defendant had a duty to warn of dangers known to it, or dangers that, in the exercise of reasonable care, should have been known to it, and breached that duty. Knowledge of the danger of the product is a component of both claims. Richard E. Kaye, *American Laws of Product Liability 3d* § 32:25. Whether there is a duty to warn, and the adequacy of warnings given, must be evaluated in connection with the knowledge and expertise of those who may be reasonably expected to use or otherwise come into contact with the product. *State v Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 463 (2019) (citing *Emory v McDonnell Douglas Corp.*, 148 F. 3d 347, 350 (4th Cir. 1998)).

In support of Count X (Strict Liability Failure to Warn) of the Complaint, Plaintiff asserts that Defendants' filtered cigarette products were not reasonably safe at the time they left their control because

they lacked adequate warnings and/or instructions concerning the dangers and hazards as a result of the non-biodegradable cigarette filters. Complaint at 42. They further state that the Defendants were required to issue adequate warnings to the City of Baltimore, the public, consumers, and public officials of the reasonably foreseeable or knowable severe risks posed by the inevitable use and litter of their filtered cigarettes. Complaint at 42. Here, Plaintiff alleges that Defendants knew, based on information passed to them and/or from the scientific community, of the environmental consequences inherently caused by the normal use and operation of their filtered cigarettes, including the "likelihood that discarded cigarette filters would contaminate the soil and ground water, pollute waterways, etc." Complaint at 42.

They also allege that they were required to warn of and instruct the plaintiff about these dangers, but failed to and intentionally concealed information in order to maximize profits for decades and externalize clean-up costs, causing continuing losses to Baltimore City. Complaint at 42. Plaintiff contends that Defendants were aware of the long-lasting negative impact that components of cigarette filters have on the environment. The Complaint cites to articles and inter-office correspondence within Phillip Morris about cigarette litter and what they knew. Complaint at 14 n. 21-22.

In *Exxon*, the Court acknowledged that there is "no duty to warn the world." *Exxon,* 406 F. Supp. 3d at 463 (citing *Gourdine v. Crews*, 405 Md. 722, 749 (2008). However, the Court further explained that the duty to warn extends "not only to those for whose use the chattel is supplied but also to third persons whom the supplier should expect to be endangered by its use." *Exxon*, 406 F. Supp. 3d at 463 (citing *Georgia Pacific, LLC v. Farrar*, 432 Md. 523, 531 (2013)). As such, the Court concluded that the State plausibly alleged that the harm it suffered was a foreseeable result of defendants' placement of MTBE gasoline into to the Maryland market. Furthermore, due to defendants' control of a substantial part of the market, and that MTBE contamination is associated with all "transportation, storage, and use of MTBE gasoline," the allegations plausibly establish that Defendants had a duty to warn the State of the dangers associated with MTBE. This is the case, because they created and controlled the market for products in the State that posed unique , substantial harms to its resources. *Exxon,* 406, F. Supp. 3d at 463.

The Defendants urge this court to find that there is no duty to warn the City as the Court held in *Gourdine*. *Gourdine,* 405 Md. at 738. However, like the State of Maryland in *Exxon*, Plaintiff alleges the environmental and economic harm it suffered was a foreseeable result of Defendants decision to use non-biodegradable filters.

In *Farrar*, the Supreme Court of Maryland considered whether Georgia Pacific, LLC was under a duty to protect Ms. Farrar from injury due to any exposure she may have to asbestos fibers that were embedded in its Ready-Mix compound. *Georgia Pacific, LLC v. Farrer,* 432 Md. 523 (2013). In *Gourdine*, the Court concluded that "[a]t its core, the determination of whether a duty exists represents a policy question of whether the specific plaintiff is entitled to protection from the defendant." *Gourdine,* 405 Md. at 745. Further, the Court in *Farrer* stated:

> Ultimately, the determination of whether a duty should be imposed is made by weighing the various policy considerations and reaching a conclusion that the plaintiff's interests are, or are not entitled to legal protection against the conduct of the defendant. There is no set formula for the determination of whether a duty exists. Courts have applied a foreseeability of harm test, which is based upon the recognition that duty must be limited to avoid liability for unreasonably remote circumstances, and the courts have also looked at the relationship of the parties.

Georgia Pacific, 432 Md. at 529 (quoting R*osenblatt v. Exxon*, 335 Md. 58, 77 (1994)).

The Supreme Court of Maryland has provided that where the action for product liability lies in a duty to warn, the cases have turned more directly on the foreseeability of harm to the person to whom the duty is alleged to owe. *Patton v. USA Rugby*, 381 Md. 627, 637 (2004). The issue in *Farrer* is whether the defendant should have recognized that household members were in a significant zone of danger because of toxic dust brought home on the worker's clothing and body. *Farrer,* 432 Md. at 533. "The elements of 'duty' that [the Supreme Court of Maryland] described, especially foreseeability of danger and the ability , through a warning to ameliorate that danger, must be based on facts that were known or should have been known to the defendant at the time the warning should have been given, not what was learned later." *Id.* at 534-35.

According to the Court in *Farrer*,

> Restatement (Second) §388(a) casts liability where the supplier knows or has reason to know that the chattel is or is likely to be dangerous. Comment b. to that section emphasizes that liability is for the failure to exercise reasonable care to give to those whom he may expect to use the chattel any information as to the character and condition of the chattel which he possesses, and which he should recognize as necessary to enable them to realize the danger of using it.

Id. at 535. The Court also explained that the fact that an individual or class of individuals is foreseeably within the zone of danger, though important, is not the sole criterion in determining a duty to warn, even in a product liability case. *Id.* at 540. Ultimately, the Supreme Court of Maryland found that the Appellate Court of Maryland erred in finding that Georgia Pacific had a duty to warn Ms. Farrar, in 1968, because of what was known to the company in 1968 about asbestos. The Court considered "whether in light of the relationship (or lack of relationship) between the party alleged to have the duty and the party to whom the duty is alleged to run, there is a feasible way of carrying out the duty to warn and having some reason to believe that a warning will be effective." *Id.* The Court went further to state that to impose a duty that either cannot feasibly be implemented or, even if implemented, would have no practical effect would be poor public policy. *Id.*

Unlike the facts in *Farrer*, Plaintiff claims Defendants knew of the toxic characteristics of its cigarette filters for years. Plaintiff also states that cigarette manufacturers have acknowledged that they have added 599 different chemicals to cigarettes. Complaint at 13-14. They further contend that Defendants were, and are, aware of both the "long-lasting negative impact the components of these filters have on the environment and the rate which their consumers litter these filters." Complaint 14-15. Plaintiff further states that Defendants knew the plastic filters gave the appearance of biodegradability meaning that smokers litter cigarette filters on the ground because smokers believe that the paper wrappers and filters will decompose in the environment. Complaint at 15-16. With this knowledge, it is alleged that "Defendants failed to educate the public about the danger discarded cigarettes pose to the public and misrepresented to Baltimore City residents that the true compounds of the filters are toxic to the environment." Complaint at 15-16. Plaintiff specifies that Defendants knew that their filters were defective. Complaint at 14 n. 22). As a result of the failure to warn, Plaintiff alleges it has sustained

substantial losses including damage to publicly owned infrastructure and real property, and damages to public resources that interfere with the property rights of Baltimore City. Complaint at. 46.

The Court finds that Plaintiff adequately pled failure to warn and the Motion to Dismiss for Counts X and XI is denied.

8. Whether the City has stated a claim for public nuisance (Count IX)

In its claim for relief based on public nuisance, Plaintiff contends that Defendants in manufacturing, distributing, marketing and promoting cigarettes have created, contributed to, and/or assisted in creating conditions that significantly interfere with rights general to the public. The Defendants assert that the City's claim for public nuisance should fail for the following reasons:

1) The City has not adequately alleged that Defendants created or contributed to the alleged public nuisance;
2) The City's public nuisance claim does not implicate any public right;
3) The lawful sale of lawful products is not a nuisance, especially when those products intended uses cause no harm; and
4) The City has not alleged that Defendants control the instrumentalities that cause the alleged nuisance at the relevant time.

According to *Exxon*, Maryland has relied on the definition of public nuisance set forth in Section 821B of the Restatement stating that "an unreasonable interference with a right common to the general public." *Exxon*, 406 F. Supp. 3d at 467 (quoting *Tadjer v. Montgomery County*, 300 Md. 539, 552-53). The Restatement articulates the following:

> Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following: (a) whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or (b) whether the conduct is proscribed by a statute, ordinance, or administrative regulation, or (c) whether the conduct

> is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Restatement (Second) of Torts §821B. In assessing a public nuisance claim, the Court looks to whether the challenged conduct imposes "an injury to the public at large or to all who come in contact with it." *Adams v. Commissioners of Town of Trappe,* 204 Md. 165, 170 (1954).

Pollution may be considered a public nuisance. Widespread water pollution is a quintessential public nuisance. *Exxon*, F. Supp. 3d at 467. Pollution may also result in a public nuisance, as defined in §821B, when there is interference with a right common to all members of the public-as, for example, when the pollution kills the fish in a public stream, or prevents the use of a public bathing beach." *Id.* (citing *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1051 (1985)).

In *Exxon*, Defendants argued that the State of Maryland's public nuisance claim must be dismissed to the extent that it is premised on their manufacture, marketing, or supply of MTBE gasoline because, they did not have control over the MTBE gasoline when it was allegedly released into the State's waters. Similarly in this case, Defendants argue that they did not have control over the cigarettes at the time the nuisance occurred, or when it was littered. However, the court in *Exxon* explained that Maryland courts never adopted the "exclusive control" rule for public nuisance liability outlined by the Court in *Cofield v Lead Industries Association, Inc.,* 2000 WL 34292681 (D. Md. Aug. 17, 2000). "To the contrary, Maryland courts have found that a defendant who created or substantially participated in the creation of the nuisance may be held liable even though he (or it) no longer has control over the nuisance- causing instrumentality." *Exxon*, 406 F. Supp. 3d at 468 (citing *Adams v. NVR Homes, Inc.,* 193 F.R.D. 243, 256-57 (2000)). "It has been held that where the finished product of a third party constitutes a public nuisance, the third party

may be held liable for the creation of the public nuisance even though it no longer has control of the product creating the public nuisance." *Id.*

Plaintiff has adequately pled sufficient facts to sustain a claim for public nuisance. Plaintiff alleges that Defendants, by manufacturing nonbiodegradable filtered cigarettes, contribute to the degradation and pollution of its natural resources. They further assert that the continued manufacture and distribution of this product has produced a permanent and long-lasting effect by "contaminating the City's soil and groundwater, hamper plant growth, pollute waterways, deteriorate critical aquatic habitats and environments, and poisoning pets, wildlife, and fish, plus the associated economic consequences of those environmental impacts." Complaint at 45. They also pled that Defendants "should have known, based on information passed to them and/or from the scientific community, that the environmental consequences rendered their plastic product dangerous, or likely to cause damage to the City of Baltimore, when used as intended or a reasonably foreseeable manner." Complaint at 45.

Plaintiff contends that the cigarette filter chosen by Defendants has caused, and continues to cause, significant harm to the environment and that the harm outweighs any offsetting benefit. Complaint at 37. They also assert Defendant's conduct caused and continues to cause permanent harm and serious damage to the property values and utility of the residential and commercial properties in Baltimore City increasing crime and decreasing the real estate property value. Complaint at 37. In light of the adequate facts pled to sustain a claim for public nuisance, the Motion to Dismiss Count IX is denied.

9. *People v. PepsiCo, Inc.*

Defendants provided this Court with the opinion for *People v. PepsiCo, Inc.* (hereinafter "the PepsiCo Opinion"), a case decided by the Supreme Court of New York, which is also a trial court. *People v. PepsiCo, Inc.*, 85 Misc. 3d 969 (2024). While factually similar, this opinion is not binding on this court.

In short, Plaintiff sought to hold Defendants PepsiCo Inc., Frito-Lay Inc., and Frito-Lay North America (hereinafter "PepsiCo/Frito-Lay") responsible for plastic pollution that has accumulated in the Buffalo River. They argue that Defendants should be responsible for the conduct of third parties who dispose their products in the Buffalo River. PepsiCo Opinion at 2. Plaintiff relies on a survey of plastic pollution in 2022, which found that "PepsiCo's plastic packaging far exceeded any other source of identifiable plastic waste, as it was three times more abundant than the next contributor (McDonald's)." PepsiCo Opinion at 3. Plaintiff asserts that "as a result of PepsiCo's and others' persistent manufacturing, production, distribution, and sale of beverages and snack foods in single-use plastic packaging, single-use plastic items have become a dominant form of pollution in urban watersheds such as the Buffalo River." *Id.* Similar to this case, Plaintiff claims the contaminants in the water endanger public health, potentially harm freshwater species, and threaten the ecosystem. They further maintain that the pollution interferes with the public's use and enjoyment of the Buffalo River. Plaintiff alleges that Pepsi/Frito Lay "has long known of the harms caused by its single-use packaging, acknowledging its website that there is a 'plastic pollution crisis' and that its own packaging has 'potential environmental impacts.'" *Id.*

PepsiCo/Frito-Lay moved to dismiss the complaint. PepsiCo/Frito-Lay argued that they should not be held liable for acts of third parties, and they have not misled anyone about the composition of their plastic packaging. PepsiCo Opinion at 5. With respect to the public nuisance claim, Pepsi/Frito-Lay argues that the disposal of the plastic is not in their control and as such, cannot be construed as a public nuisance caused or created by them. Defendants caution that courts should be careful not to impose novel theories of tort liability that are the focus of a national policy debate. In New York, a public nuisance cause of action "exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby offending public morals, interfering with the use by the public of a public place or endangering or injuring the property, health, safety, or comfort of a considerable number of persons." PepsiCo Opinion at 8.

In *PepsiCo*, the Court found that Plaintiff failed to provide any evidence that Defendants knew or should have foreseen that it could result to damage to the public. PepsiCo Opinion at 9. However, in the case before this Court, Plaintiff cites to sources specifically addressing what Phillip Morris knew about cigarette litter. Complaint at 14 n. 21-22, 15 n. 23. While this Court appreciates the reasoning employed by the Supreme Court for the State of New York, the law in Maryland regarding public nuisance is clear. As stated in *Exxon*, Maryland courts have found that a defendant who created or substantially participated in the creation of the nuisance may be held liable even if they no longer have control over the nuisance causing instrumentality. *Exxon*, 406 F. Supp. 3d at 468.

With respect to duty to warn, Defendants PepsiCo/Frito-Lay argue that the allegations in the complaint do not prove a duty to warn. The complaint does not establish an affirmative duty to warn the public that the product is defective, and if used correctly, the environment would not be negatively impacted. Plaintiff failed to demonstrate that the plastic packaging is inherently dangerous, and thus no duty to warn exist. PepsiCo Opinion at 6.

The Supreme Court of New York stated that "essential to demonstrating the viability of a public nuisance claim is to show that the product in question is defective or unlawful. Plaintiff has failed to demonstrate either." PepsiCo Opinion at 11. The Court held that Plaintiff failed to reference any statutory obligations that Defendants have violated by producing the bottles and plastic wrappings. Absent any evidence indicating that the products are defective or unlawful, "it is hard to ascertain any duty that Defendants owed." Opinion at 12. The Court is also concerned about opening the flood gates to litigation. Stating they are "against imposing civil liability on a manufacturer for the acts of a third party, because it is "contrary to every norm of established jurisprudence." PepsiCo Opinion at 12.

The Court in *PepsiCo* found there is no duty to produce a different type of plastic wrapper, or any affirmative duty to reduce their use of plastics or manufacture their product in a different manner. It noted that the Court of Appeals of New York held "that the imposition of a duty upon one unable to control the tortfeasor would be unreasonably burdensome." PepsiCo Opinion at 13 (citing *Pulka v. Edelman*, 40 N.Y.2d

781 (1976)). In *Pulka*, the garage operator was not liable for the actions of a drive who ignored warnings or other precautions. Thus, the *PepsiCo* Court reasoned that PepsiCo/Frito-Lay could not be liable for the acts of others who ignore recycling invitations. In addition, the Court cannot punish Defendants for the acts of third parties who ignore laws prohibiting littering. The case law of New York does not impose a duty on a manufacturer to refrain from the lawful distribution of a non-defective product.

Unlike in *PepsiCo*, Plaintiff in this case specifies that Defendant knew the filters were defective. Plaintiff cites correspondence within Phillip Morris, regarding defective cigarette filters, and inter-office communications. Complaint at 14 n. 22, 15 n. 23. In Maryland, a claim for strict liability failure to warn requires the plaintiff to prove the defendant's product was unreasonably dangerous as a result of the defendant's failure to warn, and that the plaintiff was injured as a proximate result of the failure to warn. A negligent failure to warn claim requires proof of those two elements and proof of an additional element, that the defendant had a duty to warn of dangers known or dangers, that in the exercise of reasonable care, should have been known to it, and breached that duty. Maryland courts consider the foreseeability of danger and the ability of a warning to ameliorate that danger, based on facts known to the defendant at the time the warning should have been given. Like New York courts, Maryland courts do not only consider foreseeability.

In this case, Plaintiff adequately pled the elements of both strict and negligent failure to warn.

CONCLUSION

In conclusion, the Mayor and the City of Baltimore, through the Complaint, seek to hold tobacco companies accountable for the pervasive cigarette filter litter that they assert litters the streets, sidewalks, beaches, parks, and lawns of Baltimore City. According to Plaintiff, most smokers believe these filters are biodegradable because of their appearance. However, Plaintiff contends that most cigarette filters are made of a "nonbiodegradable material called cellulose acetate." This substance never disappears and seeps into water and soil. Complaint at 4.

Defendants, the manufacturers and distributors of cigarettes, argue that the environmental harm is an unforeseeable consequence of manufacturing cigarettes and that they should not be held liable for the acts of third-party consumers whom they have no control over. The New York Supreme Court agrees with Defendants. In *People v. PepsiCo.*, the New York Attorney General sought to hold Defendants liable for single use plastic wrappings litter discarded in the Buffalo River. The New York Supreme Court dismissed the case in its entirety, in part because Plaintiff failed to prove the Defendants violated any statutes by using the plastic wrappings. It also reasoned that where the legislature has failed to enact laws to preclude said conduct, the courts should refrain from interfering in policy debates. *People v. PepsiCo, Inc.*, 85 Misc. 3d 969 (2024). However, whether this Court agrees with the reasoning in the *People v PepsiCo Inc.* is of no consequence, and only the laws of the State of Maryland are binding upon this court.

In accordance with the analysis above, the Mayor and City of Baltimore's claims are not preempted by State law because Plaintiff does not endeavor to create new laws through this Complaint and the statute cited by Defendants addresses fire prevention and safety, not environmental, standards. Further, the Complaint preempted by federal law because it does not establish a new *requirement*. Rather, Plaintiff seeks compensatory damages, equitable relief, criminal penalties, punitive damages, and injunctive relief. In addition, the Family Smoking Prevention and Tobacco Control Act of 2009 does not preclude *claims* arising out of product standards and does not prohibit a political subdivision from enforcing any regulation that is in addition to or more stringent than requirements in that particular statute. Furthermore, the Federal Cigarette Labeling and Advertising Act addresses cigarette labeling and advertising related to smoking and public health, not dangers to the environment.

In addition, these claims are not precluded by the Master Settlement Agreement. The powers of the Attorney General are limited to those enumerated in the Maryland Constitution, and the Annotated Code. While Governor Parris Glendening authorized the Maryland Attorney General to pursue this claim on behalf of the State, the Attorney General did not have the authority to release claims on behalf of Baltimore City. Moreover, the MSA does not confer any additional authority on the Attorneys Generals than they have pursuant to their respective states' regulations.

Nonetheless, Defendants' Motion to Dismiss Counts I through IV is granted. In Count I, Plaintiff failed to comply with the Maryland Rule § 4-202 regarding the contents of a charging document. In Counts II through Count IV, Plaintiff failed to comply with Baltimore City Health Code because Plaintiff failed to prove that they issued a civil or environmental citation placing Defendants on notice of the regulations they allegedly violated. BALT. CITY CODE, HEALTH § 7-631. Additionally, the Complaint does not comply with Baltimore City Code, Article 1, § 40-7 or Article 1, § 41.5(b) because it does not include the information required in a citation such as the time within which a person must pay the fine for the violation or request a hearing, nor does it include the time and place where the violation occurred.

As to Count V (Violation of the Baltimore City Code § 7-702) of the Complaint, there is no evidence that Plaintiff met the requirement of the Code. According to § 7-705, a violation of this code may be enforced by issuance of an environmental citation or a civil citation. Although Plaintiff argues that the process is not exclusive, the statute speaks to the process to be employed, and it also requires that Plaintiff comply with Article 1, § 40-7 or Article 1, § 41.5(b) of the Baltimore City Code.

The Motion to Dismiss Count VI (Continuing Trespass) is granted. Plaintiff has produced insufficient facts to support an inference that Defendants entered the land or commanded a third party to enter the land in possession of another.

Further, Plaintiff adequately pled causation. Foreseeability is the "touchstone in any determination of proximate, intervening, and superseding cause," which courts have held is to be decided by the trier of fact. *Collins v. Li*, 176 Md. App. 502, 536 (2007).

In addition, Plaintiff has stated a claim for Counts VII and VIII. Although Plaintiff does not consume or use the product, Maryland courts recognize bystander recovery in product liability cases and "have never limited recovery in strict liability for design defect to ultimate users of the product." *State v. Exxon Mobile Corp.*, 406 F. Supp. 3d 420, 461 (2019).

Furthermore, the Motion to Dismiss for Count IX is denied. Maryland courts recognize that pollution may result in a public nuisance. The Motion to Dismiss counts X and XI is also denied, as Plaintiffs adequately pled strict liability failure to warn and negligent failure to warn. Maryland courts require that in actions involving product liability for failure to warn, courts determine the foreseeability of harm to the person to whom the alleged duty is owed. As stated earlier, this duty is based on facts known or that should have been known to the defendant at the time the warning should have been given. Plaintiff asserts that Defendants knew that cigarette smokers would litter the cigarette filters on the ground because they mistakenly believed it was biodegradable. They also assert that the companies had knowledge of the harm these filters cause to the environment and failed to adequately warn the public of the defect.

Dana M. Middleton, Judge
Circuit Court for Baltimore City

Entered: Clerk, Circuit Court for
Baltimore City, MD
July 21, 2025