

After Palmquist

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Cite as: Heavy Metal Certified. "After Palmquist". <https://heavymetalcertified.com/briefings/after-palmquist>. CC BY 4.0.

Abstract

The decision

On February 24, 2026, the Supreme Court decided *Hain Celestial Group, Inc. v. Palmquist* [1]. The decision was unanimous. It turned on federal jurisdiction and civil procedure, not on toxicology, not on the science of heavy metals, not on whether any product was defective. It is, nonetheless, among the most consequential developments in heavy-metal product liability since the 2021 congressional report that set the current litigation wave in motion.

Sarah and Grant Palmquist sued two companies in Texas state court: the Hain Celestial Group, the maker of Earth's Best organic baby food, and Whole Foods Market, the retailer that sold the food to them. They alleged that heavy metals in the food their son ate during his first two years caused serious neurodevelopmental injury. Hain, a Delaware company, removed the case to federal court. To get there, it needed the Texas retailer out of the case, because a Texas plaintiff and a Texas defendant on opposite sides of a lawsuit destroy the "complete diversity" that federal diversity jurisdiction requires. The district court obliged. It dismissed Whole Foods as improperly joined, tried the case, and Hain won. A defense verdict, the kind a general counsel reports to the board as a clean win.

The Fifth Circuit reversed [2]. It held that Whole Foods had been wrongly dismissed, which meant the federal court had never possessed jurisdiction. The Supreme Court agreed, unanimously, in an opinion by Justice Sotomayor. The jurisdictional flaw, in the Court's words, "lingered through judgment." The federal verdict was vacated. The case now returns to Texas state court, to be tried again against both the manufacturer and the retailer, before a Texas jury.

Three procedural points sharpen the ruling's reach. First, the Court rejected the argument that a sham-seller defense (the retailer had no real role in the chain of commerce) could be established by a federal trial court's later dismissal of the retailer; the analysis must look to the pleadings at the moment of removal. Second, the unanimous-consent rule under 28 U.S.C. § 1446(b)(2)(A) means a single non-consenting properly-joined retailer can block removal before Palmquist's vacatur risk is ever incurred. Third, cases currently on appeal in which a non-diverse retailer was dismissed at the district court are now exposed to the same vacatur. The procedural posture is not narrow.

Read that sequence once more. A manufacturer took a heavy-metal injury case to trial, won it outright, and the win was erased, not on the merits, not because the science failed, but because the case had been litigated in the wrong courthouse. Years of defense were converted, in a single unanimous opinion, into a verdict worth nothing and a trial that must be held again.

Forum is not a detail

For a general counsel, the operative lesson of Palmquist is forum. In mass-tort litigation, the choice between a state courthouse and a federal one shapes the jury pool, the judge, the rules of evidence and discovery, the appetite for consolidation, the speed of the docket, and the settlement pressure that accumulates at every stage. Palmquist makes federal court materially harder to reach.

The mechanism plaintiffs use is simple and now durable. Sue the manufacturer, name the in-state retailer that sold the product as a co-defendant, and so long as the claims against the retailer are colorable under state law, the retailer's presence defeats diversity and the case stays in state court. The manufacturer's traditional counter-move (remove, then drop the retailer as improperly joined) is precisely the maneuver the Supreme Court has disarmed. After Palmquist, that maneuver does not merely fail. It is affirmatively hazardous, because a judgment obtained after a wrongful dismissal can be vacated years later, with the litigation clock reset to zero.

Heavy-metal cases will increasingly be tried in state courts, under state law, before state juries, with the retailer locked in as a co-defendant. The retailer is no longer a peripheral party to be removed early and forgotten. It is an anchor defendant. Private-label programs, in which the retailer is also effectively the brand, carry that exposure twice over.

The litigation environment Palmquist accelerates

Palmquist did not create the heavy-metal litigation wave. It removed one of the few procedural instruments defendants had for managing it.

The trigger was the 2021 staff report of a subcommittee of the U.S. House Committee on Oversight and Reform, which found elevated levels of arsenic, lead, cadmium, and mercury in baby foods (including Hain's) and noted that Hain had not tested its finished products for heavy metals until 2019 [3]. The cases that followed have been centralized as multidistrict litigation, *In re: Baby Food Products Liability Litigation*, MDL No. 3101, in the Northern District of California, a proceeding that had grown to roughly 345 pending claims by late 2025 [4]. The plaintiffs' theory is deliberately expansive: that any detectable quantity of a heavy metal can contribute to injury, a framing available precisely because there is no agreed-upon safe threshold for the metals at issue [5].

The broader enforcement environment has hardened in parallel. California's Assembly Bill 899 requires baby-food manufacturers to test for arsenic, cadmium, lead, and mercury and to disclose results publicly [6]. The FDA has issued action levels for lead in foods for babies and young children [7]. California's Proposition 65 permits any private party to bring an exposure claim with no government enforcement action behind it; one published settlement allocated \$25,000 of a \$28,000 total to attorneys' fees and \$3,000 to civil penalties [8]. A proposed class action has been brought against a major online marketplace over arsenic in rice products [9]. Independent "exposé" testing feeds the cycle directly by handing plaintiffs' counsel ready-made factual predicates [5].

The cost of a single contamination-triggered event (a recall, a delisting, a serious lawsuit cluster) belongs on a risk register, not in a marketing plan. Conservative one-year modeling places it at \$1.6M to \$6.6M for a brand at \$5M in revenue, \$8M to \$33M at \$50M, and \$57M to \$187M or more at \$500M [10]. A widely cited survey of major companies put mean outside legal fees at roughly \$2.0M per major case, with discovery costs alone frequently exceeding \$600,000 [11]. Palmquist's contribution to that arithmetic is straightforward: more of these cases will now be decided in the forum where the defendant holds the least structural advantage.

What a defensible posture now requires

If the forum is now, more often than not, a state courtroom and a state jury, the question for a general counsel is concrete. When a heavy-metal claim reaches that jury, what evidence will the company have to put in front of it?

Begin with what the plaintiff will argue. The case does not depend on proving that one particular lot was extraordinarily contaminated. It depends on a narrative: the metals were present, the company knew or

should have known, the company did not do enough. The Hain record (finished products not tested for heavy metals until 2019) shows how powerfully that narrative lands when a company cannot answer it. "They didn't test" is a sentence a jury understands without the help of an expert.

The defense depends on evidence of a particular kind. Three properties matter, and most companies in these categories satisfy at most one. The table below sets each property against the plaintiff's argument when it is missing and the defense posture when it is present.

Property · Plaintiff argues, when missing · Defense posture, when present

1. Contemporaneous · The company assembled this testing record after the complaint was filed. It looks like what it is: litigation-prepared evidence built to support a defense, not a quality-control record built to detect a problem. ·

Testing was generated routinely, before any litigation or regulatory inquiry, under a documented schedule. The record cannot plausibly have been built for the courtroom because the courtroom was not in view when the record began.

2. Independent · Testing was commissioned, sampled, and selectively reported by the company that benefits from a clean result. A competent expert will take it apart in front of the jury, lot by lot, choice by choice. · Samples were drawn by a party independent of the brand's production team and analyzed by laboratories accredited to ISO/IEC 17025 [12]. Chain of custody is documented; a break in custody invalidates the result.

3. Continuous · This single passing result is a snapshot. The tested lot was not the lot the child consumed. Conditions changed between them. The favorable result is the anomaly, not the rule. · Testing was repeated on a defined schedule, across lots and across time, against published limits. The product the child consumed sits inside a demonstrated pattern of compliance, not outside a single fortunate data point.

Most certification, and most internal quality testing, produces snapshots. The litigation that Palmquist has pushed into state court will be won and lost on the difference between a snapshot and a record.

What HMTc was built to produce

The Heavy Metal Tested & Certified program, HMTc, was built to solve this problem. The 2026 Edition of the Infant and Child Foods Program Manual is published today as the first bound volume of the program; the methodology has been under documented revision since 2024 [10]. HMTc is designed as a multi-category framework. Infant and child foods is the first category released, because it is the category where post-Palmquist exposure is most immediate.

HMTc certification is not a one-time test. It is continuous surveillance under a controlled protocol.

Certified products are tested on a defined schedule (monthly for the highest-exposure categories such as infant formula and infant cereals, quarterly for lower-exposure categories) with the frequency tied to how much of a product a child actually consumes relative to body weight, not to administrative convenience.

Samples are drawn by a party independent of the brand's production team and analyzed by ISO/IEC 17025-accredited laboratories [12]. Every sample travels under documented chain of custody; a break in that chain invalidates the result. Results must be submitted as structured, machine-readable data so the testing history exists as an analyzable record rather than a drawer of unconnected PDFs [10].

The program's decision rules are written for the cross-examination a heavy-metal case invites. A result is judged against the limit using the laboratory's expanded measurement uncertainty: a lot passes only if the result plus uncertainty is at or below the limit, and fails only if the result minus uncertainty exceeds the limit. Borderline results require defined confirmatory action [13]. The program prohibits "testing into compliance": repeated ad hoc retesting or laboratory-shopping in search of a passing number is treated as a data-integrity violation [10].

The standards do not stand still. The Standards Ratchet Mechanism commits the program to tightening limits as industry capability improves, with specified trigger conditions, a capped step size to prevent destabilizing shifts, and a forward-forecast obligation so brands can plan for the next cycle [10]. HMTc is a forward-moving signal, not a static gate. A regulator reading the program manual can verify the trigger conditions in Part 2.10 of the manual.

The Confidential Remediation Track

Two features of HMTc speak directly to the plaintiff's strongest sentence. The first is staged compliance: products are certified by status, and a brand whose results are not yet fully compliant can still be enrolled, placed under intensified surveillance and corrective action, and moved toward compliance along a documented trajectory. The second is the Confidential Remediation Track.

The Track is the operational answer to a paradox that defines this category. The brands most in need of a structured improvement program are the brands least likely to enter one if doing so creates immediate public exposure. A brand that publicly acknowledges elevated heavy metals in its products has handed plaintiffs' counsel a factual predicate before any improvement program has had a chance to operate. The Track addresses this by enrolling brands confidentially. Test data, corrective actions, and improvement records are treated as confidential business information under the license agreement. The brand may not use the HMTc Certification Mark until at least one SKU achieves a compliant status; the mark is gated to demonstrated compliance, not membership.

What the Track does produce, immediately and from the first day of enrollment, is a documented, timestamped, third-party-verified record of continuous improvement, before any plaintiff names the brand. In the language of the post-Palmquist jury that will hear these cases, the legal narrative shifts from "the brand knew and did nothing" to "the brand knew, enrolled in an independent certification program before any inquiry, and has documented evidence of continuous improvement." That shift is the difference between exposure and defense.

The Track is not a loophole. It is a structural answer to the public-exposure trap that the litigation environment creates. A brand evaluating the Track should consult counsel; the Program Operator does not offer legal advice and the Track is not a substitute for counsel-directed quality programs.

The economics, briefly

Three economic effects determine whether certification clears the cost-of-inaction bar.

The first is litigation-cost reduction. The expected one-year loss from a public heavy-metals event ranges from \$1.6M for a small brand to \$187M or more for a large one [10]. Certification cannot eliminate the underlying environmental contamination, but it can reduce the probability and severity of an adverse event through preventive controls, faster containment, and an evidentiary posture that narrows the plaintiff's strongest arguments. Expected-loss modeling places break-even on a mid-size brand at approximately \$112,500 per year [14].

The second is channel-access value. Certification is becoming a precondition for shelf space and marketplace listing at major retailers independent of any lawsuit at all. The dollar value of channel access is brand-specific. For a brand whose growth depends on entry into a national retailer's private-label or premium tier, the value is the discounted revenue of that channel.

The third is insurance-premium effect. Product liability carriers are repricing in real time as Palmquist filters through their underwriting models. Several major carriers are evaluating reduced-premium endorsements for suppliers certified to recognized third-party heavy-metal standards. The dollar value of premium reduction is carrier-specific and policy-specific, but the direction is consistent: certified suppliers pay less than uncertified suppliers for the same coverage. A brand's broker can model the specific number.

Certification is a litigation-cost-reduction expense, a channel-access expense, and an insurance-premium expense. Palmquist raised the value of all three.

The international dimension

EU regulators are tightening heavy-metals limits in food on a faster timeline than US regulators. A US brand exporting to the EU faces compliance pressure regardless of US litigation posture. A US brand selling to retailers with international footprints (Costco, Walmart, Whole Foods/Amazon) faces supplier qualification pressure from those retailers' international operations, including operations in jurisdictions with stricter limits. HMTc is currently a US standard. Its limits are designed to be compatible with the stricter end of international regulatory frameworks, which means a brand certified to HMTc holds a posture aligned with where global regulation is moving, not where US regulation currently rests.

The first action

Reading this briefing is not the action. The action is a 30-day confidential evidentiary posture review. The review answers three questions specific to the brand or retailer: Does the current testing record meet the contemporaneous, independent, and continuous test? If it does, what is the path to public HMTc certification? If it does not, what is the path through the Confidential Remediation Track? The review is conducted under confidentiality and produces a written assessment for the brand's general counsel.

If the answer to question one is yes, the path to certification is short. If the answer is no, the Track exists. Either way, the brand or retailer ends the review with a defined next step and a documented date of engagement.

A single suggestion

The 2021 congressional report told every company in this category what the plaintiffs' bar would do. Palmquist has now told them where it will be done, and on what terms. Neither document is ambiguous. The brands and the retailers that will be in the strongest position three years from now are the ones building a contemporaneous, independent, and continuous evidentiary record today, before a complaint names them, while the record can still be the kind that helps.

If you are general counsel or chief compliance officer at a brand or a retailer in an affected category, the 30-day evidentiary posture review is available now. The 2027 retailer buying cycles will not wait.

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Bibliographic record

Cite this briefing

