

Medical Monitoring and Limits to Federal Equitable Jurisdiction

by James M. Beck

No-injury medical monitoring is distinctive, if not unique, in that it exists solely as a by-product of a procedural rule—the general availability of class actions as a method of aggregating litigation. This dependency on the class action mechanism means that most significant litigation in which currently uninjured plaintiffs seek “medical monitoring” relief now occurs in federal court, thanks to the minimal diversity provision of the Class Action Fairness Act. 28 U.S.C. §1332(d)(2).

The existence of medical monitoring as a claim or a remedy is a matter of state law. Currently, thirteen states have appellate or statutory authority allowing presently uninjured plaintiffs to recover out-of-pocket costs of monitoring for latent medical conditions that claimed exposure to purported toxic substances has allegedly placed them at greater risk of developing.¹ By contrast, a greater number of states, either 21 or 23 depending on whether “sub-cellular” damage is considered a present injury, have appellate or statutory authority rejecting medical monitoring claims brought by presently uninjured persons.²

¹ See *Quiroz v. ALCOA Inc.*, 416 P.3d 824, 832-33 (Ariz. 2018) (nuisance claims only); *Potter v. Firestone Tire & Rubber Co.*, 863 P.2d 795, 822-23 (Cal. 1993); *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816, 826 (D.C. Cir. 1984) (applying District of Columbia law); *Petito v. A.H. Robins Co.*, 750 So.2d 103, 106 (Fla. App. 1999); *Exxon Mobil Corp. v. Albright*, 71 A.3d 30, 77 (Md. 2013); *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 718 n.7 (Mo. 2007); *Sadler v. PacificCare*, 340 P.3d 1264, 1270 (Nev. 2014); *Sinclair v. Merck & Co.*, 948 A.2d 587, 595 (N.J. 2008) (environmental torts only); *Hirsch v. CSX Transportation, Inc.*, 656 F.3d 359, 363 (6th Cir. 2011) (applying Ohio law); *Redland Soccer Club, Inc. v. Dep’t of the Army*, 696 A.2d 137, 145-46 (Pa. 1997); *Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 979 (Utah 1993); Vt. Stat. tit. 12, §7201; *Bower v. Westinghouse Electric Corp.*, 522 S.E.2d 424, 426 (W. Va. 1999) (syllabus, point 2).

² See *Hinton v. Monsanto Co.*, 813 So. 2d 827, 831-32 (Ala. 2001); *Baker v. Wyeth-Ayerst Laboratory Division*, 992 S.W.2d 797, 799 (Ark. 1999); *Smith v. Terumo BCT, Inc.*, 581 P.3d 1220, 1227 (Colo. App. 2025); *Baker v. Croda, Inc.*, 304 A.3d 191, 194 (Del. 2023); *Boyd v. Orkin Exterminating Co.*, 381 S.E.2d 295, 298 (Ga. App. 1989), *abrogated on other grounds*, *Hanna v. McWilliams*, 446 S.E.2d 741, 744 (Ga. App. 1994); *Berry v. City of Chicago*, 181 N.E.3d 679, 689 (Ill. 2020); *Shell Oil Co. v. Meyer*, 705 N.E.2d 962, 981 (Ind. 1998); *Wood v. Wyeth-Ayerst Labs*, 82 S.W.3d 849, 859 (Ky. 2002); La. Civ. Code art. 2315(B); *Bernier v. Raymark Industries, Inc.*, 516 A.2d 534, 543 (Me. 1986); *Henry v. Dow Chemical Co.*, 701 N.W.2d 684, 686 (Mich. 2005); *Paz v. Brush Engineered Materials, Inc.*, 949 So. 2d 1, 5-6 (Miss. 2007); *Trimble v. ASARCO, Inc.*, 232 F.3d 946, 963 (8th Cir. 2000) (applying Nebraska law), *abrogated on other grounds*, *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 551-52 (2005); *Brown v. Saint-Gobain Performance Plastics Corp.*, 300 A.3d 949, 952 (N.H. 2023); *Caronia v. Philip Morris USA, Inc.*, 5 N.E.3d 11, 18 (N.Y. 2013); *Curl v. American Multimedia, Inc.*, 654 S.E.2d 76, 81 (N.C. App. 2007); *Lowe v. Philip Morris USA, Inc.*, 183 P.3d 181, 187 (Or. 2008); *Kelly v. Cowesett Hills Assoc.*, 768 A.2d 425, 430 (R.I. 2001); *Temple-Inland Forest Products Corp. v. Carter*, 993 S.W.2d 88, 93 (Tex. 1999); *Ball v. Joy Technologies, Inc.*, 958 F.2d 36, 39 (4th Cir. 1991) (applying Virginia law); *Alsteen v. Waukeco, Inc.*, 802 N.W.2d 212, 216, 218 (Wis. App. 2011). Cf. *Donovan v. Philip Morris USA, Inc.*, 914 N.E.2d 891, 899, 901 (Mass. 2009) (requiring present physical injury, but demonstrable sub-cellular damage qualifies); *Bryson v. Pillsbury Co.*, 573 N.W.2d 718, 721 (Minn. App. 1998) (same).

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Many of the jurisdictions allowing no-injury medical monitoring recovery consider that remedy as “equitable” in nature. Indeed, *Friends for All Children*, generally recognized as the first decision ever to recognize the recoverability of medical monitoring costs divorced from any present physical injury, solely invoked “equity” to justify its novel result. 746 F.2d at 829-31 (“plaintiffs must show that they meet the traditional standards governing the award of equitable relief”). Other decisions permitting no-injury medical monitoring claims do the same, particularly when recoveries are to be administered as court-supervised funds.³

Indeed, plaintiffs often argue affirmatively that medical monitoring should be treated as an equitable remedy, especially when seeking class certification under Fed. R. Civ. P. 23(b)(2)—to avoid the predominance of common questions requirement—and occasionally courts have been receptive.⁴ Reliance on supposed “equitable” principles is also characteristic of pro-plaintiff commentators supporting medical monitoring litigation.⁵

But in federal court, the availability of “equitable” remedies, even in diversity cases, is determined by the scope of federal equity jurisdiction, not by state law. “State law cannot define the remedies which a federal court must give simply because a federal court in diversity jurisdiction is available as an alternative tribunal to the State’s courts.” *Guaranty Trust Co. v. York*, 326 U.S. 99, 106 (1945). “Congress provided that the forms and modes of proceeding in suits of equity would conform to the settled uses of courts of equity.” *Id.* at 104-05 (citation and quotation marks omitted). Thus,

This does not mean that whatever equitable remedy is available in a State court must be available in a diversity suit in a federal court, or conversely, that a federal court may not afford an equitable remedy not available in a State court. Equitable relief in a federal court is of course subject to restrictions: the suit must be within the traditional scope of equity as historically evolved in the English Court of Chancery. . . . That a State may authorize its courts to give equitable relief unhampered by any or all such restrictions cannot remove these fetters from the federal courts.

Id. at 105-06 (citations omitted).

³ *E.g.*, *Exxon Mobil*, 71 A.3d at 80 (“many courts that award medical monitoring costs to do so by establishing equitably a court-supervised fund”); *Redland Soccer*, 696 A.2d at 142-43 n.6 (medical monitoring recovery “is a highly appropriate exercise of the Court’s equitable powers”); *Hansen*, 858 P.2d at 982 (“Although trial courts have ample equitable powers to assure that this remedy is provided, we suggest consideration of a court-supervised fund”); *Ayers v. Jackson Twp.*, 525 A.2d 287, 314 (N.J. 1987) (“a highly appropriate exercise of the Court’s equitable powers”); *Petito*, 750 So.2d at 106 (“the implementation of and supervision over a medical monitoring fund is well within a court’s equitable powers”); *Burns v. Jaquays Mining Corp.*, 752 P.2d 28, 33 (Ariz. App. 1987) (following *Ayers*); *Sullivan v. Saint-Gobain Performance Plastics Corp.*, 431 F. Supp.3d 448, 456 (D. Vt. 2019) (looking to “the law of equitable remedies” as allowing an medical monitoring claim); *Donovan v. Philip Morris USA, Inc.*, 2012 WL 957633, at *15-16 (D. Mass. Mar. 21, 2012) (“the surest way for the Court . . . is to fashion relief through an injunction rather than a money damages award”).

⁴ *See Barnes v. American Tobacco Co.*, 161 F.3d 127, 142-43 (3d Cir. 1998) (court-ordered medical-monitoring programs could be characterized as final injunctive relief; denying (b)(2) certification on other grounds) (applying Pennsylvania law); *Boughton v. Cotter Corp.*, 65 F.3d 823, 827 (10th Cir. 1995) (Rule 23(b)(2) certification for a medical-monitoring claim may be legally permissible; class lacked cohesion) (applying Colorado law); *Ratliff v. Mentor Corp.*, 569 F. Supp.2d 926, 928 (W.D. Mo. 2008) (plaintiff unsuccessfully sought “medical monitoring as an equitable remedy” against a medical device manufacturer); *In re Valsartan, Losartan, & Irbesartan Products Liability Litigation*, 2023 WL 1818922, at *33-34 (D.N.J. Feb. 8, 2023) (certifying equitable Rule 23(b)(2) medical monitoring class action).

⁵ Reliance on supposed “equitable” principles is also characteristic of pro-plaintiff commentators supporting medical monitoring litigation. *E.g.*, Kyle Bradley, Reviving the Medical Monitoring Class Action, 174 Univ. of Pa. L.R. 1427, 1454 (2026) (advocating a “journey to convince courts that equitable relief in the form of medical monitoring is both appropriate and necessary”); Mark Geistfeld, The Equity of Tort Claims for Medical Monitoring, 52 S.W. L. Rev. 493, 504 (2024) (“[m]edical monitoring claims implement the equitable principle concerned about the prevention of irreparable bodily injuries”).

Guaranty Trust means that, “since *Erie*, the Supreme Court has instructed that a federal court’s equitable authority remains cabined to the traditional powers exercised by English courts of equity, even for claims arising under state law.” *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 840 (9th Cir. 2020) (citing *Guaranty Trust*). The Supreme Court “has never held or suggested that state law can expand a federal court’s equitable powers, even if allowing such expansion would ensure a similar outcome between state and federal tribunals.”⁶

The Georgia Supreme Court recently recognized the applicability of *Guaranty Trust* to an “equitable” medical monitoring claim in *Bio-Lab, Inc. v. Tartt*, ___ S.E.2d ___, 2026 WL 2395789 (Ga. Aug. 18, 2026). *Bio-Lab* declined to decide whether Georgia law would recognize such a claim until after the federal court (that had certified the question) determined that federal equity jurisdiction would allow it. *Id.* at *5-7.

Bio-Lab recognized that state law governed only “under what circumstances is equitable relief available.” 2026 WL 2395789, at *3. In that respect, to be entitled to equitable relief, a plaintiff “must first identify some legally cognizable ‘wrong’ or ‘injury’ that needs to be remedied,” which was a “separate question whether that plaintiff is entitled to some form of relief.” *Id.* (citation and quotation marks omitted).

Bare fears of injury will not authorize equitable relief. Rather, where a plaintiff seeks an equitable remedy for a threatened legal injury, that injury must be imminent, not remote, before equitable relief is authorized.

Id. at *4 (citations omitted). Because “equity follows law,” equitable relief cannot be afforded “contrary to the law.” *Id.* (citation and quotation marks omitted).

But as to “when equitable relief is available,” and “what is [its] appropriate form and scope,” *Bio-Lab* recognized those questions as “largely” federal in nature under *Guaranty Trust*. 2026 WL 2395789, at *5.

Unlike the question of entitlement to equitable relief (something we agree with the district court that state law governs), the form of equitable relief that a federal court sitting in diversity may grant may (we believe) be largely a question of federal law. [citing *Guaranty Trust* and progeny decisions] We acknowledge that this is a surprisingly thorny issue. But we think the best reading of the relevant decisional law – which is not exactly a beacon of clarity – is that the appropriate form and scope of equitable relief must be determined as a matter of federal law.

Id. (other citations omitted). “[S]tate law clearly cannot commit the federal courts to grant equitable relief [in a diversity case] contrary to restraints imposed by the Constitution or an Act of Congress.” *Id.* (Wright & Miller citation omitted). “[C]rucially, some have interpreted *Guaranty Trust* to mean that state law does not govern the **scope** of the equity powers of the federal court, even when state law supplies the rule of decision.” *Id.* at *6 (citation and quotation marks omitted) (emphasis original). Thus, *Bio-Lab*

⁶ *Id.* at 841-42. *Accord, e.g., Rodgers-Rouzier v. American Queen Steamboat Operating Co.*, 104 F.4th 978, 987 (7th Cir. 2024) (“equitable remedies available in federal court for the violation of state substantive rights might continue to depend on federal law, even after *Erie*”); *Fidelity & Deposit Co. v. Edward E. Gillen Co.*, 926 F.3d 318, 326 (7th Cir. 2019) (“federal courts’ equitable powers are limited, not by state law, but to the traditional powers exercised by English courts of equity, even in diversity cases”); *Davilla v. Enable Midstream Partners*, 913 F.3d 959, 973 (10th Cir. 2019) (“the practice of borrowing state rules of decision does not apply with equal force to determining appropriate remedies, especially equitable remedies”). See Wright & Miller, 19 Fed. Prac. & Proc. §4513 (3d ed. 2026 Update) (“State law clearly cannot commit the federal courts to grant relief, legal or equitable contrary to restraints imposed by the Constitution or an Act of Congress.”).

concluded that federal law governed the scope of “equitable” medical monitoring:

So – as we understand the current state of the admittedly ambiguous law – a federal court, although limited by state jurisprudence on the question of whether the injunction remedy may be granted, is free to decide for itself what the scope and content of that injunction should be as befits the historically discretionary character of equity jurisprudence. State law provides the basis for relief; it does not necessarily constrain the scope of that relief. And that seems especially true where, as here, state law supplies no clear answer as to the availability of a specific form of injunctive relief.

2026 WL 2395789, at *6 (citation and quotation marks omitted).

Given CAFA, availability of no-injury medical monitoring under a federal court’s equitable powers becomes a question of critical importance. The answer to that question—which no court has directly considered—is probably “no,” under *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). *Grupo Mexicano* was a creditors rights case. The decision’s key holding concerned inherent limitations of “equitable” relief in federal court. The Court determined that a creditor plaintiff could not obtain equitable relief—a pre-merits injunction against alienation of assets—because of historical limitations on federal courts equitable powers. *Grupo Mexicano* held that federal equity powers are limited to what existed in English courts of equity in 1789:

The Judiciary Act of 1789 conferred on the federal courts jurisdiction over “all suits . . . in equity.” We have long held that the jurisdiction thus conferred is an ***authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.*** Substantially, then, the equity jurisdiction of the federal courts is the jurisdiction in equity exercised . . . in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act. The substantive prerequisites for obtaining an equitable remedy as well as the general availability of injunctive relief are not altered by [the federal rules of civil procedure] and depend on traditional principles of equity jurisdiction.

Grupo Mexicano, 527 U.S. at 318-19 (citations and quotation marks omitted) (emphasis added). It has long been the law that “courts which are created by written law [such as the Judiciary Act], and whose jurisdiction is defined by written law, cannot transcend that jurisdiction.” *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 93 (1807).

Recent federal decisions have enforced that limitation. *In re Express Scripts, Inc.*, 176 F.4th 301, 314-15 (4th Cir. 2026), limited “equitable” relief available in opioid public nuisance litigation:

The fact that [plaintiff] characterized such relief as “equitable” for purposes of [state] law does not matter here. [Plaintiff] did not purport to decide whether [that state] remedy would have been awarded by courts of equity in 1791. But that is the question before us. And to answer that question, we do not ask what label state or federal courts affix to a remedy today, but whether the relief sought is the kind that English courts of equity would have awarded at the Founding.

Id. at 314-15 (citations omitted). “Although such funds may be recoverable under modern West Virginia [state] law, in 1791 no court of equity would have had the power to grant them.” *Id.* at 314 (4th Cir. 2026). Likewise, *Rodgers-Rouzier* held that “equitable remedies available in federal court . . . are in turn based . . . judicial remedies which had been devised by . . . ‘the English Court of Chancery at the time of the

separation of the two countries.” 104 F.4th at 987 (quoting *Grupo Mexicano*; other citations omitted).⁷

“Equitable” medical monitoring—allowing uninjured persons to recover testing costs for being “at greater risk” of future injury—should thus be subject to the limitations recognized in *Grupo Mexicano*. Federal jurisdiction conditions availability of “equitable relief,” such as medical monitoring, on whether English courts of equity in 1789 allowed it. It is highly doubtful that chancellors in England during the reign of King George III permitted uninjured persons to recover for mere increased risk of future injury due to a defendant’s negligence. Defendants opposing medical monitoring claims in federal court should do what the defendants did successfully in *Express Scripts*—require plaintiffs to establish the existence of such 200+-year-old English precedent. No medical monitoring decision has so far addressed this issue.

Finally, for an *Erie*-based argument to have any traction, the equitable powers of the relevant non-federal jurisdiction would have to be considerably broader than those conferred on the federal courts by the Judiciary Act. That may be the case, or it may not. For example, Pennsylvania, which allowed no-injury medical monitoring in *Redland Soccer*, has a statute like the 1789 federal Judiciary Act—only reaching even further back in time. Pennsylvania has adopted the “common law and such of the statutes of England as were in force in the Province of Pennsylvania on May 14, 1776.” 1 Pa. Cons. Stat. §1503(a). See *Novatek Corp. v. Mallet*, 324 F. Supp.3d 560, 568 (E.D. Pa. 2018) (§1503(a) precludes any *Erie*-based avoidance of *Grupo Mexicano* under Pennsylvania law). Other states, particularly the original 13, may have similar statutes.

A note of caution—this issue has apparently never been advanced in the medical monitoring context. Research has not found any opinion in any court citing *Grupo Mexicano* that also contains the phrase “medical monitoring.” But this also means that no court has rejected this argument, either. Plaintiffs invent new liability theories all the time, so it behooves those of us on the defense side to be equally creative.

⁷ *Grupo Mexicano* flagged, but did not address, the diversity jurisdiction issue, because it had been waived.

Although this is a diversity case, respondents’ complaint sought the injunction pursuant to Rule 65. . . . Petitioners argue for the first time before this Court that . . . availability of this injunction under Rule 65 should be determined by the law of the forum State. . . . Because this argument was neither raised nor considered below, we decline to consider it.

527 U.S. at 318 n.3 (*Erie* citation omitted).