

McDonald's Scores COVID-19 Victory Against GL Insurer – Policyholders are “Lovin’ It”

In a significant victory for policyholders, the Northern District of Illinois has found a duty to defend under a commercial general liability (“CGL”) policy for damages related to COVID-19. In reaching this decision, the court made several significant findings regarding the scope and interpretation of “damages,” “because of,” and “bodily injury” in the context of general liability coverage. The court thoroughly examined each term, providing a breadth of analysis policyholders can utilize in pursuing liability coverage for COVID-19 claims moving forward.

In McDonald's Corp., et al., v. Austin Mutual Insurance Company, McDonald's Corporation, McDonald's USA, LLC, Lexi Management, LLC, and DAK4 LLC (collectively “McDonald's”) filed suit against Austin Mutual Insurance Company (“Austin Mutual”) seeking to secure insurance coverage for damages arising from a lawsuit filed against McDonald's stemming from COVID-19. McDonald's claims that Austin Mutual breached its duty to defend in connection with the underlying lawsuit, Taynarvis Massey, et al. v. McDonald's Corporation, et al. (“Massey Lawsuit”), under liability policies issued to McDonald's.

The Massey Lawsuit was filed by five employees of two Chicago-based McDonald's franchises, along with four of their live-in family members (collectively “Massey Lawsuit Plaintiffs”). Three of the Massey Lawsuit Plaintiffs contracted COVID-19 or showed symptoms consistent with COVID-19. The Massey Lawsuit alleges that McDonald's is liable for public nuisance and negligence in its decision to remain open during the COVID-19 pandemic without enhanced health and safety protections. The Massey Lawsuit specifically seeks a mandatory injunction including, but not limited to, requiring McDonald's to provide its employees with adequate personal protective equipment; preclude the reuse of face masks; supply hand sanitizer; require that customers wear face masks; monitor employee COVID-19 infections; and provide McDonald's employees with accurate information about COVID-19.

McDonald's sought coverage under two Business Owner liability policies issued by Austin Mutual for the Massey Lawsuit. Austin Mutual failed to accept or deny coverage in some instances or has outright denied coverage to McDonald's for claims stemming from the Massey Lawsuit. By the time McDonald's filed suit, it had collectively incurred in excess of \$1.6 million in attorneys' fees, costs, and expenses in defending the Massey Lawsuit. Seeking coverage for these losses, McDonald's filed suit seeking a declaratory judgment that Austin Mutual owed a duty to defend the Massey Lawsuit, as well as breach of contract for failing to accept coverage for the Massey Lawsuit.

The Business Owners policies issued to McDonald's provide that Austin Mutual will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” caused by an “occurrence” that takes place in the “coverage territory” during the policy period. The policies define “bodily injury” as “bodily injury, sickness, disease or mental anguish sustained by a person,

including death resulting from any of these at any time." Based on this language, Austin Mutual moved to dismiss the Complaint for failure to state a claim on the basis that the Massey Lawsuit did not seek: 1) "damages;" 2) "because of;" 3) "bodily injury." The court disagreed with Austin Mutual's interpretation of the policy language.

In denying Austin Mutual's Motion to Dismiss, the court identified each term in dispute, starting with damages. In its analysis of "damages," the court relied on case law regarding lead exposure, likening the exposure risks and clarifying that in Illinois, "damages" does not merely mean money but can also include the cost to comply with a mandatory injunction. The court ruled that "because of" is accorded a broad, non-technical meaning not requiring proximate causation, making simple "but for" causation sufficient. Finally, the court found that since three of the Massey Lawsuit Plaintiffs contracted COVID-19 or fell ill and experienced symptoms consistent with COVID-19, the "bodily injury" component of the analysis was satisfied and could end there. However, the court went on to find that exposure to potentially harmful contaminants can also constitute bodily injury, even without manifestations of sickness or disease. Putting it all together, the Court found that if the Massey Lawsuit Plaintiffs prevail and obtain a mandatory injunction, that will only be "because of" the Massey Lawsuit Plaintiffs' contraction of COVID-19. Alternatively, the Court found another potential avenue for coverage in that the exposure to the virus is itself "bodily injury" that the Plaintiffs would be forced to expend "damages" to remedy.

Ultimately, this decision confirms that the costs incurred to comply with a mandatory injunction due to COVID-19 and the Coronavirus constitute "damages" "because of" "bodily injury," opening the door to some relief for policyholders facing liability from the pandemic. Not only is this ruling a significant victory in COVID-19 litigation, but it could also potentially broaden the scope of "damages" "because of" "bodily injury" in assessing coverage for other claims as well.

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