

Liability Insurer Must Defend Restaurant Against Employees' Public Nuisance/Negligence Suit

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An Illinois federal district court ruled that a general liability insurer was required to defend a restaurant against a suit brought by employees alleging public nuisance and negligence based on the restaurant's decision to remain open during the pandemic. *McDonald's Corp. v. Austin Mutual Ins. Co.*, No. 1:20-CV-05057 (N.D. Ill. Feb. 22, 2021).

Employees alleged that McDonald's remained open during the COVID-19 pandemic without enhanced health and safety protocols. The employees sought an injunction requiring McDonald's to provide adequate personal protective equipment, to enforce mask-wearing on premises and to monitor employees' COVID-19 infections, among other things. The insurer refused to defend, arguing that the suit did not seek "damages because of bodily injury," as required by the policy. The court disagreed.

The court ruled that under Illinois law, the costs of complying with a mandatory injunction can constitute "damages." The court further held that the underlying claims alleged damages "because of" bodily injury, explaining that "but for" the employees' COVID-19 infection and exposure, McDonald's would not have had to incur costs to comply with a mandatory injunction. In so ruling, the court rejected the insurer's contention that general liability policies cover only damages paid to a third-party, noting that this argument is "untethered to any language in the policy." Finally, the court ruled that the complaint alleged "bodily injury" for purposes of triggering the insurer's duty to defend because several employees had contracted the COVID-19 virus.

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