

## BUSINESS INSURANCE.

# Insurer seeks dismissal of COVID-19 suit filed by McDonald's, franchisees

Posted On: Oct. 12, 2020 12:05 PM CST

### Judy Greenwald

An insurer has filed a motion to dismiss a lawsuit filed by McDonald's Corp. and two of its franchisees over the insurer's refusal to defend them in COVID-19 litigation filed by the fast-food chain's employees.

Defendant Austin Mutual Insurance Co., a unit of Madison, Wisconsin-based American Family Mutual Insurance Co., filed the motion in U.S. District Court in Chicago Thursday in *McDonald's Corp., et al. v. Austin Mutual Insurance Co.*



Five workers at four McDonald's restaurants and their family members and cohabitants filed suit against McDonald's and the franchisees for public nuisance and negligence because of their decision to remain open during the COVID-19 pandemic "while simultaneously failing to comply with minimum basic health and safety standards at its restaurants," according to the motion to dismiss.

The underlying litigation said the McDonald's restaurants' operations were "causing ... or ... reasonably certain to cause," the virus' spread to plaintiffs, their family members, other McDonald's employees and the general public, the motion states.

The plaintiffs in the underlying litigation contend they have been exposed to the virus and have incurred an increased likelihood of infection and, if injunctive relief is not granted, face the risk of physical and emotional injuries, and vulnerability "to severe bodily injury or death from infection," the motion states.

Among the measures the workers seek are adequate protective equipment, a halt to forcing workers to reuse face coverings and gloves, and requiring employees and customers to use face coverings.

The insurer contends in its motion to dismiss that it has no duty to defend McDonald's and the franchisees. "Clearly, the intent of the parties to the insurance contracts was to provide coverage" to McDonald's and the franchisees "for their liability to a third person for bodily injury that might arise from the operations of the McDonald's restaurants," the motion states.

"The parties did not intend Austin Mutual to pay the insureds' costs of doing business to establish and enforce minimum basic health and safety standards at their restaurants while they remain open during the COVID-19 pandemic," the motion states, in seeking the lawsuit's dismissal.

McDonald's has incurred more than \$1.5 million in attorneys fees and other expenses in defending the underlying lawsuit, according to the complaint in the case, which was filed in August.

An attorney for the insurer had no comment, while other attorneys could not be reached.

Laura M. Gregory, a partner with Sloane & Walsh LLP in Boston, who represents both policyholders and insurers and is not involved in the case, said she believes McDonald's faces an "uphill battle" in the litigation

because policies insuring clauses are normally triggered if there has been an injury, and plaintiffs in the underlying litigation are apparently seeking to prevent future bodily injury, which would not be covered.

*More insurance and risk management news on the coronavirus crisis [here](#).*

---