

Next, Please: The Fast Food Industry Is Hit With the Latest PFAS Suit

By: Gregory S. Capps

Insurance Coverage and Bad Faith Alert

3.29.22

Over the last couple of years we have seen various industries impacted by litigation involving the newest emerging contaminant, per- and polyfluoroalkyl substances (PFAS). Suits have been brought against manufacturers of firefighting foam, shoe manufacturers, carpet manufacturers, and cosmetics manufacturers, among others. In the first suit involving the fast food industry, on March 28, 2022, a Class Action Complaint (the Complaint) was filed against McDonald's Corporation (McDonald's) arising out of its use of food packaging allegedly containing PFAS. The case, *Larry Clark, individually, and on behalf of those similarly situated vs. McDonald's Corporation*, Case No. 3:22-cv-628, is pending in the United States District Court for the Southern District of Illinois.

The Complaint alleges that PFAS used in food packaging to repel water, oil, and grease have been shown to migrate into the food. The Complaint provides a very detailed history of McDonald's alleged use of PFAS-containing food packaging dating back decades and claims that McDonald's "false, misleading and deceptive misrepresentations and omissions" in its advertising and SEC filings caused the class members to purchase food products that, had they known of the potential for PFAS exposure (which is alleged to cause various illnesses) they would not have purchased or would have paid less for the products. Interestingly, like the claims against certain cosmetics manufacturers, the claims do not allege any specific bodily injury or property damage, but rather raise claims for: (1) violation of state consumer protection statutes, including the Illinois Consumer Fraud and Deceptive Business Practices Act; (2) breach of express and implied warranties of merchantability; (3) violation of the Magnusson-Moss Act; and (4) unjust enrichment.

This lawsuit, like those in the cosmetics industry, is likely to raise questions under different coverage parts of commercial general liability policies, including the personal injury and advertising injury section and related exclusions. White and Williams LLP continues to monitor claims arising out of PFAS and has a team available to answer your questions and provide advice and guidance on how best to address the issues presented under various types of insurance policies.

For more information about the *McDonald's* case or other issues concerning PFAS, please reach out to Greg Capps (cappsg@whiteandwilliams.com; 215.864.7182) Robert Walsh (walshr@whiteandwilliams.com; 215.864.7045), Sara Tilitz (tilitzs@whiteandwilliams.com; 215.864.7150) or Lynndon Groff (groffl@whiteandwilliams.com; 215.864.7033).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.