
Obesity Lawsuit Against McDonald's Reinstated

U.S. Appeals Court Opens Wide Door for More Suits and Discovery

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The second most important court in the U.S. has reinstated an obesity law suit against McDonald's, thereby opening the door not only for similar law suits against fast food and perhaps even other food companies, but also permitting plaintiffs to demand previously secret documents from the fast food giant. It was this type of discovery which produced documents which convinced juries to begin handing down million dollar verdicts against cigarette makers, says public interest law professor John Banzhaf.

The Second Circuit U.S. Court of Appeals has unanimously held that New York General Business Law Sec. 349 -- which is similar to business and consumer protection statutes in many other states -- supports a law suit seeking to hold McDonald's liable in a class action law suit for contributing to the obesity of minors, says Banzhaf, whose law students helped put together the first successful fat law suit against McDonand's which resulted in a \$12.5 million payment.

In its six-page written opinion handed down today, the court said that this law "extends well beyond common-law fraud to cover a broad range of deceptive practices," and that plaintiffs need only meet a "bare-bones notice pleading requirement" to be sustained, and to require McDonald's to provide documents under pre-trial discovery.

The lower court judge, although he upheld three different legal theories under which he said the case against McDonald's could go forward, nevertheless dismissed the amended complaint because he said "plaintiffs have failed to draw an adequate causal connection between their consumption of McDonald's food and their alleged injuries."

However, the Court of Appeals has ruled that plaintiffs need not show that causal connection in their complaint, and need not, for example, state how much they exercised or whether there was a family history of diseases related to obesity. "So far as the Sec. 349 claims are concerned, the amended complaint more than meets the requirements of Rule 8(a)," the court unanimously concluded, thereby seemingly holding that similar complaints by other plaintiffs against this and perhaps other fast food companies would also be legally adequate and open the door to potential liability.

This ruling also permits plaintiffs' attorney to demand that McDonald's disclose any memos, test results, studies, etc. which relate to the three major claims as the appellate court framed them:

1. that "the combined effects of McDonald's promotional representations during this period was to create the false impression that its food products were nutritionally beneficial and part of a healthy lifestyles if consumed daily"
2. that "McDonald's failed adequately to disclose that its use of certain additives and the manner of its food processing rendered certain of its products substantially less healthy than represented"
3. and that "McDonald's deceptively represented that it would provide nutritional information to its New York customers when in reality such information was not readily available at a significant number of McDonald's outlets in New York visited by plaintiffs and others."

Thus, suggests Banzhaf, plaintiffs would be entitled to see any memo about whether additives and food processing techniques might make food substantially less healthy in the sense of being substantially higher in fat, trans fat, cholesterol, calories, etc., or that certain techniques might tend to increase any tendency of fast foods to have addictive effects on some of the purchasers.

It had been suggested, for example, that at least one fast food company deliberately altered the temperature at which its french fries were cooked to increase their absorption of fats -- and/or added unnecessary sugar -- both of which arguably make them less healthy.

Similarly, McDonald's would have to disclose any studies it has about whether people who eat at McDonald's frequently tend to be healthy -- a premise challenged in the movie "Super Size Me" in which Banzhaf appears.

Finally McDonald's might be required to disclose information that it was in violation of a court order requiring the disclose of certain nutritional information.

"Today, the second highest court in the land has just held not only that obesity law suits aren't frivolous, but that they are meritorious and can go forward," says Banzhaf, noting that the broadly worded opinion can easily apply to many other plaintiffs and probably to most fast food corporations.

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