

2. Was the FDA justified in placing a moratorium on silicone breast implants and then halting them altogether for cosmetic purposes?
3. Is the agency too concerned with public opinion? Should it pay greater attention to scientific evidence or to the individual women who have suffered?
4. Was it irresponsible of the manufacturers of breast implants to have marketed them without first conclusively proving they were safe? If you were on the jury, would you have found Dow Corning or its parent company liable for the illnesses suffered by women who have had breast implants?
5. On safety matters, should the FDA or any regulatory agency err on the side of overprotection or underprotection? Has the FDA's stance on breast implants been fair to women who would like breast augmentation but cannot get it? Some people disapprove of cosmetic augmentation or believe it to be a frivolous operation. Do you think that attitudes like this played a role in the controversy over the safety of breast implants?
6. Some argue that in the case of new drugs or medical procedures in which the dangers are uncertain, consumers should be free to decide for themselves whether they wish to run the health risks associated with these products or services. Assess this argument.



## CASE 6.2

### Hot Coffee at McDonald's

**TO AFICIONADOS OF THE BEAN, THERE'S NOTHING** like a piping-hot cup of java to get the day off to a good start, and nothing more insipid than lukewarm coffee. That's what McDonald's thought, anyway—until it learned differently, the hard and expensive way, when seventy-nine-year-old Stella Liebeck successfully sued the company after she was burned by a spilled cup of hot coffee that she'd bought at the drive-through window of her local McDonald's. The jury awarded her \$160,000 in compensatory damages and a whopping \$2.7 million in punitive damages. After the trial judge reduced the punitive damages to \$480,000, she and McDonald's settled out of court for an undisclosed sum.<sup>105</sup>

Unlike the outcome of most other lawsuits, the hot-coffee verdict received nationwide attention, most of it unfavorable. To many ordinary people, the case epitomized the excesses

of a legal system out of control. If hot coffee is dangerous, what's next: soft drinks that are too cold? To conservatives, the case represented the all-too-familiar failure of consumers to take responsibility for their own conduct, to blame business rather than themselves for their injuries. More policy-oriented pundits used the case as an occasion to call for reform of product liability law—in particular, to make winning frivolous suits more difficult and to restrict the punitive awards that juries can hand down.

However, those who examined the facts more closely learned that the Liebeck case was more complicated than it first appeared. For one thing, Liebeck suffered third-degree burns on her thighs and buttocks that were serious enough to require skin grafting and leave permanent scars. After her injury, she initially requested \$10,000 for medical expenses

and an additional amount for pain and suffering. When McDonald's refused, she went to court, asking for \$300,000. Lawyers for the company argued in response that McDonald's coffee was not unreasonably hot and that Liebeck was responsible for her own injuries.

The jury saw it differently, however. *First*, McDonald's served its coffee at 185 degrees Fahrenheit, significantly hotter than home-brewed coffee. The jury was persuaded that coffee at that temperature is both undrinkable and more dangerous than a reasonable consumer would expect. *Second*, before Liebeck's accident, the company had received over seven hundred complaints about burns from its coffee. In response to the complaints, McDonald's had in fact put a warning label on its cups and designed a tighter-fitting lid for them. Ironically, the new lid was part of the problem in the Liebeck case because she had held the coffee cup between her legs in an effort to pry it open.

Although the jury found that Liebeck was 20 percent responsible for her injuries, it also concluded that McDonald's had not done enough to warn consumers. The jury's \$2.7 million punitive-damage award was intended, jurors later said, to send a message to fast-food chains. Although the judge reduced the award—equivalent to only about two days' worth of coffee sales for McDonald's—he called McDonald's conduct "willful, wanton, reckless, and callous."

### DISCUSSION QUESTIONS

1. Is hot coffee so dangerous, as the jury thought? Should a reasonable consumer be expected to know that coffee can burn and to have assumed this risk? Is a warning label sufficient? Is our society too protective of consumers these days, or not protective enough?
2. In serving such hot coffee, did McDonald's act in a morally responsible way? What ideals, obligations, and effects should it have taken into consideration?
3. McDonald's claims that most consumers would prefer to have their coffee too hot rather than not hot enough. After all, if it's too hot, they can always wait a minute before drinking it. Suppose this is true. How does it affect McDonald's responsibilities? Given that McDonald's serves millions of cups of coffee every week, how important are a few hundred complaints about its coffee being too hot?
4. Was Liebeck only 20 percent responsible for her injuries? Do you agree with the amount of compensatory and punitive damages that the jury awarded her? If not, what would have been a fairer monetary award?
5. Should juries be permitted to award punitive damages in product liability cases? If so, should there be a limit to what they can award? Is it right for a jury to award punitive damages against one company in order to send a message to a whole industry?



### CASE 6.3

## Sniffing Glue Could Snuff Profits

**HARVEY BENJAMIN FULLER FOUNDED THE H. B. FULLER COMPANY** in 1887. Originally a one-man wallpaper-paste shop, H. B. Fuller is now a leading manufacturer of

industrial glues, coatings, and paints, with operations worldwide. The company's 10,000 varieties of glue hold together everything from cars to cigarettes to disposable diapers.