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Editorial

A Nonfrivolous Suit

Supporters of tort reform — and late-night comedians — like to make fun of what they say are frivolous lawsuits. One they particularly like to lampoon is the case of the woman who sued McDonald's after she was scalded by too-hot coffee. What they don't talk much about is just how hot the coffee was or that the 79-year-old woman was hospitalized with severe injuries. The two sides ultimately settled.

Now another patron has sued McDonald's after his lips were burned when he bit into an extremely hot fried-chicken sandwich. A federal appeals court, ruling out of Virginia, has rightly decided to let his case go forward.

When Frank Sutton bit into his sandwich, scalding grease “flew all over his mouth,” a fellow diner recalled. Mr. Sutton's wife took ice from her drink and applied it to his face, but his lips blistered. When he told one of the employees, he testified that she said “this is what happens” to the sandwiches “when they aren't drained completely.” The next morning, he found that his lips had bled on the pillow.

Seven months later, his injuries still had not completely healed. He says he avoided certain work assignments at his job of refurbishing and assembling outdoor amusement rides if he thought they would make his lip condition worse. Mr. Sutton sued McDonald's and the local franchisee, alleging that he had suffered \$2 million in medical bills, lost wages, and pain and suffering.

A federal district court dismissed the suit, ruling that he had failed to prove what standard McDonald's was required to meet in handling its food and that Mr. Sutton bore much of the blame because he had failed to exercise reasonable care. Late last month, the United States Court of Appeals for the Fourth Circuit, in Richmond, Va., reinstated the suit. If Mr. Sutton's account of the incident is true, the court said, it could well constitute a violation of Virginia's food safety laws and he had presented enough evidence for a jury to reach that conclusion.

The court said that diners clearly “did not expect Sutton's fried-chicken sandwich to contain a hot pocket of grease” and the statement from the McDonald's worker “serves as a strong corroboration for the reasonableness of this expectation.”

If Mr. Sutton prevails, expect his case to become a talking point for critics of civil lawsuits and a late-night punch line. What they should be saying is that companies that sell food to the public have an undeniable responsibility to ensure their products are safe. That's no joke.