Courts Can Flag Frivolous Suits All on Their Own

Remember the brouhaha that followed a jury's $3 million award to a 79-year-old woman who was terribly scalded when she spilled a take-out cup of coffee from McDonald's on her lap? The result was the perfect catalyst for attacks on greedy lawyers and frivolous lawsuits. Everyone knows coffee is hot, and she was negligent in drinking while driving. In fact, she was not driving. She was a passenger and held the cup between her knees while removing the lid to add cream and sugar when the cup tipped over and the entire contents spilled on her lap. MacDonald's operations manual required its franchisees to hold the coffee at 180-190 degrees; this was dangerously hot, enough to cause serious burns in seconds. She suffered third degree burns and required over 20 skin grafts on her thighs and elsewhere over a period of years. Moreover, McDonald's had received over 700 previous complaints of similar injuries from scalding hot coffee and had taken no action. In short, there were enough facts to justify the result.

Not so in *Forouzesh v. Starbucks*, recently decided by the U.S. District Court for the Central District of California, where the complaint, in our view, comes dangerously close to warranting Rule 11 sanctions. The aggrieved plaintiff, in a putative class action no less (which would include "All persons in ... California who purchased one or more of the defendant's cold drinks") alleged that Starbucks had violated a potpourri of common-law and statutory proscriptions: breach of express warranty, breach of implied warranty; negligent misrepresentation; unjust enrichment, fraud and violation of California's Legal Remedies Act, Unfair Competition statute and false advertising law.

How? Because its iced coffee and other cold beverages "contain significantly less product than advertised." Starbucks underfills its cups with liquid and then adds ice to make the cups "appear" full. Its menu descriptions of sizes of beverages "concealed how much space in the cup is taken up by ice cubes, not coffee or tea." A reasonable consumer is deceived into believing that the full cup is all beverage. Thus a "grande" cold drink touted as 16 ounces on the menu has only 12 ounces of beverage, 4 ounces of ice—contra a reasonable drinker's perception.

Summarily dismissing the complaint for failure to state a cause of action, without oral argument, the court made short shrift of this thesis: "If children have figured out that including ice in a cold beverage decreases the amount of liquid they will receive, the Court has no difficulty concluding that a reasonable consumer would not be deceived into thinking that when they order an iced tea, that the drink they receive will include both ice and tea and that for a given size cup, some portion of the drink will be ice rather than whatever liquid beverage the consumer ordered. This conclusion is supported by the fact that the cups (used by defendant) are clear, and therefore make it easy to see that the drink consists of a combination of liquid and ice."

So for once our critics who propose damage caps, fee awards to successful tort defendants and other remedies to discourage frivolous lawsuits are stymied. We think the District Court got it right. This type of complaint is indeed "frivolous," and the court needed no legislative assistance to so hold.