

ADMINISTRATION OF JUSTICE

You Decide the Case #2

When You're Hot, You're Hot.....

Judge: _____ Period: _____ Row: _____

THE FACTS:

In September 1993, Mary and her husband decided they would stop at a Mc Donald's fast food restaurant to get something to eat. Mary's husband, who was driving, purchased several food items at the drive-thru window including hot tea for Mary. Shortly after receiving the food, Mary "executed a series of maneuvers to cool her tea." Upon placing the lid back on the cup, Mary spilled the hot tea on her lap.

On September 21, 1995, Mary filed a complaint against the fast food restaurant alleging that the hot tea served by the defendant caused her injury. On August 16, 1996, Mary voluntarily dismissed the case, but she re-filed it on August 14, 1997. Mary's second complaint alleged three causes of action:

1. Defendant was negligent by serving a beverage that was too hot;
2. Defendant failed to warn consumers of the temperature of the beverage; and
3. Defendant placed the beverage in an unsafe container.

Soon after the complaint was filed, the fast food restaurant filed a motion for summary judgment in which the restaurant urged the court to dismiss the case. As part of its motion for summary judgment the restaurant submitted evidence that the cup in which the coffee was served contained one of the following warnings: "**CAUTION - CONTENTS MAY BE HOT**" or "**CAUTION - CONTENTS ARE HOT.**" The evidence indicated that, whichever warning was used, it was printed in two locations on the cup. The evidence the defendant gave about the warnings was uncontradicted by the plaintiff.

Overall, this case is properly characterized as a "products liability" case. If you were the trial judge, based upon the un-contradicted evidence and the undisputed facts would you:

1. Deny the motion for summary judgment and allow the case to proceed because any time a consumer is injured by a product, some liability exists on the part of the business which is selling the product in the ordinary course of a profit seeking enterprise. Accordingly, the case cannot be dismissed because a jury or judge must make a factual determination as to the level of liability that exists so that damages can be appropriately awarded;
2. Deny the motion for summary judgment and allow the case to proceed because in a products liability case in which the complaint alleges a failure to warn, the jury must first determine whether the plaintiff has read the warning before liability for the injury can be determined;

3. Grant the motion for summary judgment and dismiss the case because the warnings on the cup coupled with the common knowledge that when "hot tea" is served, it is hot, were adequate to warn consumers of possible injury; or
4. Grant the motion for summary judgment and dismiss the case because in a products liability case where the plaintiff is alleging a failure to warn, the plaintiff may not also allege negligence.

You Be The Judge!

Circle your ruling in this case your honor!

Decision 1 Decision 2 Decision 3 Decision 4