Discussion Case: *Big Fat Liability*

In 2012, the Institute of Medicine, an independent group that advises the government, reported that the annual cost of treating obesity-related chronic disease and disability had reached a staggering $190 billion annually in the United States. "Left unchecked," the Institute concluded, "obesity's effects on health, health care costs, and our productivity as a nation could become catastrophic." Said the chairman of the panel that authored the report, "If you believe this is a massive national problem, you have to deal with it in a systems way."

The problem of obesity, and its serious medical and economic effects, just kept getting bigger. According to the most recent government statistics:

- Almost 7 out of 10 American adults were overweight or obese, that is, with a body mass index (BMI) of 25 or more.[40] Seventeen percent of children and adolescents were obese, and almost a third were overweight or considered at risk of becoming so. Only 3 percent of Americans met the government's dietary recommendations, and less than a fifth exercised enough. One study estimated that by 2030, 42 percent of Americans would be obese, if current trends continued.
- Obesity in the United States among adults had doubled, and among adolescents had tripled, since 1980. Although these increases cut across all ages, genders, ethnic groups, and social classes, obesity was a particular problem for people from lower-income families and ethnic minorities.
- Obesity was a major cause of breathing problems, type 2 diabetes, heart disease, arthritis, infertility, and some kinds of cancer. In the United States, around 300,000 premature deaths a year were associated with being overweight—approaching the 400,000 deaths associated with cigarettes.

The immediate cause for this epidemic of obesity was that people were simply eating too much. Americans consumed, on average, around 2,600 calories a day, well above the healthy amount for most people. The critical question, of course, was to what extent, if at all, the food industry could be held responsible for the fattening of America. Many felt that food and lifestyle choices were an individual responsibility. Unlike cigarettes, food products were not normally addictive. Moreover, the rising level of obesity had many causes, and the exact role of particular companies was unclear. How could one know whether a person's obesity was caused by eating particular foods, overeating generally, a sedentary lifestyle, or genetic predisposition?

In an earlier case, the courts had already ruled that fast-food companies were not liable. In 2003, a judge in New York dismissed a lawsuit filed on behalf of two obese teenage girls against McDonald's. The lawsuit alleged that the fast-food giant had "negligently, recklessly, carelessly, and/or intentionally" marketed products to children—such as burgers, chicken nuggets, fries, and sodas—that were "high in fat, salt, sugar, and cholesterol." In his decision, the judge noted that the plaintiffs had failed to show that the girls had no way of knowing the risks of fast food. Moreover, the judge pointed out, "Nobody is forced to eat at McDonald's."

[40] Body mass index is calculated as a person's weight in pounds divided by the square of that person's height in inches, multiplied by 703. For example, a person who was 66 inches tall and weighed 140 pounds would have a BMI of 22.59 (140 divided by 66 times 66, times 703). "Overweight" is defined as a BMI of 25–29.9 and "obese" as a BMI of 30 or higher. A chart showing BMIs for various weights and heights is available online at *www.nhlbisupport.com/bmi.*

Others, however, thought the food industry was at least partially at fault. Fast food had become a big part of Americans' diets. In 1970, they spent $6 billion a year on it; four decades later, they spent nearly $140 billion. This trend seemed to parallel the obesity epidemic. The problem was not just the relatively high fat and sugar content of fast foods, but the super-sizing of portions. When fast-food restaurants increasingly began to compete on the basis of value—more for less—customers simply ate more.

For their part, food companies had concentrated on developing processed products, such as candy, gum, snacks, and bakery goods, which carried high profit margins along with excessive calories. They had introduced many more new products in these categories than entrées, fruits, and vegetables since the early 1980s, data showed. Moreover, both restaurants and food processors, in their critics' view, had failed to communicate adequately the health risks of some foods and had inappropriately marketed their products to children.

In response to growing public concern, some food companies and restaurant chains took voluntary steps to make their offerings healthier. Between 2005 and 2011, Kraft, the second-largest food company in the world, reformulated or introduced 5,500 products with reduced calories, fat, sugar, and salt, and it provided "healthy living" recipes on its website. In 2012, McDonald's rolled out new children's Happy Meals, containing apple slices and half the amount of fries. It also offered a smartphone app that permitted customers to access nutritional information. Some smaller chains—like Chipotle Mexican Grill, Jason's Deli, and Panera Bread—built business models around offering fresh, healthy fare. A number of major food companies, including General Mills, Campbell's Soup, and Unilever, joined a new foundation, the Partnership for a Healthy America, which pledged support for a campaign to remove 1.5 trillion calories from the food supply by 2015.

Sources: The Institute of Medicine, "Accelerating Progress in Obesity Prevention: Solving the Weight of the Nation" (2012) at *www.iom.edu;* "The ABCs of Beating Obesity," *The Wall Street Journal,* May 8, 2012; "Rates of Obesity and Severe Obesity to Climb by 2030—Study," *The Wall Street Journal,* May 7, 2012; "McDonald's Trims Its Happy Meal," *The New York Times,* July 26, 2011; and "Best Corporate Steward Finalist, Kraft Foods" (2011), at *http://bclc.uschamber.com.* Overweight and obesity statistics are from the Center for Disease Control's National Center for Health Statistics (*www.cdc.gov/nchs*) and the office of the U.S. Surgeon General (*www.surgeongeneral.gov*). Data on fast-food industry sales are from *www.fastfoodmarketing.org.*

Discussion Questions

1. To what extent do you believe that individuals are responsible for their own weight (or in the case of children, parents or guardians)?
2. In your opinion, should the food and restaurant industries be held liable for the rise of obesity, or not?
3. If you were a manager for a fast-food chain or food company, what actions would you take with respect to obesity, if any?
4. What do you think is the best solution to the obesity epidemic? What role can the food and restaurant industries, trial attorneys, government policymakers and regulators, and individual consumers play in a solution, if any?