

And Now, The Rest Of The Story . . . About The McDonald's Coffee Lawsuit

By Kevin G. Cain

We have probably all heard someone say, "Watch out! That coffee is hot. You could have a lawsuit on your hands." Somehow, somewhere along the way, the McDonald's coffee lawsuit became the poster child for frivolous lawsuits. Who hasn't taken a crack at this lawsuit for the sake of furthering their own cause? David Letterman and numerous other comedians have exploited this case as the punch-line to countless jokes. One of my favorite Seinfeld episodes involves Cosmo Kramer suing Java World after Kramer spills a cup of café latté on himself while trying to get a seat at a movie theater. Kramer suffers from minor burns that are easily remedied after a single application of a balm given to Kramer by the Maestro. Kramer asks his favorite attorney, Jackie Chiles, if the fact that he tried to sneak the coffee into the theater is going to be a problem in their lawsuit. Jackie responds, "Yeah, that's going to be a problem. It's gonna be a problem for them. This is a clear violation of your rights as a consumer. It's an infringement on your constitutional rights. It's outrageous, egregious, preposterous." When Kramer asks if this lawsuit has a chance, Jackie responds, "Do we have a chance? You get me one coffee drinker on that jury, you gonna walk outta there a rich man." Of course, Elaine is less than supportive when she finds out about Kramer's latest lawsuit and quips, "What I mean is who ever heard of this anyway? Suing a company because their coffee is too hot? Coffee is supposed to be hot." Obviously, Jerry and company are taking their own shots at the McDonald's lawsuit in particular, and at frivolous lawsuits in general.

"I mean, come on! If ever

there was a frivolous lawsuit, this is it. Right? It's coffee, it's hot, and someone got burned. Why should someone get rich off of coffee being hot? Some lady gets millions, and all I ever get for drinking coffee that is too hot is a mild blister in my mouth and the obligatory caffeine buzz that I expect in the morning with my coffee." It seems that nearly everyone has an opinion about frivolous lawsuits. This author recently removed a box containing class handouts sitting on the floor in the middle of an entryway into a Bible classroom and asked the person who put the box there if he minded my moving the box because someone could accidentally get hurt. The person responded (knowing that I was an attorney) by simply snorting as he walked away, "I think everyone who files a frivolous lawsuit should be shot." "Objection, non-responsive," I thought, but you get the point. All too often there does not appear to be much we can do to change people's opinions on this subject. Or is there?

"Just the facts ma'am; just the facts." A line made famous by Dragnet's Sergeant Joe Friday may be the answer. Unfortunately, people often refuse to let the facts alter their points of view. "I have my opinion, and I won't let truth, reality, or the facts get in the way." However, if people really knew the true facts about the McDonald's lawsuit, few would have the same opinion (or misconception) that they carry around today. Let's be honest. Most people, attorneys included, know little to nothing about the infamous McDonald's lawsuit other than the last joke they heard about it. A woman spilled some McDonald's coffee on herself, got burned, and got millions of dollars. That is about all most of us know about this woman

and her legendary lawsuit. And yet many uninformed people have very strong opinions on this case. Well, as Paul Harvey says, "And now, the rest of the story."

Liebeck v. McDonald's Restaurants

Seventy-nine-year-old Stella Liebeck of Albuquerque, New Mexico, was sitting in the passenger seat when her grandson drove his car through a McDonald's drive through window in February 1992. Liebeck ordered coffee that was served in a McDonald's styrofoam cup. After receiving the order, the grandson pulled his car forward and stopped for his grandmother to add sugar and cream to her coffee. (The rumors of Liebeck spilling her coffee while driving were inaccurate. The car was not moving, and she was not driving.) While parked, Ms. Liebeck placed the cup between her knees and attempted to remove the plastic lid from the cup. As she attempted to remove the lid, the contents of the cup spilled into her lap. The coffee was estimated to be somewhere between 180 to 190 degrees. Ms. Liebeck was wearing sweatpants that day, which absorbed the scorching coffee, holding it next to her skin. A vascular surgeon diagnosed Liebeck as having suffered full thickness burns (or third-degree burns) over her inner thighs, perineum, buttocks, and genital and groin areas. These third degree burns extended through to Liebeck's subcutaneous fat, muscle, or bone. While she was hospitalized for eight days, Liebeck underwent skin grafting, and later underwent debridement treatments. Liebeck was permanently disfigured and disabled for two years as a result of this incident.



Ms. Liebeck, a retired department store clerk, informed McDonald's of her accident and requested that McDonald's pay for her medical expenses totaling approximately \$11,000. McDonald's refused. With no other recourse in sight, Ms. Liebeck retained an attorney from Houston named Morgan Reed who had filed a similar hot-coffee lawsuit against McDonald's in 1986. Mr. Reed's prior case against McDonald's involved a Houston woman who suffered third-degree burns from McDonald's coffee. In that 1986 case, Mr. Morgan deposed Christopher Appleton, a McDonald's quality assurance manager, who testified that "he was aware of this risk . . . and had no plans to turn down the heat." McDonald's settled that case for \$27,500.

Before filing suit, Liebeck requested that McDonald's pay \$90,000 for Liebeck's medical expenses and pain and suffering. McDonald's countered with a generous offer of \$800. Ms. Liebeck had never filed a lawsuit before in her life, and she said she never would have filed this lawsuit if McDonald's "hadn't dismissed her request for compensation for pain and medical bills with an offer of \$800."

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Why did McDonald's make their coffee so hot? McDonald's requires that its coffee be prepared at scalding temperatures, based on the recommendations of coffee consultants and industry groups which claim that hot temperatures are necessary to fully extract the full coffee-flavor during the brewing process.

Ms. Liebeck brought suit against McDonald's in 1993 alleging that the coffee she purchased was defective because of its excessive heat and because of inadequate warnings. Punitive damages were also sought based on the allegation that McDonald's acted with conscious indifference for the safety of its customers. As the trial date neared, Liebeck's attorney offered to settle the case on her behalf for \$300,000 and reportedly would have settled for half that amount. A mediator recommended a \$225,000 settlement on the eve of trial, but McDonald's again refused any attempt to settle.

At trial the evidence was simply damning. It was learned that McDonald's was aware of more than 700 claims brought against it between 1982 and 1992 due to people being burned by its coffee. Some of these claims involved third-degree burns that were substantially similar to the burns suffered by Liebeck. Moreover, McDonald's had previously spent over \$500,000 in settling these prior coffee-burn claims. In spite of the knowledge of these claims and this inherent danger with its coffee, McDonald's refused to change its corporate policy and serve its coffee at a safer temperature.

McDonald's own quality assurance manager testified that McDonald's enforced a policy requirement that all coffee be served at 185 degrees, give or take five degrees. He also admitted that its coffee was not "fit for consumption" because it would cause scalding injuries to the mouth and throat if drunk by the consumer.

Q: [Y]ou know, as a matter of fact, that coffee is a hazard, selling it at 180 to 190 degrees, don't you?

A: I have testified before, the fact that this coffee can cause burns.

Q: It is hazardous at this temperature?

A: At that high temperature the coffee is a hazard. . . .

Q: If customers attempt to swallow that coffee, isn't it a fact that it will scald their throat or esophagus?

A: Yes, under those conditions, if they could get the coffee in their throat, that could happen, yes. . . .

The same McDonald's quality assurance manager continued to testify, illustrating McDonald's culpability:

Q: So. . . when somebody buys a cup of coffee and it's sold to them at McDonald's and they go to sit down and drink it in less than five minutes, it's not fit for consumption to drink, if consumption means to drink?.. .

A: It's perfectly fit to open the top and add cream and sugar and really dilute the product as far as temperature goes and it probably would be very fit for consumption. . . .

Q: If you don't mind getting burned it's fit for consumption. My question is, is it fit to be drunk, actually fluid going down your esophagus?

A: I think I already answered that.

Q: And the answer is no, it's not, isn't it?

A: Yes, we answered that.

While coffee at various temperatures has the capacity to inflict burns, the problem with McDonald's coffee is the fast rate at which it could cause such serious burns. McDonald's own expert testified that coffee served above 130 degrees could produce third degree burns; therefore, McDonald's argued, it did not matter whether its coffee

was served at 180 to 190 degrees. However, this argument has some serious flaws that the plaintiff exploited. Charles Baxter, Liebeck's expert in thermodynamics as applied to skin burns, testified that liquids can cause full thickness (third-degree) burns to skin in two to three seconds at 190 degrees, in 12 to 15 seconds at 180 degrees, and in 20 seconds at 160 degrees. Obviously, if Liebeck's coffee had been served just a little less scalding, vital seconds could have been added to her response time to allow her to get out of her grandson's car and disrobe to prevent more serious burns from occurring. Unfortunately, Ms. Liebeck had only about two or three seconds before third-degree burns set in, and the instantaneous damage was already done. Plaintiff's warnings expert, Lila Laux, testified that while people know that coffee is hot, they do not know how severe (i.e., third-degree) these burns can be and how quickly the burns can set in.

An obvious question needs to be asked at this point. Why did McDonald's make their coffee so hot? If this danger of scalding customers was known and could be easily remedied, then why not simply reduce the temperature of its coffee? That question was answered at trial. McDonald's requires that its coffee be prepared at scalding temperatures, based on the recommendations of coffee consultants and industry groups which claim that hot temperatures are necessary to fully extract the full coffee-flavor during the brewing process. McDonald's operations and training manual states that its coffee must be brewed at 195 to 205 degrees and held at 180 to 190 degrees for optimal taste. Keep in mind that water

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boils at 212 degrees Fahrenheit. Hence, the reason for preparing the coffee at near boiling temperatures was to optimize the taste. Besides, one billion annual McDonald's coffee drinkers cannot all be wrong, can they?

McDonald's knew that its coffee was being served at extremely hot temperatures, but market research told them that McDonald's customers "want hot coffee, they want it steamy hot, and they expect to get it that way." McDonald's indifference to customer safety is evident in the following testimony from McDonald's quality assurance manager:

Q: Isn't it a fact that back in 1988, when I showed you the pictures of the young lady that was burned in that situation, that you were appalled and surprised that coffee could cause that kind of burn?

A: Yes, I had never seen photographs like that before.

Q: All right. In those six years, you still have not attempted, yourself, or know of anyone within the corporation that has attempted to find out the rate of speed, the lack of margin of safety in serving coffee at this temperature right...

A: No, we have not.

McDonald's continued to demonstrate this same corporate indifference. McDonald's human factors engineer, Dr. P. Robert Knaff, testified that the number of hot coffee burns that occur are "statistically insignificant" when compared to the billion cups of coffee McDonald's sells annually. This callousness was further demonstrated by the testimony of McDonald's quality assurance manager, who stated:

Q: So a fair way to assess your reasoning is, "A few people are being seriously burned with deep second and third degree burns requiring hospitalization, but out of the billions of cups of coffee we sell, there's not been enough burned to where we need to stop selling it that hot?"

A: There's a very low probability of an accident as a result of using the product and we know that the customers want the product hot so we're at this time continuing with our current practice. . . .

Q: Mr. Appleton, do you know how McDonald's Corporation informs itself of the severity of the burns that are recorded on Plaintiff's Exhibit No. 3? Do you know what they do to ascertain how serious those burns are?

A: I'm not intimately familiar with the process. I believe it's handled through our insurance company.

Q: So for you to say that you haven't formulated a conclusion that there have been enough severe burns to warrant turning down the temperature on your coffee, you are speaking without knowledge of the extent and severity of the burns that were reflected in those computer printouts, is that right?

A: I think that I don't think we have a good measure of the severity of each of these.

Q: Well, I'm curious because I've shown you recordings here of some 700 people here that have been burned. Obviously, to you 700 people burned is not a significantly high enough number to turn down the heat. Do you have in mind a number of how many people would have to be burned for you to become so concerned that you would insist that burn specialists be consulted and

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something be done to sell this coffee at a lower temperature?

A: No, I don't have a number in mind.

At trial, McDonald's argued that Liebeck contributed to her own injuries by placing the coffee cup between her legs and by not removing her clothing promptly after the spill. McDonald's further alleged that the severe nature of the burns suffered by Ms. Liebeck were worse than usual because of her older skin making her more vulnerable to more serious injuries. A McDonald's executive testified that McDonald's had chosen not to warn its customers of the possible severe burns its coffee could cause because "(t)here are more serious dangers in restaurants." McDonald's human factors engineer admitted that the number of hot coffee burns suffered by McDonald's customers are "statistically insignificant" in comparison to the one billion cups of coffee sold by McDonald's each year.

After seven days of evidence, testimony, and arguments of counsel, the jury retired to deliberate. The jury determined McDonald's was liable on the claims of product defect, breach of the implied warranty of merchantability, and breach of the implied warranty of fitness for particular purpose. The jury further determined that Ms. Liebeck's injuries merited an award of \$200,000 compensatory damages. However, because the jury found that Ms. Liebeck was 20% at fault, that award was reduced proportionately to \$160,000. Finally, the jury awarded Ms. Liebeck \$2.7 million in punitive damages based on its finding of willful, reckless, malicious, or wanton conduct. The amount of \$2.7 million was arrived at based on evidence the jury heard that McDonald's daily coffee reve-



nues amounted to approximately \$1.34 million. These exemplary damages represented about two days worth of McDonald's coffee revenues. However, a fact that rarely ever makes headlines (in this case, or in any allegedly "fraudulent" lawsuit) is that the punitive damages were reduced by the trial court to \$480,000 (three times the compensatory damages) for a total award of \$640,000. Judge Robert H. Scott, who presided over this trial, stated in regard to the reduced punitive damages award:

I think that there was evidence and argument about the Defendant's knowledge that the coffee could cause serious, third degree, full tissue burns. The Defendant McDonald's knew that the coffee, at the time it was served, was too hot for human consumption

The written transcript is not going to reveal the attitudes of corporate indifference presented by demeanor or of the witnesses for the Defendant McDonald's as well as their employees, but the jury was exposed to it and I think that they properly considered it in their deliberations. And let me say that with knowing the risk of harm, the evidence and testimony would indicate that McDonald's consciously made no serious effort to warn its consumers by placing just the most simple, adequate warning on the lid of the cup in which the coffee was served...

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The McDonald's coffee case is not a frivolous case, as most uninformed people believe. In fact, Ms. Liebeck had a very strong case against a very unsympathetic corporate defendant. An argument can obviously be made that the punitive damages should not have been decreased, especially in light of the purpose of punitive damages.

Far too many have the misconception that if any insignificant, trivial misfortune happens to you, then you can manipulate the legal system until you finally strike gold. That simply is not the case. Our legal system has numerous checks and balances and control measures in place that deter and penalize frivolous lawsuits and curb excessive jury verdicts.

This is all evidence of culpable corporate mental state and I conclude that the award of punitive damages is and was appropriate to punish and deter the Defendant for their wanton conduct and to send a clear message to this Defendant that corrective measures are appropriate.

Judge Scott ordered the parties to engage in a post-verdict settlement conference which resulted in a settlement of the case for an undisclosed amount (less than \$600,000) which remains confidential. Ms. Liebeck's case was dismissed with prejudice on November 28, 1994.

McDonald's has taken some remedial measures in the aftermath of the Liebeck lawsuit. Many McDonald's drive-thrus now have a sign warning, "Coffee, tea and hot chocolate are VERY HOT!" Also, the lids of McDonald's hot beverage cups are now embossed with the words "HOT! HOT! HOT!" It is debatable whether the coffee at McDonald's is served any cooler than the coffee that injured Ms. Liebeck. Some sources indicate that McDonald's current policy is to serve coffee between 175-195 degrees Fahrenheit. The industry standard still calls for near boiling temperatures for the best-tasting coffee. Hence, the current reaction to coffee lawsuits is to do a better job of warning, but maintain the temperature for better tasting java.

So, what can we take from all this? First, the McDonald's coffee case is not a frivolous case, as most uninformed people believe. In fact, Ms. Liebeck had a very strong case against a very unsympathetic corporate defendant. An argument can obviously be made that the punitive damages should not have been decreased, especially in light of the purpose of punitive damages. Does anyone

really think that \$480,000 is going to sting and deter the McDonald's empire the way that \$2.7 million would? This is not about getting rich; it is about shocking back to life the conscience of a corporate giant that could not be bothered with people who are victimized by their negligence and callous indifference. The facts demonstrate that this case was far from frivolous.

Second, we as attorneys can and must do our part to help change the public perception of our legal system. Far too many have the misconception that if any insignificant, trivial misfortune happens to you, then you can manipulate the legal system until you finally strike gold. That simply is not the case. Our legal system has numerous checks and balances and control measures in place that deter and penalize frivolous lawsuits and curb excessive jury verdicts. Our legal system works; and those who degrade and twist our profession by spreading half-truths and distorting reality sadly align themselves with those who have exploited the ignorance-induced fear of others throughout history. It is truly amazing how the truth can change perspectives.

"But what if they won't listen to me?" Just like Moses at the burning bush, we may need a little extra ammunition for the mission ahead. Well, here it is. The next time someone is indulging in the latest pastime sport of "lawyer-bashing," challenge that person by saying, "I'll bet you probably think that the McDonald's coffee lawsuit was a frivolous lawsuit, don't you?" After they accept the challenge to your seemingly indefensible position, you can then begin to (politely) dismantle their perception of the poster child, cornerstone, and personification of frivolous lawsuits by informing them of "the rest of the story" behind Liebeck v. McDonald's

Restaurants. You will have begun a dialogue that will help change the misconceptions of our profession and our legal system. Each of us owes this duty to our profession in the face of the attacks that we have unfortunately grown all too accustomed to.

I am reminded of Alexander Hamilton, who wrote concerning the judiciary in the Federalist Papers of "the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community." The ill humors surrounding our profession will give place to better information and deliberate reflection; I hope that this article can serve as a starting point for that better information.

To conserve space, POA took out all of the footnotes and references. To read the entire article [CLICK HERE](#).

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