



## McDonald's Coffee Case

by John D. Whitaker

I don't think I have conducted a jury selection in the last 10 years without the infamous McDonald's coffee case coming up as an example of a clearly frivolous lawsuit. This case has been misrepresented by so many people for so many reasons that the actual facts of the case have been lost to the posturing of people who believe that the legal system is broken. Whether it is or not is a larger issue, but I thought it might be helpful to know what actually happened in this case so that you could make up your own mind.

Stella Liebeck, a 79-year-old woman from New Mexico, was a passenger in her grandson's car when they stopped to get coffee at a McDonald's drive through in Albuquerque. The restaurant employee handed the coffee out the drive-through window, and the grandson drove forward about 20 feet so that they could put cream in the coffee. His car was stopped when Mrs. Liebeck put the cup between her knees and removed the plastic top from the cup. As she attempted to get the top off, the entire contents of the cup spilled into her lap. Mrs. Liebeck suffered third degree burns to 6 percent of her body including her inner thighs, perineum, buttocks, genital and groin areas. She was hospitalized for 8 days, and was forced to undergo painful skin grafting and debridement treatments, where the burns are scrubbed to remove dead skin to prevent infection. Early on, she offered to settle the case for \$20,000 which would have been applied to her medical bills, but McDonald's refused.

During the discovery phase of the case it was discovered that McDonald's had over 700 claims by people who were burned by their coffee, some with third degree burns. McDonald's clearly knew it was burning a lot of people with its coffee. The company responded that they kept the coffee between 180 and 190 degrees to maintain optimum taste, and that keeping the coffee at this high temperature caused the restaurant to be filled with the aroma of coffee which they found increased sales of their coffee. Most restaurants keep the coffee at a substantially lower temperature and the coffee you drink at home is around 135 to 140 degrees. McDonald's admitted that they knew that a burn hazard exists with any food over 140 degrees, and coffee heated to 180 degrees would seriously burn the mouth and throat in seconds.

A thermodynamics expert testified at the trial that liquids



heated to 180 degrees will cause third degree burns within 2 to 7 seconds of contact with human skin. Mrs. Liebeck was wearing sweat pants which soaked up the hot coffee and kept it in contact with her skin long enough to create severe burns.

The jury awarded Mrs. Liebeck \$200,000 in compensatory damages, but the judge reduced this by 20 percent for comparative negligence. Wyoming is a comparative negligence state, and an identical procedure would have been followed in Wyoming. Under comparative negligence, the jury is asked to assign a percentage of the fault to each actor.

In the McDonald's case Mrs. Liebeck was found to be 20 percent at fault and McDonald's was responsible for 80 percent of the fault. For that reason, her compensatory damages would be reduced by her percentage of the total fault, or in this case \$40,000.

The jury also awarded her \$2.7 million dollars in punitive damages. There was evidence at the trial which indicated that McDonald's made \$2.7 million dollars every two days on coffee sales. That is what the jury used to determine the level of punitive damages they awarded in this case. They wanted to get McDonald's attention. If you make \$2.7 million every two days, a punitive damage award for \$50,000 is not likely to get you to stop doing the dangerous activity.

Punitive damages can only be awarded when the defendant acts in a willful or wanton manner. In the McDonald's case, the trial judge found that McDonald's actions were reckless, callous and willful. The trial judge reduced the punitive damages award as well to \$480,000. A trial judge in Wyoming has not only the authority but the duty to add or subtract from a verdict if it appears that the amount of the verdict shocks the conscience or it appears so excessive that it denotes passion, prejudice, bias or some other erroneous basis. Most people don't realize that any Wyoming trial judge has this authority.

So, Mrs. Liebeck actually only received a verdict of \$640,000 after the jury awarded her \$2.9 million. Thereafter, the case was settled between the parties and because of a confidentiality agreement that actual sum she received will never be disclosed. In all likelihood, she received less than the \$640,000.

You can only use this as an example of a frivolous case if you don't know what really happened.

**The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.**