

MCDONALD'S BURNED ITSELF

What's wrong with penalizing corporate irresponsibility that burns and may kill our consumers?

I am the lawyer who tried Stella Liebeck's case in Albuquerque against McDonald's on Aug. 8-16.

There has been an uproar from people displeased at the size of the verdict, people who have heralded it as an example of a

PERSONAL INJURY

by S. Reed Morgan

runaway jury and individuals who will not accept responsibility for their own actions. As I will explain, this cannot be true, since McDonald's witnesses admitted nobody knows or expects that coffee, spilled, will cause the severe types of burns that McDonald's coffee causes as a result of its being sold at 180-190 degrees Fahrenheit (the cause of more than 700 burns since 1982).

Stella Liebeck, at age 79, purchased a cup of McDonald's coffee while a passenger in her grandson's automobile. Her grandson pulled to the curb and stopped the car, and Mrs. Liebeck attempted to hold the cup securely between her knees while she removed the plastic lid. The cup tipped over, causing third-degree burns and necessitating hospitalization for eight days, whirlpool treatment for debridement of her wounds, skin grafting, permanent scarring and disability for more than two years.

THE COMMUNITY'S VOICE

The jury is the voice of the community. It awarded her \$200,000 for compensatory damages, reduced by 20 percent for her negligence, and \$2.7 million in punitive damages. The Court of Appeals can set it aside if it's wrong.

It cost more than \$50,000 to prosecute this case, not including legal fees. If the jury had not stopped McDonald's, who would do it? How long would this have gone on?

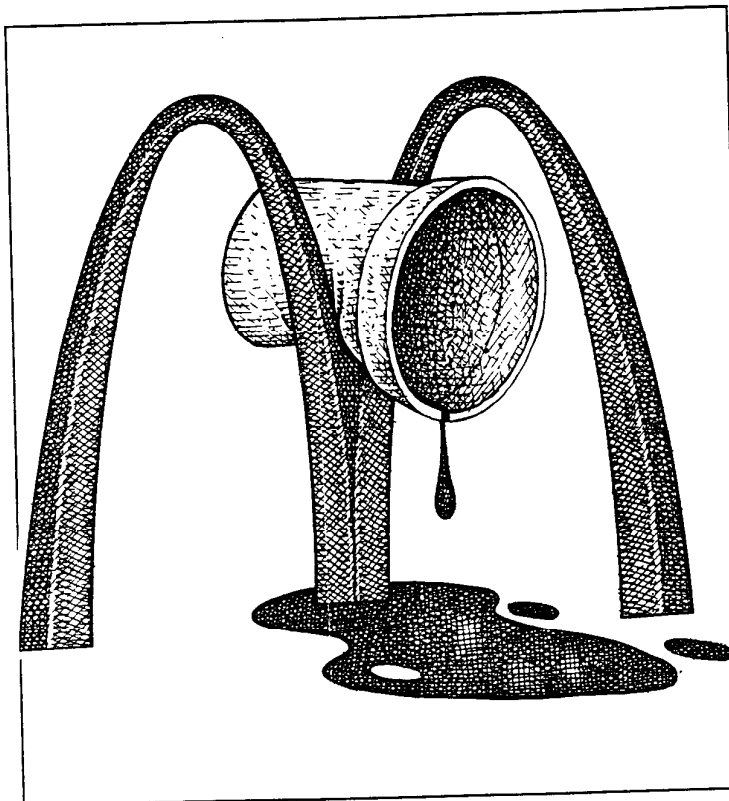
Further, the system has numerous safeguards to overturn any verdict, including this one, if it is in fact excessive.

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COMMENTARY

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PAUL KOLETI

To set the record straight:

The following information was presented to an impartial jury of six men and six women for six days. The jury found that the product was unreasonably dangerous and was sold in breach of the implied warranty of fitness imposed by the Uniform Commercial Code. The coffee is not fit for consumption, as sold.

Obviously, the jury found McDonald's coffee had caused enough human misery and suffering, and no one should be made to suffer for exposure to the sale of excessively hot coffee at McDonald's and other establishments.

You will be shocked and amazed to learn what was proven at trial:

(1) McDonald's Corporation sells its coffee at 180-190 degrees Fahrenheit by corporate specification;

(2) McDonald's coffee, if spilled, causes full thickness burns (third degree to the muscle/fatty tissue layer) in two to seven seconds;

(3) Third-degree burns do not heal without skin grafting, debridement and whirlpool treatments that cost tens of thousands of dollars and result in permanent disfigurement, extreme pain and disability to the victim for many months, and in some cases, years;

(4) McDonald's Corporation has known about this unacceptable risk for more than 10 years and it was brought to their attention through other suits (more than 700 reported claims from 1982-1992), repeatedly, to no avail. McDonald's produced a witness who said this number of burned people was statistically "trivial."

(5) Witnesses for McDonald's admitted in court that the consumers are unaware of this risk of serious burns and that McDonald's Corporation is and has been

(6) McDonald's Corporation testified, through its witnesses, that it did not intend to turn down the heat;

(7) McDonald's Corporation admitted that it did not warn of the nature and extent of this risk of harm and could offer no explanation as to why it did not;

(8) McDonald's Corporation admitted its coffee is "not fit for consumption" when sold because it will cause severe scalds if spilled or drunk;

(9) McDonald's Corporation has burned more than 700 people over the past 10 years, many with severe burns to the genital area, perineum, inner thighs and buttocks;

(10) Mrs. Liebeck's treating physician testified this was one of the worst scald burns he had ever seen and that this risk of harm was unacceptable;

(11) The chairman of the Department of Mechanical Engineering and Bio-Mechanical Engineering at the University of Texas testified this risk of harm is unacceptable, as did the most widely publicized burn doctor in the United States, who is the editor-in-chief of the *Burn and Rehabilitation Journal*, the most widely recognized burn journal in the world;

(12) McDonald's Corporation generates revenues in excess of \$1.3 million daily from the sale of the coffee, selling 1 billion cups of coffee each year;

(13) McDonald's Corporation has burned not only men and women but children and infants with their scalding hot coffee, in some instances due to inadvertent spillage by their own employees;

(14) At least one individual had scalding hot coffee dropped in her lap through the service window, resulting in third-degree burns to her inner thighs and other sensitive areas of the body, resulting in disability for years;

(15) I have recently been contacted by the heirs of a woman who went into diabetic shock and died, allegedly as the result of being burned at McDonald's.

In short, the consumer may be guilty of one second of momentary inadvertence or a mistake resulting in a horrible, excruciatingly painful, disfiguring, expensive and possibly life-threatening injury. Compare the behavior of McDonald's, a family restaurant that caters to children, that was unequivocally shown to have known of and ignored this risk for more than 10 years. McDonald's quality-control manager testified he knows the consumer is unaware of the risk, and he knows the consumer does not anticipate that it will cause these very serious burns.

UNACCEPTABLE RISKS

We had to teach McDonald's that for every degree above 140 degrees Fahrenheit, our skin burns twice as fast. At 180 degrees Fahrenheit, there is no escape from these types of burns. The product is, by definition, defective or unreasonably dangerous.

This is the applicable law. They broke the law. Why had they not studied this risk? They have laboratories and a university devoted to the study of selling food and drinks. They had a legal duty to sell safe products, not products with a hidden risk.

McDonald's testified through management that it had no intention of lowering the temperature. "No, there is no current plan to change the procedure that we're using in that regard right now," a witness testified. This is callous indifference to the welfare of its customers.

The jury applied the law of punitive damages to deter McDonald's and other similar corporations from exposing consumers to this risk by imposing a penalty of two days' coffee sales, or \$2.7 million, for willfully ignoring the safety of children, women and men that feed the McDonald's money tree.

So, the issue is, why should we tolerate this kind of irresponsibility? What's wrong with penalizing corporate irresponsibility that burns and may kill our consumers?

Is this an individual who didn't take responsibility or a corporation that didn't take responsibility? The jury found 20 percent against Mrs. Liebeck and 80 percent against McDonald's.

The risk of serious burns above 130 degrees Fahrenheit has been well documented by the Shriner's Burn Center, which has published warnings to the franchise food industry that its members are unnecessarily causing serious scald burns. The industry did not react.

McDonald's admitted that it never, in all these years, consulted a single burn doctor or thermo-dynamicist. Our firm did, and we presented this information to the jury in Albuquerque, which in turn did what is necessary to remedy the problem.

Interestingly, the news media, the day after the verdict, documented that coffee at the McDonald's in Albuquerque is now sold at 158 degrees.

Mission accomplished. This will cause third-degree burns in about 60 seconds rather than in two to seven seconds. The margin of safety has been increased as a direct consequence of this verdict. ■