

I never tire of telling and retelling this story - I just wished more people paid attention:

McDonald's Callousness Was Real Issue, Jurors Say, In Case of Burned Woman

ALBUQUERQUE, N.M. - When a law firm here found itself defending McDonald's Corp. in a suit last year that claimed the company served dangerously hot coffee, it hired a law student to take temperatures at other local restaurants for comparison.

After dutifully slipping a thermometer into steaming cups and mugs all over the city, Danny Jarrett found that none came closer than about 20 degrees to the temperature at which McDonald's coffee is poured, about 180 degrees.

It should have been a warning.

But McDonald's lawyers went on to dismiss several opportunities to settle out of court, apparently convinced that no jury would punish a company for serving coffee the way customers like it. After all, its coffee's temperature helps explain why McDonald's sells a billion cups a year.

But now - days after a jury here awarded \$2.9 million to an 81-year-old woman scalded by McDonald's coffee - some observers say the defense was naive. "I drink McDonald's coffee because it's hot, the hottest coffee around," says Robert Gregg, a Dallas defense attorney who consumes it during morning drives to the office. "But I've predicted for years that someone's going to win a suit, because I've spilled it on myself. And unlike the coffee I make at home, it's really hot. I mean, man, it hurts."

McDonald's, known for its fastidious control over franchisees, requires that its coffee be prepared at very high temperatures, based on recommendations of coffee consultants and industry groups that say hot temperatures are necessary to fully extract the flavor during brewing.

Before trial, McDonald's gave the opposing lawyer its operations and training manual, which says its coffee must be brewed at 195 to 205 degrees and held at 180 to 190 degrees for optimal taste. Since the verdict, McDonald's has declined to offer any comment, as have their attorneys. It is unclear if the company, whose coffee cups warn drinkers that the contents are hot, plans to change its preparation procedures.

Coffee temperature is suddenly a hot topic in the industry. The Specialty Coffee Association of America has put coffee safety on the agenda of its quarterly board meeting this month. And a spokesman for Dunkin' Donuts Inc., which sells about 500 million cups of coffee a year, says the company is looking at the verdict to see if it needs to make any changes to the way it makes coffee.

Others call it a tempest in a coffee pot. A spokesman for the National Coffee Association says McDonald's coffee conforms to industry temperature standards. And a spokesman for Mr. Coffee Inc., the coffee-machine maker, says that if customer complaints are any indication, industry settings may be too low - some customers like it hotter. A spokeswoman for Starbucks Coffee Co. adds, "Coffee is traditionally a hot beverage and is served hot and I would hope that this is an isolated incident."

Coffee connoisseur William McAlpin, an importer and wholesaler in Bar Harbor, Maine, who owns a coffee plantation in Costa Rica, says 175 degrees is "probably the optimum temperature, because that's when aromatics are being released. Once the aromas get in your palate, that is a large part of what makes the coffee a pleasure to drink."

Public opinion is squarely on the side of McDonald's. Polls have shown a large majority of Americans - including many who typically support the little guy - to be outraged at the verdict. And radio talk-show hosts around the country have lambasted the plaintiff, her attorneys and the jurors on air. Declining to be interviewed for this story, one juror explained that he already had received angry calls from citizens

around the country.

It's a reaction that many of the jurors could have understood - before they heard the evidence. At the beginning of the trial, jury foreman Jerry Goens says he "wasn't convinced as to why I needed to be there to settle a coffee spill."

At that point, Mr. Goens and the other jurors knew only the basic facts: that two years earlier, Stella Liebeck had bought a 49-cent cup of coffee at the drive-in window of an Albuquerque McDonald's, and while removing the lid to add cream and sugar had spilled it, causing third-degree burns of the groin, inner thighs and buttocks. Her suit, filed in state court in Albuquerque, claimed the coffee was "defective" because it was so hot.

What the jury didn't realize initially was the severity of her burns. Told during the trial of Mrs. Liebeck's seven days in the hospital and her skin grafts, and shown gruesome photographs, jurors began taking the matter more seriously. "It made me come home and tell my wife and daughters don't drink coffee in the car, at least not hot," says juror Jack Elliott.

Even more eye-opening was the revelation that McDonald's had seen such injuries many times before. Company documents showed that in the past decade McDonald's had received at least 700 reports of coffee burns ranging from mild to third degree, and had settled claims arising from scalding injuries for more than \$500,000.

Some observers wonder why McDonald's, after years of settling coffee-burn cases, chose to take this one to trial. After all, the plaintiff was a sympathetic figure - an articulate, 81-year-old former department store clerk who said under oath that she had never filed suit before. In fact, she said, she never would have filed this one if McDonald's hadn't dismissed her requests for compensation for pain and medical bills with an offer of \$800.

Then there was the matter of Mrs. Liebeck's attorney. While recuperating from her injuries in the Santa Fe home of her daughter, Mrs. Liebeck happened to meet a pair of Texas transplants familiar with a Houston attorney who had handled a 1986 hot-coffee lawsuit against McDonald's. His name was Reed Morgan, and ever since he had deeply believed that McDonald's coffee is too hot.

For that case, involving a Houston woman with third-degree burns, Mr. Morgan had the temperature of coffee taken at 18 restaurants such as Dairy Queen, Wendy's and Dunkin' Donuts, and at 20 McDonald's restaurants. McDonald's, his investigator found, accounted for nine of the 12 hottest readings. Also for that case, Mr. Morgan deposed Christopher Appleton, a McDonald's quality assurance manager, who said "he was aware of this risk?and had no plans to turn down the heat," according to Mr. Morgan. McDonald's settled that case for \$27,500.

Now, plotting Mrs. Liebeck's case, Mr. Morgan planned to introduce photographs of his previous client's injuries and those of a California woman who suffered second- and third-degree burns after a McDonald's employee spilled hot coffee into her vehicle in 1990, a case that was settled out of court for \$230,000.

Tracy McGee of Rodey, Dickason, Sloan, Akin & Robb, the lawyers for McDonald's, strenuously objected. "First-person accounts by sundry women whose nether regions have been scorched by McDonald's coffee might well be worthy of Oprah," she wrote in a motion to state court Judge Robert Scott. "But they have no place in a court of law." Judge Scott did not allow the photographs nor the women's testimony into evidence, but said Mr. Morgan could mention the cases.

As the trial date approached, McDonald's declined to settle. At one point, Mr. Morgan says he offered to drop the case for \$300,000, and was willing to accept half that amount.

But McDonald's didn't bite.

Only days before the trial, Judge Scott ordered both sides to attend a mediation session. The mediator, a retired judge, recommended that McDonald's settle for \$225,000, saying a jury would be likely to award that amount. The company didn't follow his recommendation.

Instead, McDonald's continued denying any liability for Mrs. Liebeck's burns. The company suggested that she may have contributed to her injuries by holding the cup between her legs and not removing her clothing immediately. And it also argued that "Mrs. Liebeck's age may have caused her injuries to have been worse than they might have been in a younger individual," since older skin is thinner and more vulnerable to injury.

The trial lasted seven sometimes mind-numbing days. Experts dueled over the temperature at which coffee causes burns. A scientist testifying for McDonald's argued that any coffee hotter than 130 degrees could produce third-degree burns, so it didn't matter whether McDonald's coffee was hotter. But a doctor testifying on behalf of Mrs. Liebeck argued that lowering the serving temperature to about 160 degrees could make a big difference, because it takes less than three seconds to produce a third-degree burn at 190 degrees, about 12 to 15 seconds at 180 degrees and about 20 seconds at 160 degrees.

The testimony of Mr. Appleton, the McDonald's executive, didn't help the company, jurors said later. He testified that McDonald's knew its coffee sometimes caused serious burns, but hadn't consulted burn experts about it. He also testified that McDonald's had decided not to warn customers about the possibility of severe burns, even though most people wouldn't think it possible. Finally, he testified that McDonald's didn't intend to change any of its coffee policies or procedures, saying, "There are more serious dangers in restaurants."

Mr. Elliott, the juror, says he began to realize that the case was about "callous disregard for the safety of the people."

Next for the defense came P. Robert Knaff, a human-factors engineer who earned \$15,000 in fees from the case and who, several jurors said later, didn't help McDonald's either. Dr. Knaff told the jury that hot-coffee burns were statistically insignificant when compared to the billion cups of coffee McDonald's sells annually.

To jurors, Dr. Knaff seemed to be saying that the graphic photos they had seen of Mrs. Liebeck's burns didn't matter because they were rare. "There was a person behind every number and I don't think the corporation was attaching enough importance to that," says juror Betty Farnham.

When the panel reached the jury room, it swiftly arrived at the conclusion that McDonald's was liable. "The facts were so overwhelmingly against the company," says Ms. Farnham. "They were not taking care of their consumers."

Then the six men and six women decided on compensatory damages of \$200,000, which they reduced to \$160,000 after determining that 20% of the fault belonged with Mrs. Liebeck for spilling the coffee.

The jury then found that McDonald's had engaged in willful, reckless, malicious or wanton conduct, the basis for punitive damages. Mr. Morgan had suggested penalizing McDonald's the equivalent of one to two days of companywide coffee sales, which he estimated at \$1.35 million a day. During the four-hour deliberation, a few jurors unsuccessfully argued for as much as \$9.6 million in punitive damages. But in the end, the jury settled on \$2.7 million.

McDonald's has since asked the judge for a new trial. Judge Scott has asked both sides to meet with a mediator to discuss settling the case before he rules on McDonald's request. The judge also has the authority to disregard the jury's finding or decrease the amount of damages.

One day after the verdict, a local reporter tested the coffee at the McDonald's that had served Mrs.

Liebeck and found it to be a comparatively cool 158 degrees. But industry officials say they doubt that this signals any companywide change. After all, in a series of focus groups last year, customers who buy McDonald's coffee at least weekly say that "morning coffee has minimal taste requirements, but must be hot," to the point of steaming.

POSTSCRIPT - Following the trial of Ms. Liebeck's case, the judge who presided over it reduced the punitive damages award to \$480,000, even though the judge called McDonald's conduct reckless, callous and willful. This reduction is a corrective feature built into our legal system. Furthermore, after that, both parties agreed to a settlement of the claim for a sum reported to be much less than the judge's reduced award. Another corrective feature.

ADDITIONAL NOTE - Prior to the Liebeck case, the prestigious Shriner's Burn Institute in Cincinnati had published warnings to the franchise food industry that its members were unnecessarily causing serious scald burns by serving beverages above 130 degrees Fahrenheit.