Burning Your Bottom Line

by Jeffrey L. Karlin

Learning to protect your business from the looming danger of hot-coffee spills
Nearly 20 years ago, a jury in Albuquerque, N.M., hit the world’s largest quick-service restaurant chain with a multi-million dollar judgment merely for doing something that coffee retailers do millions of times each and every day: serving a customer a fresh, steaming-hot cup of coffee. The verdict is so well-known that it’s now commonly referred to simply as “the McDonald’s case.” From the moment it was announced, the judgment was criticized as an example of the legal system gone haywire, with critics wondering how someone could receive a verdict for nearly $3 million by claiming that the coffee she bought was “unreasonably” hot when coffee is supposed to be hot.

You might assume these sorts of cases are rarely filed anymore, and that when they are they’re hardly considered a threat. However, people are still seeking compensation in court for spilling hot coffee on themselves. A leading expert on hot-coffee spills estimates that about 10 hot beverage cases are pending in American courts at any one time. And the allegations in these cases are the same ones raised in the McDonald’s case.

Why are these cases still being brought? For one thing, retail coffee is still being brewed and served at the same temperatures as it was back when the McDonald’s case was tried. And if that coffee is spilled on someone’s clothes shortly after it is served and stays in contact with skin long enough, it can cause third-degree burns requiring hospitalization and even skin grafts. Moreover, pictures of these burns are usually particularly gruesome and thus can be very compelling evidence to a jury.

Not surprisingly, such suits are costly: A guilty verdict against a shop could affect sales and (at the very least) mean higher insurance rates for the retailer. Read on for a deeper look at the McDonald’s case and how courts have handled hot beverage cases in the last 20 years, followed by some practical suggestions on how coffee retailers can prevent or limit their liability for hot-coffee spills.

THE LASTING LEGACY OF THE MCDONALD’S CASE

It all started in a drive-thru lane on a cool, sunny morning in Albuquerque. On Feb. 27, 1992, 79-year-old retired sales clerk Stella Liebeck was in the passenger seat of a car driven by her grandson when they stopped for breakfast. Along with her Egg McMuffin, Liebeck ordered a $0.49 cup of coffee. Served in a Styrofoam cup topped with a plastic lid, the beverage had been brewed according to McDonald’s specifications, with the water heated to between 195 and 205 degrees Fahrenheit. It was served at between 180 and 190 degrees Fahrenheit, also in line with McDonald’s standards. The cup contained the warning “Caution: Contents Hot” in small print.

After pulling out of the drive-thru lane, Liebeck’s grandson stopped at a curb in the restaurant’s parking lot so she could add cream and sugar to the black coffee. Liebeck placed the cup between her knees and pried off the plastic lid. The cup then tipped over and the hot liquid spilled onto her lap, soaking into her sweatpants. By the time she was admitted to a hospital, Liebeck had suffered third-degree burns on her thighs, buttocks and genitals. She was hospitalized for a week and eventually had to undergo skin graft surgery. Photographs showing her charred and eventually scarred skin were taken at some point during her treatment.

After an unsuccessful attempt to settle with McDonald’s on her own, Liebeck hired a lawyer who filed suit on her behalf in New Mexico state court. The complaint alleged the coffee had been “defective” because it was “excessively, dangerously hot” and that Liebeck had not been adequately warned about its risks. She asked for $12,500 in medical expenses and additional amounts for pain and suffering, disfigurement and disability. She also demanded that punitive damages be imposed against McDonald’s.

The trial, held two years after the suit was filed, lasted seven days. Liebeck’s lawyers argued that McDonald’s coffee was hotter than that of other retailers and much hotter than the coffee consumers made at home. They also asserted that in the 10 years before the accident, McDonald’s had received more than 700 complaints about excessively hot coffee but had not reduced the brewing or holding temperatures or revised its warning labels. And they showed those pictures of Liebeck’s injuries to the jury.

The jury deliberated for only four hours before returning a judgment against McDonald’s. Although it found that Liebeck was partly responsible for the accident, the jury decided that she was entitled to $160,000 for her medical expenses and other direct damages. It also awarded $2.7 million in punitive damages, representing two days’ revenue from McDonald’s nationwide coffee sales. The trial judge reduced the punitive damages to $480,000 and the case settled some months later for an undislosed amount.

Simply put, Liebeck’s lawyers played on the jury’s sympathies by highlighting the severity of her injuries. They made the company look like the corporate “bad guy” that had knowingly sold customers “dangerously hot” coffee. And McDonald’s lawyers did not use an
days. Liebeck’s lawyers argued that McDonald’s coffee was hotter than that of other retailers and much hotter than the coffee consumers made at home. They also asserted that in the 10 years before the accident, McDonald’s had received more than 700 complaints about excessively hot coffee but had not reduced the brewing or holding temperatures or revised its warning labels. And they showed those pictures of Liebeck’s injuries to the jury.

The jury deliberated for only four hours before returning a judgment against McDonald’s. Although it found that Liebeck was partly responsible for the accident, the jury decided that she was entitled to $160,000 for her medical expenses and other direct damages. It also awarded $2.7 million in punitive damages, representing two days’ revenue from McDonald’s nationwide coffee sales. The trial judge reduced the punitive damages to $480,000 and the case settled some months later for an undislosed amount.

Simply put, Liebeck’s lawyers played on the jury’s sympathies by highlighting the severity of her injuries. They made the company look like the corporate “bad guy” that had knowingly sold customers “dangerously hot” coffee. And McDonald’s lawyers did not use an
independent expert witness with direct experience in the retail coffee industry to explain the scientific rationale for brewing and serving coffee at such high temperatures.

THE AFTERMATH

The verdict in the McDonald’s case created a firestorm of criticism that never really ended. The most frequent complaint has been that the damage award was too big and that Liebeck should have been more careful with her coffee. Over the years, the McDonald’s case has become the leading example to some of what is wrong in the American civil justice system. In fact, the case is so infamous that the Utah Supreme Court recently ordered a new trial to a plaintiff in a personal injury case merely because the defense lawyer mentioned the McDonald’s case in his closing arguments to a jury.

Shortly after the verdict in Liebeck’s case, the coffee industry started taking significant action to prevent another jury award of that magnitude. In particular, warning labels now appear on virtually all take-away cups and lids sold at retail locations. These warnings are generally larger and expressed with more urgency than before the verdict. By 1998, for example, McDonald’s had added an exclamation point to its warning labels and placed one on its lids saying “Caution, I’m Hot!” Retailers started warning consumers that the beverage was “Extremely Hot!” and placing these warnings on cups, cup sleeves and lids.

Moreover, the SCAA directly assisted attorneys defending hot-coffee spill cases. Acknowledging that the industry was “under attack,” the SCAA and its spinoff Coffee Quality Institute (CQI) provided technical and scientific information on the national standards for brewing and holding temperatures to retailers, insurers and defense lawyers through seminars, press releases and other means. The organization stressed that brewing coffee at high temperatures helped draw out “the most flavorful elements from a bed of roasted and ground coffee,” while the holding temperature maintained those flavors until the coffee was ready to be served.

SCAA executives have also served as expert witnesses in hot-coffee spill cases, explaining the rationale behind the national standards to judges and juries. This testimony has been critically important in defending lawsuits similar to the McDonald’s case. It has effectively blunted claims that coffee retailers “callously” brew and serve coffee at temperatures high enough to cause third-degree burns by demonstrating that these temperatures are made necessary by the science of coffee brewing and used in direct response to customers’ preference for hot, flavorful coffee.

And these efforts have proven successful. Since 1994, there have been two dozen written opinions touching on the subject of whether hot beverage retailers can be held liable for selling coffee brewed in accordance with the national standards. In virtually every case, the courts have held that retail coffee was not “unreasonably dangerous” because its hot temperature was not “beyond that contemplated by the ordinary and reasonable consumer.” In addition, courts have concluded that the warning labels that typically appear on the cups, lids and sleeves are legally sufficient.

One of the most important aspects of these cases is that they were decided by judges on legal grounds before they had a chance to reach a jury. Presenting a case to a jury is always a risky proposition; a bad set of facts, a poor performance by a key witness or unsympathetic jury members can result in a losing case and a big damage award.

DEALING WITH COFFEE SPILL CASES

Still, there is ample reason for concern on the part of the retail coffee industry. The high brewing and holding temperature for retail coffee has not changed since Liebeck bought her cup of coffee back in 1992. Nor has anything changed about human physiology; coffee brewed at the national standards can cause very serious burns. And you can be sure that a plaintiff’s trial lawyers will be looking for a poster child coffee spill victim to help counter the criticism over frivolous lawsuits created by the McDonald’s case.

During the last 20 years, there have been at least 50 cases involving coffee spills that raised at least some of the same allegations as those in the McDonald’s case. The scenarios in these...
cases vary. Some have involved employees who spilled coffee on a customer, some concern lids that were improperly placed on a take-away cup and in others customers have spilled hot coffee on themselves. There have been large awards and settlements against coffee retailers in some of these lawsuits, demonstrating that coffee spills can still generate significant damage awards and settlement payments for retailers and their insurers.

In addition, it is certainly conceivable that a court might find that a jury (rather than a judge) should decide whether the national standards for brewing and holding coffee create beverages that are “unreasonably dangerous.” If that happened, it could encourage other courts to reach the same conclusion. Because juries would be more easily swayed, that might well result in an increased number of settlements or judgments in favor of coffee spill plaintiffs. Thus, care needs to be taken to raise legal defenses on behalf of the coffee industry and to defend the court decisions regarding those defenses already on the books every time they surface.

What can coffee retailers do to lower their risk of being the target of a hot-coffee-spill case? Here are some practical suggestions:

**Training and education:** All staff members should be sensitized to the fact that hot beverages can cause very serious injuries. Employees should be specifically trained on the proper placement of lids on cups, sleeves on cups and cups in carrying trays.

**Brewing procedures:** Make sure that brewing techniques conform to the national standards and that machines receive proper maintenance to avoid overheating coffee.

**‘Caution’ labels:** Warnings such as “Caution: Hot” should be distinct and placed where they can be seen on the cup, lid and sleeve.

**Adequate insurance coverage:** Check with an insurance broker on what coverage levels are needed and make sure that your policy has not lapsed.

**Accident response:** If a customer is injured by hot coffee, assist in getting medical attention, secure evidence (such as the cup, lid, tray and brewing records), and then contact your insurance carrier and lawyer.

None of these steps will guarantee a good outcome in court, but they will raise your chances of being protected and will help ensure that your customers safely enjoy their hot beverages.

Coffee retailers have a common interest in defending the national brewing and holding temperatures from legal challenges. The 20th anniversary of the McDonald’s case is an appropriate moment to take stock, share best practices (both for the industry and its lawyers) and make sure that a case that has become somewhat of a laughingstock never has a chance to become something far more serious.

*The views expressed are solely those of the author, and not those of the Gray Plant Mooty law firm (where he is employed) or any of the firm’s clients.*