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(Amy Beth Bennett/South Florida Sun-Sentinel via AP)

Randy Maniloff: McDonald's mostly stays out of hot water for its hot water

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Last Wednesday, a Broward County, Florida, jury awarded \$800,000 to 8-year-old Olivia Caraballo for second-degree burns suffered in 2019 when a “dangerously hot” Chicken McNugget fell from a Happy Meal onto her leg while in a car seat.

Unsurprisingly, some of the extensive media coverage of the verdict recalled the case of Stella Liebeck. In 1994, a New Mexico jury awarded the 81-year-old nearly \$3 million for serious burns incurred when her McDonald’s coffee — resting between her knees while in the passenger seat of a parked car — spilled. A judge reduced the award to \$460,000 and the parties later settled.

The massive award to the grandmother (about \$6 million in today’s dollars) caused a firestorm. Some called it clear evidence that the legal system was broken. Everyone knows that coffee is hot. Resting a cup between your knees is a burn waiting to happen. This narrative went: something needed to be done about runaway juries that award a king’s ransom to people for their own foolish acts.

But not everyone saw it as McDonald’s being hamburglared. According to the American Museum of Tort Law, McDonald’s had no one to blame but itself for the outcome. Liebeck had offered to settle the case for \$20,000, but McDonald’s offered only \$800.

The jurors heard experts testify that McDonald’s coffee, served between 180 and 190 degrees, was 30 to 40 degrees hotter than it should be. At this temperature, spilled coffee causes third degree burns in less than three seconds — before there’s time to wipe it off. The jury also learned that, while 700 other people had been burned previously, the company did not reduce its temperature.

Following the massive publicity of Liebeck’s case — which now lives in legal lore and was even the subject of a documentary — some others with coffee mishaps at the Golden Arches tried to replicate the octogenarian’s success. But in many cases, judges dismissed their cases before they even had a chance to get before a jury of their coffee-drinking peers.

Rosalind Holowaty’s coffee was situated in a beverage tray on her lap with the drink tab open. The cup tipped over as her husband drove on a steep decline to exit a McDonald’s in Rochester, Minnesota. She suffered second degree burns to her thighs. Because hot coffee is inherently hot, the court concluded that the beverage did not have a design defect. Dull steak knives, the judge observed, would be safer too.

The court also concluded that McDonald’s did not have a duty to warn Holowaty. “The average consumer understands that coffee is hot,” the court noted, “and that it will cause burns if it comes into contact with skin.”

Barry Triche claimed that three cups of coffee, handed to him from a Mickey D’s drive-thru window in Louisiana, were not properly seated in the carry-out holder. The tray was on his lap and a cup fell out as he moved his leg to pull into traffic. In his suit, a state appeals court concluded that he would not be able to prove at trial that the employee had failed to properly secure the coffee.

The court also made a more wide-reaching observation, lamenting a growing tendency for victims of accidents and their attorneys to look for someone to blame for an injury that is not another’s fault. “It seems that injuries from accidents that regularly happen at home,” the court noted, “and would be considered as accidents as a matter of course become full blown negligence actions when a solvent defendant is involved.”

While exiting a McDonald’s in Frankfort, Kentucky, Margie Ann Faesy slipped and fell. She didn’t blame the restaurant for tripping. But she sought damages for the burns caused by the coffee she had been holding. She maintained that the coffee was excessively hot. But a Kentucky appeals court upheld the dismissal of her case. It concluded that, even if the java had been somewhat cooler, burns would have still occurred. Thus, the cause of Fasesy’s injuries was the fall and not the temperature of the coffee.

Unlike some others, Kathy Kirby convinced a judge not to put the kibosh on her case. She was burned when the lid came off a cup of coffee that had been handed to her from a McDonald’s drive-thru window in Toledo, Ohio.

A state trial court reasoned that, because the restaurant voluntarily put lids on cups, it had a duty to act with reasonable care. In addition, there was no evidence that Kirby — holding the cup in the middle and not squeezing it — handled the cup in an unreasonable manner.

Despite the bruhaha that the Liebeck case created about the dangers of its coffee, McDonald’s has mostly stayed out of hot water. Maybe Olivia Caraballo’s is the beginning of a change.

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