

POISON!

CONDEMNATION *BEFORE* INVESTIGATION

Some years ago I ran into the idea of condemnation before investigation. It just floored me. As a self directed learner in this world, I always took pride that I never did 'group think'. I could not be one of those Jones followers who swallowed poison at the direction of my leaders. I was an independent thinker, or so I thought. But then this little article about the McDonald's case came to me and I surprised myself that I was participating in group think in that I had formulated an opinion before I had all the facts. My opinion before reading this? That some ridiculous woman sued McDonald's for something that was her own fault, her own responsibility and that we are sue-happy in the USA and the jury must have been out to lunch on this one. What were they all thinking? My opinion after reading this - well read on.

THE ACTUAL FACTS ABOUT THE MCDONALD'S' COFFEE CASE

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There is a lot of hype about the McDonald's' scalding coffee case. No one is in favor of frivolous cases of outlandish results; however, it is important to understand some points that were not reported in most of the stories about the case. McDonald's coffee was not only hot, it was scalding — capable of almost instantaneous destruction of skin, flesh and muscle. Here's the whole story.

Stella Liebeck of Albuquerque, New Mexico, was in the passenger seat of her grandson's car when she was severely burned by McDonald's' coffee in February 1992. Liebeck, 79 at the time, ordered coffee that was served in a styrofoam cup at the drive through window of a local McDonald's.

After receiving the order, the grandson pulled his car forward and stopped momentarily so that Liebeck could add cream and sugar to her coffee. (Critics of civil justice, who have pounced on this case, often charge that Liebeck was driving the car or that the vehicle was in motion when she spilled the coffee; neither is true.) Liebeck placed the cup between her knees and attempted to remove the plastic lid from the cup. As she removed the lid, the entire contents of the cup spilled into her lap.

Liebeck suffered full thickness burns (or third-degree burns) over 6 percent of her body...

The sweatpants Liebeck was wearing absorbed the coffee and held it next to her skin. A vascular surgeon determined that Liebeck suffered full thickness burns (or third-degree burns) over 6 percent of her body, including her inner thighs, perineum, buttocks, and genital and groin areas. She was hospitalized for eight days, during which time she

underwent skin grafting. Liebeck, who also underwent debridement treatments, sought to settle her claim for \$20,000, but McDonald's refused.

During discovery, McDonald's produced documents showing more than 700 claims by people burned by its coffee between 1982 and 1992. Some claims involved third-degree burns substantially similar to Liebecks. This history documented McDonald's' knowledge about the extent and nature of this hazard.

McDonald's also said during discovery that, based on a consultant's advice, it held its coffee at between 180 and 190 degrees Fahrenheit to maintain optimum taste. He admitted that he had not evaluated the safety ramifications at this temperature. Other establishments sell coffee at substantially lower temperatures, and coffee served at home is generally 135 to 140 degrees.

Further, McDonald's' quality assurance manager testified that the company actively enforces a requirement that coffee be held in the pot at 185 degrees, plus or minus five degrees. He also testified that a burn hazard exists with any food substance served at 140 degrees or above, and that McDonald's coffee, at the temperature at which it was poured into styrofoam cups, was not fit for consumption because it would burn the mouth and throat. The quality assurance manager admitted that burns would occur, but testified that McDonald's had no intention of reducing the "holding temperature" of its coffee.

Plaintiffs' expert, a scholar in thermodynamics applied to human skin burns, testified that liquids, at 180 degrees, will cause a full thickness burn to human skin in two to seven seconds. Other testimony showed that as the temperature decreases toward 155 degrees, the extent of the burn relative to that temperature decreases exponentially.

Thus, if Liebeck's spill had involved coffee at 155 degrees, the liquid would have cooled and given her time to avoid a serious burn.

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McDonald's asserted that customers buy coffee on their way to work or home, intending to consume it there. However, the company's own research showed that customers intend to consume the coffee immediately while driving.

McDonald's also argued that consumers know coffee is hot and that its customers want it that way. The company admitted its customers were unaware that they could suffer third degree burns from the coffee and that a statement on the side of the cup was not a "warning" but a "reminder" since the location of the writing would not warn customers of the hazard.

The jury awarded Liebeck \$200,000 in compensatory damages. This amount was reduced to \$160,000 because the jury found Liebeck 20 percent at fault in the spill. The jury also awarded Liebeck \$2.7 million in punitive damages, which equals about two days of McDonald's' coffee sales.

Post-verdict investigation found that the temperature of coffee at the local Albuquerque McDonald's had dropped to 158 degrees Fahrenheit.

The trial court subsequently reduced the punitive award to \$480,000 — or three times compensatory damages — even though the judge called McDonald's' conduct reckless, callous and willful. No one will ever know the final ending to this case.

The parties eventually entered into a secret settlement which has never been revealed to the public, despite the fact that this was a public case, litigated in public and subjected to extensive media reporting.

Trainers: Use this story as an example of non-examined beliefs about other cultures, rumors, fear. Critical thinking means examining or thinking about thinking.