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One Lump or Two?

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When S. Reed Morgan won a \$2.9 million jury award for a grandmother who accidentally spilled McDonald's coffee on herself, he prompted a tort reform storm that has barely abated. Morgan's 1994 case was immediately seized as a symbol of an out-of-control society overeager to sue. Morgan's client, Stella Liebeck, turned into the namesake for "Stella Awards," a mocking honor that tort-case skeptics continue to slap on lawsuits they want to ridicule.

Apart from the rhetoric, Liebeck's case had a serious impact on daily life. Coffee sellers absorbed the jury's message and subsequently added safety features such as better-gripping lids. The suit's effect on the courts wasn't as lasting. McDonald's Corporation settled it rather than pursue appeals. And the case never prompted a flood of coffee-spill cases in the civil courts.

Indeed, Morgan has handled only three cases involving the beverage since Liebeck's suit. Mostly, he helps boat and railroad workers recover damages for on-the-job injuries. The living he earns from suing transport companies allowed him a few years ago to move his solo practice from Houston to a town northwest of San Antonio fittingly named Comfort.

But Morgan and his coffee-cup cause are about to move back to the front burner. He has a new McDonald's coffee case, one that closely resembles the <I>Liebeck</I> case -- and his first set to go to trial since then. Morgan's opening statement is scheduled for July in Post, Texas. Maxine Villegas, a grandmother in her seventies, was a passenger in a car stopped at a drive-through, where coffee splashed on her legs and left third-degree burns. Villegas testified in a deposition that coffee spilled out as her sister passed the cup.

Since Morgan's 1994 victory, he has turned down many other plaintiffs. "I'm not interested in handling them unless there's third-degree burns, because of the whole penumbra effect that they're allegedly frivolous," he says. Third-degree burns refute that accusation, he believes. Villegas's complaint against McDonald's may generate nothing more than jokes for Jay Leno and David Letterman. Yet in light of the influence of the earlier suit, this scalded-granny case may keep a 90-million-cup-a-day industry on alert for another decade to come.

In the case of Stella Liebeck, Morgan convinced an Albuquerque jury that McDonald's sold "unreasonably dangerous" and "defectively manufactured" coffee. Liebeck, then 79 years old, had placed a cup between her legs while sitting in a parked car, but tugged too hard and splashed coffee into her lap. Liebeck squirmed in a bucket seat while the approximately 170-

degree beverage seared her skin. Liebeck spent a week in the hospital, then returned a month later for skin grafts to heal the second- and third-degree burns across her buttocks, thighs, and labia.

McDonald's denied it was selling coffee that was too hot, or had done anything wrong at all. The defense attorney, Tracy McGee (now Jenks) of Albuquerque's Rodey, Dickason, Sloan, Akin & Robb, told the jury that Liebeck had been "unwise" to hold the coffee as she had. "The real question is how far you want our society to go to restrict what most of us enjoy and accept," said Jenks. The jury gave Liebeck \$200,000 for compensatory damages, then knocked off 20 percent because she had contributed to the accident. Jury members at the time said that they had tacked on \$2.7 million to punish McDonald's for its corporate coffee policy. The judge reduced the total award to \$640,000. Then the two sides settled confidentially.

McDonald's current general counsel, Gloria Santona, says the loss was a fluke because an unfamiliar insurer, which was representing the franchise, set trial strategy: "If we had had better communications, we would have had a heads-up and would have been much more actively involved in the defense." Jurors told *Newsweek* at the time that an expert for the company inadvertently helped sway them. After learning that 700 people had complained to the company about the heat of its coffee, safety consultant Robert Knaff calculated that that equaled one problem for every 24 million cups sold. This was, he said, "basically trivially different from zero." One juror explained the decision to award millions in punitives: "It was our way of saying, 'Hey, open your eyes. People are getting burned.'"

Coffee sellers listened. "It caused the industry to look at itself and its standards, and say, 'Are we sure we know what we are doing?'" recalls Ted Lingle, the executive director of the Specialty Coffee Association of America. "We are selling a product that represents a hazard, no one denies that," Lingle adds, "so the question then is, how do we keep it reasonably safe for the millions of consumers who enjoy it every day? And the answer is in more secure packaging." Hot beverages to go are sold now with stronger cups and often sleeves to make the cups easier to handle than in 1994. Most cars now include beverage holders.

In the courtroom, though, McDonald's and other sellers have fought back against the jury finding that Liebeck was handed unreasonably hot coffee. In the couple dozen cases that have gone to trial since 1994, coffee sellers have pointed out that the beverage must be brewed at 195 to 205 degrees Fahrenheit, or else the grounds won't release the flavor. Moreover, most people prefer coffee at 161.8 degrees Fahrenheit, a University of California at Davis study shows, which is why, says Lingle, the industry's standard serving temperature is 160 to 185 degrees. Although Morgan's experts had testified in the Liebeck case that coffee of 170 degrees would cause second-degree skin burns in two seconds, one's tongue and mouth lining are thicker than one's skin. What scars your hand melts in your mouth.

At stake in Morgan's suits then and now, those in the coffee trade contend, is whether consumers will be able to relish coffee in the ritual manner to which they have grown accustomed -- sipping a reassuringly hot beverage.

Morgan's cases for individual consumers tend toward products that, like hot coffee, remain unregulated for safety. He has filed a couple of cases challenging the absence of safety features on forklifts, for instance. In Villegas's coffee case, Morgan again will focus on temperature. McDonald's will not say how hot its coffee should be at serving; Starbucks recommends 175 to 185 degrees Fahrenheit. "For all practical purposes, that's too dangerous," Morgan insists. "There's no margin of safety when you have something unexpected occur." Like a lid popping off.

The lawyer from Comfort, Texas, must grapple with a decade of changes in public opinion. General counsel Santona declined to discuss the company's defense strategy, which will be handled in court by Michael Byrd of Lubbock's Byrd & Associates and David Whitehurst of

Addison, Texas's Whitehurst & Cawley. Yet it's possible that McDonald's will reply to Villegas's failure-to-adequately-warn claim by arguing that years of packaging improvements clearly signal that coffee drinkers must beware. Morgan contends that, in general, the newer safety features remain inadequate. The protective sleeves, he says, confirm that the coffee remains too hot. He maintains that all sellers should be warning customers that the liquid is not merely hot, but scalding.

Have attitudes turned too far against Morgan for him to win this time around? The 1994 Albuquerque jurors told reporters that, at first, they were annoyed that they had to hear a seemingly silly case over spilled coffee, filed by a lifelong drinker of the brew. The Texas jurors may react similarly. They have heard a decade of clamor about loony lawsuits and the unnecessary warning labels they spawn -- as well as the legend of a grandmother scalded by coffee: Wasn't that warning enough for Villegas?

Grab a latte, and make it a tall one. The rematch between Reed Morgan and McDonald's promises to be a colorful showdown, pitting safety against drinking pleasure, and it might just influence your enjoyment of your morning roast.