

## When Is a Law Suit Frivolous?

### Legal View

By Jeffrey R. Kelley, Esq.

This question comes up often but is not always easy to answer. Five years ago, a friend of mine told me about a 37-year-old co-worker, who was riding a bicycle to work one morning, and ran head first into the back of a stopped Sprinter van. The bicycle rider was immediately rendered a C3-C4 quadriplegic. Although the life changing spinal cord injury was beyond dispute, liability was not. The problem was the cyclist admitted “100% fault” for the collision in a Channel 9 News interview from his hospital bed, describing how he had tucked his chin due to the cold February head wind, and didn’t see the van he was following had stopped. The van was indeed stopped, and more accurately parked with its driver outside cleaning an RTD bus kiosk. The van’s driver also confirmed the cyclist had his head down and did not see the van. The responding police officer cited the rider for damaging property (denting the back door of the van) at the insistence of the owner of the van, an RTD vendor, and the “case” was closed. At the continuing insistence of our mutual friend, the cyclist and his wife eventually decided to pursue a lawsuit against the RTD vendor.

During discovery, we learned the van our client thought he was following never stopped. It had gone around the RTD vendor’s Sprinter van that was *parked* in a through lane, in a “no parking” zone, and possibly with no strobe lights activated. Prior to filing suit, the ambulance driver, who was first on scene, was interviewed and adamant the Sprinter van had no lights activated. We also learned the RTD vendor made a decision to not use traffic control devices, such as cones, to taper traffic around its parked vehicles because it would “take too much time.” Profit projections were tight, based on a driver servicing over sixty bus stops a day, and thus the extra time needed to place cones behind the van did not fit the formula. Based on willful neglect to protect the public from this danger, our Judge agreed to instruct the jury on punitive damages against the vendor, and the case was settled. Fortunately, following settlement, the RTD vendor also began using traffic cones to warn traffic of its “parked” service vehicles. A frivolous case? Hardly, but corporate profit once again was found to be more important than public safety.

Our case followed years of media coverage criticizing plaintiff’s attorneys for filing “frivolous law suits”, seeking judgements against corporations who would rather settle than suffer a huge verdict entered from a “runaway jury.” The public outcry for tort reform was in full swing in 1992, when Stella Liebeck of Albuquerque, New Mexico, was severely burned by a cup of coffee purchased at a local McDonald’s’ drive through window. The “McDonald’s hot coffee case” received a great deal of publicity and became a prime example of such “frivolous lawsuits”. But a closer look at the facts of the case, and the law, reveal a much different picture.

Ms. Liebeck, 79-years-old at the time of the incident, was injured when her grandson stopped his car in the McDonald’s parking lot so she could add cream and sugar to the coffee. She placed the cup of coffee between her legs and attempted to remove the lid, and in doing so, she spilled the entire liquid contents onto her lap. The sweatpants Ms. Liebeck was wearing, absorbed the hot liquid and held it next to the skin of her thighs. She suffered second and third

degree (full thickness) burns to her thighs, buttocks, groin and genital area. Her surgeons described her very serious injuries to involve six percent of her total body surface area. Ms. Liebeck was hospitalized for eight days for treatment of the burns, requiring debridement and skin grafts for coverage. Ms. Liebeck asked McDonald's to pay her medical bills of \$20,000, but they never offered more than \$800. By blaming Ms. Liebeck, McDonald's made a bad strategic decision to fight the claim, but ultimately it was a good decision for the public.

Ms. Liebeck's law suit was based on the fact that McDonald's decided to sell unnecessarily hot coffee, and therefore created a dangerous or defective product. During the discovery phase of the McDonald's litigation, several interesting facts came out that were not "news worthy enough" for the main stream media to report:

- McDonald's faced over 700 prior claims for burns from the coffee from 1982-1992.
- Some of these claims involved full-thickness burns similar to those of Ms. Liebeck.
- McDonald's admitted they kept their coffee temperature between 180 and 190 degrees Fahrenheit.
- McDonald's used this temperature based on a consultant's advice that this was the range needed for the best taste.
- McDonald's claimed customers consumed the coffee after they got to work or home, at which time the coffee would have cooled down.
- McDonald's' own internal research showed most of the customers drank the coffee while still in their car.
- McDonald's admitted they had not studied the dangers associated with these high temperatures.
- Other fast food restaurants sold their coffee at significantly lower temperatures.
- Coffee served by people in their homes was in the 135 to 140 degree range.
- Liebeck's expert testified liquids at 180 degrees would cause a full-thickness burn to human skin in two to seven seconds.
- At 155 degrees, the likelihood of a burn injury would fall exponentially.

The most damaging evidence came from McDonald's own quality assurance manager, who testified McDonald's required their restaurants to maintain coffee temperature at 185 degrees. Even with this knowledge, McDonald's never reduced the temperature of its coffee. Based on McDonald's willful conduct, the Judge in Liebeck's case instructed the jury to consider awarding Ms. Liebeck punitive damages, which it did, generously. Ms. Liebeck was awarded \$200,000 in compensatory damages, and \$2.7 million in punitive damages. The compensatory damages were reduced to \$160,000 because the jury found Ms. Liebeck was 20 percent at fault. The punitive damages award was also substantially reduced by the Judge to \$480,000, but this is rarely reported. The \$2.7 million in punitive damages was intended to punish McDonald's for its "reckless, callous and willful" conduct and based on about *two days' of coffee sales for McDonald's*.

Although Ms. Liebeck eventually settled her claim for an undisclosed sum never revealed to the public, her important case lives on and continues to be the subject of legal debate and public discussion, even in an HBO documentary titled **Hot Coffee**. Interestingly, a post-verdict

investigation showed the temperature of the coffee at the local Albuquerque McDonald's had been reduced to 158 degrees.

In the end, these two cases proved to be not so "frivolous," because they allowed the legal system to serve and protect the plaintiffs and the public.

Do you have a legal question? Send your question to Gilpin County attorney Jeff Kelley ([Jeff@klfpc.com](mailto:Jeff@klfpc.com)). Appointments for in person legal counsel are available in both Black Hawk and Denver offices.

*Note: All legal claims are different and require full analysis by an attorney.*