



**Your on the
Street Reporter**



Uyless Black

Once Burned, Twice Shy?

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Albuquerque, New Mexico---“The plaintiff... suffered third-degree burns...when she accidentally spilled coffee in her lap after purchasing it from a McDonald's restaurant in Albuquerque.”

One would think that McDonald's had learned its lesson about serving cooked (hot food) to its customers. Yes, food but not drinks. In 1994, McDonald's was successfully sued because it made an excessively hot drink. Like the hot chicken on the leg cited in an earlier report, this accident entailed similar damage, but with coffee.

“Liebeck [the plaintiff] ordered a 49-cent cup of coffee from the drive-through window of a McDonald's restaurant at 5001 Gibson Boulevard Southeast in Albuquerque, New Mexico. Liebeck was in the passenger's seat of a 1989 Ford Probe, which did not have cup holders.”

This reporter suggests: Sue Ford! “Her grandson parked so that Liebeck could add cream and sugar to her coffee.” Sue the grandson!

“She placed the coffee cup between her knees and pulled the far side of the lid toward her to remove it. In the process, she spilled the entire cup of coffee on her lap. Liebeck was wearing cotton sweatpants, which absorbed the coffee and held it against her skin, scalding her thighs, buttocks, and groin.” Sue the sweatpants company!

Sue anyone but the person responsible in the first place: Liebeck. In litigating America? Fat chance. And there's more.

“Liebeck sought to settle with McDonald's for \$20,000 to cover her medical expenses. When McDonald's refused, Liebeck's attorney filed suit in the U.S. District Court for the District of New Mexico, accusing McDonald's of gross negligence.”

The case against McDonald's should not have been for gross negligence, as the café was selling a product widely known, and liked, for its high temperatures. Knowing how Americans sue one another at the drop of a hat...or coffee cup...the case was one of ignorance or arrogance, but not negligence.

How hot was the coffee that got McDonald's into hot water? “Liebeck's attorneys argued that, at 180–190 °F, McDonald's coffee was defective, and more likely to cause serious injury than coffee served at any other establishment.”

Any other establishments? The reports on this incident (cited in the footnotes) stated that at that time in the 1990s, “Starbucks [sold] coffee at 175–185 °F, and the executive director of the Specialty Coffee Association of America reported that the standard serving temperature [was at that time] 160–185 °F.”

McDonald's coffee temperatures were only a few degrees hotter than Starbucks and very close to the standards of a coffee trade association. Should five degrees difference bring forth such a lawsuit? It should not have brought forth any lawsuit. Drinking hot coffee---voluntarily---does entail a smattering of responsibility and judgment on the part of the drinker.

Currently, the National Coffee Association recommends brewing coffee with water in the 195–205 °F range. Starbucks brews coffee for adults at 150–170 °F.

As a warning to tea drinkers, Starbucks' tea is hotter: 200 °F. Watch out for your lips and laps!

¹ <https://www.bing.com/search?q=lawsuit%2C+1992%2C+New+Mexico%2C+hot+coffee/>. Also see https://en.wikipedia.org/wiki/Liebeck_v._McDonald%27s_Restaurants.

I did a test. I made a pot of coffee with a procedure identical to how I always brew the beverage. Discretion aside, I even made the coffee from hot water, just like they do in coffee ads on TV. Using a thermometer, I measured the temperature of my coffee. It was 170 °F.

I was tempted to sue our stove manufacturer for allowing me to heat water sufficient for blending the coffee grinds with the water. After all, I could drink lukewarm, even cold coffee... grinds and all.

“Liebeck sought to settle with McDonald's for \$20,000 to cover her actual and anticipated expenses. Her past medical expenses were \$10,500; her anticipated future medical expenses were approximately \$2,500; and [other] loss of income was approximately \$5,000 for a total of approximately \$18,000. McDonald's offered only \$800.

“When McDonald's refused to raise its offer, Liebeck retained the Texas attorney Reed Morgan. Morgan filed suit in the U.S. District Court for the District of New Mexico.”

Whoa, McDonald's. Big mistake, you should have settled. “The jury found that McDonald's was 80 percent responsible for the incident. They awarded Liebeck a net \$160,000 in compensatory damages to cover medical expenses, and \$2.7 million in punitive damages.”

Who was responsible for the other 20 percent? After all, that 20 percent meant more money for settlement or suing. Most likely, that 20 percent fault was on Liebeck. But little could be gained by Liebeck suing herself. We would not be surprised if her lawyers lobbied for such a suit in order to take another piece of the money pie.

William James, in *Pragmatism* (1907) said, “Experience...has ways of boiling over, and making us correct our present formulas.”

Much to McDonald's chagrin, coffee has ways of boiling over, too. In litigating USA, boiling over into lawsuits.