

## Separating Myth From Reality: The Truth About "Hot Coffee"

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Without a doubt, most Americans are more familiar with the notorious McDonald's "hot coffee" case than with landmark Supreme Court decisions. The 1994 lawsuit, in which a New Mexico jury awarded Stella Liebeck \$2.86 million in damages after the octogenarian spilled coffee on her lap at a McDonald's drive-through window, became more than just another big verdict. It became a rallying cry for advocates of tort reform, and a symbol of an American civil justice system run amok. Over the years, the truth behind this litigation has become lost as the story swiftly gave way to urban legend, a legal version of the childhood game of "telephone" which has been recounted so many times and for so many different audiences that the line between myth and reality has become hopelessly blurred. On the surface, one might think that the new documentary film "Hot Coffee," which was selected as one of 16 feature-length documentaries (out of 841 entrants) to be shown at the 2011 Sundance Film Festival, would help set the record straight. After all, the filmmaker behind it is Susan Saladoff, a lawyer from Ashland, Oregon. According to Saladoff, "the whole point of my making the film was that I had something to say about the civil justice system, and I wanted to get my message out to as many people as possible." Indeed, the film will reach a wide audience, in light of the fact that HBO purchased the film and will broadcast it at a future unspecified date. Saladoff's work features interviews with members of the jury, Liebeck's lawyer, and family members (Liebeck herself died in 1994), as well as "man on the street" questions about the case posed to ordinary members of the public. But if what you're expecting is a dispassionate chronicle of the case rather than a slanted, Michael Moore-like effort, prepare to be disappointed. Saladoff certainly has an agenda. She hopes to counter the public perception of the Stella Liebeck case as an example of "jackpot justice" in which personal responsibility takes a backseat to runaway verdicts. Saladoff says she wants to warn individuals that they "are giving up their Constitutional rights every day without even knowing it," and adds "No one knows what a tort is, yet they're being asked to vote on it." To that end, she includes in the documentary prominent plaintiffs' attorneys, consumer advocates, and Joanne Doroshow, founder and executive director of the liberal Center for Justice and Democracy. In her quest, Saladoff also spotlights several other cases purportedly illustrating the evils of tort reform. These include Colin Gourley, a child afflicted with cerebral palsy as a result of alleged medical malpractice during delivery, who was awarded \$5.65 million in damages at trial only to see it reduced to \$1.25 million due to a Nebraska state-mandated damages cap. Also included is the case of Jamie Leigh Jones, who sued KBR/Halliburton after being sexually assaulted by co-workers while working as a contractor in Iraq. Her lawsuit was ordered to arbitration due to a mandatory arbitration clause in her employment contract, and Jones fought unsuccessfully for the opportunity to try her case before a jury. Interviews with U.S. Senator Al Franken and bestselling author and lawyer John Grisham are also featured in the film. Most reviews of the film note in passing that the filmmaker behind "Hot Coffee" is a lawyer, without going any further to explore any bias. For 25 years, Susan Saladoff represented plaintiffs in personal injury, medical malpractice, and product liability lawsuits. She's been a member of and held leadership positions in a number of trial lawyer organizations, including the Association of Trial Lawyers of America (which later became the American Association for Justice). She even served as a past president of Trial Lawyers for Public Justice, a group dedicated to fighting against the "big business interests" that seek to close "courthouse doors so victims can't hold the powerful accountable." Film critics who felt like doing their homework didn't have to look much further than "Hot Coffee"'s website, which portrays its film as an effort to counter the "success of the public relations campaigning, paid for by tobacco, pharmaceutical and insurance companies" which have supposedly "brainwashed" jurors and resulted in a civil justice system that "is not impartial." Noting that documentary films "have become a vehicle for alternative ideas to get a public forum," Saladoff expresses her belief that "Hot Coffee" has the potential "to really change the way people think about our civil justice system and access to the courts." So, putting aside popular misconceptions, legal urban legends, and now the one-sided documentary by a plaintiff's lawyer on a mission, just what are the true facts about the Stella Liebeck case? On February 27, 1992, Stella Liebeck (then 79) spilled her 49 cent cup of McDonald's coffee into her lap. Unquestionably, she sustained serious personal injuries—she suffered third degree burns, roughly 6% of her body was burned, she spent multiple days in the hospital, and she endured painful debridement procedures while hospitalized. In addition, there was expert medical testimony that elderly patients are more susceptible to burns than younger people as a result of the thinning of skin that occurs as part of aging. Although the incident occurred in Albuquerque and suit was filed there, Ms. Liebeck's lead attorneys were Texans S. Reed Morgan of Comfort, Texas and Jerry McKenney of Houston (Kenneth Wagner of New Mexico served as local counsel). According to her pleadings, Ms. Liebeck had incurred \$10,500 in past medical expenses and lost \$5,000 in wages from her job as a department store clerk. The lawsuit alleged that the coffee was unreasonably dangerous because it was excessively hot, and that consequently the coffee was defective as sold. In addition, she claimed that there was no warning of this defect. McDonald's defenses to these assertions included the position that Ms. Liebeck's injuries were the result of her own negligence in handling the coffee. The company also argued that coffee has to be served hot, and that the optimal temperature range to serve coffee is between 155 and 160 degrees. When the plaintiff's experts pointed to the approximately 700 or so burn claims that had been leveled against the fast food chain between 1982 and 1992, McDonald's experts referred to such a number as statistically insignificant in light of the billions of cups of coffee served by the company in that time period. The case didn't have to go to trial. Ms. Liebeck initially sought \$20,000 from McDonald's to cover her

medical bills, future medical treatment, and lost earnings; McDonald's responded with an offer of \$800. Shortly before trial, Liebeck and her lawyers were demanding \$300,000 to settle the case. The case proceeded to trial, lasting from August 8–12 and August 15–17, 1994. After roughly 4 hours of deliberation, a jury composed of six men and six women found for the plaintiff. Contrary to popular opinion, the jury did consider Ms. Liebeck's own responsibility for the incident, and found her 20% at fault. The jury, however, proceeded to award Ms. Liebeck \$200,000 in actual, or compensatory, damages (reduced to \$160,000 because of her percentage of fault), and \$2.7 million in punitive damages.

One of the other of the myths of this "hot coffee" case is the sheer size of the verdict. The trial judge ruled that the punitive damages award of \$2.7 million was excessive, and slashed it to \$480,000 (3 times the amount of Liebeck's compensatory damages). Nevertheless, McDonald's appealed the verdict, and so did the plaintiff (on the grounds that the punitive damages ruling shouldn't have been reduced). While the case was still on appeal, the parties reached a confidential settlement in late November, 1994.

These are the plain facts of the case, free of efforts by either the plaintiffs' personal injury bar to demonize McDonald's and other large corporations, or by tort reform advocates to perpetuate beliefs about a large verdict that did not even stand. The civil justice system did its job: Stella Liebeck had access to the courts, and availed herself of the right to a jury trial—one of the most important liberties we enjoy as citizens. When a verdict was delivered in excess of the limits put in place by the people's own elected representatives, it was properly reduced to a fraction of its original size. If you're inclined to watch "Hot Coffee," by all means do so—but watch it knowing the agenda its maker is trying to advance, and knowing the real facts.