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Rulings Appear To Be Split In Tort Cases For Coffee Burns *Industry Standard Debated As Claims Brew*

by John O. Cunningham

Lawyers say there is a dearth of state decisions on the critical elements of coffee-burn cases—and an apparent split in authority, but that may soon change as such suits become more common.

In two recent cases brought by plaintiffs burned by hot coffee, Superior Court Judge Diane M. Kottmyer dismissed one case by summary judgment, but District Court Judge Leah W. Sprague ruled that a similar suit should be decided at trial.

The two court decision, respectively, are: *Martinelli v. Custom Accessories, Inc.*, Lawyers Weekly No. 12-143-02; and *Guay v. Starbucks Coffee Company*, Lawyers Weekly No. 16-016 02. Jeffrey S. Stern of Boston reported that he settled a third case for a plaintiff in Middlesex Superior Court early this year.

Local lawyers say that coffee burn cases are much more complicated than the media portrayal of the seminal “McDonald’s coffee case.”

But recent Massachusetts rulings show that there are indeed good-faith claims of coffee being brewed at dangerous temperatures higher than the industry standards.

Attorneys for plaintiffs and defendants agreed that hot coffee is normally brewed at temperatures that can cause second degree burns almost instantly.

But lawyers differ on the relevance of industry standards for brewing and serving coffee, the need for explicit warning’ about the dangers of coffee spills, and the possible relevance of negligent design theories applicable to cups and lids.



JUDGE DIANNE M. KOTTYMER
Plaintiff must show coffee was
‘unreasonably hot’

Differences Of Opinion

Brittany J. Smith of Springfield, who represented a plaintiff who survived summary judgment in the District Court case of *Guay*, said that “you have to get an expert who can testify that the coffee was served at temperatures too hot to be safe.”

She added that cup design and warnings must be put in issue as well, arguing that the trier of fact should decide whether cups and lids should be more insulated or harder to spill.

Smith also argued that a mere warning that “coffee is hot” is not sufficient to put hurried consumers on notice of the real dangers of mobile consumption.

She noted that many may not be aware that the plaintiff in the 1994 New Mexico case of *Liebeck v. McDonald’s Corp.* suffered third-degree burns that required skin grafts. Smith said her own client needed “painful skin debridements that involved cutting of blisters and skin.”

But defense counsel in *Guay*, David S. Katz of Wellesley, suggested that plaintiffs must show a breach of industry standards, noting that “coffee is brewed between 175 and 195 degrees for flavor and freshness” that consumers prefer.

He added that his client, Starbucks Coffee keeps a databank of decisions around the country, and he suggested that every opinion except for one has ultimately favored the defendant based upon application of “industry standards.”

Katz suggested defense lawyers should examine *McMahon v. Bunn-O-Matic Corporation*, a 1998 decision from the 7th U.S. Circuit Court of Appeals, as well as *Holowaty v. McDonald’s Corp.*, a 1998 decision from the U.S. District Court in Minnesota for cogent arguments on the subject.

He also said there have been no appellate decisions in Massachusetts on coffee burn cases, noting that many coffee claims settle out.

Smith relied on the 1997 appellate case from Ohio, *Nadel v. Burger King*, which upheld a recovery by a child burned from a coffee spill, and she argued that “maybe the industry standards are wrong.”

She also pointed to previous case law rejecting industry standards for diving boards and pool depths after numerous injuries.

Frederick J. Cicero of Malden, counsel for plaintiffs Lynda and Ralph Martinelli in the recent Superior Court case, stated that he would appeal the summary judgment granted to Dunkin’ Donuts and one of its franchisees in his case.

He said his clients’ claim “is primarily a defective container claim” that “implicates implied warranties of adequate containment and fitness for a particular purpose.”

Cicero argued that “Dunkin’ Donuts selects the container and lid arrangement” knowing that “hot coffee purchased at a drive-up window has to be transported away in an auto.”

He maintained the lid in his case was not designed to stay on the container if it fell over.

Stern, who handled a case involving an exploding coffee maker, said that getting hit with hot coffee “can be like getting hit with napalm.”

He suggested that “retail practices should take account of the fact that coffee is brewed at inherently dangerous temperatures.”

Summary Judgment Denied

Plaintiff Gail Guay brought an action against Starbucks Coffee Co. at the end of 1998 for damages allegedly resulting from the defendant’s negligence, breach of implied warranties and failure to warn.

The plaintiff suffered second-degree burns when she accidentally spilled a cup of black coffee purchased at the defendant’s Newburyport store on May 30, 1998.

The judge noted that the defendant “contended that it should be absolved of liability as a matter of law because it at all times complied with prevailing standards in the industry regarding the temperature at which coffee is brewed and served.”

But Sprague added that “such compliance is not the ‘sole determinative factor in assessing liability.’”

She said the defendant’s negligence “is not an issue of law but is an issue to be determined by the trier of fact at trial.”

Sprague suggested that the finder of fact “is to consider all relevant factors, one of which may be the defendant’s compliance with the custom or practice of its trade.”

The judge also emphasized that the plaintiff “has produced ... the affidavit of an expert, Richard Fraser, M.D.” who is prepared to testify that “the excessive temperature of the coffee plaintiff purchased from the defendant was the direct and proximate cause of the plaintiff’s injuries.”

Summary Judgment Granted

On June 12, 1997, plaintiff Lynda Martinelli purchased a cup of hot coffee in a Styrofoam cup with a lid at the drive-up window of a Dunkin’ Donuts at 980 Eastern Ave. in Malden.

After purchasing the coffee, the plaintiff affixed a plastic cup holder to the door of her vehicle to hold the covered cup in place. When she made a sharp turn into her driveway, the cup holder and the coffee fell onto her side and coffee spilled out of the cup burning her left hip and thigh.

The plaintiff sued the vendor, the maker of the cup holder and other defendants in Middlesex Superior Court in the year 2000.

The judge granted summary judgment for Dunkin’ Donuts and its franchisee who served the coffee because there was “no indication that the cups failed to contain their contents under foreseeable conditions where they would reasonably be expected to do so.”

Kottmyer said that the “plaintiff must adduce evidence that the coffee was defective or unreasonably dangerous by virtue of being hotter than it should have been.”

She also emphasized that “heat is an inherent feature of a cup of coffee.”

The judge noted that coffee is customarily served and intended to be consumed as a hot beverage. Given the nature of the product, the fact that the coffee was hot enough to burn skin on contact is insufficient to satisfy their burden,” Kottmyer said.

She asserted that the plaintiff must show that the coffee was “unreasonably hot” to survive summary judgment, and she added that there was “no evidence that the cup and lid violated any applicable standard or were otherwise unreasonable in design.”

Settling Out

In Stern’s case, a glass “French press” type of coffee maker exploded due to failure of the glass components to homogenize evenly during manufacturing.

The fact that coffee grounds were mixed with the water worsened the burn injury suffered by the plaintiff, a 41-year-old woman, because the mixture adhered to her thigh.

Stern said he engaged an expert “ceramicist” from MIT, Yet-Ming Chiang, to analyze the product and explain how the catastrophic failure occurred.

He also argued that a design defect failed to include a feasible enclosure around the glass which could have minimized the injury.

The case settled at mediation after depositions of the plaintiff and her husband.

Stern said that “getting early and effective expert assistance on glass and ceramic fractures was a critical key to settlement.”

Questions or comments may be directed to the writer at jcunningham@lawyersweekly.com.



Plaintiff Gail Guay suffered second-degree burns on her foot due to a coffee burn. Guay’s case recently survived summary judgment in state District Court.