

In Pursuit Of Justice

Samuel Hirsch Esq. Speaks With *Zman*

Large corporations and powerful figures dread the thought of facing him, knowing that he will make them pay a steep price for mistreating his clients. Meet Shmuel Hirsch, scion of Torah giants and a scholar in his own right, who earned his semichah from HaRav Moshe Feinstein, zt"l, and went on to become one of the top lawyers in New York. Learn about his stormy history as an assemblyman and his stellar career as a litigator.

Shimon Rosenberg - Y. Lefkowitz

On August 18, 1994, the national media was stunned by a sensational piece of news. A jury had awarded 81-year-old Stella Liebeck \$2.86 million to be paid by McDonald's, the world's largest chain of hamburger fast food restaurants. Liebeck had sued McDonald's two years earlier arguing that the coffee she had been served was too hot, causing third-degree burns when the cup spilled on her.

Her court victory opened a floodgate of negative attention. It aroused widespread condemnation. Liebeck, her lawyer and the American justice system became targets of commentators, pundits and comedians.

After all, who hasn't burned themselves on coffee? Who hasn't burned their tongue on soup that was too hot when served? To go to court for that and be awarded millions of dollars in compensation? Ridiculous! And if every restaurant becomes the subject of spurious lawsuits like that, all of America's food establishments will soon be put out of business. Critics pointed to this lawsuit as an example of how litigation in America has spiraled out of control.

The consensus on the street was that Stella Liebeck had purchased a winning lottery ticket, buying a coffee that was too hot and emerging \$2.86 million wealthier. Now, with 20 years of hindsight, it turns out that most people were not aware of the entire story.

A Storm in a Cup... of Coffee

The story began on February 27, 1992, when Liebeck, then a 79-year-old widow, sat in the passenger seat of her grandson's car. She was parked in the parking lot of a McDonald's in Albuquerque, New Mexico. Her grandson had taken her to buy breakfast, which included a cup of hot coffee.

When the elderly woman removed the cover from her cup of steaming coffee, the cup overturned and the contents spilled out.

While at first glance this sounds like an everyday event, Liebeck was so badly

burned that she required hospitalization. She was found to have sustained burn wounds on 16% of her body, and another 6% of her body suffered third-degree burns, the most severe level. She spent a week undergoing skin grafts in the hospital and racked up a \$10,000 medical bill.

Liebeck's family was shocked by the high cost of the seemingly minor incident. It seemed inconceivable that a simple cup of coffee could do so much damage. The family sent a letter to McDonald's asking them to refrain from serving coffee at temperatures high enough to cause burns. They also asked McDonald's to underwrite the cost of Stella's hospital stay.

McDonald's replied with an offer to pay \$800 towards the medical expenses. Undoubtedly, officials at McDonald's had plenty of opportunity to regret that decision.

Stella Liebeck had never before sued anyone in court, but now she contacted a lawyer named Reed Morgan. Morgan filed a lawsuit on her behalf against McDonald's. Twice Liebeck's attorney tried to settle the matter out of court, but McDonald's refused and insisted that the case be brought before a judge.

At the time, McDonald's policy was to serve its coffee at a temperature between 180° and 190°F. This is about 30° hotter than what most home percolators produce. A burn expert testified in court that at 180° a liquid can inflict third-degree burns in just 15 seconds. Morgan presented documents in court showing that between 1983 and 1992 nearly 700 people reported burns caused by the overheated coffee served by McDonald's. He argued that after hearing so many complaints, McDonald's had to have known that their product presented a danger. He accused the chain of failing to consider the safety of the public when it refused to lower the temperature at which its coffee is served.

Another expert testified on behalf of McDonald's that burns are extremely rare, with only 1 in 24,000,000 cups of coffee sold by the chain resulting in burns. This number is so small that it is statistically insignificant. Furthermore, company officials insisted

that they still had no intention of lowering the temperature. Their lawyers argued that people regularly burn themselves in similar ways and the individuals are responsible for such mistakes, not the company that sold them the drink. McDonald's also argued that its competitors also serve coffee at the same temperature and the reason is the same: that's what the customers want, a piping hot cup of coffee.

Liebeck's lawyers showed the jury photos of the burns Liebeck had suffered and of the skin grafts she had to undergo. She was left with severe scarring and was facing another two years of treatments. The graphic images left a strong impression on the jury.

After seven days of presenting arguments and just four hours of deliberations, the jury awarded Liebeck \$200,000. Because she had accidentally spilled the coffee on herself, the award was reduced to \$160,000. However, in order to drive home the message to McDonald's and force the executives to correct their coffee policy, they levied an additional fine of \$2.7 million against the chain—the amount of profit McDonald's makes from two days of coffee sales.

The unusually high fine triggered a media sensation. Dozens of newspapers around the world reported the story. However, the further the story spread from Albuquerque, the less attention it received. Some newspapers dedicated no more than one paragraph to the incident. In such a limited forum there was obviously no room to print the facts in their entirety. Soon all that registered in people's minds about the story was this: "Woman Receives \$2.9 Million for Burns." With people unaware of all the facts, it began to look like a sly trick by a money-hungry woman to win a large sum from a famous fast-food chain.

Commentators blamed Liebeck for driving the car at the time she spilled her cup of coffee. They made fun of her "senseless" accusation that McDonald's was at fault for her injuries. (In fact, she was in the passenger seat of a parked car at the time.) A quiet, elderly woman was transformed by the media into a monster. She even received

personal letters criticizing her for suing McDonald's in court.

Many congressmen followed suit and held up Stella Liebeck as an example of how people abuse the legal system to rob legitimate businesses. In short, for many years Liebeck remained a symbol of everything that is wrong with American justice.

What few Americans are aware of to this day is that the \$2.86 million was only a jury recommendation. In fact, the judge reduced the amount awarded to just \$640,000. In the end the two sides agreed on a settlement of less than \$600,000. Of that, 40% went to pay Liebeck's legal fees. In addition, Liebeck had to agree not to speak to the press, so she never had an opportunity to defend herself against the public attacks on her reputation. She died in 2004 at the age of 91, spending her final years as social pariah, hurt and disappointed at how America had treated her.



Symbol of injustice? A sign attacks the judgment granting Liebeck \$2.9 million.



Newspaper reports on the woman who sued McDonald's after suffering burns.