

## Commentary

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### **Frivolous Lawsuits: Are You Absolutely Certain?**

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In his recent State of the State Address, Gov. Joe Manchin stated that “frivolous lawsuits” should be stopped. I agree! No one should file a truly “frivolous lawsuit.” In fact, there are rules that provide serious consequences to those who do. However, some may take the governor’s words as a license to restrict rights under the guise of eliminating “frivolous lawsuits.” These same people also may forget the governor’s call for a commitment from the insurance industry to reduce rates. Regardless, what is a frivolous lawsuit? When I ask this question, the case most cited is “the McDonald’s hot coffee case.”

Surely you remember the McDonald’s case—the one where the elderly lady spilled coffee in her lap and got millions by suing McDonald’s. How did that little 81-year-old lady trick the judge? How did she fool a 12-member jury? How did she swindle the lawyers for McDonald’s? The justice system must have simply failed! Thus began the rally cry against “frivolous lawsuits” and the need for “tort reform.” After all, this was a “frivolous lawsuit”, wasn’t it?

Stella Liebeck bought a 49-cent cup of coffee at a McDonald’s drive-through window in Albuquerque, N.M. While removing the lid to add cream and sugar, she spilled it in her lap. She sustained third-degree burns to her groin, inner thighs and buttocks that required skin grafts. She was hospitalized for seven days and incurred more than \$10,000 in medical expenses. All she wanted was McDonald’s to pay her medical bills. They refused. She sued.

Prior to trial, the court ordered the case to mediation. The mediator was a retired judge who, after listening to the arguments on both sides, recommended McDonald’s settle the case for \$225,000. McDonald’s refused despite having received more than 700 reports of coffee burns and settling claims from scalding injuries for more than a half a million dollars.

At trial, the jury learned that McDonald’s coffee was prepared at very high temperatures and held at 180 to 190 degrees—significantly hotter than others. Burn experts for Mrs. Liebeck testified that it takes less than three seconds at this temperature to cause third-degree burns. Not disagreeing, McDonald’s experts stated that coffee hotter than 130 degrees could produce third-degree burns.

McDonald’s witnesses testified that these high temperatures were maintained for two economic reasons: to limit the number of free refills offered by McDonald’s (the hotter the coffee, the less likely someone will wait for it to cool) and to provide optimal taste.

The jury also was told by a McDonald’s executive that McDonald’s knew its coffee sometimes caused serious burns, but the company had not consulted a burn expert about it. He also testified that McDonald’s had decided not to warn customers about the possibility of severe burns, even though most people would not think it possible. Finally, he stated that McDonald’s had no plans to turn the heat down.

When the jury reached the jury room, the 12 members quickly found McDonald’s liable but also concluded Mrs. Liebeck was 20 percent at fault for spilling the coffee. The jury awarded compensatory damages of \$200,000, which were reduced to \$160,000 because of Mrs. Liebeck’s comparative fault.

The jury then found McDonald’s had engaged in willful, reckless, malicious and wanton conduct. The jury deliberated for four hours with some jurors unsuccessfully arguing for as much as \$9.6 million in punitive damages. Instead, the jury awarded \$2.7 million in punitive damages, which equaled the sale of coffee companywide for two days.

On post-trial motions, the judge lowered the punitive damage award by more than 75 percent to \$480,000. He determined this amount by tripling the \$160,000 compensatory damage award. With this

reduction, the total award was \$640,000. Prior to an appeal, the parties reached an out-of-court, confidential settlement.

People should be accountable for their actions. It is foreseeable you may spill hot coffee when removing the lid while holding it in your lap. Likewise, companies should inform consumers of the unforeseen risks associated with their products. While we all know coffee is hot, would you expect coffee to cause third-degree burns requiring surgery?

No one can or should condone “frivolous lawsuits.” Likewise, no one should have to address whether a lawsuit is frivolous just to have access to our courts; that is the duty of our judges and juries as set forth by our laws. Legislation that limits rights merely because something appears in a sound bite to be “frivolous” is not in the best interest of our society. I am sure this is not what the governor is suggesting. What appears “frivolous” on its face may not be so frivolous when all of the facts are considered by a judge, jury and an appellate court.

A “frivolous lawsuit” is an action that presents no debatable question to the court. Studies by the federal government and academic experts prove there is no basis to claim that there is a “frivolous lawsuit” explosion. As the governor explained, the objective is fairness!

Changes to our justice system based on these sound bites appear to attack “frivolous lawsuits” but may instead keep those who are severely injured out of the court system and away from the public eye. That would not be fair. In fact, such changes would be very serious indeed. \*\*\*

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