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Zachary Rami

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CASE NOTES

Courts split as to whether consumers injured by hot coffee can seek recovery

by Zachary Rami

Common sense, coffee and consumers clashed recently in *McMahon v. Bunn-O-Matic*,¹ wherein the Seventh Circuit Court of Appeals held that a coffee maker manufacturer did not have a duty to warn consumers that its coffee would be served at 180 degrees, and that the coffee maker was not defectively designed. The decision, which affirmed a lower court's entry of summary judgment in favor of the coffee maker manufacturer, is consistent with a majority of courts, which have held in recent years that such claims leave no issue of material fact for trial.² However, not every jurisdiction has routinely dismissed these "coffee" cases. In fact, *McMahon* referred to *Nadel v. Burger King*,³ which held that a products liability claim for excessively hot coffee was appropriate for a jury to decide.

This Note will discuss the facts and procedural history of *McMahon*, as well as the Seventh Circuit's ruling on the duty to warn and defectiveness of the product's design. This note will next examine the Ohio Court of Appeals' contrasting decision in *Nadel*. This comparison will demonstrate the importance of selecting an effective litigation strategy when proceeding on defective product claims. Additionally, this Note will explore courts' differing

levels of confidence in consumers' ability to ascertain the dangers of everyday life. This Note concludes that the Seventh Circuit's approach in *McMahon* could potentially threaten legitimate recovery by consumers, which in turn, highlights the importance of an effective litigation strategy.

The Spill That Spurred National Outrage

The precursor to *McMahon* and *Nadel* was a highly publicized 1994 case involving a New Mexico woman, Stella Liebeck, who spilled 180 degree McDonald's coffee on herself and suffered serious burns.⁴ The jury awarded the plaintiff \$2.9 million in damages, most of which were punitive in nature. The judge subsequently reduced the verdict to \$640,000. The large verdict attracted national attention as politicians, lawyers, and citizen groups, favoring tort reform used the case to symbolize what they believed was wrong with the civil legal system: frivolous lawsuits, excessively high jury verdicts, and huge lawyer contingency fees. In fact, Newsweek magazine called Stella Liebeck the "poster lady" for tort reform efforts in the U.S. Congress.⁵

Despite public perception, many of these "coffee" lawsuits are not meritless. In fact, they arise from the credible legal doctrine of products liability. In the early days of American law, courts subscribed to the principle of *caveat emptor* (or, buyer beware), which held that a manufacturer or retailer of a faulty product was not liable for injuries that their defective products caused. However, as American law progressed, courts began to allow plaintiffs to recover for injuries sustained by defective products. Today, there are four theories of recovery for products liability law, including negligence, under which the plaintiffs in *McMahon* and *Nadel* proceeded.⁶ Under negligence claims in products liability, manufacturers and/or sellers can be liable to injured parties for creating or failing to detect a flaw in the design of a product. Additionally, the manufacturers and sellers can be liable for failure to warn consumers about the risk or harm inherent in the design of the products.

Discussion of the Facts and Procedural History of *McMahon*⁷

The factual setting of *McMahon* is relatively simple. Plaintiff-appellants Jack and Angelina McMahon ("Jack," "Angelina," or "McMahons") stopped at a Mobile gas station mini mart during a break in their long-distance driving trip. At the station, Jack purchased a cup of coffee brewed in a coffee maker manufactured by defendant-appellee, Bunn-O-Matic Corporation ("Bunn"). The McMahons

alleged that the coffee's temperature during the brewing cycle was 195 degrees Fahrenheit, and that the temperature dropped to 179 degrees once the coffee was "holding" in a carafe on a hot plate. The mini mart served the coffee in a Styrofoam cup covered with a plastic lid.

After the McMahons resumed their driving trip, Jack asked Angelina to remove the lid, presumably so he could drink the coffee while driving. Angelina decided to pour the coffee into a second, smaller cup to make it easier for Jack to drink. In the process of arranging the two cups, the coffee spilled into Angelina's lap. She suffered second and third degree burns, which caused pain for months and permanent scars.

The McMahons filed lawsuits against Bunn, and the manufacturers of the Styrofoam cup and plastic lid. The McMahons settled their suits with the cup and lid producers, but their claims against Bunn remained. They sued Bunn on two theories: (1) Bunn breached a duty to warn consumers about the dangers of its hot coffee; and (2) coffee served above 140 degrees Fahrenheit is "unfit for human consumption" and is therefore a defective product.

The McMahons filed the original suit against all three defendants in an Indiana state court. Bunn successfully removed the case to the United States District Court for the Northern District of Indiana on the basis of diversity jurisdiction. In the district court, both parties agreed to abide by the decision of a magistrate judge. The magistrate

subsequently granted summary judgment in favor of Bunn. The magistrate judge noted that both Jack and Angelina admitted in their depositions that they valued the “hotness” in coffee, sought hot coffee, knew hot coffee could cause burns, and took safety precautions to prevent such burns. As a result, the court found no genuine issue of material fact for trial. The McMahons appealed to the Seventh Circuit Court of Appeals.

Seventh Circuit Holds that Coffee Maker Manufacturer had No Duty to Warn About Coffee’s Hotness.

The Seventh Circuit’s opinion, penned by Judge Easterbrook, began its analysis by examining the McMahan’s first claim: That coffee served at 179 degrees is abnormal, and therefore Bunn had a duty to warn consumers about the danger of its product. The court did not reject the McMahan’s argument on its face, and it even suggested that a warning “about a surprising feature that is potentially dangerous yet hard to observe could be useful.”⁸ Nonetheless, the court criticized the McMahons for failing to submit crucial evidence to support their case. For example, Jack and Angelina did not demonstrate that 179 degree coffee is abnormal or contrary to the industry-standard. Moreover, since Jack and Angelina knew that coffee was a hot liquid and that contact with the skin could result in burns, the court reasoned that a warning would be unnecessary.

Since the McMahons failed to offer

evidence that demonstrated the proper temperature for coffee, the court conducted its own examination by consulting relevant case law and the American National Standards Institute guidelines. The court concluded that the industry standard is around 175 to 185 degrees, and therefore, that the coffee from Bunn’s maker was not abnormally hot.

The McMahons argued that even if 179 degrees were the industry-standard, Bunn still had a duty to warn consumers because most people are unaware of the severity of potential burns. The court was skeptical of this argument, opining that a person injured by any product could later claim that he or she was unaware of the risks before the accident. Moreover, the court decided that a useful warning would have to contain so much information — such as how many cups of coffee are sold annually and of these how many cups break or spill thereby causing burns — that it would no longer be effective. Further, Indiana law has shied away from detailed warnings and instead expected its consumers to educate themselves about the hazards of daily life. By comparison, the court noted that the legal system expects reasonable consumers to understand the inherent dangers in using a knife, and similarly, they should be aware of the dangers of drinking and handling hot coffee.

Court Finds Bunn’s Coffee Maker Defect-Free

To recover against a manufacturer for

a defectively designed product, Indiana law requires a plaintiff to prove two elements: (1) that the design is defective; and (2) that the defective product is unreasonably dangerous. The court opined that Indiana law creates a negligence claim based on the manufacturer's "failure to take precautions that are less expensive than the net costs of the accident."⁹

To support their argument that Bunn defectively designed the product, the McMahons submitted an affidavit from biomedical and biomechanical engineering Professor Kenneth R. Diller, concluding that the coffee's hotness caused the Styrofoam cup to become flimsy. The court ruled that Diller's conclusion supported a claim against the cup manufacturer and not Bunn. Additionally, the affidavit lacked reasoning for its conclusion and therefore violated the principle of *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), which held that scientific opinions without supporting methodology and data have no place in federal courts. Under *Daubert*, the court found the affidavit inadmissible and ruled that the McMahons had not tendered evidence to demonstrate that Bunn defectively designed the product.

Despite this holding, the court analyzed the McMahon's contention that coffee served at 180 degrees is unreasonably dangerous. The McMahons argued that 180 degree coffee is more likely to burn than 135-140 degree coffee, the standard that Professor Diller supported. Additionally, the McMahons maintained that keeping coffee at 180

degrees, as opposed to a cooler temperature, required more electricity, which cost more money. Hence, the McMahons contended that Bunn spent more money to create a riskier product, which violated the second prong of Indiana's product liability claim.

The court did not accept this argument, reasoning that people spend money everyday to increase their risks, such as paying money to ski or attending baseball games where flying balls abound. Addressing its holding in *Moss v. Crossman Corp.*, 136 F.3d 1169 (7th Cir. 1998), which held that Indiana law does not consider a risky product defective *per se*, the court found nothing in the record to demonstrate that the cost of serving 180 degree coffee outweighed the benefits. Instead, the court noted that there are many benefits to hot coffee, including the enriched taste and aroma.

Although the court did not deny the severity of Angelina's injury, it suggested that first-party health and accident insurance were more appropriate modes of compensation, and that the legal system is not the place for harms that "are common to the human existence."¹⁰

Making Human Experience a Genuine Issue of Material Fact: *Nadel v. Burger King* offers another approach to defective coffee claims

The *McMahon* court's theory that the legal system should rely on consumers' common sense about the dangers of hot coffee was attacked in *Nadel*, where the Ohio Court of Appeals held that

human expectations and experiences are questions of fact for a jury to decide. In *Nadel*, plaintiff-appellant Paul Nadel ordered several items, including two cups of hot coffee, from a defendant-appellee's drive-through window. The defendants were Burger King Corporation ("Burger King") and Emil, Inc. ("Emil"), which operated the Burger King under a franchise agreement. Also present in Paul's car were Paul's mother Evelyn, his two daughters, and son Christopher, a plaintiff-appellant. As Paul drove away from Burger King's window, the coffee spilled onto Christopher, who suffered second degree burns.

The Nadels sued Burger King and Emil, alleging that: (1) the coffee was excessively hot, and therefore defective; and (2) Burger King and Emil breached a duty to warn consumers about the dangers inherent in handling extremely hot coffee. The trial court granted the defendants' motion for summary judgment, ruling that Christopher's injury was the result of superseding, intervening causes attributable to Paul and Evelyn.

In reversing the trial court, the Court of Appeals of Ohio held that the Nadels' claims presented material issues of fact. Ohio product liability law states that a design is defective when the foreseeable risks exceed the benefits or the product is more dangerous than "an ordinary consumer would expect when used in an intended or reasonably foreseeable manner."¹¹ In this regard, Ohio's law is more liberal than Indiana's law because Ohio allows a plaintiff to

prove one of the elements of its product liability law, whereas Indiana requires the plaintiff to prove both elements.

In support of their argument that the coffee was defective because it was excessively hot, the Nadels submitted various law journal articles favorable to their position. As in *McMahon*, the *Nadel* court found the plaintiffs' evidence weak and ineffective. However, given the resultant second-degree burns, the court decided that a jury is better able to determine whether the 175 degree coffee purchased from Burger King was hotter than the Nadels would have expected and whether the risks of this hot coffee outweighed its benefits.

The *Nadel* court held that a jury also should decide whether the absence of a warning about the coffee's heat made the product defective. Ohio law does not consider a product defective for lack of warning when the risks are open and obvious or a matter of common knowledge. Defendants argued that the Nadels admitted in their depositions that they knew the coffee was hot, and they ordered it anyway. As a result, defendants concluded that they owed no duty to warn of the obvious risks of hot coffee. The court, however, decided that the issue was whether it was unreasonable to serve the coffee at such a high temperature without warning the customers of unforeseeable risks. In turn, the court held that it was up to a jury to decide whether second degree burns resulting from spilled coffee was an unforeseen danger or common

knowledge.

Contrasting Litigation Strategies and Imputed Consumer Awareness

A significant difference in *McMahon* and *Nadel* was the plaintiffs' litigation strategy, even though the theories of recovery were nearly identical. In *Nadel*, plaintiffs sued the retailers of the coffee, whereas in *McMahon*, they sued the coffee maker manufacturer. It appears that the difference between defendants was the primary reason the courts arrived at inconsistent conclusions. At the beginning of *McMahon*, the court noted that plaintiffs' decision to sue Bunn was puzzling. To illustrate its point, the court rhetorically asked: "Why should a tool supplier be liable in tort for injury caused by a product made from the tool? If a restaurant fails to cook food properly and a guest comes down with food poisoning, is the oven's manufacturer liable?"¹²

The court then commented that holding Bunn liable for failure to warn would be impractical because many consumers never see the coffee maker when purchasing coffee.¹³ Further, coffee makers are small, and it would be hard to fit an adequate warning on them.¹⁴ Additionally, the *McMahon* court suggested that plaintiffs' contention that excessively hot coffee is defective because it breaks down a Styrofoam cup is better directed against the cup makers.¹⁵ The court suggested that a better theory of recovery against Bunn would have existed if Bunn marketed its coffee "as

suitable to businesses serving carry-out coffee in flimsy cups..."¹⁶

In contrast to the *McMahons*, the *Nadels* proceeded against the retailers of the coffee, Burger King. This strategy was more sensible because Burger King was in a better position than the coffee maker manufacturer to warn its customers about the dangers inherent in hot coffee. Moreover, Burger King was in a better position to take any necessary steps to reduce the dangers of the hot coffee by letting it cool for a short time before serving it to customers, particularly those who patronize the drive-through window.

The difference in litigation strategy was not the only reason the courts reached inconsistent opinions. The Seventh Circuit, in its interpretation of Indiana law, seemed to suggest that consumers must take more responsibility for the risks inherent in everyday activities, such as drinking coffee. The court revealed a profound distrust in consumers when it remarked, "[a]ny person severely injured by any product could make a claim, at least as plausible as the *McMahons*', that they did not recognize the risks *ex ante* as clearly as they do after the accident."¹⁷ While there is some truth to the court's comments, it unfairly undermines the recovery efforts of those plaintiffs who were seriously injured. The Seventh Circuit's harsh ruling may leave severely injured plaintiffs without adequate legal means to seek compensation and redress for another's wrongs. Instead, a jury is more capable than a three-judge appellate court panel to ascertain the reasonable

expectations of consumers. In contrast, the *Nadel* position is more sensible because it allows juries to determine what a plaintiffs' reasonable expectations should be. As a result, plaintiffs' peers will have more say about their chances of recovery. While allowing a jury to decide one's expectations does not guarantee recovery, plaintiffs at least will have a legitimate chance.

Conclusion

Both *McMahon* and *Nadel* contribute important insights into "coffee" cases. *McMahon* demonstrates the importance of selecting an effective litigation strategy when plaintiffs sue for injuries caused by hot coffee, or any other food or beverage. And *Nadel* suggests the importance of allowing a jury to decide what a consumer's reasonable expectations should be, as this approach allows plaintiffs a better chance to recover for their injuries than under *McMahon*. Together, both cases reveal that lawsuits based on injuries arising from hot coffee have more merit than what many tort reformers suggested in the mid-1990s.

Just ask Shelia Liebeck.

Endnotes

¹ McMahon v. Bunn-O-Matic, 1998 WL 351294 at *1 (7th Cir. July 2, 1998).

² See *id.* at *2.

³ Nadel v. Burger King, 695 N.E.2d 1185 (Ohio App. 3d 1997).

⁴ See *Liebeck v. McDonald's Restaurants, P.T.S., Inc.*, 1995 WL 360309, at *1 (N.M. Dist. Aug. 18, 1994).

⁵ *Are Lawyer's Burning America?*, NEWSWEEK, Mar. 20, 1995.

⁶ "These are: (1) strict liability in contract for breach of a warranty, express or implied, (2) negligence liability in contract for breach of an express or implied warranty that the product was designed and constructed in a workmanlike manner, (3) negligence liability in tort largely for physical harm to persons and tangible things, and (4) strict liability in tort largely for physical harm to persons and tangible things." W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS, at 678 (5th ed. 1984).

⁷ Any material referred to in this section is taken from *McMahon v. Bunn-O-Matic*, 1998 WL 351294 at *1 (7th Cir. July 2, 1998), unless specifically cited otherwise.

⁸ *McMahon*, 1998 WL 351294 at *3.

⁹ *Id.* at 5.

¹⁰ *Id.* at 7.

¹¹ *Nadel*, 695 N.E.2d at 1190.

¹² *McMahon*, 1998 WL 351294 at *3.

¹³ See *id.* at *3.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ *Id.*

¹⁷ *Id.* at 4.