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Cover Page Footnote
Special thanks to Brady Brammer, JD MPA, who successfully negotiated the outcome of the Timpanogos case on behalf of the concerned citizens.
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By Kempton Cox

I remember when the McDonald’s hot coffee case hit the news. Don’t we all? An elderly woman named Stella spilled hot coffee on herself, sued McDonald’s, and won $3 million. It was a hallmark of America’s unhealthy love for frivolous litigation, and the case drew harsh criticism from the court of public opinion. “Uh...yep. Coffee is hot. And she spilled on herself because she was driving at the same time.” I agreed with everyone else—the outcome of the case was absolutely ludicrous.

But then, years later, I read the case in law school. I learned that she wasn’t driving—she was the passenger. And the car was stopped. As she opened the lid, the coffee spilled, causing burns (including third-degree burns) on nearly 17% of her body. After eight days of hospitalization and undergoing painful skin grafts, she faced over two years of disability and recovery. Clearly, this was no ordinary coffee.

In fact, McDonald’s sold its coffee at 180 - 190 degrees Fahrenheit, far above the 130-degree industry standard. They had discovered that most people pick up coffee on the way to work, wanting it to be hot when they reach the office. So, McDonald’s decided to adjust for cooling time, selling the coffee at a heat that they themselves considered “not fit for consumption.”

During the ten years prior to the famous case, McDonald’s received over 700 complaints from burn victims, but McDonald’s marched onward: the revenue from the hot-when-you-get-to-work coffee far outweighed the settlement payouts. Until Stella, anyway.

She also offered to settle, but she wanted $20k to cover medical costs, and they refused. So she went to court, and the jury awarded her far more than she was asking, in part because the punitive damages were designed to discourage McDonald’s from continuing its bad behavior. Oh, and that $3 million verdict? It was equal to less than three days of coffee sales for McDonald’s. Hardly a dent.

That’s all very interesting, you say, but what does it have to do with human waste? Keep reading.

In 2012, a different sort of “frivolous” lawsuit hit the fan, and this time it was close to home, at least for those of us living in Utah County. The Timpanogos Special Service District runs a composting plant, producing some of the best compost available in the area.

But it stinks.
So neighbors sued.

And the frivolous-lawsuit warriors began their public outcry:

“This is another ridiculous lawsuit.”

“[R]ediculous (sic) amount of money because of a harmless smell. Next time I have to work next to someone with a B/O problem, I’ll just sue.”

“This is always the way it is isn’t it?... The asudacity (sic) of these people is beyond hypocritical.”

“This is a joke of a lawsuit.”

“Stupid lawsuit.”

“Get over it.”

“Grow up.”

And on, and on, and on. And these reprimands were taken from the comment section of just one news article.5

We might be inclined to agree that suing over smelly air is frivolous. We do, after all, live in a society and must suffer some minor inconveniences. But I had learned from the McDonald’s case to distrust the court of public opinion and learn the facts for myself.

And I did. The composting plant had the policy of mixing one part human waste with three parts green waste. This is good composting practice, but it creates a problem: as the population grows, the compost heaps grow at a 4 - 1 ratio. In the ten years leading up to the lawsuit, the heaps had grown from 2,000 dry metric tons to an upper estimate of 26,000. The plant was operating 24 rows of piles, each one measuring 10 feet high, 24 feet wide, and 160 feet long.

Clearly, this was no ordinary compost heap.

In fact, over one thousand complaints had come in over the years, ranging from losses in property value, to headaches, to vomiting. So, the special district reached out to everyone within a one-mile radius, trying to get them to voluntarily grant an easement for the “passage of odiferous air.” The easement asked residents and property owners to accept a list of negative fallouts “including, but not limited to” headaches, bronchial malady, reduction in property value, and loss of appetite or sleep.

When nobody agreed to sign voluntarily, the district offered money in exchange for the easement. When that failed, it sought a claim under eminent domain, suggesting that public necessity trumped private property interests.

No attempt succeeded, but the plant continued to grow its operations. Then, finally, the neighbors and businesses in the area placed their legal rights into a single entity and sued the district.

To prove their case, the neighbors would need to show that the smell was past the funny level and into the dangerous level. But how does one quantify stink? Well, you call an odor expert.

You can count all of America’s odor experts on one hand, and they all know each other. The citizens’ attorney chose to employ the expertise of Bob Bowker, the man who literally wrote the book on odor control and measurement (along with more than a dozen other publications on the subject).

Bob flew from his home in Maine, and over the course of several days, he joined the attorneys and plant administrators at the heaps, where he trapped air in sealed domes at different times—windy days, calm...
days, the middle of the night, right after the heaps had been freshly stirred to release gaseous build-up, etc. From there, the domes were shipped to a special facility in St. Croix, Minnesota, where a panel of trained smellers prepared for a long day.

This is where it gets interesting. The odiferous air is released into isolation chambers, where only the smeller’s nose is permitted entry. Then, the smeller begins to introduce fresh air into the chamber, unit by unit. When the ratio of fresh air to odiferous air is 1 - 1, the air is at one odor unit. When the ratio is increased to 2 - 1, the air is at two odor units, and so on. The trained smeller carefully identifies the moment at which enough fresh air has been introduced that the odiferous air no longer smells. The higher the odor units, the stinkier the original air is determined to have been.

The results in our case were alarming. The industry standard for public composting is for air at the edge of the property to land between 4 - 7 odor units. Conservative estimates of air taken from the fence line at the Timpanogos heaps placed the smell from 100 - 200 odor units. Yes, you read that correctly.

The experts also determined that regardless of whether the heaps were covered, the air a mile away was still at 30 odor units—enough for someone sensitive to smells, like a pregnant woman, to vomit.

Fortunately, the special district was reasonable, and unlike Stella and McDonald’s, the two parties came to a settlement before going to trial. As part of the agreement, the heaps are currently stirred only at night, the green-to-human waste ratio has been increased to 5 - 1, and all composting in the area will cease by 2020.

Most people, if presented with the facts in either of these two cases, would agree that the lawsuits were not frivolous. In fact, these are precisely the types of situations for which the American system of civil litigation was established. But let this be a lesson for all of us. Don’t draw your weapon in the battle against frivolous lawsuits if you haven’t done your research. Oh, and don’t trust the news.

References

2 Ibid.
3 Ibid.
4 Ibid.