

MONDAY, DECEMBER 27, 2010

FIVE SECTIONS | \$2.00

DAILY REPORT

A SMART READ FOR SMART READERS

▶ VERDICTS & SETTLEMENTS



ZACHARY D. PORTER/DAILY REPORT

Nelson Tyrone, who bought a cappuccino machine similar to the one that burned his client for testing: "It wasn't the machine that was defective; it was the lack of supervision and training."

Woman awarded \$1.2M in burn case

PLAINTIFF SAYS she suffered nerve damage after being splashed by hot water from improperly maintained machine at QuikTrip

BEN SMITH

Special to the Daily Report

A COBB COUNTY JURY has awarded \$1.2 million to a woman who

was scalded and suffered permanent nerve damage when an improperly maintained QuikTrip cappuccino machine spewed 190 degree water on her hand.

The jury award by a jury of four men and eight women Friday was followed by a confidential settlement agreement on punitive damages between the parties over the weekend.

The punitive phase of the trial had been scheduled to take place Monday.

"I'm relieved that we were able to do something for the client," said plaintiff's attorney Nelson O. Tyrone III.

Valerie Ellis Pinkett of Swift, Currie, McGhee & Hiers represented QuikTrip Corp.

"We view this as a compromise verdict," said Pinkett. "The verdict in its totality represents no more than the life care plan that was presented (by the plaintiff.)"

Tyrone said he didn't know how much his client has paid out in medical expenses. Pinkett said the plaintiff has paid \$25,000 in medical costs to date.

The plaintiff, Cynthia Nance, is a Gwinnett County resident. Nance was injured at a QuikTrip in Jefferson. The case was tried in Cobb County State Court because the Tulsa, Okla.-based company's registered agent for Georgia has a Marietta address.

Cobb State Court Judge David P. Darden presided in the case.

According to court records, Nance, 52, was injured on Halloween 2007 while attempting to pour cappuccino from a self-service machine at the Jefferson QuikTrip franchise store.

"When plaintiff pressed the button to dispense coffee into a cup, hot water from the cappuccino machine, instead, shot away from the cup and directly onto her left hand," the original complaint states.

Some of the hot water splashed onto her arm and stomach.

Tyrone bought one of the machines for testing. He concluded the cappuccino maker was not defective but that store employees had negligently allowed customers access to the machine while it was missing a key part.

At trial, Tyrone argued his client had been injured because the machine's "mixing chamber," which blends hot water with coffee powder, had been removed.

Tyrone argued that store employees should have warned customers not to use the machine until the mixing chamber was placed back into the cappuccino maker.



We admitted she was burned, but we denied we were responsible for the alleged subsequent surgery and alleged ... diagnosis.

—Valerie Ellis Pinkett,
who represented
QuikTrip Corp.

QuikTrip admitted negligence prior to trial but did not explain how the accident happened, Tyrone said.

"We admitted she was burned, but we denied we were responsible for the alleged subsequent surgery and alleged ... diagnosis," said Pinkett.

After suffering the initial burns, Tyrone said his client's fingers began to curl and the pain wouldn't go away. She was diagnosed with Reflex Sympathetic Dystrophy Syndrome, which Tyrone described as "a horribly painful nerve disorder in which the pain switch for the sympathetic central nervous system gets turned on and it stays on."

According to the National Institute of Neurological Disorders and Stroke, RSD, also known as Complex Regional Pain Syndrome, is a chronic condition with symptoms of "intense pain out of proportion to the severity of the injury."

Over time, the injury gets worse and can spread.

The plaintiff's expert witnesses were C.M. Schade, an anesthesiolo-

gist from Dallas, and Loretta Lukins, a Phoenix nurse who specializes in life care plans.

QuikTrip argued that if Nance had RSD, it wasn't the company's fault. Pinkett said the company offered a pre-trial settlement offer of \$85,000. Tyrone said he wouldn't settle the case for less than \$4.1 million and refused mediation.

Pinkett said Tyrone asked the jury for \$9 million. Tyrone said he did not propose a specific figure.

The jury took more than five hours Friday to decide the case, Tyrone said.

Tyrone acknowledged that, for some, this case may be reminiscent of the infamous 1992 McDonald's "hot coffee lawsuit" that was filed on behalf of an elderly Albuquerque, N.M., woman who suffered third-degree burns when scalding coffee spilled into her lap while in the drive-through line.

A jury awarded the victim, Stella Liebeck, \$2.86 million, which the trial judge cut to \$640,000. The final award was negotiated in a confidential settlement.

News media outlets turned the Liebeck case into a flaming example of frivolous litigation. Lawmakers often cited the case when arguing for tort reform. Tyrone said the QuikTrip and McDonald's cases are distinctly different. The Liebeck case, he said, was a product liability lawsuit and the Nance case was a negligence suit.

"It wasn't the machine that was defective; it was the lack of supervision and training," the attorney said.

Tyrone said the only time the Liebeck verdict was discussed in court was during voir dire when a potential juror mentioned the case while answering attorneys' questions.

The case is *Nance v. QuikTrip Corp.*, No. 2008A13621-5. 