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Editorial

Taxi drivers fall into two groups, namely those who do not speak at all, and those who barely draw breath. I like to play a game with the silent ones; I wait until they turn off the meter then sit there, saying nothing, until they tell me the fare …35 minutes is the current record.

Those who speak, upon discovering that I am a lawyer, almost invariably raise 'the coffee case', as in 'what-about-that-woman-who-got-[insert-a-number]-million-dollars-from-McDonalds-for-spilling-coffee-on-herself?'

I am conducting a taxi-driver-awareness-campaign on this case; to wit, that the black hot liquid served by McDonalds is not coffee; the 'coffee' was at near-to boiling temperature; the plaintiff received third-degree burns to approximately 10% of her body resulting in permanent scarring; the amount the plaintiff received is unknown as the case settled but it was likely to have been substantially less than $1 million… and it is not an Australian case.

You will be pleased to hear that public opinion is slowly swinging, with the majority of [male] taxi drivers concluding that third-degree burns to their 'lap area' would warrant an award of several million dollars.

It is not just taxi drivers who are fascinated with the 'coffee' case; in an oration to an Annual Scientific Meeting of Anaesthetists[1] the Honourable Justice David Ipp described the case as *'typical of the vast number of negligence cases that have been resolved in recent times with little regard to the personal responsibility of the plaintiff for the loss sustained'.*

Also representative of this lack of personal responsibility, orated[2] His Honour, was the case (American, again) of a plaintiff who sustained burns to 77% of her body when a negligently dropped cigarette ignited the car she was in.[3] Philip Morris settled the case for $2 million dollars.

Sounds dodgy? Consider this: Philip Morris subsequently changed the design of its cigarettes so they would self-extinguish if not being puffed. The facts of the case were such that it was arguable that if the cigarette in question had been self-extinguishing, the injuries to the plaintiff would not have occurred. Internal documentation from Philip Morris revealed that the self-extinguishing cigarette had been commercially and technically viable for more than a decade before the plaintiff was injured.

Still not convinced? Here's the clincher – this plaintiff was 21 months old; the cigarette was dropped by her mother, and yes, the mother was a party to the proceedings – she was the fifth named defendant. The contribution made by this American toddler, horrifically injured by the negligence of the others, to an oration entitled 'Personal Responsibility in Australian Society and Law: Striving for Balance'(!) escapes me.

KASSIE JAMES, NSW

Endnotes: **1** Personal Responsibility in Australian Society and Law: Striving for Balance - Edited version of oration delivered at Annual Scientific Meeting, Australian and New Zealand College of Anaesthetists, Perth, WA on 1 May 2004. **2** To be strictly accurate, the original oration referred to two other American cases that were subsequently revealed by *Mediawatch* as urban myths, hence the 'edited version' of the oration. **3** www.waltman.com contains the pleadings and depositions from the case.