

## **£11 million from the NHSLA in a week**

Four different cases netted a total of about £11,000,000 for Timothy Hartley's lay clients in approval hearings this week of some of his clinical negligence cases. The largest was for a now eleven year old girl with dyskinetic tetraplegic cerebral palsy. She has overt dystonia, affecting both her trunk and limb muscles, as well as involuntary athetoid movements affecting her upper limbs and face. She is unable to sit or stand unless heavily supported and will be wholly wheelchair dependent throughout her life. She has no intelligible speech but can use a communication aid. She was born after induced labour as a result of the negligent failure by midwifery and medical staff to realise or monitor the adverse effects of the use of a bolus of Prostin gel and to counter those effects by an intravenous tocolytic infusion, suffering an acute hypoxic injury to her brain during the last part of her mother's labour. There were real issues arising as to when she ought to have been born and whether the damage would have been avoided entirely or only reduced. Causation was perceived by the LSC as so difficult that initially, until persuaded to do so, it refused to fund investigations into quantum pending the outcome of liability and causation issues. Eventually a 90% concession of liability was negotiated and approved. Settlement was for a lump sum of about £1,900,000.00, after discount to 90%, together with periodical payments the value of which, according to forensic accountants, equated to an additional conventional award exceeding £5,000,000.00. Approval was given by Mrs Justice Cox, who endorsed the settlement warmly.

The second substantial case was another case of birth injury to a boy who is now 15. Although far less seriously physically handicapped than the girl in the first case, he suffers from severe learning difficulties and will need care throughout his life. Liability was admitted very early by the Defendant but negotiations as to quantum,

which took place whilst leave to appeal to the House of Lords in *Thompson* was being sought, were fiercely conducted, by leading counsel for the Health Authority, especially in relation to indexation of the care award. It was agreed finally that the parties would be bound by the result in the pending appeal. The final award, again approved by Cox J., was for a lump sum and ASHE indexed periodical payments giving a conventional award equivalent of over £3,200,000.00.

The third case was one of the most complex cases on causation which counsel on either side had seen. The claimant, now 14, had, as very young baby, suffered initial sagittal synostosis, which was followed by multi-suture synostosis so that the sagittal suture, the thin layer of dense fibrous connective tissue between the two parietal bones, ossified prematurely. That was followed by premature ossification or fusion of all other skull sutures. The paediatrician to whom he was referred advised against surgery on three occasions before the Claimant was 15 months old. He did not in fact undergo such surgery until he was 4. It was eventually agreed that the final occasion of such advice was negligent. By that time however there was radiological evidence that the Claimant had suffered raised intracranial pressure. Although his mother did not agree, the medical evidence was that he was still developing normally at that point. Subsequently it became apparent that he has severe learning difficulties. The issue was as to whether those problems were caused by the delay in undergoing surgery. The Claimant's case rested on inviting a Court to infer that to be the cause of his problems. The Defendant instructed a geneticist who found evidence of Kabuki syndrome which, they asserted, had caused the Claimant's problems. All medical experts eventually came to agree that there was, at the least, some syndromic contribution. Negotiations at a round table meeting between leading Counsel for the Health Authority and Timothy Hartley for the Claimant, produced a settlement of £500,000.00. Cox J., in approving the settlement without reservation, commented on the difficulties of the issues involved and the good sense of the solution reached.

The final case was of failure in October 2001 by a cardiothoracic surgical team to suture the pericardium at the conclusion of surgery, leaving a defect through which the patient's heart herniated in early 2004. The Claimant fell down stairs either as a result of such herniation or in an accident which caused it. A *Bolam* defence was advanced by the Health Authority. An agenda for discussion settled by counsel on behalf of the Claimant raised the question of whether or not there was any logical reason to leave the pericardium unsutured - which only saved the surgical team a simple procedure taking five minutes - and the experts agreed that there was no such reason. Liability was subsequently conceded and negotiations as to the dependency led to settlement at £300,000.00

