

Foreseeable damage caused in an unforeseeable manner

In clinical negligence cases, there have been a number of cases in which the Courts have considered the degree of foreseeability of injury required to allow recovery for the Claimant. Recently, David Allen QC and Richard Pearce appeared for the Claimant in **Lorraine v Wirral NHS Trust [2008] EWHC 1565** in which the authorities were reviewed. The Claimant sustained cerebral palsy as a result of his mother suffering a massive placental abruption whilst at home. It was the Claimant's case that his mother should have been admitted to hospital because of her history of a cervical fibroid and a persistent unstable lie in this and previous pregnancies. The Defendant accepted that cerebral palsy by the mechanism of cord prolapse was a foreseeable risk of the Claimant's mother being managed at home but maintained that there was no breach of duty in failing to offer her admission and that in any event the Claimant could not recover for the non-foreseeable manifestation through placental abruption of the foreseeable risk of hypoxia and cerebral palsy. Plender J rejected the Defendant's argument as to breach of duty, finding a negligent failure to communicate information as to the Claimant's mother's history of a fibroid and the consequent failure to detect the fibroid in the instant pregnancy. He found that prudent management would have involved her admission to hospital. On the issue of causation, he distinguished **Thompson v Bradford [2005] EWCA 1439**, holding this to be a "relevant breach of duty" because, the injury, though unforeseeable in its manifestation (placental abruption), was foreseeable in its outcome (cerebral palsy). The Defendant also failed on an argument that, even if the Claimant's mother had been at hospital at the time of the placental abruption, the outcome would have been the same.

The judgment is notable also for the positive comments that he made about the experts called on behalf of the Claimant, Mr Roger Clements and Professor Stuart Campbell.