PERSONAL INJURY DEPARTMENT

Reported & Notable Cases

Chukwudi Ezugwu (By His Litigation Friend Onyemaechi Ezugwu) v (1) Rachel Louise Platt (2) Richard Charles Platt (Personal Representatives of The Estate of Jacqueline Platt, Deceased) (2008) LTLPI 29/4/2008 (Unreported elsewhere) Document No. AM0201245

The claimant, a 41-year-old man, received an award of £1,740,000 lump sum and periodical payments of £137,000 payable in full on the date of trial and every anniversary thereof (which taking into account the income he would earn on it during the year was equivalent to £140,700 pa) to vary in line with ASHE 6115 70th percentile for injuries sustained to his brain, both of his femurs, his right hip and both feet in a road traffic accident in November 2003 and £210,000 for loss of dependency under the Fatal Accidents Act 1976. His life expectancy was reduced by approximately three years and he was unable to resume working.

Out of Court Settlement (approved) 25/2/200829/4/2008 (Unreported elsewhere)
Document No.: Quantum Reports - AM0201245

E v E 2012: Over £6.2m Secured for Road Traffic Accident Victim

Neil Lorimer of Lanyon Bowdler Solicitors secured a settlement valued at £6,201,390.00 for a Claimant seriously injured in a road traffic accident.

The Claimant was just 15 months old when he was involved in a road traffic accident. He suffered a severe head injury along with a skull fracture, broken tibia and broken humerus. As a result of his head injury the Claimant went on to experience many problems. He suffered hemiparesis (weakness on one side of the body), epilepsy, learning difficulties, visual impairment, cognitive impairment and speech problems.

In October 2010 an action was brought on behalf of the Claimant for the losses he suffered and losses he would continue to suffer a result of the accident; this was settled in September 2012 with the approval of the Court.

The Claimant secured a lump sum of £1,821,869 for past losses and a variety of losses he would incur in the future. These included the past care costs, medical costs, future loss of earnings and future accommodation costs.

However the Claimant would also require 24 hour care in the future due to the severity of his injuries and needed assistance from a Professional Deputy to manage his financial affairs. It was very important to ensure that the Claimant could afford this for the whole of his life as he was still young. A periodical payment order guaranteed the Claimant an income which was index linked rising to £144,000.00 per annum from age 19. The capitalised periodical payment order was in excess of £4.35m. Having both a lump sum and a periodical payment order can be very attractive as it offers both future peace of mind as well as immediate financial support.

Re J 2012: £5.6m for CICA Applicant

Neil Lorimer of Lanyon Bowdler Solicitors in September 2012 secured £5,602,326.74 gross for an Applicant following injuries resulting from a serious assault.

Details:

The Applicant was a baby in 1994 when he suffered serious injuries as a result of an assault which involved being smothered in a duvet. The injuries suffered by the Applicant were extensive and he was left with severe neurological damage, moderate to severe learning difficulties, reduced cognitive function and regular uncontrolled epileptic seizures. However his motor function remained largely intact.

A claim was brought in 1996 on the Applicant's behalf to the Criminal Injuries Compensation Authority (CICA) under the pre-tariff scheme. The original assessment from the CICA was £3,500. This was thankfully rejected by the Applicant's mother. The Applicant's parents acted for many years in person before instructing Lanyon Bowdler in November 2011. A final hearing date was fixed for September 2012 and the whole case was prepared in less than a year.

Proving the case:

The main issues in this case were whether the Applicant would require 24 hour care for the rest of his life as a result of the injuries and following from this whether he would require alternative accommodation. It was necessary to prove this point to the CICA.

This issue was proven by meticulous preparation of expert evidence, care reports and witness evidence. The central arguments employed and proven for the Applicant were threefold:

1 It was dangerous to leave the Applicant alone at night as he suffered regular seizures.
2 It was unsafe to leave the Applicant home alone at any point as he was not able to deal with new situations such as a home emergency or an intruder. In essence the Applicant was operating at the equivalent age to a 10 year old.
3 Not having 24 hour care would reduce the quality of life of the Applicant as shift pattern care would result in a disjointed routine.

Neil said "This case demonstrates the importance of taking legal advice as it is very difficult for members of the public to quantify the appropriate award and know what witness and expert evidence is necessary to prove the case to the satisfaction of the CICA".

Gary Wayne Bishop V (1) David Levy (2) La Societe Autocars Bonnaffoux Bremond (A Firm) (3) Generali Assurances Iard (2010)

C received a lump sum award of £1,900,000 after being involved as a passenger in a coach crash on the way to Grenoble airport. Due to excessive speed, the coach skidded on ice, colliding with a boulder before coming to rest on a roadside crash barrier. C was thrown from the coach and suffered a severe concussive head injury. The coach was driven by the D1, owned by the D2 and Insured by D3. C suffered contusions of the brain and intracranial haematoma requiring neurosurgical evacuation.

C utilised the decision in Odenbreit to bring the claim in England under the jurisdiction of the English Court. The Defendants (D) made an early admission of primary liability, but issues remained outstanding over applicable law and quantum.

As C had been ejected from the coach during the crash, it became apparent he was not wearing his seatbelt at the moment of impact, giving rise to allegations of contributory negligence and raising issues over the applicable law. C submitted that the issue of contributory negligence was a substantive one, and so should be governed by French law. Under French law, no reduction in damages on the basis of contributory negligence is applied for a passenger failing to wear a seatbelt and C argued that there was insufficient reason not to apply French law. D contended that the issue should be governed by English law as it was a procedural matter to be governed by law of the forum. In the alternative, it was contended that French law was the applicable law, but should not be applied in favour of English law: Dawson v Broughton. As such, D sought a 25% reduction for contributory negligence in failing to wear a seatbelt, applying Froome v Butcher. The parties compromised the issue of contributory negligence, agreeing a 90/10 split on liability which was approved by the Court.

A further issue arose in relation to the applicable law in terms of damages. At the time Rome II was yet to enter into force and under English conflict of laws cases, damages were treated as partly substantive and partly procedural. The substantive issue was whether the heads of loss were available under French law. Having been agreed that the heads were available, the quantification of the loss was considered procedural and was to be assessed by the law of the forum, in this case, English law: Harding v Wealands.

Having determined how quantum was to be assessed, there was a final issue over a Periodical Payments Order (PPO) and the security of a foreign insurer. The Third Defendant may be considered ‘reasonably secure’ for the purposes of s2 Damages Act 1996, with a state body, the Fonds de Garantie des Assurances Obligatoires, able to step in should they cease to exist. However, concern was expressed at the potential of C having to sue in the French courts should the insurer go out of business. A lump sum settlement was agreed to negate the potential difficulties arising with a PPO.

Out of Court settlement (approved): £2,111,111 lump sum
Compromise (after 10% deduction): £1,900,000 lump sum

The case was settled on a global basis with no particular breakdown of damages. However, the following breakdown was estimated by the claimant's solicitors:

Breakdown of General Damages: Pain, Suffering and Loss of Amenity: £130,000.Breakdown of Past Special Damages: Loss of earnings: £94,500; Care costs: £62,750; Aid and equipment costs: £75; Accommodation costs: £26,500; Travel and transport costs: £10,000; Gardening costs: £750; Medical and therapy costs: £40,750; Deputy and Court of Protection costs: £17,000; Miscellaneous costs: £10,750.

Breakdown of Future Special Damages: Loss of earnings: £168,750; Loss of Pension: £57,500; Case management costs: £213,750; Aid and equipment costs: £2,250; Accommodation costs: £267,250; Travel and transport costs: £5,750; Holiday and leisure costs: £; DIY and garden maintenance: £31,250; Medical and therapy

costs: £746,000; Deputy and Court of Protection costs: £111,000; Miscellaneous costs: £42,250.

Frank Burton QC and Bernard Doherty instructed by Lanyon Bowdler Solicitors for the Claimant. instructed by DWF for the Defendant.

Lanyon Bowdler also acted for 23 other passengers who suffered moderate injuries in this accident.

£1.5m for Brain Injured Claimant

Neil Lorimer, Partner and Head of the Personal Injury and Clinical Negligence Departments at the Telford Office, secured a settlement of nearly £1.5m for a Claimant following a Road Traffic Accident in 1996.

At the time of the accident, the Claimant was 33 years old. He was riding his bicycle when he was involved in a collision with the Defendants motor vehicle. The Defendant had argued that the accident was the Claimants fault, because his bicycle had swerved in front of his car. Neil was able to produce evidence based on the accident debris and witness evidence to show that this was not the case, and shortly before the trial, the Defendant admitted responsibility for the accident.

The Claimant suffered multiple injuries in the accident, and in particular a brain injury that affected his speech, concentration span, memory, stamina and mood. He was left with severe problems with planning, organising, is anxious, intolerant and unaware of the effect of his behaviour on others. As a result of the accident the Claimant lost his home, job and contact with his son. He is no longer able to work or manage his financial affairs but with daily assistance from a support worker, is able to live in the community.

The Claimant's compensation award includes amounts for loss of earnings, care and household assistance, accommodation and adaptation costs, transport needs, aids and equipment as well as an amount for pain and suffering received. This award has enabled the Claimant to acquire suitable accommodation and employ a Case Manager and support worker.

Neil, who as well as being on the Law Society's Personal Injury and Clinical Negligence Panels, is also on the Headway Panel, a charity which specialises in helping adults with acquired brain injury. He says of this case “this was one of the most professionally challenging times spent in dealing with an acquired brain injury matter, culminating in an excellent result for the Claimant.”

A v G

Court: Birmingham High Court **Total Court Award**: £1.43 million
Judge: Robert Owen QC **Damages for PSLA**: £90,000
Claimant’s age at date of trial: 64 years

The First Claimant (C1), a 64 year old woman received circa £1.43m after she sustained a serious leg injury requiring a through the knee amputation following a road traffic accident which occurred on 2 May 2007.

Claimant: Female: 61 years old at date of accident; 64 years old at date of award.

Road Traffic Accident: C1 was walking along a pavement when a vehicle being driven by the First Defendant mounted the pavement, crushing C1 against a wall.

She suffered a serious injury to the left leg which resulted in a through knee amputation. She also suffered a severe de-gloving injury to the right leg.

C1 sustained injury and brought a claim. D admitted liability for the collision.

Injuries: C1 suffered a serious injury to the left leg which resulted in a through knee amputation causing phantom pain and was still woken by pain at night. She had a persistent desire to scratch "the foot". She lost her balance and had a tendency to fall. She suffered a severe de-gloving injury to the right leg. She had ligament injuries to the right knee, severe lacerations and tissue loss around both legs and a laceration to her forehead. The injuries left her with severe and unsightly scarring. She was diagnosed with an Adjustment Disorder with symptoms of depression following discharge and anxiety but had a good prognosis.

Effects: C1 was in hospital for three months and upon discharge was only able to mobilise with a wheelchair and some adaptations were necessary to her rented accommodation. Seven months after the accident, she began using a prosthesis but had great difficulty in doing so with the one provided by the NHS. She had reduced mobility using a prosthesis and was now a wheelchair and pavement scooter user. She purchased a private prosthesis with an interim payment. She was not able to return to paid employment or resume her newly set up private psychotherapy practice. She received significant gratuitous assistance from her adult children and had to employ a Case manager, driver/support worker, cleaner and gardener.

Court award: £1.43m.

Background to Damages:

C1 had qualified as a psychotherapist shortly before the accident and although she had been employed by MIND and Confide for several years, she had recently set up her own practice. She claimed loss of earnings to age 70. Gross earnings from her private practice in the year before the accident amounted to £750. However, she expected to build upon the business; taking on eight clients a week over a 48 week period at £40 per session. The claim was challenged in its entirety by the Defendants.

The Judge was satisfied that C1's claim was made out, despite now being aged 64. It was held that the loss would span another seven years; up to and including age 69 and that the appropriate multiplicand was, £12,466, as pleaded. Multipliers were agreed separately between the parties. The total claim for future loss of earnings amounted to £58,590.

The main issue between the parties was future care.

The evidence of the medical experts relied upon; Professor Thomas and Dr Datta for C1 (Dr Datta not called) and Dr Henderson-Slater for D was that C1 would not be capable of transferring safely and reliably due to the amputation and to cartilage damage, instability and osteoarthritic changes in her right knee together with other co-morbidities of old age. It was agreed that her use of the prosthesis had plateaued; and that her use of the prosthesis would deteriorate from the age of 66 and that she was unlikely to use the prosthesis functionally after at most the age of 80.
(There was disagreement as to the age between the various medical experts)

C1 contended that she would require a live in carer and the cost of that carer was claimed on the basis that the carer(s) would be privately employed. The care costs would escalate until live-in care was required. The cost of the care package as contended for by C1 was £102,638 per annum. It was accepted by C1 that the care package could have been provided at a cost of £98,000 per annum by an agency, but her preference was for direct employment.

The Defendant disputed the need for a live in carer and that her care needs could be met by "drop-in" care but in the alternative, stated that if live in support was deemed necessary, that the package contended for by C1 could be provided at a cost of £42,328 by a national agency providing one carer brought in from London who would live with the Claimant having one weekend off a month. It was argued the carer would opt out of the 48 hour Working Time Directive. C1 contended that such a package as put forward by the Defendant would breach the Working Time Regulations 1998 and by the age she would need the care she would have no guarantees that care could be provided at that cost.

C1 also claimed the cost of a Case Manager, although accepting that the need for that would be reduced should the Court find that agency provided care was appropriate, rather than direct employment. The Defendant disputed the need for future case management entirely on the basis that C1 was an articulate and astute woman who did not need such support and that the agency would run the basic care regime.

HELD: That from age 80, C1 would require 24 hour live-in care. The Judge did not make a finding as to whether the regime offered by the Agency put forward by the Defendant was in breach of the Working Time Regulations. However he was not satisfied with the evidence of the D's Care Expert Mrs Waters that the care needed for this Claimant could be met at the cost quoted.

He found that the care was of the most basic kind and could be provided by a local agency in Shrewsbury at a cost of £98,000 and that from that point onwards, there would be no need for case management input. The breakdown of the award for future care was:

£12,905 to aged 74 (12 hours domestic assistance plus 12 hours support worker at £10 per hour using a 54 week year
£24,700 per annum from aged 74 to 80 (39 hours per week assistance
£98,000 per annum from age 80

On a lump sum basis, the total future care claim amounted to £666,464.00. C1's rented property was not suitable for her purposes. She required a suitably adapted bungalow which would need to be extended to provide a separate bathroom and living space for her carers and be suitable for wheelchair use. It was held that this was reasonable to ensure that the Claimant would be able to attract and retain carers. With an agreed purchase price of £295,000, the Roberts v Johnstone figure was £38,887.50. It was held that adaptation costs would amount to £170,810 with extra furnishings at £6,935. Increased outgoings were held to be £3,250 per annum. It was also held that C1 did not require a conservatory as she had not made out that this was a necessary expense. The total future accommodation claim amounted to £285,882.

Breakdown to special damages: All items of past loss were agreed as follows:

Loss of earnings £27,500, travelling expenses £11,500 care £30,000 to include gratuitous care, case management and support worker, medical expenses £1,980, accommodation £3,875, aids and equipment £703.40, prosthesis costs £21,862, holiday costs £430. Miscellaneous expenses £1,604. Interest amounted to £3,000.

Breakdown to general damages: damages for pain, suffering and loss of amenity were agreed at £90,000 plus interest of £3,600.

The Court awarded £58,590 for future loss of earnings. Future care amounted to £664,464 as above. Future transport costs were agreed at £30,000. Future medical expenses were agreed at £5,514. Future prosthetic costs were agreed in the sum of £118,865. Future aid and equipment costs were conceded in full at £34,654. DIY and decorating was conceded in full at £1,459. The court awarded £285,882 for accommodation and £27,000 for future holiday costs, being the cost of extra support worker assistance whilst on holiday were agreed at £2,000 per annum. Future miscellaneous costs were agreed at £7,000.

Ralph Lewis QC and Jonathan Jones instructed by Neil Lorimer and Gayle Kinsey of Lanyon Bowdler Solicitors, solicitors for the Claimant. Marcus Dignum instructed by Christopher Wright of Morris Orman Hearle Solicitors for the Defendant.

S v VdB and T

S suffered serious personal injuries in a road traffic accident in Dubrovnik, Croatia in July 2003. He was riding pillion on a Croatian scooter which was on hire, and was insured with a Croatian insurer, Jadransko being driven by SvB, a Belgian national. He was not wearing a crash helmet. She turned left from a minor road onto a major road into the path of a car driven by T, a French national and insured with a French insurer AXA. A collision occurred and S was knocked from the scooter and suffered serious head and orthopaedic injuries.

S was awarded 1.3 million euros at trial by the French Court applying Croatian law who found both Defendants liable but reduced the award for S's contributory negligence in not wearing a helmet. The damages included awards for future care and loss of earnings.

Almost £1m Compensation for LB Amputee Accident Victim

The Claimant received just under a £1m compensation following a terrible accident when he literally came within an inch of his life. The Claimant was crushed and seriously injured when a tipper truck toppled on to its side trapping him against a pile of rubble on a Shifnal building site in May 2005. He was flown by air ambulance to Selly Oak Hospital in Birmingham where he remained for several weeks.

As a result of the accident, the Claimant suffered numerous injuries including a head injury and damage to his teeth. However, the most serious injury was to his left leg which was so badly injured that a below the knee amputation was required.

Neil Lorimer, Partner and personal injury specialist at Lanyon Bowdler Solicitors was instructed to pursue a claim on behalf of the Claimant for compensation for his injuries. Neil comments "The truck owner's insurance company accepted that the accident had been caused through negligence and breaches of health and safety law. The accident has been a terrible ordeal for the Claimant, I am delighted that we have been able to use our expertise to ensure the Claimant had interim payments

during his recovery and has secured the compensation he deserved in a remarkably short time frame. We were able to settle the claim with the Defendants in less than two years from the date of the accident, which is a massive achievement in cases of this size. We hope that the money will help to secure the Claimant and his family's future and also go someway to compensate him for his terrible ordeal."

Positive thinking the Claimant was a keen sportsman before the accident and despite his terrible injuries his excellent prosthesis has allowed him to take up a football coaching position at a local school. The Claimant comments" I refused to allow my injuries to stop me from leading a full and active life. If I can act as a role model for others I am delighted. I would like to thank Neil Lorimer at Lanyon Bowdler. Using his expertise he secured me the financial support I needed during my recovery which enabled me to buy a suitably adapted vehicle and a state of the art prosthesis. The speed of the final settlement is in no small amount due to his hard work and genuine passion to help. I get enormous satisfaction in seeing children enjoy sport, and am hoping to work with disabled and disadvantaged children as well".

Peter Geoffrey Daniels v (1) Simon John Edge (2) Motor Insurers Bureau (2005) LTLPI 3/8/2005 (Unreported elsewhere) Document No. AM0200827

The claimant, a 67-year-old man, received a lump sum of £450,000 plus periodic payments for the multiple injuries sustained in a road traffic accident in September 2000. The claimant suffered a severe brain injury, neck fractures and fractures to his collarbone, jaw and ribs. The claimant required constant supervision and care for the remainder of his life

Stoke-on-Trent District Registry (Judge Rubery) 3/6/20053/8/2005 (Unreported elsewhere).
Document No.: Quantum Reports - AM0200827

W (Executrix of the Estate Of X, Deceased) v Johnson (2006) LTLPI 2/11/2006 (Unreported elsewhere) Document No. AM0201019

The claimant, a 41-year-old woman, received £850,000 including £10,000 for bereavement damages (despite not having been married to the deceased) following the death of her partner in a road traffic accident in August 2002. The claimant also received damages on behalf of her children, one of whom was conceived by artificial insemination post-humously and born approximately two years after her partner's death.

QBD Stoke on Trent (Judge Rubery) 24/8/20062/11/2006 (Unreported elsewhere)
Document No.: Quantum Reports - AM0201019

Ahmed v Chapman

£500,000 recovered for a Pakistani national who suffered a lower limb amputation through the knee days before being due to return to Pakistan. The case involved difficult issues of immigration law and the valuation of loss of earnings, care and accommodation in the UK and Pakistan.

Obtaining and considering the appropriate evidence in respect of, in particular, care, loss of earnings, prosthetic provision and accommodation in Pakistan was challenging. These were made more difficult as the Claimant emanated from a rural and "*mountainous*" region of Pakistan where any appropriate provision was

extremely difficult to access. Accordingly, the case had to be considered in the context of the Claimant moving away from his home to a city even in Pakistan. In addition, there was a prospect of the fact that he would return from time to time to the United Kingdom or to another overseas country in order that appropriate medical and prosthetic provision could be made for him.

Damages were agreed on the basis the Claimant would, as he eventually did, return to Pakistan where the cost of care, accommodation and earnings were very much lower than in the UK.

Ruptured Ovarian Cyst

In January 1995 the deceased underwent surgery following the discovery of a large ovarian cyst. During the course of the operation the cyst ruptured, and some cells implanted in the abdominal wound. The contents of the cyst were later found to be malignant and consequently the she died in April 1998 from a recurrence of ovarian cancer.

In an action brought in the High Court it was alleged that the consultant was negligent for failing to offer the deceased more radical surgery, namely a hysterectomy with a vertical incision, in view of the ultrasound findings on the size and content of the cyst and the significant risk of malignancy. The consultant chose to use a horizontal incision without a hysterectomy. It was also alleged that following receipt of an histology report the consultant treated the case as a borderline lesion rather than an established cancer. The consultant admitted negligence during the course of the High Court action.

The case settled for just short of half a million pounds. We assisted the Claimant (the deceased husband) with national and local media coverage. He received a handwritten apology from the consultant which went a long way to helping the Claimant achieve closure.

Irene May Crowther v Dr Nigel Huw Jones (2008) LTLPI 22/4/2009 Document No. AM0201341

Sex: Female, **Age at injury:** 46, **Age at trial:** 55

The claimant, a 55-year-old woman, received a lump sum of £445,000 after a GP failed to refer her to a breast surgeon in June 2001 and she was later found to have cancer which had spread. She underwent treatment but the cancer later recurred as metastases and she was given a life expectancy of approximately three years from the date of that diagnosis.

Claimant: Female: 46 years old at date of incident; 55 years old at time of settlement. Clinical Negligence: In June 2001, the claimant (C), on the advice of a practice nurse, consulted the defendant GP (D) about her left breast. C had been complaining of pain in her left breast and itchiness around the nipple and the nurse had felt lumpiness in the area. D examined C's breast and recorded fibroadenotic breasts with no discreet lumps. He also reassured C and said that patients with breast cancer did not suffer from pain.

Approximately 15 months later, C consulted a different GP because she was concerned about her left breast. The GP arranged for an urgent referral to hospital. At hospital C was diagnosed as having a malignant lump and mammograms showed

that there was a large tumour occupying most of the upper part of her left breast. Further investigations revealed that the cancer had spread and it was aggressive. The following month C underwent a mastectomy and a breast implant and then commenced chemotherapy and radiotherapy.

In May 2007, C was diagnosed as suffering from painful rib metastasis and was prescribed new drugs to treat the recurrence.

C sustained injury and brought an action against D alleging that he was negligent in failing to refer her to a breast surgeon in 2001. C alleged that if the diagnosis had been made in 2001, she would not have required a mastectomy and breast implant or chemotherapy.

Liability admitted. D admitted that C should have been referred to a breast surgeon in 2001 and that if she had been she would have been given a diagnosis. However, D maintained that due to tumour multifocality C would have undergone a mastectomy in any event and would have required chemotherapy and radiotherapy.

Injuries: C suffered breast cancer and recurrence in the form of metastases and a much reduced life expectancy.

Effects: C underwent a mastectomy and had aggressive chemotherapy and radiotherapy. She suffered from fatigue including pain and reduced mobility in her legs. Her sleep pattern was disturbed and she gained weight. She also suffered from a psychiatric adjustment disorder with mixed anxiety and a depressed mood for which she required anti-depressant medication and cognitive behavioural therapy.

C was absent from work for periods of time and reduced her working hours to part-time. She needed assistance with domestic tasks.

C had a severely disabled adult son for whom there was a 24-hour care regime in place, paid for by the local authority. C had managed the carers, spending four to five hours per week but after she became ill she was unable to continue providing the same level of case management for her son. Care experts agreed that her services needed to be replaced by those of a professional case manager.

Prognosis: C was given a life expectancy of approximately three years from the date of diagnosis of the metastases in 2007; less than two years from the date of settlement.

Out of Court Settlement: £445,000 total damages (approved).

Background to damages: C argued that her services would not be adequately replaced by an agency. She contended that, but for the accident, she would have continued to provide her management services for the benefit of her son until she reached 75 years old. Further it was argued pursuant to Lowe v Guise [2002] EWCA Civ 197 she was entitled to claim for the loss of ability to case manage her son and such was pecuniary loss measured in money's worth and it should be compensated for in the lost years. D disputed C's claim for lost years case management including the need for it, its extent and duration. He argued that case management services would be provided for by the local authority and therefore the services of a professional case manager were not required and that the services would be provided by C's family and should be compensated for at gratuitous care rates. D also argued that, as a matter of law, C was not entitled to claim lost years case management because it was effectively a claim for services in the lost years which

would fail as in Phipps v Brooks Dry Cleaning Services Ltd [1996] QBD 100. D maintained that case management was akin to do-it-yourself work and was therefore a loss of amenity which should fall within general damages and should not be calculated on a multiplier and multiplicand basis.

In her schedule of loss, C reserved the right to elect at trial, following the trial judge making findings of fact, for either an interim payment and a stay of proceedings, which would allow the parties to the proceedings to be amended upon her death to include all dependants under the Fatal Accidents Act 1976, or to conclude the case at trial with an award being made which would include a lost years claim for case management. However, C decided to accept a lump sum in full and final settlement which included a substantial sum for lost years case management or settling the prospective claims following her death.

The case was settled on a global basis with no particular breakdown of damages. However, the following breakdown was estimated by the claimant's solicitors:

Breakdown of General Damages: Pain, suffering and loss of amenity: £55,000. Interest on PSLA: £3,000.

Breakdown of Special Damages: Past loss of earnings: £3,000. Past care: £37,000. Past aids: £7,000. Past services including gardening and case management: £11,000. Interest on specials: £14,000. Future Loss of Earnings: £9,000. Future care: £17,000. Future aids: £3,000. Future services: £2,000. Future surgery: £13,000. Future case management: £31,000. Lost years case management costs: £200,000. Lost years future loss of earnings: £40,000.
PSLA Damages Figure: £55,000.
Out of Court Settlement (Approved) 2008/11/21
LTLPI 22/4/2009 (Unreported elsewhere)
Document No.: Quantum Reports - AM0201341

Wayne Joseph Appleby v Walsall Health Authority (1998) [1999] Lloyd's Rep Med 154

A claim for medical negligence arising from lack of oxygen at birth was allowed to proceed where the claimant issued the writ twenty-five years after the event as that was within three years of his actual knowledge of the claim. In any event, the claim would have been allowed to proceed under s.33 Limitation Act 1980.

Clinical Negligence - Civil Evidence - Civil Procedure - Personal Injury QBD (Popplewell J) 22/10/98
References: LTL 23/1/2001: (1999) Lloyd's Rep Med 154
Document No.: Case Law - AC8001651
(The case subsequently settled for £400,000 with discount for litigation risk on causation)

Hope v Draper

H was a front seat passenger in a car which was in a high speed collision on the M5.

She sustained a fractured sternum, whiplash to the cervical spine and neck and soft tissue/ligament injury to the left shoulder. She also suffered a psychological injury. Panel Solicitors were instructed on her behalf by a legal expense insurer as part of the drivers car insurance. The Claimant was not offered a face to face meeting and

decided that she wished to instruct a local Solicitor with the necessary specialist personal injury knowledge. The panel lawyer who never met her in person advised her £16,000 was a good offer. Thankfully she rejected it and sought alternative legal advice and £400,000 was recovered in a settlement.

All of the above injuries taken together resulted in a serious disability to the Claimant which impacts upon her ability to work and on her needs of day to day life. The Claimant was unable to take up her place at university. This is going to have a significant impact upon H's future earnings and she has a limited residual earning capacity.

Owena Thorpe & Ors v (1) The Department Of Transport (2) Amey Construction Ltd (3) Walkway Contracting Co Ltd (2000) [LTLPI 18/2/2000 (Unreported elsewhere) Document No. AM0900219

The claimants, the wife and children of the deceased (D), received £185,000 following D's death in a road traffic accident. D was the passenger of a van that had veered off a flyover, through the crash barrier and onto the embankment below. The claimants brought an action against the Department of Transport and the contractors responsible for the flyover's construction who agreed to settle the claim without any admission of liability.

QBD (Elias J) 24/1/200018/2/2000 (Unreported elsewhere)
Document No.: Quantum Reports - AM0900219

Misdiagnosis of Cancer - Kidderminster Hospital

The Claimant originally suffered from Breast Cancer in 1992. She was under the care of Oncologists at Royal Wolverhampton Hospital (RWH) and surgeons at Kidderminster General Hospital (KGH). The Claimant had a family history of Breast Cancer and in 1993 she had a lumpectomy followed by radiotherapy and Tamoxifen. In 1996 a further lump was discovered and following examination at RWH she was referred to a consultant at KGH. He arranged for mammography and fine needle aspiration. The cytology report stated that the sample was unsatisfactory. The consultant did not repeat it but instead advised that cytology had shown the lump was normal. It was the Claimant's case that this lump was cancerous and that between July 1996 and March 1999 when the cancer was finally diagnosed, there had been negligence in failing to diagnose it.

The Claimant saw an Oncologist in February 1999 as she felt that the lump had enlarged and she was feeling generally tired and unwell. He diagnosed a thyroid problem and advised her to see her GP and not to come back for a further year. Having seen a Consultant Clinical Geneticist at Birmingham Women's Hospital, the Claimant was advised to immediately go back to KGH for further investigations, as a result of which she was diagnosed as suffering from Breast Cancer. The Claimant suffered injury as a result of unnecessary chemotherapy including psychological damage. Notwithstanding the delay although the prognosis was worse the Claimant's prospects remained good. She had to resign her partnership from a pub/restaurant business.

Liability remained fully in issue throughout the case, however a meeting between the parties enabled the parties to reach agreement in the sum of £110,000.00 (the Claimant discounted this figure to take into account litigation risk).

This was an extremely complex case in relation to breach of duty, causation and losses:

1 Complex legal issues on credit and mitigation required to be given by the Claimant.
2 Matter of utmost importance to the Claimant who felt strongly that the Defendant's negligence could easily have caused her premature death and had given her a worse prognosis.
3 Fully fought until shortly before trial.
4 Whether the lump present in 1996 was the same lump later found to be malignant in 1999.
5 Whether the lump present in 1996 was palpable.
6 KGH admitted the consultant was negligent for reporting the cytology as normal but denied it had any causative effect and denied all the other allegations of negligence.
7 There were three experienced experts on either side who disagreed on the key questions. Expert 1 for the Claimant relied upon a cutting edge paper with respect to the calculation of the size of a lump at the date of missed diagnosis.
8 Serious dispute and complex evidence and literature on the size of the lump in 1996.
9 Dispute as to extent of Claimant's physical and psychiatric injuries.
10 Complex financial calculations required on the Claimant's losses with assistance needed from a forensic accountant.

Auxerre Coach Crash 1993

Neil dealt with the Auxerre Coach Crash claims, where he acted on the issue of liability on behalf of all 70 passengers or their representatives. There were 11 deaths and many serious injuries, when a front tyre blew out on the coach, causing it to leave the road. This complex case against the coach operator and tyre manufacturer, was taken to trial in the High court and compensation in excess of £3 million was recovered for the victims.

Susan Barbara Banks (By Her Litigation Friend Sally Martin) v Ablex Ltd (2005) [2005] All ER (D) 366 (Feb) [2005] EWCA Civ 173

There were no incidents from which the respondent employer could have foreseen that the aggressive behaviour of another employee might result in injury to the mental health of the appellant employee.

Torts - Negligence - Personal Injury CA (Civ Div) (Kennedy LJ, Longmore LJ, Maurice Kay LJ) 24/2/2005
References: LTL 24/2/2005: (2005) IRLR 357: Times, March 21, 2005
Document No.: Case Law - AC0107925

Claim for Damages Following Hip Surgery - Agnes Hunt Orthopaedic Hospital, Oswestry

Lanyon Bowdler Solicitors acted for a Claimant who brought a claim for damages for personal injuries and consequential loss arising from alleged clinical negligence. This was with respect to the treatment and advice the Claimant received at The Robert Jones & Agnes Hunt Orthopaedic Hospital NHS Trust whilst the Claimant was under the care of her Consultant, with respect to her hip including surgery.

The Claimant's Consultant performed a periacetabular osteotomy. Periacetabular osteotomy involves performing several bone cuts and repositioning the bone at the end of the femur in the hip socket. Since the operation the Claimant has suffered from serious disability. She could not walk any distance without discomfort and had to use a stick. She did very little gardening and struggled with housework and was in constant pain. She contacted us many years after the operation when she failed to have her questions adequately answered by the Trust and by then she thought she should never have had the operation.

The initial allegations of negligence summarised were as follows:-

1 Misdiagnosis of underlying symptoms;
2 Offering an operation to the Claimant which she would say should not be performed on patients as old as she was and which carried a very high risk of complications;
3 Having recommended the operation to the Claimant, failing to obtain properly informed consent;
4 Failing to offer alternative treatment;
5 Performing the periacetabular osteotomy.

The Defendant initially argued that the claim was statute barred and brought out of time, but withdrew the limitation Defence following representations from Lanyon Bowdler.

It was the Claimant's case that had she not had the operation her pre-operation symptoms (which were not major) would have continued until the age of about 60 and she would have had a total hip replacement which on the balance of probabilities would have been successful and would have left her pain free. She would then, about 10 years later, have undergone a revision hip replacement which would also have been successful and left her pain free.

As a result of the operation the Claimant was significantly disabled. She continued to work but with difficulty and her ability to carry out normal household tasks greatly diminished. She would not be able to have a hip replacement operation because of the non-union of the pubis. The medical evidence obtained was that she was likely to be wheelchair bound later in life. This is something that would not have happened unless and until the second hip replacement had failed in 20 – 25 years time. The medical expert was of the view that she would need single level accommodation and that she would require significant care and attention. An Occupational Therapist visited the Claimant's property and stated that her present accommodation met neither her present nor her future needs. The Claimant was described as a stoical individual

The main thrust of the Claimants case was that she was not adequately consented. The case was strenuously defended throughout and listed for trial for four days at Birmingham District Registry.

This was an extremely complex case in relation to negligence and demonstrating that the negligence caused the injury. Periarticular osteotomy is a major operation, known to carry very significant risks of serious complications, and which is technically difficult to perform. Expert Orthopaedic Surgeons instructed by Lanyon Bowdler concluded that the Claimant should have been warned that the success rate was likely to be low. It is a relatively rare operation carried out by few practitioners.

They also concluded that she was not properly consented. She was not apparently warned of the very high risk of complications including non-union and nerve damage (both of which she had). She was given an unrealistically high chance of improvement of pain in the hip.

With regard to causation, the Defendant's own doctors carried out many investigations to attempt to identify the causes of the Claimant's increased pain and disability. All accepted that they were a great deal worse than they were before the operation. Having carried out the investigations, the doctors concluded that the problems were the result of the surgery.

The Defendant steadfastly refused to make any offers until weeks before trial. Following the rejection of 3 offers the Trust agreed to pay acceptable damages by way of an out of Court settlement to the Claimant. With her damages the Claimant was able to buy a bungalow making day to day living easier.

Out of Court Settlement after Newborn Baby Tragically Dies - Royal Shrewsbury Hospital NHS Trust

Neil Lorimer settled a claim for two Claimants whose newborn daughter tragically died at the Royal Shrewsbury Hospital.

Claimant 1, the mother brought an action for funeral expenses and bereavement damages and for damages in respect of her daughter's personal injuries arising from the negligence of the doctor who delivered her daughter. She also claimed damages for physical and psychiatric injuries and consequential losses. Claimant 2, the father, claimed for damages for psychiatric injury and consequential losses.

Claimant 1 was admitted to Hospital for induction of labour. This was her first pregnancy and she had conceived with difficulty.

The Consultant elected to proceed to a trial of instrumental delivery in theatre after a 19 ½ hour labour and he used forceps to deliver the baby. She was born with significant bruising and swelling, with cuts to her face and ears together with multiple skull fractures and a massive brain injury. She was subsequently transferred to the Neonatal Unit where she died in her mother's arms later that evening.

Claimant 1 suffered a second degree perineal tear which was repaired in layers.

The Post Mortem Report outlined serious birth injuries including a fractured skull. The conclusion of the Pathologist was that baby died due to:

1 (a) brain injury; secondary to
(b) birth trauma; and
2 pulmonary haemorrhage (secondary to brain injury).

A police investigation took place and the Consultant was charged with gross negligence manslaughter. He was found not guilty however. The criminal standard of proof is "beyond reasonable doubt" and the jury also needed to be satisfied on that standard that there was "badness" in the sense of criminal conduct.

With regard to the civil proceedings the numerous allegations of negligence and that they caused the baby's death were admitted by the Trust. Following negotiation the Trust agreed to pay damages by way of an out of Court settlement to both Claimants.

An apology was obtained for the clients together with an assurance that procedures would be reviewed. We supported the clients with matters arising from the criminal case, the Coroner and helped manage the intense media interest.

Atkins v Wrekin District Council and another [1996] All ER (EC) 719.

A 63-year-old male plaintiff applied for a bus pass under a local authority scheme. Concessions available to men over 65 and women over 60. Plaintiff's application refused. Plaintiff claiming discrimination on grounds of sex contrary to European Community law in Telford County Court against Council and Dept of Transport. Action transferred to Royal Courts of Justice and points of law referred to European Court of Justice in Luxembourg. The issue was whether the travel concession scheme coming within scope of relevant Community provisions – Council Directive (EEC) 79/7, art 3(1). The Advocate-General's Opinion was of the view that the local authority scheme discriminated against Mr Atkins. Unusually the European Court Judges did not follow the Advocate General and upheld the scheme.

Subsequent to this decision the age for eligibility for bus passes was equalised at 60 for both men and women.