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CASE STUDY – NEGLIGENCE DELAY

This was an unusually complicated clinical negligence case arising out of negligent delay by a GP in referring a patient with a spinal tumour for specialist opinion, resulting in paraplegia. It was remarkable, not only for its medical complexity but also for the extent to which both sides' medical experts changed their ground in the run-up to trial.

MR B was a manual worker, who reported back pain to his GP over a period of some 3 years. From the outset this was clearly not mechanical back pain, in that it was thoracic, radiated along the ribs and troubled Mr B at night. After a standard non-urgent referral to an orthopaedic clinic he was eventually diagnosed with chondrosarcoma, a tumour of the spine. By that time serious neurological symptoms had developed. Urgent neurosurgery was carried out. Mr B has been paraplegic ever since.

A claim was brought against the GP not because he had failed to diagnose the cause of Mr B's pain, but because he had not referred him earlier to a specialist, as this would have led to more thorough investigations and a much earlier diagnosis of the tumour. He would have been likely to have had an operation before the tumour began to compress the spinal cord.

It was conceded very shortly before trial that the GP was in breach of duty in not referring at least a year before he did and that in the absence of negligence Mr B would have come to surgery 10 months earlier; this rendered the evidence of 5 of the experts unnecessary. In total, 24 experts had been instructed by the two sides and had prepared reports accordingly.

Chondrosarcoma is extremely rare and all the experts involved appear to have found this case medically fascinating. For the Team, it was a full time job as we approached trial to keep track of the shifting medical positions on both sides. At the start of the case, it was the Team's experts advice that although Mr B would be paraplegic for life, his cancer could still be cured. Six months before trial it was found that the tumour had metastasised and cure was no longer realistic, but the medical view was that the downturn in prognosis was



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the result of the negligent delay - the Particulars of Claim and Schedule were amended accordingly. Within the last few days before trial it was realised that the metastasis probably pre-dated the breach of duty and so the cancer prognosis was inevitable in any event and the pleadings had to be amended once more.

Due largely to foot dragging by the Defendants, requiring repeated applications by the Team to the Court, the focusing of the issues happened at a late stage. The Judge set the trial date back a day in order for the experts to meet again and discuss the issues central to the case. Once they had, the issues crystallised and the matter settled on the third day of the trial slot.

Had Mr B been referred to a specialist when he should have been, he would not have been cured of the cancer, however the progression would have been slowed and he would have had several years in which he would have been able to live a more normal life, been able to walk and drive and he would not have been as dependant on his family for care.

The amount of settlement is confidential, but the Team take some comfort from the fact that it will enable Mr B to achieve his first priority of moving into suitable accommodation where he can be better cared for. Costs were ordered against the Defendant.

The Team was led by Partner James Wright with assistance from Solicitors Louise Tyler and Rachel Rogers and various Trainees.

The case provides a particularly clear example of the need for strong case management, and of the Team successfully running and taking to trial complex medical cases against determined opposition.

For further information please contact James Wright, Partner at Wilson Browne LLP on **01536 410041** or by email at jwright@wilsonbrowne.co.uk.