

# Wilsher v Essex Area Health Authority [1988]

## Evidence

The Essex Area Health Authority, the defendant represented by an inexperienced junior doctor, was accused of negligence as it injected an overdose of oxygen into the lungs of a premature newborn during postnatal care. It was discovered that the infant had problems with his eyes afterward. According to medical data, an overdose of oxygen was one of five possible reasons that could have led to the infant's blindness. The court proclaimed that the defendant is not liable for the infant's injury, as it was more probable that one of the other factors was the main reason for the child's blindness.

The Court of Appeal, however, used the case of *McGhee v National Coal Board* where the term "apparent increase in risks" was first used. The Court of appeal proclaimed that as the hospital broke its obligations and increased the injury's risk as a result of its negligence, the hospital was liable for the injury even though the claimant has not proved that it was exactly the hospital's negligence as the reason for the injury.

## Problematics

The House of Lords said that it is impossible to claim that the defendant's negligence was the reason for the injury or that it had a great impact on such an injury and the claim was denied. It also said that *McGhee's* case had not formulated a new rule of law—it was simply based on the analysis of facts.

## Resolution

The first-instance court proclaimed that the Essex Area Health Authority is liable for the infant's injuries by making a reference to the *McGhee v National Coal Board* [1973] case, according to which in case of multiple possible reasons, it is the claimant's liability to prove that the defendant's actions were the main or the sole reason for the injuries.

Later on, the House of Lords allowed the claimant's appeal and proclaimed that the first-instance court had wrongly interpreted *McGhee's* precedent. Also, with no connection to the number of possible reasons, the claimant always must prove the connection between the reason and the result.

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