

COCHLEAR IMPLANT DAMAGE

DUE TO MVA

LIABILITY

By Dr R Payten

- History - 19 year old girl previously implanted at 10 years for congenital deafness with good result.
- Did mainstream HSC.
- Pre accident audiogram - mild loss left side, profound loss on right side.

- Since accident, no hearing in implanted left ear and severe left tinnitus
- Fractured odontoid process with subsequent severe C2 nerve pain - spinal cord OK
- Refused option of implant to the other right ear
- Implant makes loud whooshing noise and causes burning behind the ear when switched on

- Insurance company denies liability
- Accident has not contributed to any reduction in unassisted hearing
- Loss of hearing only due to a damaged replaceable prosthesis, not an injury to the body itself
- MAA guidelines state assessment must be without assistive devices except where these cannot be removed

- My opinion is that insurance company is liable for loss of hearing
- Damage to prosthesis within the cochlea no different to damage to middle ear prosthesis or dislocated joint prosthesis subsequent to MVA
- Unfair to discriminate against a cochlear prosthesis

- MAA guidelines state prosthetic devices (i.e. hearing aids) must be removed when testing hearing
- Cochlear implant is not a hearing aid since it does not amplify sound
- It is not an assistive device since it takes the place of absent hair cells rather than assisting them

ASSESSMENT

- Pre-accident audiogram with implant switched on shows mild loss left and profound loss right, binaural H.L. = 35%, WPI 12%
- Post accident audiogram shows total loss right, profound loss left, binaural H.L. = 98.5%. Add severe tinnitus 1.5%. Total bin. loss = 100%, WPI = 35%
- WPI due to MVA ($35\% - 12\%$) = 23%
- Had it not been for the MVA, she would not have suffered a WPI of 23%