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AFTER UNBORN TWIN DIES IN AUTOMOBILE COLLISION

## Parties settle after unborn twin dies in automobile collision

On Sept. 17, 2005, the defendant, working in the course and scope of her agency with a logging company, pulled out from a stop sign and drove her truck into the side of the plaintiff's mini-van, the plaintiff alleged.

At the time of the collision, the plaintiff was 28 weeks pregnant with twins (one male and one female). Upon impact, her seatbelt cinched down, causing the male twin's placenta to rupture.

The plaintiff was transported to the hospital, where an emergency C-section was performed. Doctors could not save the male twin, but they were able to save the female twin.

However, the female twin developed a brain hemorrhage and hydrocephalus. The resulting brain damage caused several development abnormalities, including slow mental development, motor problems and vision problems.

Subsequent neuropsychological testing demonstrated that the female twin's cognitive level was in the mentally retarded range.

The plaintiff filed claims against the defendant driver and the logging company for the personal injuries suffered by the plaintiff, the surviving female twin and three other minors who sustained relatively minimal injuries in the collision.

The complaint included a claim under *DiDonato v. Wortman*, 320 N.C. 423 (1987), for the wrongful death of the unborn yet viable male twin. The male twin's viability was established from the survival of his twin sister.

Prior to the filing of the lawsuit, the defendant insisted that she only had liability coverage of \$100,000 per person and \$300,000 per accident.

After the suit was filed, the plaintiff amended the complaint to allege that the defendant was acting in the course and scope of her agency with the logging company and included a claim against the logging company under the doctrine of respondent superior.

The logging company had an additional \$1,000,000 in liability insurance coverage, increasing the total insurance coverage to \$1,300,000.

**Type of action:** Personal injury Wrongful death Negligence Respondent superior Unborn but viable twin

**Injuries alleged:** Plaintiff (abdominal trauma causing a placental abruption which necessitated an emergency C-section), female twin (brain hemorrhage and hydrocephalus causing brain damage, which in turn caused developmental and cognitive impairments), male twin (death), other minor plaintiffs (abrasions)

**Case name:** Confidential

**Case number:** Confidential

**Court:** Confidential

**Verdict or settlement:** Settlement

**Settlement date:** Oct. 9, 2007

**Amount:** Global settlement of \$1,300,000

**Special damages:** Plaintiff (\$19,033), female twin (\$250,094.70 in medical bills), male twin (\$993 in funeral expenses), other minor plaintiffs (\$13,090 combined)

**Plaintiff's expert:** Cynthia Wilhelm, Ph.D. (life care planner)

**Insurer:** Confidential

**Plaintiff's attorneys:** John M. McCabe and Brian F. Davis of Davis & McCabe, P.A., Raleigh; Brian M. Ricci of Edwards & Ricci, P.A., Greenville

**Submitted by:** John M. McCabe



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### Most Important Opinions

#### 1. Criminal Practice – Abusive Boyfriend Convicted of Murder One

: The 4th Circuit affirms defendant's first-degree murder in the fatal shooting of his ex-girlfriend after a day of fishing and a fish fry on the reservation of the Eastern Band of Cherokee Indians; the trial court properly admitted evidence of defendant's prior violent acts and death threats against the victim, and

By  
Published: January 14, 2008  
Time posted: 1:00 am



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defendant "invited error" by refusing to allow a jury instruction on a lesser-included offense.

2. Administrative – Black Lung – Evidence – Disability – Rebuttal

*Mingo Logan Coal Co. v. Owens* An administrative law judge did not improperly limit a coal mining company's ability to rebut a presumption of black lung benefits for a claimant who had spent at least 15 years in an underground mine and had become totally disabled from breathing difficulties, and the 4th Circuit affirms the award of benefits.

3. Administrative – 'Market Rate' Debate in Black Lung Fee Award

*Eastern Associated Coal Corp. v. Director, OWCP* In this black lung benefits case, claimant's lawyers had sufficient market-based evidence to support their hourly rates of \$175 to \$300 and their quarter-hour billing did not lead to billing excessive hours, but the 4th Circuit said the record did not support some fees for legal assistants; the court affirms the award of over \$32,000.

> All Opinions...