ties and the perceived loss caused by the adult child's death to the other family members.

Nonviable Fetus May Recover for Loss of Parent's Consortium

Angelini v. OMD Corp., 410 Mass. 653, 575 N.E.2d 41 (1991).

This decision concluded that a nonviable fetus had a claim for loss of parental consortium. The child's father was injured as a passenger in an automobile accident and sued the driver and the bars that served the driver before the accident. The child further alleged that the father intended to provide support to his unborn child but the support was diminished as a result of the accident. At the time the parent was injured, the plaintiff was a nonviable fetus. The trial court dismissed the child's claim because he was nonviable at the time of the accident. The state supreme court reversed.

Although Massachusetts had recognized that a child had a right to loss of consortium due to the injuries to a parent, it had refused to extend the doctrine in cases in which a legal relationship such as cohabitation between the parties did not exist. To continue the line drawing, the court looked to cases determining the basis for damages associated with prenatal injuries. In these cases, the Massachusetts courts extended a cause of action to a fetus in two related circumstances. First, the child could recover if it was born alive when the injury occurred before viability. Second, the infant's estate could recover for severe injuries after viability if the injuries were fatal. The court, therefore, concluded that viability of the fetus did not control the result.

The court further noted that a child born after a parent's wrongful death could collect damages for the parent's death. To maintain consistency between the statutory interpretation and judicial developments of common law, it followed that the child should be able to collect for injuries to the parent that were not fatal. The court, therefore, concluded that a child conceived before the parent's accident and subsequently born alive could recover damages for loss of consortium if he could also demonstrate a reasonable expectancy that the parent would have provided for his care.

Thermographic Treatment Covered as Diagnostic Service

Thermographic Diagnostics, Inc. v. Allstate Insurance Co., Case No. A-89/90 (N.J. Sup. Ct. 1991) (Lexis, State lib., N.J. file).

In this case, the New Jersey Supreme Court concluded that an insurance policy providing for diagnostic services extended coverage for thermography exams. Thermography is a diagnostic procedure that measures infrared energy emitted by the skin to determine the presence of temperature differences between corresponding areas of opposite sides of the body. The insurers in this case refused to pay for treatments and argued that it was not of proven medical value and therefore was experimental. The supreme court affirmed the lower courts' determination that the costs were covered under the state's no fault law but left open some issues concerning the appropriate cost of the treatment.