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Man settles claim for fetal death

BY SARAH STANLEY

A husband who lost his wife and unborn child in an auto accident has reached a \$1 million settlement in an apparent case of first impression under a recent amendment to Virginia's wrongful death statute.

The amendment, which went into effect in 2012, allows a civil action to be brought in the wrongful death of a child in utero, regardless of the term of the pregnancy.

The decedent in the case was 38-year-old Michele Acree of Windsor, who was seven months pregnant with the couple's first child, whom they named Henry Wyatt Acree. The three-vehicle accident occurred on Route 460 – a four-lane, undivided highway – during Acree's evening commute home from Suffolk on Dec. 12, 2014.

The defendant, 79-year-old Pauline Austin, attempted to make an improper lane change and struck the passenger side front end of Acree's Jeep. The contact caused the Jeep to enter the opposite lane of travel, where it was T-boned by an oncom-

ing vehicle at approximately 55 mph.

Acree and her 7-month-old fetus died shortly after the crash.

Suit was filed in Suffolk Circuit Court under Virginia's amended wrongful death statute (Virginia Code § 8.0150B and § 32.1-249.2), according to Virginia Beach attorney John Zydron, who represented Tyler Acree, Michelle's husband and administrator of her estate.

Zydron provided a Verdicts & Settlement Report, which appears on page 6.

Zydron reached out to the National Legal Research Group in Charlottesville to inquire if the plaintiff had a right of action for wrongful death on behalf of Henry, the unborn child.

Steven G. Friedman, a senior attorney with the NLRG, determined that Zydron had a strong case.

In a memorandum he presented to Zydron, Friedman acknowledged that for many years, Virginia case law had held that "since a fetus is not

a legally cognizable 'person' separate from its mother until birth, Virginia's wrongful death statute does not allow a cause of action for the death of an unborn child."

But in 2012, the General Assembly amended the Virginia Code, creating a new cause of action for the wrongful death of a fetus. The new law, signed by then-Gov. Bob McDonnell, allowed family members to recover damages when an unborn child died as a result of medical malpractice, domestic abuse or negligence.

At the time, critics of the bill feared an onslaught of lawsuits. But three years after the new law went into effect, Friedman's research failed to turn up any Virginia cases that have addressed the new fetal death provisions.

On Aug. 12, the parties negotiated a settlement in the amount of \$500,000 for the wrongful death of the mother, and \$500,000 for the unborn child.

The defendant has since entered an Alford plea on one count of involuntary manslaughter, according to a report from the Daily Press. She faces sentencing on Nov. 16.

Zydron could not be reached for additional comment.



ZYDRON