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VERDICTS & SETTLEMENTS

Plaintiff wins record verdict on wrongful conception claim

\$1,800,000 Verdict

In what is believed to be the largest verdict in U.S. history for a case of this kind, a 40-year-old woman who gave birth to a healthy child after a failed bilateral tubal ligation was awarded the sued upon amount of \$1,800,000. The defendant physician expert testified the defendant was not negligent and the wrongful conception was simply the result of the known and accepted 2 to 3 percent failure rate of this sterilization procedure. The plaintiff's expert testified that the defendant physician's failure to properly place any of the six hulk clamps on

plaintiff's fallopian tubes was the proximate cause of the wrongful conception. Virginia case law prohibited the jury from considering the cost to raising the child as an element of plaintiff's damages. The plaintiff's special damages were limited to \$39,000 in medical expenses and \$9,000 in lost wages. The emotional distress caused by the negligent wrongful conception was the most important element of plaintiff's damages. A very healthy and loved baby was born to the plaintiff, and the child is now 6 years old.

The case settled for a confidential amount after the verdict.
[14-T-030]



DUNNIGAN



LEWELLYN

Type of action: Medical malpractice

Injuries alleged: Wrongful conception resulting in birth of healthy child

Court: Newport News Circuit Court

Tried before: Jury

Judge: Timothy S. Fisher

Date resolved: Nov. 7, 2013

Special damages: \$39,000 in medical expenses and \$9,000 in lost wages

Lowest demand: \$300,000

Highest offer: \$100,000

Verdict or settlement: Verdict

Amount: \$1,800,000

Attorneys for plaintiff: Stephen A. Dunnigan, Newport News; Stephen K. Lewellyn, Culpeper

Plaintiff's experts: Sanford M. Rosenberg, M.D.

Defendant's experts: Eric Swisher, MD

Insurance carrier: Medical Mutual