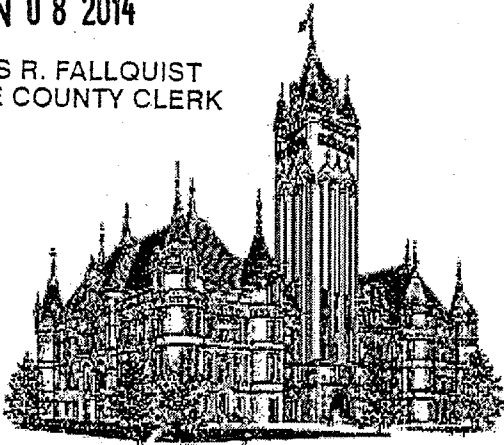


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SPOKANE COUNTY COURT HOUSE

**Superior Court of the State of Washington
for the County of Spokane**

Department No. 4

Kathleen M. O'Connor
Judge

Lisa Gurkowski
Judicial Assistant

Mark Sanchez
Court Reporter

1116 W. BROADWAY AVE, SPOKANE, WA 99260-0350
(509) 477-4707 • FAX: (509) 477-5714
dept4@spokanecounty.org

January 8, 2014

Michael Jon Riccelli
Attorney At Law
400 S. Jefferson St. Ste. 112
Spokane, WA 99204-3144

Jennifer Lynn Moore
Attorney At Law
601 Union St. Ste. 1500
Seattle, WA 98101-1363

John E. Hart
Lynetta St. Clair
Attorneys at Law
1000 S.W. Broadway Ste. 2000
Portland, OR 97205-3072

**Re: PITTS, AMANDA OBO VS INLAND IMAGING LLC ETAL
No. 2011-02-02449-5**

Dear Counsel:

I heard Oral Argument on Defendants' Motion For Summary Judgment on January 3, 2014. This motion was specifically directed to Plaintiffs' claim under the "lost chance of survival doctrine". I deferred my decision in order to read the case law, particularly, *Estate of Ruth M. Dormaier, etal v. Columbia Basin Anesthesia, P.L.L.C, etal* ___ Wash.App ___ 313 P.3d 431 (Nov. 2013).

While the *Dormaier* case does not require that this claim be plead separately as an autonomous cause of action, it does require that the plaintiff present evidence to support the traditional tort principles of (1) duty (2) breach (3) proximate cause and (4) damages. There was extensive discussion in the briefs about whether there was evidence to support, or not, a breach of the standard of care. This is not a motion for summary judgment on the standard of care. There are clear material issues of fact which must be resolved by a jury. However, Plaintiffs have presented the testimony of Dr. Randall M. Patten which sufficiently addresses the tort concepts with respect to this motion so the analysis can move forward.

The next issue is when the lost chance of survival doctrine applicable. *Dormaier, 442*, is also instructive.

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Michael Jon Riccelli
Jennifer Lynn Moore
John E. Hart
Lynetta St. Clair
January 8, 2014
Page 2

. . . (we) hold where the defendant's negligence reduced the decedent's chance of survival by less than or equal to 50 percent, the loss of a chance is the injury and the plaintiff receives proportional compensation under the lost chance doctrine, but where the defendant's negligence reduced the decedent's chance of survival by greater than 50 percent, as a matter of law, the death remains the injury and the plaintiff receives all-or-nothing recovery under traditional tort principles. Thus, a plaintiff may not argue the lost chance doctrine where the defendant's negligence reduced the decedent's chance of survival by greater than 50 percent.

Plaintiffs presented the testimony of Dr. Patten on this issue at paragraphs 17 and 19 of his declaration filed December 27, 2013. In paragraph 17 Dr. Patten said if negligence did not occur there was a 90% chance of survival of both twins in the general literature in this area. A reasonable reading of paragraph 19 indicates these twins would have a 90% chance of survival if Dr. Hardy, the treating physician, had been properly advised of the twins' circumstances. As this percentage exceeds 50% it does not support giving the lost chance of survival instruction to a jury. Defendants' Motion For Summary Judgment is granted.

Yours truly,



Kathleen M. O'Connor
Superior Court Judge

kmo/tim
cc: Legal File