

### General state of the law re: “negligence” class torts for pre- and post-natal harms

$\pi$	Harm	$\delta$ = mother	$\delta$ = someone other than the mother
Child born alive	pre-natal injury	Split, but likely no duty owed <sup>1</sup>	Yes duty owed unless other no-duty rule
Child stillborn	pre-natal injury	Likely no duty owed	Yes duty owed if viable at time of injury unless other no-duty rule
Pregnant mother	personal injury	n/a	Yes a duty owed unless other no-duty rule
Child	pre-natal injury due to mother's pre-conception injury	n/a	Yes a duty owed unless other no-duty rule <sup>2</sup>
Baby/Child	post-birth injury	Yes duty owed unless other no-duty rule	Yes duty owed unless other no-duty rule
Parents	wrongful conception <sup>3</sup>	n/a	Yes duty owed unless other no-duty rule
Parents	wrongful birth <sup>4</sup>	n/a	Yes duty owed unless other no-duty rule

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<sup>1</sup> There are not many cases, but about half say no duty here, and the others say duty, but then limit the duty in a variety of ways.

<sup>2</sup> *Cf. Renslow* (yes duty) and *Albala* (no duty). New York stands virtually alone in completely rejecting a duty.

<sup>3</sup> Cases seem to be recognizing a new form of legally cognizable harm and so better to treat them as involving LCH rather than DUTY/DUTY. Most jurisdictions recognize this type of claim, but then limit the damages recoverable.

<sup>4</sup> Again, this seems more akin to recognizing a new form of legally cognizable harm. Most jurisdictions recognize this type of claim but disagree over the damages recoverable.