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Bystander Claim – Appellate Division Holds That Jury Could Find Plaintiff in Same-Sex Relationship Has Claim for Witnessing Death of Her Wife’s Daughter

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Plaintiffs, Valerie Benning and I’Asia Moreland, were a same-sex couple who lived together with Moreland’s two biological children. While they were crossing a street in Trenton, a motor vehicle accident caused the death of two-year-old I’Maya.

As a result, plaintiff filed a lawsuit and included a bystander negligent infliction of emotional distress claim under Portee v. Jaffe, 84 N.J. 88 (1980).

The court held that plaintiff presented sufficient evidence from which a jury could find that she and the two-year-old I’Maya had an intimate familial relationship at the time of the child’s tragic death. The court noted the rejection of prior attempts to restrict the class of claimants to married persons and noted that the basis for a Portee claim is the existence of an intimate familial relationship with the victim of the tortfeasor’s negligence.