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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Wrongful Death Lawsuit Information

6/10/10

A “wrongful death” occurs when a person is killed due to the negligence or misconduct of another individual, company or entity. Every state has a civil “wrongful death statute,” or set of statutes, which establish the procedures for bringing wrongful death actions. An action for wrongful death belongs to certain persons identified by statute. In most states, such persons will include the decedent’s immediate family members, such as surviving spouses and children, and sometimes parents or siblings. An attorney experienced in wrongful death law can explain all of the intricacies of these lawsuits and help achieve the best possible outcome for survivors.

Elements

In order to bring a successful wrongful death cause of action, the following elements must be present:

- *The death of a human being;
- *Caused by another’s negligence;
- *Loss as a result of the death, and;

The survival of family members or others named by a particular state’s statute as being entitled to sue.

A wrongful death claim may arise out of a number of circumstances, such as in the following situations:

- *Medical malpractice that results in decedent’s death;
- *Automobile or airplane accident;
- *Occupational exposure to hazardous conditions or substances;
- *Death during a supervised activity.

Damages



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Pecuniary, or financial, injury is the main measure of damages in a wrongful death action. Courts have interpreted “pecuniary injuries” as including the loss of support, services, lost prospect of inheritance, and medical and funeral expenses. Most laws provide that the damages awarded for a wrongful death shall be fair and just compensation for the pecuniary injuries to the persons for whose benefit the action is brought, resulting from the decedent’s death. If the persons bringing the action paid or are responsible for the funeral expenses or medical care incidental to the injury that caused the decedent’s death, they may also recover those expenses. Finally, a damage award will include interest from the date of the decedent’s death. State statutes vary on whether interest may be recovered.

Determining Pecuniary Loss

When determining pecuniary loss, it is relevant to consider the age, character and condition of the decedent, his or her earning capacity, life expectancy, health and intelligence, as well as the circumstances of the persons bringing the action. This determination may seem straightforward, but it often becomes a complicated inquiry, keeping in mind that the measure of damages is actual pecuniary loss.

Usually, the main consideration in awarding damages is the circumstances of the decedent. For example, when an adult wage earner with dependants dies, the major parts of the recovery are: 1) loss of income, and 2) loss of parental guidance. The jury may consider the decedent’s earnings at the time of death, the last known earnings if unemployed, and potential future earnings.

Adjustments in the Jury’s Award

In a wrongful death action, the jury determines the size of the damages award after hearing the evidence. The jury’s determination is not the final word, however, and the size of the award may be adjusted upward or downward by the court for a variety of reasons. If the decedent earned considerable income and gave it to his family, that sum will be recoverable. However, if the decedent routinely squandered his income, this might reduce the family’s recovery. Similarly, the courts might reduce a jury’s award if the decedent had poor earnings, even though he was young, had great potential, and supported several children. At the same time, a jury may award lost earnings despite the decedent’s having been unemployed, if he had worked in the past and if the plaintiff presented evidence of the decedent’s average earnings while employed. If the plaintiff fails to present such evidence of the decedent’s average earnings, the court may set aside the jury’s damage award and order a



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new trial.

Using Expert Testimony to Determine Pecuniary Loss

Plaintiffs are able to present expert testimony of economists to establish the value of the decedent to his family. Until recently, this testimony was not admissible when a housewife died, but that rule has changed. When the decedent is a housewife who was not employed outside the home, the financial impact on the survivors will not involve a loss of income, but increased expenditures to continue the services she was providing or would have provided if she had lived. Because jurors may not be knowledgeable regarding the monetary value of a housewife's services, experts may aid the jury in this evaluation.

Punitive Damages

Punitive damages are damages awarded in cases of serious or malicious wrongdoing to punish the wrongdoer, or deter others from behaving similarly. In most states, a plaintiff may not recover punitive damages in a wrongful death action. There are some states, however, that have specific statutes that permit the recovery of punitive damages. In states that do not explicitly allow or disallow punitive damages in wrongful death actions, courts have held punitive damages permissible. An attorney will be able to advise you as to whether your state allows punitive damages.

Survival Actions for Personal Injury

In addition to damages for wrongful death, the persons entitled to bring the wrongful death action or the decedent's estate, depending on the governing state statute, may be able to recover damages for personal injury to the decedent. These are called "survival actions," since the personal injury action survives the person who suffered the injury. The person entitled to bring the wrongful death action or the decedent's personal representative can bring such an action together with the wrongful death action.

In a survival action for a decedent's conscious pain and suffering, the jury may make several inquiries to determine the amount of damages, including: 1) the degree of consciousness; 2) severity of pain; and, 3) apprehension of impending death, along with the duration of such suffering.

Limitation Periods

As with any personal injury claim, there is a time component (called the "statute



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of limitations”) governing when a wrongful death action must be filed. The limitations period in a wrongful death action may run from the date of death in some states, while in other states it has been held to commence when the party bringing suit discovers, or should reasonably have discovered, the connection between the decedent’s death and the cause. In many states, the appointment of a personal representative will start the limitations period running. When the decedent’s death is a result of a disease caused by a toxic or hazardous substance, some states have different time requirements. Anyone who believes that he or she might have a wrongful death claim should contact an attorney to determine how much time is left to file suit.