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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

JANUARY 28, 2010

E-Newsletter

Wrongful Death

Wrongful death claims allege, as their basis, that the deceased was killed as a result of the negligence or liability of another. The deceased's surviving relatives, the dependents or beneficiaries bring suit against those claimed to have been negligent or liable, seeking monetary damages to compensate for the improper conduct. Each state has its own statute covering the viability of claims for wrongful death, and not every state follows the same guidelines, principles, or rules. Some states have "true" wrongful death acts in which the next of kin are entitled to bring a cause of action in their names as a result of damages sustained following the decedent's death.

Other states have acts that are more properly called "survival acts." These acts preserve the rights which vested in the decedent at the moment of his death and expand those rights to include the right of the survivors to bring a claim based upon the decedent's rights, as well as including damages resulting from the actual death itself. Finally, some states recognize both types of lawsuits, but generally have a provision that limits the right of the survivors in order to prevent a double recovery under the two different theories for the same injury.

The states also vary in who is authorized to be a plaintiff in wrongful death/survivor actions. Generally, the primary beneficiaries of the individual--the spouse and children--are able to bring a claim. In some states, parents of the deceased can be designated as beneficiaries and thus become plaintiffs in the suit. In most states, if the deceased did not leave any spouse, children or parents, then there is no one who may bring a wrongful death claim. However, in some states, other relatives can become plaintiffs if they were, in fact, dependent upon the deceased for economic support. In still other states, the recovery



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is simply doled out to the deceased's heirs at law or is distributed to the beneficiaries of the estate as it would be in any normal probate proceeding.

In most jurisdictions, a plaintiff in a wrongful death cause of action can allege any tort theory including an intentional tort, reckless or negligent behavior or strict liability. Often, it is not necessary that the defendant's conduct be the sole cause of the death. Even where the defendant's negligence contributes in part, or in tandem with other circumstances to the decedent's death, the plaintiff may still recover.

Once the plaintiff has established legal liability on the part of the defendant for the death, he must establish the type and amount of his damages. In some jurisdictions, the plaintiffs may be able to recover the costs of the deceased's medical care, funeral expenses incurred, loss of future earnings of the deceased, the value of the loss of the deceased's benefits (such as pension benefits or medical and health insurance coverage), loss of consortium, and general damages. Additionally, in a few jurisdictions, the plaintiffs may be able to recover damages for their own and the deceased's pain and suffering or mental anguish, and may also be able to recover punitive damages.

The method and manner of calculating damages in a wrongful death action can often be very complex. This potential complexity is especially true when trying to calculate the pecuniary loss to which the plaintiffs are entitled. Pecuniary loss generally includes the survivor's loss of support, contributions and services due to the decedent's death. The bases for computing these damages are the decedent's life expectancy and work life expectancy. The life expectancy of the beneficiaries and, where necessary, the remaining period of minority of any beneficiaries must also be considered. In calculating the value of the plaintiff's future loss, not only may the wages of the decedent be considered but the court may also consider the value of past contributions made by the decedent, the decedent's familial concern, his personal habits, and his spending behavior.

A defendant is entitled, in general, to raise any defenses in a wrongful death action that he could have raised in an action brought directly by the decedent, had they not died. Therefore, if the decedent was contributorily



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negligent in causing his own death, the defendant may assert that defense in the wrongful death action. Also, in most states, if the decedent had already recovered damages for his death, such as in a case where the death was not immediate and the decedent was able to bring his own successful cause of action, the survivors may not then successfully bring a wrongful death action and recover, in essence again, for the same injury. There are limitations to this prohibition and in some situations the survivors may still be entitled to commence and maintain a wrongful death claim.

Checklist: Whom to Notify and Things To Do When a Death Occurs

To read and printout the Checklist please click below.

[Whom to Notify and Things to do When a Death Occurs](#)

Disclaimer

This publication and the information included in it are not intended to serve as a substitute for consultation with an attorney. Specific legal issues, concerns and conditions always require the advice of appropriate legal professionals.