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# Understanding Wrongful Death In Washington State

Catastrophic Injury Cases

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## UNDERSTANDING WRONGFUL DEATH IN WASHINGTON STATE

*In Washington (like most states), a wrongful death claim is governed by a specific statute that was passed by the legislature. The wrongful death statute has specific requirements that must be met before a case may succeed.*

The death of a person that is caused by the conduct of another party may give rise to a “wrongful death” claim. A wrongful death is one where a person dies due to the unlawful conduct of another person or entity. The unlawful conduct can be intentional (e.g., assault or murder) or unintentional (i.e. negligent or mistake). Not only can an individual person be responsible for causing a wrongful death, but so can a corporation or governmental entity can as well. When a wrongful death occurs, the law permits the surviving relatives of the deceased to recover certain types of damages against the responsible party.

In Washington (like most states), a wrongful death claim is governed by a specific statute that was passed by the legislature. The wrongful death statute has specific requirements that must be met before a case may succeed. To bring a wrongful death case, a person called a “Personal Representative” must first be appointed by the court on behalf of the deceased person’s estate. The Personal Representative may also be known as the Executor or Executrix of the estate. A petition to appoint the Personal Representative must be filed in court. The judge must then enter an order appointing the person who will act as Personal Representative of the estate. The Personal Representative is then responsible for prosecuting the wrongful death case on behalf of the estate and certain surviving relatives (also called beneficiaries).

In Washington, only certain designated surviving relatives can bring a wrongful death case. These surviving relatives are also called “statutory beneficiaries” (because they are designated by the wrongful death statute). The Washington legislature created what is called a “two-tiered” system of beneficiaries who may bring a wrongful death case. This means that there are two levels of certain designated surviving relatives that have legal authority to recover damages caused by the death of a loved one. If none of these designated surviving relatives exist then no wrongful death action can be brought. In that case, the death of a person, even if considered “wrongful,” cannot recover damages against the responsible party.

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In Washington’s “two-tier” system, the surviving spouse and children make up the first tier of authorized beneficiaries. A step-child is also included in the first tier. These surviving relatives have automatic standing to bring a wrongful death case for the wrongful death of a spouse or parent. Often times one of these “first-tier” beneficiaries will be appointed as the Personal Representative by the court to bring the wrongful death lawsuit.

The second tier of beneficiaries who may bring a wrongful death action consists of a parent or sibling of the deceased, but only if this surviving relative was dependent on the deceased for financial support. There is one exception however. That is when the deceased child is a minor. In that case, a parent may bring an action for the wrongful death of a minor child to recover damages for the “destruction of the parent-child relationship” regardless of whether the parent was financially dependent on the minor child at time of death.

But if the person wrongfully killed was an adult, unmarried and without children, only a parent or sibling may maintain a wrongful death action as long as this surviving relative was financially dependent on the deceased at the time of death. Washington courts have stated that the “second-tier” beneficiary must have been substantially dependent on the deceased for financial support. The parent or sibling does not need to be wholly or completely dependent on the deceased. But there must be enough evidence to prove “substantial financial dependence.” The financial dependence must also occur at the time of death, as opposed to having occurred in the past or to occur at some point in the future.

What constitutes substantial financial dependence? There are no hard and fast rules. But Washington courts have generally held that substantial financial dependence may occur where the deceased was paying or contributing to a portion of the parent’s or sibling’s living expenses. The courts have clearly stated however that services provided by the deceased that one would expect to be provided by a family member is not enough to show substantial financial dependence. The courts have also held that “emotional” dependence is not enough either. Without evidence of substantial financial dependence

the court will almost certainly dismiss the wrongful death action for failing to comply with the specific terms of the statute.

Washington's wrongful death statute can produce some very unjust results. Take for example the situation where the person wrongfully killed is an adult, unmarried and has no children. Even if the deceased had very close and loving relationships with his or her parents and siblings, no wrongful death action could be brought unless the deceased was financially supporting his parents or siblings. One would assume that most single childless adults do not financially support other family members. So when a wrongful death occurs in this type of situation no recovery can be made, no matter how egregious the conduct was that led to the person's death. That is unjust. The death of an unmarried childless person is no less painful or devastating to a surviving parent or sibling not receiving financial support than it is to a surviving relative who was receiving financial support from the deceased. This is why many attorneys have asked the Washington legislature to amend the wrongful death statute to prevent these types of unjust results.

When the Personal Representative brings the wrongful death action, he or she does so for the purpose of recovering damages on behalf of the deceased person's estate and surviving beneficiaries. Both the estate and surviving beneficiaries each can recover economic and non-economic damages caused to them by the person's death. The estate's economic damages may include healthcare and funeral expenses as well as the deceased person's net accumulated earnings and benefits expected to have been earned over the course of the person's life had death not occurred.

The phrase "net accumulated earnings" refers to those earnings and benefits received after other personal and living expenditures are deducted (e.g., normal living expenses, gifts, contributions, and consumer expenditures). The law requires that an expert (usually an economist) calculate the present value of the Estate's expected net accumulation. Obviously this amount will vary according to the deceased person's income producing capability. There can be wide disagreement among the experts on just how much net accumulated earnings would have been earned by the deceased had death not occurred. For this reason it is very important to involve competent and highly skilled experts in the

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case who have excellent reputations.

A difficult case can arise when the deceased is a child or when the deceased’s earnings history is sporadic, or when the deceased’s earnings potential has not been fully realized. In these cases the insurance company and its lawyers will almost certainly argue that any future expected earnings are too speculative to calculate. In these cases the insurance company will often refuse to pay a large sum of money to compensate for future lost earnings. For these reasons it is very important that an experienced wrongful death lawyer be hired early to investigate and pursue this type of case. The experienced wrongful death lawyer can hire the best experts and uncover specific evidence to help prove that the deceased’s potential earnings were much more substantial than what the insurance company lawyers and experts may contend.

When using experts to calculate economic damages, it is important to involve the expert early on in the case. It is also important to furnish the expert with all of the necessary documentation to help the expert calculate lost earnings and expected net accumulations. These records may include without limitation employment, tax, educational, medical, bank, insurance, or other financial documents. In the case of a deceased child or young adult, sometimes the financial records of the parent may help. Many times the earnings potential of children may closely resemble that of their parents. In any event, the expert will want to review as many records in the case to help support the expert’s opinion.

Each surviving beneficiary (first-tier or second-tier) also has an individual claim for economic damages. This might include damages for lost financial support expected to be received from the deceased person had death not occurred. For example, a surviving child might incur damages for expected contributions to cover the cost of a future college education. There might also be damages for healthcare expense incurred by the surviving relative which were necessitated by the person’s death (e.g., counseling, psychiatric treatment, or medication).

The losses categorized as non-economic damages may be more difficult to calculate or quantify. In the case of the Estate’s non-economic damages, these may include a recovery for the loss of enjoyment of life due to the deceased person’s shortened life ex-

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pectancy. Also included may be damages for the pain, suffering, anxiety, emotional distress, humiliation, and fear experienced by the deceased person prior to death as a result of the incident that caused death (e.g., a car accident victim who initially survives and is conscious before death). Many times it may be necessary to hire a medical expert to help establish that the deceased person consciously felt pain, distress or anxiety before death occurred. Sometimes the testimony of witnesses or passersby's who had contact with the deceased right before death can help establish that the person was in fact conscious before death and experienced pain and suffering. Occasionally the autopsy report will help prove the deceased was conscious before death, but often times not.

Each surviving beneficiary also has a separate or individual claim for non-economic damages caused by the person's death. A surviving spouse may recover damages for "loss of consortium" which includes the loss of emotional support, love, affection, care, services, companionship, including sexual companionship, as well as assistance, expected from the deceased spouse. A surviving child may recover damages for the loss of a parent, to include the loss of love, care, companionship, and guidance expected from his or her father or mother.

In the case of an action brought by the parent for the wrongful death of a minor child, the surviving parent may recover economic and non-economic damages as well. The economic damages may include financial support expected from the child (e.g., if the child were employed and/or contributing toward the parent's living expenses at the time of death). The non-economic damages may include damages for the parent's grief, mental anguish, and suffering caused by the child's death.

Whether damages are being claimed by the Estate, a surviving beneficiary, or a parent over the death of minor child, the non-economic damages portion of the case can be difficult to determine and present to an insurance company or a jury. There is no magic formula to apply. But certain facts may be relevant to deciding what amount of non-economic damages is fair and just. These factors may include the deceased person's life expectancy, the deceased person's health and habits, and the quality of the deceased person's relationships with surviving beneficiaries. Many times using an experienced and

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competent mental health expert (e.g., therapist, psychologist, psychiatrist, counselor, etc.) can help establish and prove the “intangible” loss suffered by a surviving spouse, parent, child or sibling. Not the least important is to hire an experienced wrongful death lawyer to pursue the case. The wrongful death lawyer will usually possess valuable knowledge and expertise to assist in proving and presenting damages to the insurance company or jury if the case goes to trial.

Clearly the death of a loved one is tragic. An unexpected death in the family can be the most difficult experience to encounter in one’s life. But if you are a surviving relative of a person who was killed due to the intentional and/or negligent conduct of another party, it is important that you hire legal representation as soon as possible. A Personal Representative must be chosen and then formally appointed by the court. In many cases the insurance company investigators and lawyers have already gathered a substantial amount of information to help mount a defense to the anticipated wrongful death action that will be filed. If you delay hiring a lawyer, it could cause substantial difficulties later on, especially if evidence is lost, destroyed or misplaced.

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