

The Essential Guide To Wrongful Death Law in Washington State



Wrongful Death

In Washington State



Christopher M. Davis
Attorney at Law

Dedication & Acknowledgement

This book is dedicated to my family and especially to my wife,
Anne Mischelle.

I would also like to dedicate this book to all of the family members
who have experienced the wrongful death of a loved one. No one
should ever have to experience such a tragic loss. I applaud the
courage these individuals show as they re-build their lives every day.

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For information or permissions, please contact:
Davis Law Group, P.S.
2101 Fourth Avenue, Suite 630
Seattle, WA 98121
Phone: (206) 727-4000

Reviews

Read what other lawyers across the country and in Canada are saying about ‘Wrongful Death in Washington State’ by Christopher Davis...

“Although I practice law in Florida, I have relatives who live in Seattle. So I’m familiar with Washington’s complicated wrongful death laws. Chris Davis’ new book is a valuable resource for grieving families who are dealing with the tragic aftermath of a wrongful death. The book is an easy read, and discusses the issues and problems that commonly arise in wrongful death claims. No family member should hire an attorney or speak to an insurance company about a wrongful death claim in Washington State until after reading this book.”

~ **Nancy Cavey**, Cavey & Barrett, Florida

“Seattle attorney Chris Davis’ new book about wrongful death law in Washington State should be read by every family that is dealing with the tragic aftermath of losing a loved one due to someone else’s wrongful conduct. The book handles a very painful and devastating experience with sensitivity and compassion, and with the goal of teaching family members about the complicated intricacies and nuances associated with wrongful death law. The book deserves my highest recommendation.”

~ **Brenda Hollingsworth**, Auger Hollingsworth, Ottawa, Canada

“Chris Davis has hit another homerun with “The Washington Wrongful Death Book.” This is an invaluable guide to anyone who has to deal with the death of a loved one due a tragic accident. Davis not only explains the law but gives no nonsense advice on how to deal with other issues that might arise such as school issues for children who have loss a parent, probate issues and health insurance. There is not one stone that is left unturned. Before you speak to an insurance adjuster or an attorney do yourself a favor and read this invaluable guide.

~ **Mike Schafer**, Schafer Law Firm, Louisville, Kentucky

“Kudos to Seattle lawyer Chris Davis for his new book, “The Washington Wrongful Death Book.” In his book, Mr. Davis explains in plain English how the Washington wrongful death laws help families seek justice and recover fair compensation after a loved has been killed in an accident or due to medical malpractice. Family members can read this book in privacy and discuss important issues among themselves before they even contact a lawyer. It is no wonder why Mr. Davis is admired by jurors and highly respected by the local and national media. His ability to communicate with sincerity, respect and compassion are apparent to anyone who reads his book.”

~ **Lawrence Buckfire, Esq.**, Buckfire & Buckfire, Michigan

“Where can someone turn after tragedy strikes? Is hiring a lawyer even the right decision? What lawyer should they hire? And what about just trying to get real information from an top-flight wrongful death lawyer, instead of a sales pitch? Fortunately, Washington State has an answer to these questions and more in the fantastic resource, “Wrongful Death in Washington State.” Written by nationally-known personal injury and wrongful death attorney Chris Davis, this book answers questions that every family needs answered before embarking on the journey to hire an attorney to help them with a wrongful death action. I commend Mr. Davis for writing this book. Far too many top-level injury lawyers act as salespeople, hiding valuable information from the public. Mr. Davis does what the best lawyers should do: provide real life answers and information about the complexities of Washington State’s wrongful death laws. Fantastic attorney, invaluable resource . . . a must read to those in need!”

~ **Mark Breyer, Esq.**, Breyer Law Offices, Phoenix, AZ

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Introduction

Losing a loved one is a devastating experience. When a family member's life is suddenly cut short as a result of the carelessness or negligence of another, the grief and feelings of loss can be overwhelming. If this has happened in your family, you may be going through a complex array of emotions, including sadness, denial, anger, and hopelessness. No one is ever prepared for such a tragic event. I understand that my words of sympathy and encouragement may mean very little to you during such a difficult time. However, if you are reading this book because you lost a loved one due to an accident or medical error, please accept my very sincere condolences.

As you read this book, you will learn that Washington law gives certain family members and survivors a right to hold the wrongdoers accountable, including the right to recover fair and reasonable compensation for their loss. Of course, no amount of money will ever make up for the loss of a family member. Even so, our civil justice system recognizes that a wrongful death can impose severe emotional and financial consequences on the surviving family members, and therefore the recovery of monetary compensation may be the only way to achieve justice.

Wrongful death claims are complicated and are often very expensive to pursue. They require a thorough understanding of Washington's complex wrongful death statute, the laws of probate and estates, and the case law decisions that have developed for these types of claims over many years. The expense of a wrongful death case can also be quite high. Many times wrongful death cases require expert testimony in many different fields of study. It may be necessary to hire numerous experts to prove various elements in the case and/or to improve the likelihood of a successful outcome. For these reasons, you will want an attorney who is experienced in handling wrongful death cases and who also has sufficient resources to pursue the case all the way to trial, if necessary.

Wrongful death cases also receive special attention from insurance companies. Usually, the most highly experienced and trained adjuster is assigned to the wrongful death case in an effort to either completely avoid responsibility for

the death, or to minimize the amount of compensation that the carrier must pay to resolve the claim. Dealing with a trained insurance adjustor without the guidance of an experienced wrongful death attorney is not a level playing field. If you are now dealing with the aftermath of losing a loved one, then you may be suddenly faced with problems that require immediate attention, like:

- The need to arrange and pay for a funeral
- Starting a probate action and/or hiring a reputable probate and estate lawyer
- Addressing claims by healthcare providers to pay medical bills
- Making sure there is enough income to take care of basic living expenses for surviving family members
- If there are children, making sure the needs of each child are being met
- If life insurance exists, then meeting the claim requirements of the carrier
- Addressing the legal repercussions of a wrongful death claim that may exist

I wrote this book to give surviving family members some level of comfort when dealing with the sudden loss of a loved one and to help them determine whether a wrongful death case may, in fact, exist. This book will help you understand the issues you may be facing. If you are considering hiring a lawyer, then this book will also help you begin thinking about that decision now so that you may select the best lawyer for your wrongful death case.

—**Christopher M. Davis**, November 2009

Disclaimer

The information in this book is just that: INFORMATION. This book does not constitute legal advice, and no attorney-client relationship has been formed by receiving and reading this book. Although the author is a licensed attorney in good standing in the state of Washington, Mr. Davis is not the reader's attorney absent a signed retainer agreement, as required by Washington State's attorney ethics rules.

A wrongful death or survival action is one of the more complex types of cases in the field of personal injury law. These cases require a thorough knowledge and understanding of Washington's complex wrongful death and survival laws and the numerous appellate decisions that interpret and define them. These cases almost always involve complex legal issues or questions where the outcomes are heavily, if not completely, influenced by the individual facts of the case. In most cases, a wrongful death action requires urgent investigation and preparation to increase the chances of a favorable outcome. Furthermore, this type of case often requires a substantial outlay of financial resources (many times exceeding six figures) to hire appropriate experts, properly prepare and successfully present the case either to an insurance company or a jury.

Given these factors, a person who wishes to pursue a wrongful death and/or survival action should immediately consult with experienced legal counsel for specific legal advice. Anyone who wishes to consult with Mr. Davis about a specific case may reach him using the contact information at the back of this book, or by visiting DavisLawGroupSeattle.com.

Chapter One

Basic Facts About Wrongful Death Cases in Washington

What is a Wrongful Death?

A wrongful death is one that is caused by the negligence or wrongful act of another. A wrongful death case refers to the type of claim that may be brought on behalf of certain surviving relatives to recover compensation against the party responsible for causing that death. Specifically, Washington law defines this cause of action as the death of a person “caused by the wrongful act, neglect, or default of another.”¹

A wrongful death occurs when a person dies as a result of the wrongful or unlawful conduct of another person or entity. The wrongful conduct can be intentional (e.g., assault or murder) or unintentional (e.g. carelessness, negligence or malpractice). Of course, an individual person can cause a wrongful death. But a nonperson, like a corporation or governmental entity, can also be legally responsible for a wrongful death. For instance, if a person causes another’s death while on the job, this may give rise to a wrongful death claim against that person’s employer as well.

When a wrongful death occurs, Washington law states that only certain designated surviving relatives may pursue a cause of action against the responsible party. If these relatives do not exist, a wrongful death action may be pursued only on behalf of the estate (but the damages which may be recovered are limited). This will be explained further in the chapters that follow.

Establishing Negligence

To understand a wrongful death claim, you must also understand the principle of negligence. Most wrongful death claims are based on the

1

See Revised Code of Washington (RCW) 4.20.010.

wrongful act of negligence committed by the responsible party. The term “negligence” is simply defined as “the failure to exercise ordinary care under the same or similar circumstances.”² Thus, to prove a wrongful death claim, you must show that the person who caused the death was acting careless in some way.

Sometimes, it can be fairly easy to determine whether a person was negligent and that the negligent conduct caused another person’s death. For example, many wrongful death cases involve automobile accidents. A driver who causes another person’s death by violating a traffic law (e.g., running a stop sign or crossing the center line) is negligent for being careless in that specific situation. As a result, a wrongful death claim may be pursued against that driver because his negligence caused the death of another person.

Sometimes, it can be more difficult to determine whether someone’s death was caused by negligence. For instance, in a medical negligence case, the question of whether a physician acted carelessly may be more complex and difficult to determine. In this type of case, the law usually requires that another physician give an expert opinion about whether negligence has occurred.

It is important to note that a finding of negligence against the wrongdoer is just one element that must be met before a wrongful death case may be successful. Other requirements may include the existence of a proper wrongful death beneficiary (e.g., a designated surviving relative like a spouse or child) and that certain damages have been incurred.

2 See Washington Civil Pattern Instruction (WPI) No. 10.01.

Civil vs. Criminal Responsibility

There is a distinction regarding civil and criminal liability for a wrongful death. A **civil claim** for wrongful death will only involve the recovery of money or compensation against the responsible wrongdoer. Most of the time, a civil wrongful death claim is pursued and defended by private parties (also called litigants). Usually, the party who is accused of causing the wrongful death is defended by a private insurance company. In a civil claim, a primary issue is determining what amount of money or damages must be paid by the wrongdoer (or the wrongdoer's insurance company) to fairly compensate the estate and surviving relatives. In a civil case, the wrongdoer will only be required to pay financial compensation (i.e., damages) to certain designated surviving family members.

A person who causes a wrongful death may be **criminally responsible** as well. For this to occur, the wrongdoer's conduct must be worse than ordinary negligence. Usually, the wrongdoer must act intentionally or recklessly to be guilty of a crime. If criminal liability exists, the wrongdoer is punished with jail time and/or fines.

It is important to keep in mind that negligence is defined simply as "the failure to exercise ordinary care." A crime only occurs if the wrongful death was caused by conduct rising beyond simple carelessness. For instance, a drunk driver who kills another person will also be subject to criminal prosecution because this act has been defined in Washington as constituting reckless conduct (i.e., the willful and wanton disregard for a person's safety).

It is also important to note that a party who causes the wrongful death of another person may be subject to both **civil liability** and **criminal responsibility**. The two classifications are not mutually exclusive. However, a wrongful death caused by the intentional conduct of the perpetrator (e.g., assault or murder) is usually not the type of conduct that will be covered by an insurance policy. Most, if not all, insurance policies will only pay damages caused by conduct that is

considered negligent and sometimes reckless, but never intentional. So although a wrongful death claim may be brought against a person who intentionally kills another, the claim may not be worth pursuing because there is no insurance policy to pay a settlement or verdict. An exception to this might be if the intentional wrongdoer is very wealthy.

The O.J. Simpson case is an example in which the alleged wrongdoer was subject to both criminal prosecution and civil liability for the death of Nicole Brown and Ron Goldman. Although Mr. Simpson escaped criminal responsibility (he was found not guilty), he was subject to civil liability after another jury assessed damages against him of more than \$30 million. Presumably, a civil wrongful death case was brought against O.J. Simpson because he had substantial financial resources to pay a large verdict.

The Time to File a Case is Limited

There are strict time limits on when a wrongful death case may be filed or pursued. This time limit is called the Statute of Limitations. In Washington State, the Statute of Limitations is usually three (3) years from the date of death. This means that the case must either be settled or filed in court within this time or the claim is no longer valid.

Not only is it a dangerous practice to wait until the end of the three-year period before filing suit or settling the claim, but most wrongful death cases should be investigated immediately following the person's death. Given the potential size and complexity of this type of case, the insurance company will almost always mount an immediate investigation and aggressive defense of the claim. You certainly want to be prepared for this. You also want to promptly gather evidence to make sure the claim is preserved. This may include gathering witness statements, performing an accident reconstruction, obtaining a private autopsy, and hiring experts, if necessary. In many cases, a prompt investigation can dramatically increase the likelihood of a successful outcome in a wrongful death case.

Although most wrongful death claims must be filed in court within three (3) years of the date of death, this time period may be shorter in certain situations. For example, if the death was caused by negligence that pre-dated the person's death (i.e., the person was injured and then survived for a period of time before dying) then a case may need to be filed within three (3) years from the date that the negligence was committed. Again, you should immediately consult with an experienced attorney to learn whether a shorter time limit may apply to the case.

Wrongful Death Claims Against the Government

If the wrongful death case arises from a possible claim against a governmental entity like a town, municipality, county, or the state of Washington, then certain requirements must first be met. This situation often arises if the death was caused by a governmental employee while that employee was acting within the scope of the job. For example, if a city or county worker causes a car accident that leads to another person's death, then a wrongful death case will likely exist against the government (the employer) in addition to the claim against the worker.

With claims against a Washington governmental entity, a separate claim form must be properly completed and served BEFORE a lawsuit can be filed. Failure to follow these steps could result in the case being dismissed. This subject is covered in more detail in the chapter discussing the legal process for wrongful death claims.

Basic Facts Worksheet: Do You Have a Case?

Before you can know whether you have a case or not, you will need to speak with an experienced attorney. You may even wish to talk with more than one attorney before deciding who will represent you if you do indeed have a case. This worksheet is designed to help you gather your thoughts and key information so that discussions with an attorney are efficient and informative.

Do you have a case?

Did the wrongful death occur within the statute of limitations? (3 years)

What are the basic details surrounding the wrongful death claim you are looking to bring? (date, location, circumstances, etc.)

Who is the party or entity that may have been negligent in the wrongful death action you're considering?

Based on what you read in chapter 1, does there appear to be civil responsibility in this case? Against whom?

Based on what you read in chapter 1, does there also appear to be criminal responsibility in this case? Against whom?

Based on what you read in chapter 1, is there a possible case against a government entity?

Chapter Two

Planning a Funeral After an Unexpected Death

There is no easy way to plan the funeral of a loved one after an accident. You are likely feeling emotionally drained, physically exhausted, and over-stressed as you approach the memorial plans. When the death of a loved one is anticipated because of illness or old age, funeral plans have often been made or discussed beforehand and the family members may have had time to prepare themselves for the loss. If preparations like these have already taken place or if you have some idea of how your loved one wanted his/her funeral to be conducted, it is obviously much easier to put the funeral together quickly.

This chapter will offer some guidance for planning a funeral to honor someone you have lost, especially if the person was killed in an unexpected fatal accident.

Steps to Take Immediately After the Death

There are certain steps to take immediately after the death of your loved one. They include:

1. Pronouncing the Death. As soon as someone passes away, the death needs to be pronounced by a professional. This normally means that you must call 911 or a coroner's office so that a medical professional can confirm the death and make it official. If the death results from a car accident or another serious accident, the deceased has either been pronounced at the scene or later at the hospital. For many unexpected deaths caused by accidents you don't need to call 911 or the coroner's office because medical professionals will be on staff and able to pronounce the death immediately.

2. Deciding About Embalming. Within the first few hours of death you need to decide if you want your loved one's body to be embalmed. Embalming is a process designed to preserve the body. If you embalm,

you give yourself the option of having an open casket funeral and prolonging the funeral process, since the body will not have to be buried or cremated right away. It may make sense to choose embalming if the family wants more time to plan for a funeral or if an open casket is preferred.

3. Selecting a Funeral Home. You will need to call a crematorium or a funeral home to come and pick up your loved one's body from the hospital or place of death. The funeral home will usually make the necessary arrangements for transportation. If the death was unexpected, then you may not have identified a funeral home that you prefer to use, so you will need to select one. Most churches, synagogues or other places of worship have a member or parishioner responsible for assisting with funeral planning, so this is an excellent place to start. Many funeral homes also have web pages now and most are listed in the yellow pages. By taking a look at the various funeral home websites, you can get a feel for the home. If possible, consider selecting a funeral home close to your loved one's community so that it is easier for mourners who wish to attend the service.

4. Notifying Friends and Family. As soon as possible, you or other family members should start contacting people to make them aware of the loss. If you are an immediate family member like the spouse, parent, sibling or child of the deceased, you may want to contact a close friend or other family member to make most of the calls. Consider making the calls after you have made plans for the funeral so that you can let people know the location, date and time of the services.

As you begin making arrangements for the funeral or memorial service, you will want to think about what your loved one would have wanted. Where there has been an unexpected death resulting from an accident, the victim may not have made his or her wishes known. It may also mean that you have never talked about a memorial service. If this is the case, it will be up to you to make the arrangements according to what you think your loved one would want.

To plan a meaningful service, think of things that most characterized your loved one: his/her favorite activities; favorite flowers; meaningful songs, hymns, or poems, etc. Once you have made note of your thoughts about your loved one's personality and activities in life, it will become easier for you to choose some details over others for the funeral.

The Funeral

Funerals are probably the most popular of all the memorial options, as they are the most traditional type of service. There is no one set way to have a funeral – how you proceed depends on your loved one's religious affiliation, age, and personality. For example, for a child's funeral service, the parents will often choose to have a more uplifting service and will choose to decorate the area with balloons, flowers, and stuffed animals. Many parents also choose to have their child's favorite stories and songs read and sung at the service.

A funeral usually will include prayers or blessings and are often directed by a priest, rabbi, or other spiritual leader. They are usually held in a church, synagogue, or in the chapel of a funeral home. If the deceased was not religious, prayers and blessings can be replaced by singing favorite songs and/or reading favorite poems or passages. You can pick how you want the service to proceed. Just discuss your choices with the funeral director to ensure that the service will go as smoothly as possible.

Your funeral director will be your key resource during the funeral planning process. There is at least one funeral director at every funeral home and he or she will work very closely with you throughout all of the arrangements. How closely you work with your funeral director and the amount of organizing the director does for you will depend on your needs. For example, if you need help writing the obituary, a good funeral director will help you with that and will also distribute the obituary to the newspapers of your choice.

The funeral director should explain the funeral planning process, discuss

which tasks he/she can perform on your behalf, and help you complete all the steps necessary to complete the preparations. The funeral home will also coordinate transportation of your loved one's body from the funeral home to the place of worship for the funeral and then to the place of burial. Remember that, in most situations, the amount you will be charged will vary according to what the funeral director does on your behalf and the type of work the funeral home does as part of the preparation and funeral service.

The planning phase of the funeral will likely take a few hours. You simply go into the funeral home, meet with the director and discuss the necessary details. If you or family members are unable to go into the funeral home, the director may be able to come to you. It is also a good idea to have the personal representative or executor of the estate present at this meeting to sign all of the necessary paperwork. If no personal representative or executor exists, then an immediate family member like a spouse, parent, or adult child should suffice.

Here are a few things you need when you meet with the funeral director:

- The clothes you want your loved one to wear in the casket. Make sure you bring a full set of clothing, undergarments included. Shoes are not entirely necessary but will be used if you decide to bring them with you.
- A rough copy of the deceased's life history, including the names of living relatives, spouse and the places your loved one lived.
- The names of the deceased's parents, including mother's maiden name.
- The deceased's social insurance number. This is needed in order to register the death and make it official.

In addition to coordinating funeral arrangements, the funeral home may also offer additional products and/or services. For instance, the funeral home will have caskets on hand for you to purchase or rent. The cost of a casket will vary tremendously. Keep in mind that often, only the most expensive models are on display at the home. Do not be afraid to ask the funeral director if there are less expensive models you can consider. Many people who are planning a funeral on a budget consider renting a casket for the funerals and viewing, and then buying specially-constructed wooden boxes for the burial.

The funeral home will also likely offer you other basic products that you can personalize according to your loved one's characteristics. For example, they will likely have different layouts and patterns for service programs and memorial cards. They may also have boards that you can use to display family pictures or other memorabilia. Some homes now offer a service where family photos can be scanned to a CD and displayed as part of a computerized presentation program.

The Wake or Viewing

In many faiths, a wake or a viewing is held either a couple of days before the funeral, the day before the funeral, and sometimes immediately before the funeral. A wake gives family and friends of the deceased a chance to pay their final respects and say goodbye. During a wake or viewing, the casket is usually present. It may be open or closed, depending on the wishes of the immediate family members. You will need to coordinate the day and time of the viewing with the funeral director.

In terms of preparing the room for the wake, you do not have to do much at all. The staff at the funeral home will be open to suggestion on placement of the casket and flowers, but often they have helpful suggestions on how best to prepare the room for the wake. Generally, when people send flowers after a death they will send them directly to the funeral home or the church. This means that you will not have to move or transport the flowers. All you have to do is let the director know where you want them in the room.

The wake can be as long or as short of a period you want it to be. Some families may choose to have a viewing two nights in a row and others may want just one viewing. The viewing or wake can be anywhere from a couple of hours to all day, depending on the wishes of the family members.

The Memorial Service

Some people may want to choose a less formal memorial service to commemorate their loved one. Most memorial services usually take place after the body has been buried or cremated. If you choose a memorial service as the main way to remember your loved one, you will still need to work with a funeral home or crematorium in relation to your loved one's remains. However, the memorial service itself is different.

A memorial service can be held anywhere. Many people have chosen to conduct a memorial service at a favorite place of the deceased. This can include a favorite park, a family home, church, synagogue, or even a restaurant.

If a memorial service is held outside of funeral home you may not have access to the services of a funeral home director. This means a memorial service may require more work by you or other family members. For some relatives, this may add more (and unnecessary) stress to a process that is already overwhelming. If you want to hold a memorial service, you may then want to hire an professional event planner, especially if the memorial will be more elaborate. Choose someone who is qualified and experienced with planning and conducting a memorial service. If hiring a planner isn't in your budget or doesn't appeal to you, you may try contacting a few locations you have in mind to see if you can hold the service at those spots. Simplifying the service and tasks will make planning on your own much easier.

The Jewish Shiva

Many towns and cities have dedicated Jewish funeral homes. If not, it is a good idea to contact your loved one's synagogue for advice on where to hold the funeral itself. In accordance with Jewish custom, the burial usually happens within 24 hours of the death, meaning that embalming the body may not be necessary.

If your loved one was Jewish, you will likely plan a Shiva. Shiva is one of the most prominent customs for bereavement in Judaism. While traditional Orthodox Shivas last for seven days, your family's observance and that of your loved one will dictate how long the Shiva will be and which customs you will observe during this time. Regardless of your faith, consulting a trusted Rabbi is the best course of action, as customs for Shiva vary.

Muslim Burial Customs

If your loved one was Muslim, your local mosque can assist you in planning the memorial. Many larger cities have funeral facilities to accommodate Muslim funeral practices described below. In the Muslim tradition, bodies are buried as soon as possible after the death. They are not cremated. Almost immediately after the death, the body of the lost loved one must be washed. This usually occurs within hours of death. The people washing the body are typically of the same gender and are usually immediate family members. This process is meant to clean the body before it is buried.

Following cleansing, the body is "enshrined." Enshrining the body involves wrapping it in a plain cloth. The purpose of the wrapping is to protect the dignity and privacy of your loved one. The way the shroud is placed on the body or its color can vary. It is important that the shroud not be flashy – it is meant to be modest and simple. Once the body has been enshrined, a prayer called the *Salat al-Janazah* ensues. The *Janazah* prayer communicates the collective prayer of forgiveness for the dead.

After the prayer, the deceased is buried. The burial consists of placing the body into an open grave. There is often no casket and the burial site is either unmarked or marked by a simple indicator. Three balls of soil are used to prop the body: one under the head, one under the chin and one under the shoulders. Those present at the service each put three handfuls of soil on top of the body. Once this is complete, prayers of forgiveness are recited. The body is then fully covered in soil by the people who dug the grave. Lastly, one more collective prayer is recited for forgiveness of the deceased.

The Muslim burial is typically followed by a three-day mourning period. During this time, no decorative clothing is to be worn. The mourning period is also characterized by many visitors to the home of the primary grievers, namely spouses or other immediate family.

The Reception

In many traditions, after a funeral or memorial service takes place there is usually a reception. You can choose to have the reception anywhere you want. Most people tend to have receptions at their home, the home of the deceased or in the funeral home or church where the service took place. You may choose to have the reception catered, but keep in mind that you don't need to provide an entire meal for the guests at the reception. Some small items like appetizers and refreshments are typical.

If you have the reception catered, the employees of the catering company will set up the food area at the reception for you. The funeral home or church should take care of setting up tables and chairs and the caterers will take care of the food and usually the dishes and utensils.

If you decide to have the reception in your home or the home of the deceased, you will be able to organize the reception area as you see fit. You still have the option of having the event catered. If you get the caterers to come to your home you can direct them, tell them what you want and leave the rest up to the catering staff.

Necessary Paperwork and Notifications

After the funeral or memorial service, you will want to be sure you get the death certificate. Your funeral director will help you with the death certificate, as it is often sent directly to the funeral home and then given to the immediate family after the service.

Once you have the death certificate, you can begin notifying government agencies and other organizations that need to be aware of your loved one's death. If a probate action has been or will be started, then the probate attorney will usually take care of this for you.

For example, you or the probate attorney will need to contact all of the deceased's creditors, including utility/cable companies and mortgage lenders. The deceased's doctors, dentists, and pharmacists should also be notified. It is also important that your loved one's bank is notified so that arrangements can be made for bank accounts, mutual funds, investments, and safety deposit boxes. Again, the process of notifying creditors is usually handled during the probate process, but if the deceased's estate is not subject to probate, then all creditors should be notified by the deceased's executor or immediate family members.

Delegate, Delegate, Delegate

Regardless of the format of the funeral and/or memorial you plan for your loved one, delegating tasks to those around you will be extremely important. After an unexpected death or accident, people who were close to the deceased are often very willing to help surviving family members during the period of stress and grief. Do not be shy about reaching out to others for help. You can delegate the obituary writing and distribution to someone you know and trust and who knew the deceased well. If you choose to go this route, be sure you read the obituary first to make sure all appropriate family members are mentioned, that their names are spelled properly, and that facts and dates are correct. You could also delegate the task of informing everyone of the location and time of the service.

An unexpected death is extremely difficult to handle without thinking about the funeral and planning involved. When you start to think about planning a funeral with little or no previous preparation, it can seem like a daunting, stressful, and draining task. Take the process one step at a time. Keep in mind the resources you have at your disposal and try not to do it all yourself. Take your time and weigh your options according to what your loved one would have wanted for their service, and be sure to ask for help if you need it.

Funeral Planning To Do List

1. Pronouncing the Death.

2. Deciding About Embalming.

3. Selecting a Funeral Home.

4. Notifying Friends and Family.

Paperwork Checklist

___ Get copy of death certificate

___ Notify government agencies

___ Notify creditors, utilities

___ Notify bank

Funeral Planning Notes

FUNERAL PLANNING NOTES:

WAKE / RECEPTION PLANNING NOTES:

MEMORIAL SERVICE NOTES:

Chapter Three

Overview of Washington State’s Wrongful Death Laws

The state of Washington has two main statutes that govern wrongful death actions. There is a general wrongful death statute³ and one that specifically applies to a parent’s cause of action for the death of a child.⁴ In addition, there are statutes that address survival actions (e.g., to recover those damages the deceased could have claimed had the deceased survived).⁵ To some extent, these laws may overlap, particularly when a cause of action may include facts to support different theories of liability and different elements of damages.⁶ This chapter will address Washington’s general wrongful death statutes.

Under Washington’s general wrongful death statutes, an action may be brought on behalf of the deceased’s estate and for the benefit of certain designated surviving relatives, also called “statutory beneficiaries” (because they are designated by the wrongful death statute). If there are no designated statutory beneficiaries, then the deceased person’s estate may pursue a claim in limited circumstances but only certain economic damages are recoverable (e.g., future lost earnings, medical expenses, etc.).

Two-Tiered System of Wrongful Death Beneficiaries

The Washington legislature created what is called a “two-tiered” system of beneficiaries who may recover damages for the wrongful death of a person. This means that there are two levels of certain designated surviving relatives that have legal authority to recover damages caused

3 See RCW 4.20.010 and RCW 4.20.020.

4 See RCW 4.24.010.

5 See RCW 4.20.046 and RCW 4.20.060. A discussion on survival actions is covered in a subsequent chapter.

6 See 6 Washington Pattern Jury Instructions (4th Ed.), Chapter 31 (2002).

by the death of a loved one. In the first tier, the wrongful death action is brought for the benefit of the deceased's surviving spouse, registered domestic partner, and/or children or stepchildren.⁷ If these survivors do not exist (i.e., the deceased was single and without children), then the claim may be brought on behalf of second-tier beneficiaries. (See below for examples of second-tier beneficiaries.) If both first-tier and second-tier beneficiaries exist, then the wrongful death action is limited for the benefit of first-tier beneficiaries only.⁸

In the case of a surviving spouse, that spouse must have been legally married to the deceased at the time of death.⁹ Historically, this meant that a surviving cohabitant or domestic partner could not recover damages for the wrongful death of a live-in partner. However, the wrongful death statute was recently amended to allow a surviving domestic partner to maintain a cause of action if the domestic partnership was registered with the state of Washington before the date of death.

The second-tier of wrongful death beneficiaries include surviving parents or siblings, but only if they were financially dependent on the deceased for support at the time of death. The Washington courts have determined that a surviving parent or sister/brother may only recover compensation if they were *substantially dependent* on the deceased for support.¹⁰ This means that unless the single and childless deceased was supporting a parent or sibling at the time of his or her death then no recovery can be made by any surviving relative.

7 RCW 4.20.060. The statute was recently amended in 2007 by allowing a wrongful death action on behalf of a surviving "state registered domestic partner."

8 See *Tait v. Wahl*, 97 Wn.App. 765, 987 P.2d 127 (1999).

9 See *Roe v. Ludtke Trucking Inc.*, 46 Wn.App. 816, 732 P.2d 1021 (1987).

10 See *Armantrout v. Carlson*, 141 Wn.App. 716, 170 P.3d 1218 (2007).

The courts have also stated that the surviving parent or sibling need not be wholly or completely dependent on the deceased. Partial dependence has been deemed sufficient.¹¹ 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.¹²

In the case of second-tier beneficiaries, the question of what constitutes substantial financial dependence on the deceased is a factual issue. There are no hard and fast rules here, but usually substantial financial dependence may occur when the deceased was paying or contributing to a portion of the parent’s or sibling’s living expenses. However, the courts have stated that certain services provided by the deceased that one would expect to be provided by a family member **may not** be enough to show substantial financial dependence. This might include contributing to a common household where all family members reside. The courts have also held that “emotional” dependence is not enough, either.¹³ 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.

Unjust Results

Washington’s wrongful death statute can produce some very unjust results. For example, take the situation in which the person wrongfully killed is an adult who is unmarried and has no children. Even if the deceased had a close and loving relationship with his/her parents and siblings, the family could not recover damages in a wrongful death action unless they were also financially dependent on the deceased. It is

11 See *Mitchell v. Rice*, 183 Wash. 402, 48 P.2d 949 (1935).

12 One exception to the “financial dependence” requirement is when the decedent is a minor child. In that situation, the surviving parents may bring a wrongful death action for the destruction of the parent-child relationship. However, to recover damages the parent must show that he or she contributed to the financial support of the child. This is discussed in a later chapter.

13 See *Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004).

safe to assume that the majority of single adults without children do not financially support other family members. So when a wrongful death occurs in this type of situation, no recovery can be made on behalf of the surviving relatives, no matter how egregious the conduct that led to the person's death. Even so, the death of an unmarried person with no children is no less painful or devastating to a surviving parent or sibling not receiving financial support than it is to a parent or sibling who was being supported by the deceased.

Action Brought by Personal Representative

To bring a wrongful death case, a person called a "Personal Representative" (PR) must first be appointed by the court on behalf of the deceased person's estate. The PR is the only person who can file and prosecute a wrongful death action. A separate document (called a petition) must be filed in court which asks the judge to specifically appoint the PR. Often times, the PR may also be a wrongful death beneficiary, like a surviving spouse or adult child. If the court accepts the person designated as the PR, then an order is entered giving that person all of the rights and obligations that come with this position.

If a potential wrongful death claim exists, then family members should promptly arrange to meet and/or hire an experienced wrongful death attorney so that the process to appoint a PR can begin immediately. Since it can take weeks or months for a court to appoint the PR, the process may delay when a separate wrongful death lawsuit may be filed and prosecuted against the responsible wrongdoers.

You should know that the PR has certain duties to the estate and surviving beneficiaries, much like an executor or executrix in other states. The courts have stated that the PR is merely a statutory agent or trustee who acts in favor of the designated beneficiaries.¹⁴ Also, the PR does not recover compensation or damages in the wrongful death action, unless the PR is also a wrongful death beneficiary. In some cases,

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See *Gray v. Goodson*, 61 Wn.2d 319, 378 P.2d 413 (1963).

the PR may be permitted to recover a fee for the amount of time spent devoted to litigating the case, responding to discovery requests, etc.

Since the PR is the only person authorized to file and prosecute a wrongful death claim, one of the first things to do may be to get the PR appointed by the court so a lawsuit can be filed promptly. If someone other than the PR files the wrongful death lawsuit the court will dismiss the action if requested by the defendant. Therefore, it is very important that the parents or other family representatives consult with an experienced attorney to properly file the petition and obtain the order appointing a PR before the wrongful death action is filed.

Children as Wrongful Death Beneficiaries

If the deceased has minor children, then they are considered beneficiaries of the estate and a wrongful death action is pursued on behalf of the children. When minor children are involved, they will have a claim for expected contributions that the deceased parent would have made to them until age 18 – the age of majority in Washington state. For example, contributions for basic living necessities and other expenses like school and/or college are recoverable. Each child also has a monetary claim for the loss of that child's relationship with the deceased parent. This is also called a loss of consortium claim, which encompasses the child's loss of love, protection, guidance, and affection that would have been expected from the deceased parent.

A surviving adult child may also have a claim for the wrongful death of a parent. Unless the adult child was financially dependent on the parent, the claim is usually limited to the child's loss of his or her relationship with the parent. This is a subjective loss, so the value of the claim will depend on the strength of the relationship between the adult child and the deceased parent. Generally, the stronger and closer the relationship, the higher the value of the claim. In most cases, a minor child's claim for the loss of a parent will be much higher than the claim of an adult child. This is because the minor child is usually much more financially and emotionally dependent on the deceased parent so the parent's death

is considered a much more significant and damaging loss to the minor child.

In the case of surviving minor children, the settlement of a wrongful death action must be approved by the court. Washington law requires that all minor claims must be investigated by a person called a Guardian ad Litem (GAL) who then gives a recommendation to the court on whether the settlement is reasonable and should be approved. The court will also decide how the settlement funds will be used and/or invested on behalf of each minor child. The purpose behind this law is to make sure that the minor's interests are being protected and that the child will have access to the settlement funds when the child reaches age 18.

What is a Survival Action?

When a person's death is caused by the negligent act of another person, Washington's survival statutes preserve causes of action that the deceased person could have brought had he or she survived.¹⁵ The purpose of awarding damages under the survival statutes is to remedy the old common law anomaly which only allowed accident victims to sue if they survived an accident but barred the claim if they died. This means that a survival action is a claim for injuries and damages that the deceased suffered prior to death, and which the deceased could have pursued had he/she lived.

An example of a survival action would be where the deceased is injured but does not die immediately from those injuries. This time period between the injury and death may be short (a few hours or a few days), or the period may be much longer (a few months or even years). During this period, the deceased may have incurred more medical bills and other expenses, and may also have experienced ongoing physical pain and mental suffering before death. In a case like this, in addition to a wrongful death claim the deceased's estate may also pursue a survival

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See *Estate of Otani v. Broudy*, 151 Wn.2d 750 (2004).

action to recover these pre-death damages which were caused by the at-fault party's negligence or wrongful act.

Chapter Four

The Pre-Litigation or Claims Process for Wrongful Death Cases

Obviously, losing a loved one in an accident is tragic and there is nothing that can be done to bring the person back. The last thing on your mind during a difficult time like this is the question, “How much should I be compensated for the loss of my loved one’s life?” To many, putting a dollar figure on someone’s life is both impossible and distasteful. Often times, the only justice that can be achieved under the law for such a tragic loss is an award of compensation. In some cases, justice can come in the form of criminal charges filed by the state, but I see many wrongful death cases where the defendant’s conduct is fairly egregious and no criminal charges are ever filed for a variety of reasons. While the award that comes from a wrongful death suit will never bring the loved one back to life, in my work with families pursuing wrongful death claims, I often see that achieving a measure of justice helps families move forward in their grieving process.

Following a wrongful death in Washington, you may have been appointed as the personal representative to handle the estate. Your job may be to look out for the interests of the surviving children and/or the spouse. As the personal representative, you have a legal obligation to represent the best interests of the deceased person’s estate for the benefit of each beneficiary (e.g., child and spouse). This includes the obligation to pursue and/or file a wrongful death case if the facts support such a claim.

If a wrongful death claim does exist, then you are often dealing with the insurance claims process. More often than not, this is a minefield that is likely unfamiliar territory. In order to be successful at fulfilling your legal obligation as a PR, you must take this process very seriously on behalf of the deceased’s estate if you want to secure the family’s financial future.

Once a wrongful death occurs, the insurance claims process usually begins immediately. This means the personal representative and/or surviving family members must take immediate action. This action may include preserving all of the evidence from the accident, hiring experts to inspect any vehicles and/or the accident scene, and obtaining witness statements. Many times, important evidence will be lost if action is not taken immediately. For instance, vehicles may need to be preserved to ensure that important evidence can be examined by experts at a later time. If there is a dispute as to the facts of an accident you will need to make sure that the at-fault party does not destroy any critical evidence or information. The insurance company is looking out for its interest, which makes it very important for you to look out for the interests of the estate and surviving family members. Make no mistake – what the insurance company wants and what is best for the estate and family members are not the same thing.

Although the police may conduct an investigation into a fatal accident, like a motor vehicle accident that causes death, their investigation materials may not be available for a long period of time. The police investigation may not be thorough, or it may not address or include certain issues or questions that may be important or relevant in a subsequent wrongful death case brought by the deceased's family. Sometimes, the police may not document critical evidence because it is not what they are looking for, or because they are focusing on a criminal prosecution and not a civil wrongful death action. The evidence that is important in a civil wrongful death case may not be the same evidence that is important or relevant in a criminal prosecution.

Every available piece of information should be gathered and kept so that it can be reviewed at a later time, either by an expert or an attorney. Experts know what evidence to collect, how to preserve it, and how to evaluate the importance or relevance of that evidence. Procrastination or lack of follow-through is usually the enemy in a wrongful death case because evidence can be lost or destroyed and this may impact the likelihood of a successful result.

The Insurance Claims Process

The insurance claims process and the negotiation and settlement of a wrongful death case may be more difficult than ever due to the current economic environment. In times of an economic recession or a slow economic period, the insurance industry may aggressively resist or defend a wrongful death case to avoid paying out a reasonable settlement or verdict. Like most businesses, insurance companies are tightening their belts and cutting back on costs wherever they can. Unfortunately, one of the primary targets of these cost-cutting measures is **you** – the person who brings a claim. In the case of a wrongful death claim, it is the surviving family members who may be victims of an overzealous insurance company focused on minimizing its exposure and increasing its profits.

The insurance adjuster assigned to your case may try to settle the claim fast and at a relatively low dollar figure before you have a true understanding of the claim and what the claim may be worth. What may seem like a large sum of money can be deceptively low, especially to a family that is facing burial costs, estate settlements, and care for minor children. Sometimes, the adjuster will try to settle quickly in an effort to dissuade you from hiring an attorney. Usually this occurs because the insurance company knows that an experienced wrongful death attorney will likely have better leverage when negotiating a wrongful death case and can recover much more money than the unrepresented family member can ever recover on his or her own.

Unfortunately, I see the flat-out denial of claims in my practice more now than ever. Insurance companies are looking for any reason they can to deny a claim. Sometimes, the insurance adjuster may misrepresent the amount of insurance coverage that may exist. Other times, the insurance company may falsely represent which parties may be legally at fault, and therefore liable for paying monetary damages. Sometimes, the adjuster may give false legal advice about the status of the wrongful death laws or misrepresent the type and/or quantity of damages that may be recoverable. Whatever the reason or method used, the

insurance company cannot be trusted to protect the interests of the surviving family members. No matter how compassionate and caring an insurance company representative may seem, keep in mind that their interest and your interest are not the same.

Filing a Claim

How do you file a claim in a wrongful death case? If the death involves a motor vehicle accident, the very first step is to make a phone call to your insurance agent and let him/her know that a tragic accident has occurred. In most other accident cases you should contact the at-fault party or that party's insurance company. You will want to obtain the claim number from the at-fault party's insurance company. If a claim has not been opened, then you will want to give the carrier some basic information about what occurred. This may include the date and location of the accident and the names of the individuals involved. Most of the information needed initially will be contained in the police report, so you may wish to obtain a copy of the report first before discussing the details of the claim with the at-fault carrier.

You may also wish to delay talking to the insurance adjustor about the specifics of the claim until the initial shock of the accident has worn off. I have seen insurance adjustors use bereavement family member's shock and grief to the advantage of the insurance company. If you are distraught and overwhelmed by the loss of a loved one, you may say or do things that may impact the claim in the future. Statements you make about the deceased or what happened in the accident can be used against you later on if a wrongful death case is filed. Keep in mind that just because an insurance company representative calls you **does not** mean you are obligated to speak with him/her. Your only obligation is to yourself and your family during a difficult time like this.

Speaking With the Insurance Claims Adjustor

By pursuing a wrongful death claim you will likely be interviewed by a claims representative from your own insurance company, or the deceased person's carrier, or the at-fault person's insurance company,

or by all three. You might think the adjustor is trying to help you, especially if it is the adjustor from your insurance company. Keep in mind that this may not be the case at all. Each insurance company adjustor owes their allegiance and concern to his or employer, not to you – the person who is making the claim. Be aware that the interests of the claimant (in this case, you) and the insurance company almost always oppose each other. The claimant wants the carrier to pay as much money as possible to resolve the claim while the insurance company wants to pay out as little as possible. Because these interests often conflict with each other, consider the following recommendations when talking to the claims representative:

Things to DO When Speaking With An Insurance Adjustor

- Prepare for the meeting by speaking with your attorney. Take the time to fully understand the process and make the most of your attorney's expertise and years of experience.
- Before you get started with the interview, write down the name, address and phone number of the insurance adjustor and insurance company.
- Provide your full name, address and telephone number to the adjustor.
- If possible, record the conversation. If you can't record it, take good notes.
- Ask the adjustor if he/she is aware of any witnesses to the accident.

- Tell the truth. It is imperative that you are truthful at all times during the interview. Lying or exaggerating can be harmful to the claim.
- Pause before answering the question. This will give you time to think about the question and the answer you are about to give. Remember: You are not being timed, so proceed slowly and thoughtfully as you answer each question.
- It is okay to answer “I don’t know” or “I don’t understand.”
- Be cordial and treat the adjustor with respect, but be firm and assertive when necessary.
- Answer questions with “yes” or “no” that call for it. Not every answer requires follow-up. Try to avoid “rambling” when answering questions. Often, “yes” or “no” is all you need to say.

Things to AVOID When Speaking With An Insurance Adjustor

- Do not agree to have the conversation recorded by the insurance adjustor unless your attorney is present on the call.
- Insurance adjustors will try to engage you in an informal conversation in an effort to relax you and get as many details about the accident as possible. Be aware of this.
- Do not agree to anything. The call should be about collecting information, NOT about you agreeing to anything.

- DO NOT SIGN ANYTHING. No matter what the insurance adjustor faxes or mails to you, never sign anything. Instead, pass the documents along to your attorney for review.
- During an interview with the adjustor, you are not obligated to identify witnesses.
- Avoid talking in absolutes. In other words, do not give exact distances, times, etc. Always use qualifying words such as “approximately” when describing the details about the accident.
- When you report the accident, give general information. You should speak with your attorney before you give a formal recorded statement.
- Do not argue with or get angry at the adjustor. If you do, you make it much more difficult to obtain a fair settlement of your case.
- Do not guess at the meaning of any question. If you do not understand a question, ask that the question be repeated or clarified. “I don’t know” is usually an adequate answer if you don’t understand the meaning of the question
- Do not volunteer information. Make sure you fully answer the adjustors’ question and then quit speaking. Although it is important to always tell the truth, it is also important not to give more information in your answer than necessary.
- Do not interrupt when the interviewer is asking the question, even if you think you already know the answer.

- Do not answer compound questions with a “yes” or “no” answer.
- Do not allow the adjustor to assume facts that are not true when asking his question. Always correct or clarify any untrue facts.
- Do not use phrases like “In all honesty” or “I would never lie.”
- Do not use words like “always” or “never.”
- Do not give long narrative answers. Short and concise answers are the best.
- Do not use words like “uh-huh” or “mm-hmm.” These can be misinterpreted and change the meaning of your answer.

How Does The Insurance Company Work?

To recover the best settlement, you should know how the insurance company does business. As you already know, the reason any insurance company exists is to make a profit. This is the carrier’s primary goal – to make as much money as possible for its executives and shareholders. In its most simplistic form, the insurance company must take in more money than it pays out. Thus, the insurance company will focus on selling more policies and minimizing its liabilities. Any claim is a liability because it means the insurance company has to pay out money to settle the claim. The insurance adjustor’s job is to settle claims for as little as possible while other people working for the company (e.g., sales people) try to sell more policies. If the adjustor can spot a defense or weakness in your claim, then his or her job is to make sure the defense or weakness is exploited to the fullest extent possible so that any payout will be minimized.

Sometimes an insurance adjustor can actually manufacture a defense or claim in the case. This is done by obtaining favorable statements from you and other witnesses. This could include recovering or eliminating favorable evidence that might help your claim. While the methods used by an insurance company may be ethical, sometimes they are not. I have handled cases where the carrier has deliberately “lost” favorable evidence. Whatever the method used to gather evidence, just remember that the carrier is looking for any way to reduce its payout.

To achieve your goal of recovering a fair and reasonable settlement you must provide the adjustor with strong reasons that it should pay out more to settle the claim rather than less. This may be accomplished by providing the adjustor with certain information or documentation to support your claim. There are certain pieces of information that may be more persuasive than others. How relevant the information is depends on the facts of the case and the status of the law that applies to the claim. Keep in mind that the more persuasive the evidence submitted to support the claim, the higher the likelihood of a more favorable settlement recovery. Having an experienced attorney working in your corner gives you the absolute best chance of securing a favorable outcome in your case.

Insurance Benefits and Coverage Available

There are different types of insurance benefits that may be available to you or other surviving family members if the death of your loved one is caused by a motor vehicle accident. If the deceased had automobile insurance coverage, then these benefits may include:

- **Personal Injury Protection (PIP) / Survivor Benefits**
 - Usually, there is at least \$10,000 worth of coverage that is available for loss of services performed by the deceased. Services lost would include mowing the grass, taking the kids to school, home repairs, etc. The amount of this coverage could be as high as \$35,000 depending on the policy. Washington law states that PIP coverage of \$10,000 must be offered unless

rejected in writing by the insured. If the carrier cannot produce a copy of the insured's written rejection, then PIP coverage must be offered, even if the insured never paid for it.

- **Funeral Benefits** - Available to help cover the cost of the funeral.
- **Uninsured/Underinsured Motorist Benefits (UM/UIM)**
This coverage will apply if the at-fault driver is uninsured, or if the at-fault driver's insurance coverage is insufficient to cover all damages. UIM coverage is a "floating layer" of coverage, meaning that it is coverage in addition to the coverage held by the at-fault driver. Washington law states that UM/UIM coverage must be offered in the same amount as a driver's liability coverage unless rejected in writing. If there are multiple policies then the separate UM/UIM coverage amounts may be stackable. You will need to consult an attorney to make this determination.

There are different types of insurance policies or types of coverage that are held by the at-fault party. These coverage types are extremely important because they will often determine whether a wrongful death case can be successfully pursued.

- **Personal insurance coverage.** You should ask for all policies that covered the at-fault party so you can determine if stacking is available. Do not trust the opinions or statements made by the insurance adjustor about what policies exist or may apply. Get the policies and make your own determination or have an experienced attorney review the policies.
- **Umbrella Policies.** These are insurance policies that apply when additional coverage is needed to cover the value of the loss. An umbrella policy is also called an "excess policy" because it offers additional coverage on top of a primary policy, like an automobile insurance policy.

- **Business Insurance Policies.** As the name implies, these are insurance policies that cover the actions of the business entity and the company employees.
- **Personal and Business Assets of the at-fault party.** You may need to look at the personal and business assets of the at-fault party to determine whether they are sufficient to pay the value of the claim if insurance does not exist. If the at-fault party is a major corporation, then it may be self-insured.

During the claims and pre-litigation process, you will want to evaluate the possibility of any third-party claims. A third-party claim is one that may exist against someone who was not directly involved in the accident that caused the death, but whose actions may be deemed a contributing factor. Examples of third party claims include:

- **Dram Shop Claims** – If a death is caused by an individual who is intoxicated, such as a drunk driver, then liability may be imposed on the establishment that served the alcohol. Contact an attorney to discuss this very technical area of the law.
- **Employer-Employee Relationships** – If the at-fault party was acting within the course of his or her employment when the accident occurred, this may allow for a separate claim against that person's employer.
- **Principal-Agent Relationship** – If the at-fault party was acting to further a business or other relationship, the party receiving the benefit of that relationship (called the principal) may also be liable for the wrongful conduct.
- **Governmental Liability** – Sometimes a claim may also exist against a local municipality or state agency. For instance, if the at-fault party was operating a motor vehicle and there is

evidence to suggest that an unsafe condition of the roadway also contributed to the accident, a claim may exist against the state.

- **Family Car Doctrine** – In Washington, a family member (e.g., parent) may be responsible for the at-fault party’s actions in a fatal car accident case if the vehicle operated by the at-fault person was owned and/or maintained by that family member. This situation most commonly arises when the at-fault driver is a young adult and the vehicle has been purchased and/or is maintained by the parent.

How Claims Are Evaluated

Statistically, more than 95% of all wrongful death claims are settled prior to trial, either during the claims process or during litigation before the trial. A fair and reasonable settlement may be successfully negotiated if your claim is properly documented, presented, and argued to the insurance adjustor. At Davis Law Group we rely on a number of factors when evaluating a wrongful death claim. These factors may include:

1. **The facts of the accident giving rise to the claim.** If the at-fault party’s actions are egregious, then the claim may be valued higher than if the acts only amount to a “simple mistake.”
2. **Identity of the parties.** If the death was caused by the actions of a sympathetic person (e.g., a grandmother), then the claim may be lower than if the death was caused by an unsympathetic party (e.g., a large multinational corporation).
3. **The cause of death is important.** The claim may be worth more if the cause of death is uncontested. Similarly, if there are other explanations or prior medical conditions that may have contributed to the person’s death, the value of the case may be lower.

4. **The number and status of the beneficiaries.** Usually, the value of a wrongful death case is higher when the deceased was married with children. This is because each beneficiary has a right to claim compensation for the loss of the relationship.
5. **Pre-death suffering.** The value of the claim may be higher if the deceased experienced conscious pain and suffering before death. Typically, the longer the period of time experienced, the higher the value of the claim.
6. **Liability defenses.** If the at-fault person can successfully prove that he or she was not at fault or that someone else was at fault, then the value of the claim might be lowered significantly.
7. **Information about the deceased.** If there is damaging or embarrassing information about the deceased person (e.g., the deceased was not a good person, had criminal convictions, etc.), then the value of the claim may be less or could be nonexistent.
8. **Existence or lack of insurance coverage.** There must be enough coverage to pay for all of the damages. If the at-fault driver was uninsured you may recover nothing (assuming you have no additional coverage like UM). If the other driver only had minimal coverage, then this may be all that you receive (unless additional coverage exists).
9. **The experience and reputation of your lawyer.** If you have an experienced lawyer who regularly handles wrongful death claims, then this may increase the value of your claim in the eyes of the insurance company.

There is no magic formula for placing a value on the loss of a human life. Much of the loss, or the amount of damages that are legally recoverable is purely subjective in nature. Often the value of the claim

is heavily influenced by the quality of the relationship between the deceased and the surviving spouse and/or children. Ultimately, the value of any given case is what a jury says it is. No two cases are alike and each one has to be judged on its own merits, given the facts that exist. Nonetheless, because wrongful death cases are incredibly complex and expensive to pursue, you should consult with an experienced attorney to maximize your chances of a successful outcome.

The Settlement Demand Package

When it comes to representing surviving family members in a wrongful death case, Davis Law Group goes to extraordinary lengths to compile and present an effective settlement demand package to the insurance company. We obtain all documents and materials that may relate to the claim and then organize and present it in the most influential and persuasive way possible in an effort to secure the highest settlement recovery. The settlement demand package may include many different types of documents, records and items, including:

- A complete discussion and analysis of the facts of the accident and the wrongful death laws that may apply
- Incident reports or police reports
- Copies of pleadings that are ready to be filed in court in the event that the settlement does not occur (e.g., a complaint, or deposition notice, etc.)
- Photos of the scene of the accident or of the injuries
- Medical records and reports
- Expert reports (e.g., economist, vocational expert, accident reconstruction)
- Video re-enactments and/or computer simulations
- Video testimony from witnesses and/or experts

- Audio recordings
- PowerPoint presentations with case facts
- Day-In-the-Life Videos
- Photos of the deceased and of family members
- Witness statements

By providing a comprehensive and persuasive settlement demand package, you are helping the insurance adjuster build his or her file so that the company can justify paying out a large settlement. Providing a comprehensive and persuasive settlement demand package gives the insurance company a number of reasons for settling the claim immediately and fairly rather than going to court. Keep in mind that an experienced attorney knows how to present the package in an appropriate way so that the information increases the change of a favorable settlement. A “do it yourself” approach to this step could provide the insurance company with information that can help THEIR case.

Should I Settle Or Go To Court?

Your primary goal during the claims process phase of a wrongful death case is to build your case by collecting and evaluating all evidence that can help you secure a fair and reasonable settlement. Together with an experienced attorney, you will prepare your case as if it is going to go to trial. Even an experienced attorney can never know which cases will settle and which will go to trial, so it is important to be prepared to take your case all the way through trial, if necessary. Even so, there are many benefits and advantages to settling a case. These advantages include:

- **Avoiding the risk of trial.** Litigation is risky because juries are unpredictable. It doesn't matter how strong you think the case may be, a jury can always come up with arguments or

reasons to justify a lower verdict, or to side with the insurance company. Going to trial is always going to be a gamble to a certain extent.

- **Avoiding the expense of litigation and trial.** Wrongful death cases are expensive to pursue. A single case can require thousands of dollars and sometimes the expense can easily exceed six figures. Attorney ethics rules require that the expense of litigation must be borne by the client, although the attorney may advance these costs. It is important to keep in mind that most of the expenses can come from hiring a number of experts, paying for depositions, and creating trial exhibits.
- **Achieving final resolution of the claim and gaining peace of mind.** There is a significant emotional toll on family members who have to participate in the litigation of a wrongful death case. These cases also impose time requirements on family members. Various family members may have to take time off work to attend a deposition and/or sit through trial.
- **Avoiding further emotional pain.** It can be difficult for family members to “re-live” the circumstances surrounding the death of their loved one. The litigation experience can delay closure and may bring up painful feelings of grief and sorrow. The grieving process may continue until the wrongful death case has concluded.

The disadvantage to a settlement is that you don't know what the jury would have done. Many times, it comes down to whether or not you want to take a chance at going to trial. At some point, you will have a very candid conversation with your attorney about your expectations

and the estimated value of the case. The pros and cons of litigation and trial must be carefully weighed so that you can make the best decision for your family. Since each wrongful death case is different and may involve different legal questions, your decision must be based on the specific facts involved.

Chapter Five

The Wrongful Death of a Child

Every parent's worst nightmare is suffering the loss of a child. Very few events in life are more tragic than a child's death. That loss may be even more painful when the child dies as a result of another's person's wrongful conduct. Because this book covers the subject of wrongful death, it would be incomplete without addressing the subject of a child's wrongful death. The state of Washington has enacted special laws that address this type of claim.

On the one hand, the thought of a parent asking for compensation for the loss of a child may seem offensive. Clearly, no amount of money will ever bring back the child or make up for such a terrible loss. On the other hand, the law recognizes such a claim and gives a parent a specific "right of redress" against the responsible party. This means that the law provides a remedy for such a tragic loss and that the remedy is measured in terms of financial compensation to be paid to the parents. The recovery of compensation may also play a part in holding the responsible party accountable for the negligence, and may act as a deterrent in the future. For example, if a child dies because of unsafe business practices, a company may change those practices once they have been required by law to compensate the family who suffered the loss. A wrongful death claim may also assist the parents in the grieving process and help begin the family's healing process. This chapter is dedicated to parents who are experiencing the tragic loss of a child. I wrote this section of the book so that if you have lost a child, you can be aware of the specific laws, procedures, and issues that may exist in a case involving the wrongful death of a child.

Washington's Law on the Wrongful Death of a Child

Washington State authorizes a parent to recover damages for the loss of a minor child, as long as the parent has regularly contributed to the support of the child.¹⁶ The requirement that a parent must regularly contribute to the support of the child has been a recent change to the law. This change was made to prevent a parent (oftentimes, the father) who never or rarely supported the child during the child's lifetime from profiting financially from the child's death.

The question of whether the parent regularly contributed to the support of the child is a question of fact. This means that there is no narrow legal definition of what it means to "regularly contribute to the support of the child." This determination will depend on the specific facts of the case. In the end, a judge or jury¹⁷ will weigh the evidence and facts to determine whether a non-custodial parent has proven that he or she supported the child during the child's lifetime.

In the context of the specific wrongful death statute, the term "support" generally means to provide for a child's needs for housing, food, clothing, education and health care. Usually, a non-custodial father who is obligated by a court order to make child support payments can meet this requirement by showing compliance with the order.¹⁸ Presumably, a parent who pays child support every month is one who regularly contributes to the support of a child.

Nonetheless, the question of whether a parent regularly supports a child may not be easily answered in some cases. If a parent is behind in paying his or her child support, would he or she be unable to recover

16 RCW 4.24.010.

17 If neither party has requested a jury by filing a document in court and paying a fee the case will then be decided by the judge.

18 See *Guard v. Jackson*, 83 Wn. App. 325, 921 P.2d 544 (1996), *aff'd*, 132 Wn.2d 660, 940 P.2d 642 (1997).

a settlement? What if the parent pays for some types of support (like food and housing), but not others (like insurance and private school)? In the end, a judge or jury will determine whether the parent's financial support has been adequate enough to justify a damage award.

Unmarried or Separated Parents

Washington's wrongful death law only creates one cause of action, meaning that only one lawsuit is allowed against the party responsible for a child's death. But if the child's parents are not married, or are separated, then damages may be awarded to each parent separately as the jury or judge finds just and equitable. If one parent brings the wrongful death lawsuit, and the other parent is not named in the lawsuit, then the non-named parent is entitled to receive notice of the suit including a copy of the complaint that is filed in court. Notice of the suit must be accomplished by personal service. The requirement of notifying the other parent only applies if that parent's paternity has been established, which is usually accomplished by a court or administrative order.

The notice to the other parent must state that this parent must join as a party to the suit within twenty days or the right to recover damages under this section will be barred. The failure of the other parent to appear in the lawsuit in a timely fashion will bar that parent's right to recover any part of an award made to the parent who has instituted the lawsuit. There may be exceptions, like when one parent is out of the country or in the military. Unfortunately, the language of the statute does not address these types of situations. In any event, the parent who has been properly notified of the lawsuit should act promptly and consult with experienced legal counsel.

Wrongful Death of a Fetus

Washington's wrongful death statute will also apply to an unborn fetus as long as the fetus was "viable."¹⁹ Usually, a viable fetus is one that was

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See *Moen v. Hanson*, 85 Wn.2d 597, 537 P.2d 266 (1975).

healthy and was expected to be born healthy if the death of the fetus not occurred. The wrongful death of that fetus is a recognized cause of action under the statute. What this means is that a child does not have to be physically born before a claim for wrongful death can go forward.

Damages for Wrongful Death of a Child

The damages recoverable for the wrongful death of a child include medical, hospital and medication expense, and the loss of *consortium* (love, companionship, services and support) that the child provided to the parents. The parents are also entitled to recover damages for the loss of financial support that the parents received from the child, up to the time when the child reaches the age of majority. To recover lost financial support, the parents will usually have to show a history of receiving support from the child before that child's death.

The parents may also recover damages for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship. The actual amount recoverable will depend on the facts of each individual case, but will often depend on factors like the age, health, and capacity of the child and the situation of the surviving parents.

Damages for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship may also encompass recovery for the parents' own grief, mental anguish, or suffering caused by the death of their child. These damages may also be reflected in each parent's need for individual expenses caused by the child's death, like the expense of reasonable and necessary psychological treatment, counseling, and medication. Often times, it will be important to present expert psychiatric or psychological testimony to support the parent's claim for these damages.

Damages may also be recovered for the parents' loss of companionship, including the loss of relationship and protection of the deceased child

in an amount that is fair and equitable under the circumstances.

Wrongful Death of Adult Child

The specific statute that permits an action for the wrongful death of a child applies only to minor children - those under the age of 18. If the child is 18 years of age or older, then the general wrongful death statute applies (explained in earlier chapter). A parent may only bring an action for the wrongful death of an adult child if that parent was financially dependent on the child at the time of death. Also, the parent can only maintain the action if the adult child was single and childless. If the adult child died while married or with children, then only those surviving relatives can benefit from the wrongful death case.

Choosing Experienced Counsel

Selecting an attorney in a wrongful death case involving a minor child is very important. The attorney should have experience settling or litigating wrongful death cases to verdict. One challenging aspect of a case involving the wrongful death of a child is proving the amount of damages that the parents and the estate may be entitled to receive. Remember that, the calculation of damages may be problematic if the child's death occurs at a young age and therefore it may be difficult to calculate future lost earnings and the intangible losses sustained by the parents. An experienced and skilled attorney can find very compelling ways to establish these losses so that the insurance company or a jury will agree to pay reasonable and fair compensation.

In my practice, we also use focus groups to help us evaluate wrongful death cases. These focus groups are made up of individuals who review evidence and listen to testimony about the case. The members of the group are often chosen from voter registration records or other public documents. The idea is to select people we may find in a jury pool so that we can get a fair evaluation of the case. A focus group can assist in determining the range of value in a case, and give our attorneys ideas about how to present the case to a jury in trial. Of course, a focus group will never mimic or simulate a real trial so at Davis Law Group, we are

cautious about relying too heavily on the results. But an evaluation like this can often provide enormous assistance to us when preparing for settlement talks or trial.

Chapter Six

Determining the Value of a Wrongful Death Case

One of the most important concerns in a wrongful death case is determining a reasonable estimation of what the case may be worth. The decision to pursue a claim involves carefully considering the following factors: (1) an evaluation of how much you can expect to recover, (2) how much it will cost you in terms of time, money, and emotion to pursue the case through litigation and trial, and (3) an estimate of your chances of success (i.e., determining how difficult it will be to convince a claims adjuster or a jury that the person or entity responsible for your loved one's death should pay compensation). In this chapter, I will provide you with some tools for understanding these considerations. These are the same factors that an experienced wrongful death attorney is likely to evaluate when answering the ultimate question: "What is my wrongful death case worth?"

First, there is no amount of money that will ever compensate family members for the loss of a loved one. Most people will agree that money is not adequate "compensation," it does not make the situation "fair" or "right," and it certainly will never make up for such a tragic loss. If someone is responsible for totally destroying your car, the car can be replaced. Obviously, this is not the case when a human life is lost in an accident. There simply is no replacement for losing a child, parent, spouse or sibling.

Second, the value of a wrongful death claim is not the value of the person who died. It is important to distinguish the difference between the value of a **claim** and the value of a **person**. Several times, I have had a surviving child, parent, spouse or sibling say after being presented with a settlement offer from a defendant, "Is that all they think my loved one is worth?" Even though I have discussed the value of a claim versus the value of a person before settlement negotiations, it is still difficult for survivors to understand this concept. This is especially true

if the settlement offer is low, but not necessarily unreasonable given the facts, the defenses, and any difficulties associated with the case.

To help illustrate how the presence or absence of certain facts can affect case value, let's discuss some examples. In each of the follow three scenarios, I will use the tragic death of a relatively normal seven (7) year-old boy who I'll call "Jimmy" as our subject.

Example A: Jimmy is crossing the street in a crosswalk with a green light in his direction of travel with his mother holding his hand. When they are nearly across the street, with their light still green, a heavily intoxicated beer delivery truck driver, while on the job, driving his beer truck, runs the red light striking and killing Jimmy. It is the fourth time the driver has been caught drinking on the job in the last year.

In this example, the beer truck driver is obviously at fault. His employer is going to be held responsible for the driver's actions. The employer is a large corporation and has nearly limitless resources to pay damages in this case. Juries are usually prejudiced against intoxicated drivers, people who run red lights, and against large alcoholic beverage corporations who hire unsafe drivers. One might easily assume that the jury will probably want to "punish" the beer distributor for continuing to employ a driver who drinks on the job. The case may be worth several millions of dollars in many jurisdictions.

Example B: Jimmy is crossing the street in a crosswalk with a green light in his direction of travel with his mother holding his hand. When they are nearly across the street, with their light still green, an unemployed 65-year-old grandmother, on her way to deliver food baskets to the poor, runs the red light striking and killing Jimmy. The grandmother has an automobile insurance policy with coverage of \$25,000 and no assets.

In this example, the 65-year-old grandmother is obviously at fault. However, this defendant is much more sympathetic than the corporate

alcohol distributor. Plus, the grandmother only has insurance coverage of just \$25,000, which is the most that a lawyer may be able to collect from her. Even if you go to trial and get a much higher jury verdict, the grandmother has no money or assets to pay it.

Example C: Jimmy is playing soccer in the park. Jimmy chases the soccer ball out of the park, across a sidewalk, across the parkway, between two cars parked close together and into the street immediately in front of a car traveling at 20 mile per hour. The driver of the car, a 65-year-old grandmother on her way to deliver food baskets to the poor, hits Jimmy and kills him. The grandmother is hysterical at the scene. She tells police that she had no chance to avoid hitting Jimmy because he “came out of nowhere.”

In this example, Jimmy is likely at fault or at least shares a good portion of fault. Plus the grandmother is a sympathetic defendant. A jury might have more compassion and understanding for the grandmother than the parents of the boy who was killed. A jury might determine the boy was 100% at fault. Thus, the value of the wrongful death claim brought by Jimmy’s parents might be worth nothing at all.

In each of the examples, we have the same young boy who dies. His parents suffer the same tragic loss, regardless of the other factual differences in each example. However, the value of the parents’ case in Example A is likely worth millions of dollars. The case in Example B is likely worth only \$25,000 (plus any underinsured motorist coverage that may exist). The case in Example C is probably worth nothing at all.

Keep in mind that the examples above are simplistic so that you can easily see how certain facts may radically change the value of a case. In any given case, there may be dozens of other important facts or legal issues that may also affect the value of that case.

To illustrate this, let’s look at Example C again. Assume that Jimmy’s parents promptly hired a lawyer who in turn retained an accident

reconstruction expert to analyze the accident. That expert goes to the accident scene within days and, based on the length of the vehicle skid marks and other evidence collected, determines that the grandmother was actually traveling 50 mph – twice the legal speed limit. Even if Jimmy popped out of nowhere, the grandmother was speeding and will likely share as much if not more blame than Jimmy for causing his death. This additional fact now changes how strong Jimmy's parents case against the grandmother will be. If the grandmother also had more than \$25,000 in insurance, , the wrongful death case may be worth much more than this amount.

Keep in mind that any wrongful death attorney's job is to evaluate how the facts and legal issues will impact case value, and then discuss his or her evaluation with the client. In some cases, the attorney needs to conduct more investigation, like hiring experts or taking depositions, before forming an accurate and reliable opinion regarding case value. It usually pays to hire an experienced attorney to investigate the claim, and do whatever is reasonably necessary to maximum the chances of success.

The Eight Factors Which Determine What Your Case is Worth

In reading through the different factors that may affect the expected outcome of your case, you may be disheartened. You may not agree with the factors or wonder why something entirely outside of a family's control has any relevance at all in a wrongful death case. I understand how you feel and most people who suffer the loss of a family member feel the same way. Unfortunately, we can't change these factors or the law itself. But I can tell you that my goal is to educate Washington citizens about the factors which may influence the value of a wrongful death case.

It is sad but true that the value of a claim is what can be collected. For example, the case in which a wife and seven children are mourning the loss of a well educated, upper-level business man may be worth only

\$25,000 if that is the maximum amount of money that can be collected from the wrongdoer. However, that same wrongful death claim against a multinational corporation like Toyota or Ford might be worth tens of millions of dollars.

Here are the eight primary factors that determine the value of your wrongful death claim:

1. Your losses and the elements of compensation which are available to you under the law of the state which has jurisdiction over your wrongful death claim.

The value of a wrongful death case will depend on the number of claimants involved and the damages that are recoverable. The wrongful death of a single, childless 19-year-old young man who is a high school dropout and also unemployed may be worth next to nothing compared to the wrongful death of a 38-year-old married physician who is a husband and father of four children ages 2, 4, 6 and 8. With the latter, the surviving spouse and each child have individual claims for the loss of their husband and father. In addition, the physician's estate has a claim for future lost net earnings, which may be worth millions of dollars if he was a high earner, as many doctors are. Yet, the 19-year-old's death may only involve the estate's claim for lost earnings, which may be difficult (if not impossible) to predict if the boy never had a good education or a well-paying job.

2. You and the type of witness you will make, and the type of witness each other close family member will make. Whether or not a jury will have sympathy for you isn't as influential as whether a jury will like you. This depends on many things. Will they feel empathy for you or will they dislike you? What prejudices will they have for you and against you? Do jurors know someone who has suffered a loss like yours? The claim adjuster's perception of a jury's prejudices will also affect the value the insurance company or responsible company places on your claim. Look at the three examples of Jimmy. In each of them, Jimmy's mom and dad will likely have sympathy from the jury as a cornerstone of the case. The claims adjuster will want to take Mom and Dad's statement,

get a feel for them as people to test the built-in sympathy factor, and if the parents pass the test, serious settlement discussions may follow. If Jimmy's parents present as rude, obnoxious, or unsympathetic personalities, that could be a road block to settling the case.

The unwritten rule in personal injury law is that, all things being equal, juries like to give money to people they like and respect. If the deceased person's surviving family members come across as likeable, trustworthy, respectable, and genuinely sympathetic, then the jury is likely to award a higher verdict than if family members appear dishonest, unlikeable, and unsympathetic. If the jury perceives that the survivors are using the lawsuit to "try and get rich" then the verdict may be disappointingly low, or the jury may find in favor of the defendant. But if the jury believes the survivors have suffered and endured much grief and loss as a result of their loved one's death, then the verdict is likely to be high or at least satisfactory given the other facts and/or legal issues involved.

3. The jury's likely perception of how valuable a life the deceased led, and how "good" or "bad" the deceased was. Whether the **deceased** was a "good" person, or if you had a "good" and close relationship with the deceased, is one factor that is also likely to color a jury's view of a claim. It is easier to give more money for the death of a "valuable" or nice person than it is for someone who is perceived as a "bum." Children are usually viewed in a positive light, but keep in mind Example C a few pages ago in which the child may have actually been to blame for his own death.

4. The amount of insurance or a corporation's funds available to pay your claims. In most situations, when the defendant (the wrongdoer, the person, or company you're making a claim against) is either a person or a small company, the realistic maximum amount of money that can be collected - regardless of the injury - is the amount of the insurance available to cover your claims. **Rarely does it make economic sense to pursue defendants beyond the amount of insurance coverage or readily available settlement funds they have set aside.**

For example, in the case of a wrongful death claim that has an estimated jury verdict value of \$500,000 and a defendant that only has a \$50,000 insurance policy, the choices are: 1) do you settle the case for \$50,000; or (2) do you go to trial to get a judgment for \$500,000, knowing the defendant has no other assets? You could go to trial, but you will likely never recover the higher amount. In a case like this, once you accept the \$50,000 policy limit, you can consider the case as done and the expenses are likely minimal. You cannot go after more than this if you accept payment of the defendant's policy limits. The insurance company will not pay out the policy limit amount unless you sign a full release of the claim.

If you are looking for more than the defendant's insurance policy limits, you will have to go to court, get a jury verdict, and then try to collect that verdict from the defendant's personal assets, if any exist. But filing a lawsuit and going to trial may cost you a minimum of \$50,000 just in expenses alone (not including attorney fees). Washington state attorney ethics rules state that the \$50,000 expense must be payable by the client and must come out of the recovery. If you get a verdict for more than \$50,000, the defendant's insurance company will tender its \$50,000 policy limits to satisfy its contractual obligation to its insured. That money must then be paid to the lawyer to cover the litigation costs, like discovery expenses, expert fees, etc.

After the defendant's insurance policy pays out to cover costs, you then will have to try and collect the remaining \$450,000 from the defendant's personal assets to satisfy the \$500,000 judgment. If there are no assets, or if the defendant declares bankruptcy (which is likely), then the judgment becomes worthless. If the defendant does have assets, it may then take years and thousands of dollars in additional attorney fees and costs just to pursue collection efforts. This is why it is almost always preferable to accept the wrongdoer's insurance policy limits instead of going to trial and trying to collect more. To do otherwise is incredibly risky, and you may have to spend a lot of money without any guarantee that you will get that money back. I tell my

clients that you might as well go to Las Vegas and spend your money gambling there because at least you'll know the odds of winning and getting your money back.

5. The identity of the wrongdoer, the type of witness he or she will make, and what he or she was doing at the time of the accident which killed the deceased. How will the jury view the person who is responsible for the accident which killed your loved one? Was the incident an understandable accident, with little chance to portray the responsible person as being “bad” or needing to be punished? Or was the wrongdoer grossly negligent, had the person been drinking/under the influence been drinking, or intentionally chose to design and build a defective product? Your experienced wrongful death lawyer will help you evaluate the strength or weakness of this factor to help you determine the value of your case.

The three examples of Jimmy's death clearly illustrate the application of this factor. Think back to when you read them: Did you feel angry at the drunk truck driver and his employer? If so, you would have been willing to put a large value on the compensation you would have given to Jimmy's parents. Look at Example C, where Jimmy ran into the street without looking. Did you feel sympathy for the driver, being caught in the wrong place at the wrong time with no fault for the boy's death? You may have placed a very low or zero value on the case. This is the natural result of applying this factor to the estimated value of a wrongful death wrongful death claim.

6. The jurisdiction and venue of your case. A jury in a sparsely-populated rural county will likely judge the value of a case much differently than a jury in a heavily populated or urban area. The laws of some states may make proving your claim easier or harder. Some trial courts move cases quickly, others take many years to get a case to trial. These two factors are difficult to evaluate on your own, so you will want the help of an attorney.

7. The particular judge and jury you draw. A judge has a considerable amount of discretion over what evidence will be let in and kept out at trial. Some judges have a reputation for being “defense-oriented” versus “plaintiff-oriented.” You may also draw a conservative jury versus a more liberal jury. (These qualifiers aren’t political in nature, but go to how the jury reacts.) Each might value the case differently. Some judges and juries look more sympathetically on claims of a wrongful death claimant than in other jurisdictions.

8. The skill and reputation of your lawyer and/or legal team. Some lawyers have handled many different wrongful death cases so they will likely be much more versed in the status and nuances involved with the law that covers these types of claims. The skill of your lawyer will have a great deal to do with the value which is placed on your claim. As with anything in life, skill leads to success, success builds reputation, and, in the case of an experienced legal team, reputation leads to larger, quicker and more economically productive recovery.

Remember that this is only a quick and simplistic discussion of the eight factors that may affect the value of your case. You should consult with an experienced and successful wrongful death attorney to fully advise you about these elements and help you get a better idea about what you might reasonably expect in financial recovery. That advice, coupled with your lawyer’s counsel about your chance for success and the cost of pursuing your claim, will help you decide on whether to pursue a wrongful death case and what financial recovery you can expect.

Summary: The Eight Factors Which Determine What Your Case is Worth

- 1. Your losses and the elements of compensation which are available to you under the law of the state which has jurisdiction over your wrongful death claim.**
- 2. You and the type of witness you will make, and the type of witness each other close family member will make.**
- 3. The jury's likely perception of how valuable a life the deceased led, and how "good" or "bad" the deceased was.**
- 4. The amount of insurance or a corporation's funds available to pay your claims.**
- 5. The identity of the wrongdoer, the type of witness he or she will make, and what he or she was doing at the time of the accident which killed the deceased.**
- 6. The jurisdiction and venue of your case.**
- 7. The particular judge and jury you draw.**
- 8. The skill and reputation of your lawyer and/or legal team.**

Chapter Seven

The Specific Damages Recoverable in a Wrongful Death Case

Washington law states that only certain types of damages may be recoverable in a wrongful death case. The deceased's estate may recover damages. Certain designated beneficiaries of the estate (e.g., a surviving spouse or child, or a sibling or parent financially dependent on the deceased) may also recover damages. Generally, the damages are divided into two categories: economic and non-economic. Economic damages usually refer to those damages that are easier to calculate, like lost earnings, medical expenses, and other forms of compensatory damages. Non-economic damages usually refer to the subjective losses, like pain, suffering, grief, mental anguish, and the loss of the relationship with the deceased.

Damages Recoverable by the Estate

The deceased's estate may recover both economic and non-economic damages. Here is a list of the most common types of damages that the estate may claim:

- 1. Health care and funeral expenses.** The cost of reasonable and necessary medical treatment the deceased received before death is recoverable by the estate. The amount of health care expenses can be very high when the person required trauma room care and surgical intervention in an effort to save his or her life. Often, efforts to collect this damage amount are offset by the claims for reimbursement asserted by Medicare, Medicaid, or health insurance companies which paid the medical expenses, resulting in little net gain for the estate.

Funeral expenses are also recoverable by the estate. This can include reasonable funeral and burial expenses, including mortuary services, casket, transportation of the body to the burial site, costs of cremation, the purchase of a grave site, and other similar expenses.

2. Lost net earning accumulations. The estate may recover the future lost net earnings that the deceased was projected to earn over his or her working life. This is calculated by subtracting the amount of money the deceased would have used for personal consumption or personal expenses from the gross projected earnings over the deceased's lifetime. Usually these calculations must be made by an expert, like an economist or an accountant.

Sometimes the amount of the deceased's future net lost earnings can be vigorously contested by the other side, especially if there are facts that may support a large damage claim. For instance, if the deceased was cut down in the prime of his earnings life, he may not have realized his full earning potential. If the deceased was a medical doctor who had just finished her residency, there may be a significant dispute over how much more money she stood to earn over the course of her career. Potentially, the amount could be several millions of dollars, depending on the deceased's future prospects, her professional specialty, her reputation at the time of her death, and her anticipated skill as a physician. Given the number of unknown variables upon which a large future economic loss is based, the insurance company will often dispute the loss as being excessive and/or inflated.

When calculating future lost earnings, the amount is usually expressed in "present value" to reflect the accepted rule that money received today is worth more than if that same amount is received in the future. A determination of "present value" requires establishing an amount of money which could be set aside today at an expected rate of return, until the day, week, month, or year that the deceased would have received that income. The deceased might have earned \$5 million over his/her lifetime, but in terms of present value the amount of damages is only \$2 million because the expected amount of \$5 million earned over several years in the future is only worth \$2 million in today's dollars.

Usually, it is much easier to calculate the deceased's future net earnings when the deceased is an adult versus a child. With a child, there is

always a certain amount of speculation over how much money he or she may have earned. Sometimes, with deceased children, it may be necessary to rely on the financial earnings history of the parents and siblings to get a sense of how financially successful the child may or may not have been, had the child lived through a normal work/life expectancy.

3. Pre-death pain, suffering and fear of death. If there is evidence that the deceased experienced pain or fear before death, then the estate may claim damages for this type of non-economic loss. There is one caveat, however. These damages may only be sought if the deceased left a surviving spouse or child, or a financially dependent sibling or parent. Washington law clearly states that if one of these surviving relatives does not exist, then the estate may not recover damages for the deceased's pre-death pain or suffering.

In cases involving instantaneous death, the estate may not recover any damages for pain and suffering. Pain and suffering damages are only available if measurable time elapses between injury and death.²⁰ So how is it possible to know if a deceased person experienced pain or fear before death? Sometimes we rely on witnesses, like those who are present or witnessed the death. Other times, we rely on an expert, like a medical doctor or pathologist, who can give an opinion on whether the deceased likely experienced pain before death.

In one case of mine, there was a serious dispute over whether the deceased experienced pain and fear before her death in a serious automobile accident. I was able to track down witnesses who actually made contact with the deceased woman right after the accident. These witnesses stated that she was visibly conscious and talking. I also hired a medical expert who reviewed the deceased's medical records and was able to share the opinion that the woman had experienced considerable

²⁰ See *Bingaman v. Grays Harbor Community Hospital*, 103 Wn.2d 831, 699 P.2d 1230 (1985).

pain as a result of her injuries. This evidence allowed me to recover a significant amount of money for the estate as compensation for the deceased's pre-death pain and suffering.

Damages Recoverable by the Beneficiaries

As previously stated in this book, only certain designated surviving relatives may recover individual damages for the death of a loved one. In Washington, those relatives will include a surviving spouse or registered domestic partner, a child or stepchild, or a financially dependent sibling or parent. Here is a list of the most common types of damages that may be recovered by a wrongful death beneficiary:

1. Past and future economic benefits from the deceased. The appropriate surviving family member may recover any benefit of value, including money, goods and services that he or she would have received from the deceased from the date of death and through the deceased's life expectancy.

For instance, if the deceased left minor children and was expected to pay for the children's school and/or college education, then this expense is a recognized damage element that may be recoverable. If the deceased is a parent of minor children, then each child may also claim the value of the deceased's expected household services to each child, like childcare, housecleaning, meals, etc. Again, these types of damages are usually calculated by an economist or accountant.

Establishing an expected amount of future lost benefits can be very hotly contested, especially when the wrongful death beneficiary is an adult child of an elderly parent, or a financially dependent sibling or parent. This loss (except for a spouse in most states) is different from the expected earning power of the deceased — it is the portion of those future earnings that would have been spent on the particular surviving relative (e.g., spouse, child, etc.). Usually, an expert can establish a monetary value as long as the surviving family member can establish the reasonable expectation that he or she would have received that

support, either because of a legal or moral duty to support (a spouse, child, or elderly parent) or because of behavior established over a lifetime (contributing to the living expenses of a brother or sister). Children of different ages or of special requirements would reasonably receive a different percentage of a parent's earnings, and only until the statutory or moral duty to support ends.

A track record of giving from the deceased is very important in helping provide both size and certainty of the size and frequency of the gifts, goods, and services expected from the deceased. Some generalizations may have to be used when you are looking at a young child's claim for the death of a parent, a spouse's claim, or a parent's claim for a young child, because jurors and claims adjusters expect that gifts and services will naturally flow in these relationships.

2. Loss of relationship (also called loss of consortium). Each appropriate surviving family member has an independent claim for the loss of his or her relationship with the deceased. In the case of a surviving spouse, the damages are for the loss of the deceased's company, cooperation, emotional support, love, affection, care, services, and companionship (including sexual companionship). In the case of a surviving child or financially dependent sibling or parent, the damages are for the loss of the deceased's love, care, guidance, protection, and companionship.

Damages for the loss of the relationship with the deceased are purely subjective. The strength of the person's relationship right before death is extremely important. With surviving children, the age and dependency on the deceased parent at time of death is also very important. Younger children are usually more emotionally dependent on their parents so the damages for the younger child's loss of relationship will usually be much greater than if the child was older and more mature.

The perception of the value related to the loss of a relationship is the perceived "closeness" between the claimant and the deceased. How

strong was their relationship? How long had they known each other? What did they do together? How often did they talk and see each other? Did they work together or play together? Was the deceased taking care of the claimant's needs as a caretaker or nurse? Was the deceased adept at listening to the claimant's troubles and providing him or her with sound advice, and making his or her life easier? On the flip side, did the claimant rarely see or hear from the deceased? If the claimant was a spouse, what was the quality of the marriage? If the claimant is a child, what was the quality of the parent-child relationship? All of these questions are important when it comes to evaluating the amount of damages recoverable for the loss of the relationship with the deceased.

The testimony of friends and family about your relationship with the deceased will very effectively and persuasively present the facts which would lead to a claims adjustor or jury putting a high value on this element of compensation. This testimony would focus on the outward signs of what must have been very strong ties between you and your loved one, and the intensity of the loss you have suffered.

In many wrongful death cases that I handle, I have hired mental therapists, counselors, psychologists, and psychiatrists to help me establish the intrinsic loss that a surviving spouse and/or child has experienced as a result of the deceased's death. I also rely on the testimony of other family members and friends who can state how close and loving the deceased was with his/her surviving relatives. In addition, the use of family photos, letters, cards, and other mementos can be very helpful in establishing the closeness of the relationships with the deceased and the profound nature of the loss that surviving family members are experiencing.

When proving loss of relationship damages, the strength of the deceased's character and the deceased's perceived loss of value is also important. For instance, a person who was highly respected, both personally and professionally, will carry much more weight and

influence with a jury than if the person was a convicted criminal, or a “dead-beat” parent. Usually, jurors will assume that a deceased person who had a good character and a good reputation in the community presents a much greater loss to surviving family members than if the deceased had none of these attributes. This is why it is extremely important to consider what type of person the deceased was at the time of his or her death. Generally the wrongful death of a good person commands a much greater monetary value than if the deceased could have been considered a bad person or one who lacked moral scruples.

Damages for Grief, Sorrow & Mental Anguish Over Death of Loved One

Many people are surprised to learn that in the typical wrongful death case, the surviving family members may not collect damages for the grief, sorrow, and mental anguish they have suffered, and will continue to suffer, from the loss of their loved one. This fact may seem outrageous since the grief and sorrow experienced by survivors is perhaps the most painful and profound type of loss they will experience over the deceased’s death. But that is the law. I will avoid spending too much time explaining why, except to state that the reasoning goes back to when wrongful death laws were first passed by states many, many years ago. The simple answer is that Washington’s wrongful death statutes simply don’t allow it, and only the state legislature can change this.

The good news is that there is one exception to Washington’s prohibition against a beneficiary recovering damages for grief, sorrow and mental anguish. That exception is when the case involves the wrongful death of a minor child. In those cases, a surviving parent can recover damages for sorrow, grief, and mental anguish for the death of the child. This is allowed because there is a specific statute that permits this type of recovery. However, the claim only exists if the child dies when he or she is a minor (i.e., under the age of 18).

Damage Factors in Common Wrongful Death Claims

Let's now look at different family relationships to help you get a feel for the interaction between the family relationship each claimant had with the deceased along with the elements of compensation which might be available under Washington law. Keep in mind the application of the other seven factors in determining the value of your case. As always, consulting with an experienced wrongful death attorney will help you determine how these factors may impact your claim.

1. Parents' Action for the Death of a Minor Child. The intense loss of the relationship between parent and child is the most valuable damage element in this type of case. The value of this claim will primarily depend on the strength of the parent-child relationship. If the parent was heavily involved in the child's life, then the claim may have significant value. Likewise, if the parent was estranged from the child, then the claim may not have much value at all. The value of this claim may also be influenced by how bad or egregious the wrongdoer's conduct was that caused the child's death.

If the deceased child is older, then it may be possible to persuasively present the expected economic benefits which would have flowed from the child to the parent, or the future of lifetime earnings which can be recovered by the estate. The reasoning is that a two-year-old is pretty much a blank slate, while a teenager's future professional or earnings ability may be more easily charted. If you can show that the child had very good future earnings prospects, then the economic loss to the child's estate could also be substantial.

2. Spouse and Children's Action for Death of Spouse/Parent. Usually, the most valuable wrongful death case is the immediate family's claims for the wrongful death of a spouse and parent. Insurance companies are more likely to value these claims higher because they are valued more highly by juries. If the deceased spouse/parent was the primary earner, then often the economic loss represents the highest damages portion of

the case. The spouse and each child are permitted to recover damages equal to the expected contributions and future net earnings that each would have received from the deceased.

Other factors may also influence the perceived value of this claim, such as the “worthiness” of the family members to be compensated for the death of the deceased, and the perceived “worth” of the deceased’s life. If the surviving spouse and children are perceived as likeable, trustworthy, and sympathetic then the value of the wrongful death case could be worth millions. This is especially true if the deceased was a high income earner.

3. Adult Child’s Action for Death of Elderly Parent. The value of an adult child’s claim for the wrongful death of an elderly parent is also very dependent upon the closeness of the relationship between them. Most juries will judge adult children claims as much less sympathetic than if the surviving children are minors and financially dependent on the deceased. There are exceptions, of course, especially if the defendant’s conduct that gave rise to the death is particularly egregious or heinous.

4. Sibling’s Action for Death of Another Sibling. Remember, Washington law states that a surviving sibling may only maintain a wrongful death action if that sibling was financially dependent on the deceased. So the first hurdle is to prove that the deceased sibling was supporting the surviving sibling. If no such proof exists, then no claim exists. If there is proof of financial dependence, the dependence must be substantial according to Washington law. If evidence of financial dependence exists, then the surviving sibling is allowed to recover damages for the loss of his or her relationship with the deceased. Again, the strength of the siblings’ relationship will be important to establishing how valuable this claim may be.

Assessing Damages May Take Time

Since wrongful death cases are complicated, and because there are many different damage elements involved, it may take months or years before the attorney may have a good idea as to the overall value of the case.

Sometimes, it is important to have depositions of witnesses and family members so that the parties can learn about the deceased person's life and his or her relationships with survivors. Sometimes, there may be certain legal issues and/or defenses that need to be fully explored in litigation before case value can be adequately assessed. This is why it is usually a good idea to promptly retain an experienced wrongful death attorney so that the case can be fully investigated, litigated, and then settled or tried in front of a jury, if necessary.

Summary: Damages Recoverable in a Wrongful Death Case

Damages Recoverable by the Estate

1. Health care and funeral expenses.
2. Lost net earning accumulations.
3. Pre-death pain, suffering and fear of death.

Damages Recoverable by the Beneficiaries

1. Past and future economic benefits from the deceased.
2. Loss of relationship (also called loss of consortium).

Damages for Grief, Sorrow & Mental Anguish Over Death of Loved One

Damage Factors in Common Wrongful Death Claims

1. Parents' Action for the Death of a Minor Child.
2. Spouse and Children's Action for Death of Spouse/Parent.
3. Adult Child's Action for Death of Elderly Parent.
4. Sibling's Action for Death of Another Sibling.

Chapter Eight

The Litigation Process for Wrongful Death Claims

A Word of Caution

The laws and procedures governing wrongful death claims are complex. The same holds true for the litigation process in a wrongful death case, since the rules governing litigation are often entirely dependent on the laws and procedures in the local jurisdiction – the area where the case will be tried. That is why it is extremely important that family members consult with a local attorney who has experience litigating wrongful death cases. This chapter is only intended to provide a general overview of the litigation process for the wrongful death case in the state of Washington, and is no substitute for professional legal advice provided by an attorney who can apply factors to a specific case.

Pre-Litigation Investigation

Although this chapter discusses the litigation process for wrongful death cases, it is impossible to ignore or understate the importance of conducting investigation before a lawsuit begins. Oftentimes, obtaining evidence very early on, well before the lawsuit is filed, can drastically improve the chances of a successful outcome in the wrongful death case. For instance, it is usually wise to obtain witness statements as soon as possible. Taking measurements at the scene may also be important since certain evidence like skid marks, debris, etc. can disappear within days. Most experienced wrongful death attorneys will want to conduct some amount of pre-litigation investigation before filing a lawsuit, unless the attorney is retained a long time after the person's death or if there are time limits imposed (e.g., pending statute of limitations).

Filing a Lawsuit

To file a wrongful death lawsuit, a number of documents (also called *pleadings*) are actually filed with the court, along with a fee paid to the court clerk. In Washington, these pleadings are called the *summons* and *complaint*. The **summons** informs the person being sued that a lawsuit

is being filed and that the person must respond to the lawsuit within a certain period of time (the deadline for Washington residents is 20 days from the date of receiving the papers, and 60 days for non-residents). The **complaint** sets forth the facts that support the claim along with a description or statement of the legal theories that are being alleged against the wrongdoer. The wrongful death complaint will usually identify the parties, the facts or circumstances surrounding the person's death, and the specific laws which support or authorize the wrongful death cause of action.

The person who files a wrongful death lawsuit is called the *plaintiff* (often referred to here as the "claimant." The person or party that is being sued is called the *defendant*. Usually the plaintiff must arrange to personally serve a copy of the summons and complaint to each defendant. The lawsuit is usually divided up into different stages: (1) information gathering or discovery phase, (2) pre-trial preparation stage, (3) pre-trial settlement or alternative dispute resolution stage, and (4) trial. The length of each of these stages or phases will depend on the complexity of the case as well as the laws and rules of the local jurisdiction where the case is being prosecuted.

In Washington, a wrongful death lawsuit must usually be filed in the superior court of the county where either the death occurred or where one of the defendants resides. Each county has its own superior court. Each superior court may also have its own local rules about filing deadlines, and trial setting. The superior court will also have guidelines for motion practices – the numerous motions that may be filed in a given case concerning issues of law that must be decided by the judge. These issues may involve discovery matters, legal questions, and evidence questions. Most superior courts now publish their local rules on the court's website so that citizens can read and understand them.

Statute of Limitations

A wrongful death lawsuit must be settled or filed in court within a certain period of time. This period or deadline is often called the *statute*

of limitations. Depending on the jurisdiction, the statute of limitations may begin to run on the date of death, upon discovery of the person's cause of death, or upon discovery of the defendant's negligent conduct.

The length of the statute of limitations period will vary depending on the laws of the jurisdiction that govern the wrongful death claim. In some states, the statute of limitations may be as short as one year. In other jurisdictions, it may be as long as five years. This is why it is extremely important to consult with an experienced wrongful death attorney in the actual jurisdiction where the case will be filed.

It is a dangerous practice to wait until the statute of limitations period is about to expire before filing a wrongful death lawsuit. If the lawsuit is filed right before the deadline and if the defendant cannot be found, or if the wrong defendant is served, the case could be dismissed and the plaintiff gets nothing. For this reason, it is very important to hire an attorney well before the statute of limitations expires. Many attorneys will refuse to accept a case when the statute of limitations period is about to expire because there may be insufficient time to investigate the case, file the suit, and locate and personally serve the proper defendant(s).

Another reason not to wait until the statute of limitations is about to expire is that important evidence in the case may be lost or destroyed. Witness memories can fade over time, or important witnesses may move and not be easy to locate. Generally, the more time that elapses after a wrongful death, the greater the likelihood that important evidence may be lost or destroyed. Simply put, waiting too long to investigate and/or prosecute the claim in court may cause irreparable damage to the case.

Authority to File a Wrongful Death Lawsuit

As discussed in previous chapters, Washington law requires that a Personal Representative be appointed on behalf of the deceased's estate. Essentially, this person acts on behalf of the deceased person's estate and

is given authority by the court to file suit for the purpose of recovering damages in a wrongful death lawsuit. A wrongful death lawsuit cannot be prosecuted until a personal representative is appointed by the court. This means that a probate action must first be completed so that a personal representative is appointed. A probate action is a special type of legal proceeding that addresses the management and finalization of the deceased person's estate. Assets and liabilities are accounted for, and any remaining proceeds and assets are divided up among surviving relatives according to a will (if one exists) or based on the intestate statute if no will exists. Once a personal representative is appointed, the wrongful death lawsuit may be filed.

Technically, anyone can be appointed the personal representative. However, the court will usually prefer someone who is reputable and trustworthy. Someone with a criminal background, especially one involving dishonesty or fraud, may be excluded by the court. Oftentimes, the personal representative is a surviving family member or a good friend of the deceased. Sometimes a professional, like another lawyer, can be appointed as the personal representative.

Although there can only be one wrongful death lawsuit, Washington law recognizes that more than one claim may be pursued in the same case. In one claim, an action is brought to recover damages on behalf of the estate (like funeral and healthcare expenses, the deceased's lost future earnings, etc.). In the other claim, a lawsuit can be brought to recover damages for each surviving beneficiary designated by the wrongful death statute. A surviving spouse may recover separate damages for the destruction of the marital relationship. Each surviving child may recover separate damages for the loss of the parent-child relationship. The damages claimed by each beneficiary are usually distinct and separate from the damages claimed by the estate.

The Personal Representative who brings the wrongful death case will have a fiduciary (i.e., heightened or enhanced) obligation to the other interested parties in the action (like other beneficiaries). This means that

the personal representative has a legal duty to protect the interests of the estate and all beneficiaries who may have a right to recover damages in the case. The failure to fulfill this duty may subject the personal representative to legal liability and/or damages.

Initiating a Suit Against a Governmental Entity

Sometimes a wrongful death claim may exist against a governmental entity, like a town or city, municipality, county, or the state. It may not be immediately apparent that the defendant is a governmental entity (e.g., a transit or utility company) but it is very important to understand that many jurisdictions, including the state of Washington, have specific pre-filing laws for when a claim or lawsuit may be brought against a governmental entity.

In Washington, the plaintiff must first file and/or serve a separate claim form upon the governmental entity before a wrongful death lawsuit can be filed. The act of filing and presenting claims against a governmental entity can be very complex and confusing. Failure to strictly comply with this law is a costly mistake because the wrongful death lawsuit could be dismissed altogether. This is another reason why it is extremely important to consult with an experienced wrongful death attorney if one of the defendants may be a governmental entity.

Washington law also requires that the verified claim form be served on the authorized agent for that particular entity (i.e., town, county, state or governmental agency). The proper service of the valid claim form is also essential. There usually are only certain individuals who can actually accept service of the claim form. What this means is that if you serve the wrong person, your case could be later barred.

To be valid, the governmental claim form must also contain specific information. This will include: a description of the conduct and circumstances which brought about the injuries and death; the time and place the injury or damage occurred; the names of all persons involved; the residence of the claimant for a period of six months immediately

before the claim arose; and a statement of the amount of damages claimed. Remember that a wrongful death claim brought on behalf of the deceased person's estate and surviving relatives can be verified and presented only by the estate's Personal Representative.

Once a claim form has been properly verified, presented, and served on the appropriate agent for the governmental entity, a period of 60 days must pass before a lawsuit can be initiated. Failure to wait 60 days is a fatal mistake that will invalidate the claim and result in the dismissal of the case. Every wrongful death case is complex, but filing and presenting claims against a governmental entity can be an even greater challenge, so it is wise to promptly consult with an experienced wrongful death attorney.

The Discovery Process

After the wrongful death lawsuit is filed and the defendant is properly and timely served, both sides participate in a process of exchanging information about the case. This process is known as *discovery*. There are many different forms of discovery, or different ways to request or obtain information from the other side in a case. In Washington, the rules governing the discovery process are quite broad and allow each side to investigate what evidence and witnesses may be introduced at trial. Even if the requested information does not appear directly relevant to the case, it may still be a proper request if it may *lead* to the discovery of relevant information.

One form of discovery may involve sending or answering written questions, called *interrogatories*. There may also be written *requests for production* of documents and other materials that are relevant to the claims being made in the suit. There may be limits to the number of written questions or requests that can be exchanged, depending on the local court rules. When the interrogatories and requests for production are answered and completed, the Personal Representative or beneficiary must also execute a document stating that the answers and responses are true and accurate.

Another form of discovery may include a *deposition*. A deposition is a face-to-face meeting where the attorneys are allowed to ask witnesses questions under oath while a court reporter transcribes the session. Any witness who may offer testimony at trial can be deposed, including the Personal Representative, a beneficiary (or surviving family member), the deceased's doctor, the medical examiner or coroner, other family members, eyewitnesses, and experts involved in the case.

The deposition is a very important legal proceeding that should almost always involve preparation by the wrongful death attorney and the person who is going to be deposed, particularly if that person is the Personal Representative or a close family member who is initiating a claim for damages in the case. The person's performance at the deposition can have a huge influence on the success or value of the wrongful death case, usually because these individuals are very important in communicating and establishing the extent of the losses caused by the wrongful death.

In addition to interrogatories, requests for production, and depositions, each side's lawyer may also be permitted to issue a *subpoena* or a *subpoena duces tecum*. This is a request to produce documents or items in addition to requesting that the person appear at a deposition or trial. For instance, the wrongful death attorney may wish to subpoena the medical examiner's records for the purpose of establishing the cause of death. Other documents, like financial, employment, and medical records may be requested by subpoena to help establish various elements or issues involved in the case.

The discovery phase may also include a request by the other side that the plaintiff or a beneficiary must submit to a medical examination and/or a psychological evaluation. Washington's discovery rules permit one party to request such an exam or evaluation for the purpose of learning more about the person's health and/or to evaluate the person's claim for damages. For example, if a surviving parent claims to experience substantial psychological stress or grief following the death of a child,

then the defendant's psychological expert may be permitted to conduct an evaluation to verify or refute these claims. Another example is where the cause of death is disputed and one party is permitted to perform an autopsy or examination of the body by a qualified expert.

The legal and factual grounds necessary to support a request to conduct a medical examination or psychological evaluation on a surviving family member will depend on the facts of the case and the issues involved. In most cases, the judge will have considerable discretion to grant or deny the defendant's request for a medical or psychological evaluation on a case-by-case basis.

Using Expert Witnesses

After a wrongful death case has been filed in court, it will often require the assistance of expert testimony to help the attorney prove one or more elements of the action. Since wrongful death cases can involve many different issues that are often complex and difficult to prove, an experienced wrongful death attorney will usually want to engage the assistance of one or more experts early on in the case. Sometimes, the success of a wrongful death case will hinge on the credibility and/or knowledge of the experts involved. This is why it is extremely important that the attorney have substantial experience in handling wrongful death cases, as well as having the knowledge of the different types of experts that may be necessary to achieve a successful result.

There are many different types of experts that can be used in a wrongful death action. Generally, experts can fall into three classifications in the wrongful death case: (1) liability experts, (2) causation experts, and (3) damages experts. Let's start with the first category, liability experts.

1. Liability Experts

Certain experts may be necessary to help prove that the defendant was responsible for the incident which caused the person's death. There are numerous examples of different types of experts who may help prove the defendant's liability or negligence. Usually, the person's field

of expertise will depend on the circumstances that led to the accident that caused death. Examples of liability experts may include those in the fields of accident reconstruction, engineering, biomechanical engineering, medicine, physics, or metallurgy.

Take the case of an automobile accident which caused another person's death. If there is a dispute about who caused the accident, the wrongful death attorney may wish to hire an accident reconstruction expert to review the facts and circumstances of the collision and then offer an opinion about exactly how the accident occurred. This expert will usually want to visit the scene of the accident, take measurements and photographs, and collect any other evidence to help determine how the accident happened.

Sometimes, an expert witness is legally necessary to establish liability or negligence in the wrongful death case. This is true for medical malpractice cases. Washington law requires that a medical expert is necessary to prove that the deceased's physician violated the standard of care in some fashion, which in turn led to that patient's death.

2. Causation Experts

Sometimes, there is a dispute about how the deceased actually died. Often, but not always, this dispute arises in the medical negligence or malpractice case. For example, the deceased may have had other medical conditions or injuries that conceivably could have caused the death. However, Washington law requires that the medical negligence be a "proximate cause" of the person's death. In that situation, a medical expert, like a pathologist or coroner, may be necessary to establish the cause of death. This is when another autopsy or forensic examination of the body may be necessary.

3. Damages Experts

One frequent use of experts in a wrongful death case is to address the issue of damages. There may be several different types or classification of damages that may be sought in the wrongful death case, depending

on the facts of the case and the legal issues involved. An experienced wrongful death lawyer will hire the best experts to help uncover and explain certain evidence, which in turn increases the likelihood of a successful result. Generally, the classification of damages experts may fall into two categories: (1) economic damage experts and (2) non-economic damage experts.

The term “economic damages” refer to those hard or tangible damages that are usually easier to calculate, like lost wages, medical expenses, future income loss, or lost net accumulations to the deceased’s estate. Examples of economic damage experts include economists, medical experts, accountants, vocational experts, and life care planners.

One of the most common types of damages requested in a wrongful death case is a claim for the deceased’s future lost earnings, or the future net lost accumulations to the person’s estate. A vocational expert may be necessary to help establish the deceased’s lost income and/or future occupational advancement opportunities. An economist or accountant may be necessary to calculate the present value of the future lost earnings based on the deceased’s occupation at the time of death, anticipated future promotions, and the person’s savings and consumption rate.

When using experts to calculate economic damages, it is often important to involve the expert early on in the case and it is also important to furnish the expert with all of the necessary documentation required for him/her to form an opinion. For instance, when calculating future lost earnings, the expert may need to review several different types of records involving employment, tax, educational, medical, bank, insurance, or other financial documents.

The second category of damages consists of “non-economic damages” and refers to those subjective or intangible losses that are usually more difficult to quantify. They include pain, suffering, grief, and the loss of the deceased’s love, society, companionship, and affection. Thus, it

is often wise to retain one or more experts to address or discuss these types of damages to a jury.

Take the case involving the wrongful death of a child. The parents will likely suffer a substantial amount of psychological distress and suffering. In this situation, it may be beneficial to use a psychological expert, like a psychiatrist, psychologist, or mental health therapist, to discuss the parents' loss of their child. There may be long-term emotional issues that surviving parents and children may face as a result of losing a loved one prematurely. Thus, using an expert to discuss, explain, and highlight these losses may be very helpful to explaining the parents' loss to the jury.

Another category of damages may include the deceased's pre-death pain and suffering. Remember that Washington law permits the estate to recover damages for the deceased's pre-death pain and suffering. If there is a dispute over whether the deceased did experience pain or fear right before death, then a medical or psychological expert may be useful to establish this fact.

Oftentimes, the choice of an expert is a very important factor that can have a huge influence on the success of the wrongful death case. Sometimes, the distinguished academic and professional credentials of the expert are extremely important. Other times, the ability of the expert to teach and explain the particular field of expertise to a jury or lay person may be valued more highly than the particular expert's academic credentials or success. Choosing which particular expert will work best is usually a judgment call by the wrongful death attorney and should be based on the specific needs of the case.

Wrongful death attorneys must also be mindful of the expense of hiring and using experts, which can be considerable and cost many thousands of dollars. Thus, there has to be a real need for the expert in order to engage one for a case. The economics of the case must also justify the expense of using experts. Above all else, the attorney must choose

experts carefully and use them only to highlight or explain certain issues in the case. Sometimes, there may only be a few qualified well-regarded experts in a particular field of study, so an experienced wrongful death attorney may wish to retain one or more of these experts immediately, before the defense attorney can do so.

Again, the unique facts and circumstances of the case will often dictate which type of expert to use and how many experts will be necessary in the case. Because experts are a critical component in a successful wrongful death case, it is usually beneficial to retain an experienced wrongful death attorney early on so there is sufficient time to locate, hire, and brief each expert who may be necessary to support the merits of the case.

Alternative Dispute Resolution or Mediation

Depending on the jurisdiction and the complexity of a wrongful death case, the discovery phase in litigation may take many months or sometimes even years. When discovery is finally completed, and each side generally knows what evidence will likely be offered at trial, the parties may then begin to conduct settlement discussions. Sometimes, the law of the particular jurisdiction or venue will require that the parties engage in meaningful efforts to settle the case other than just simply negotiating between themselves. These efforts are sometimes called *alternative dispute resolution or ADR*. One example of ADR is *mediation*. In mediation, the parties agree to hire an impartial person (called the mediator) to help them settle the case. Often times, the mediator is a retired judge or an experienced attorney who has advanced training and/or education in the area of ADR.

Usually, the process of mediation is voluntary and non-binding (unless a settlement is reached). This means that a mediator cannot force a party to settle and either party is permitted to reject offers from the other side. But the parties are expected to participate in mediation in good faith with the goal of trying to settle the case instead of going to trial. Typically, the mediator goes back and forth between the parties and

communicates settlement offers. The mediator may also communicate strengths and weaknesses of each side's case and discuss potential outcomes if the case proceeds to trial.

A mediation session is typically a confidential proceeding, so anything that is said during the session cannot be used at trial. Many times, mediation can be used successfully to resolve a case involving wrongful death claims. Mediation sessions can be held over the course of one day or over several days, depending on the size and complexity of the case.

Evaluating settlement offers at mediation or during ADR depends on many factors. The experience of the wrongful death attorney is often important because a settlement offer will always be judged in relation to how a jury may decide the case. Thus, you want an attorney who has successfully litigated wrongful death case(s) in the past. Both sides will attempt to predict how a jury might rule and then factor this into their evaluation of the case. The specific facts involved in the case and how those factors are highlighted or proved by the wrongful death attorney can also have an enormous influence on the insurance company's evaluation of the case.

Preparing for Trial

If the case does not settle after discovery and ADR or mediation has failed, then the case may proceed to trial. Each side has the option of trying the case before a judge or jury. Depending on the jurisdiction, a jury trial may not happen automatically. One party may have to specifically request that the case be decided by a jury as opposed to a judge. In most wrongful death cases, the defense attorney will request a jury trial by filing a document in court called a *jury demand* and then paying a *jury fee* to the clerk. In Washington, the court rules usually require that certain documents must be filed and exchanged within 30 to 90 days before the trial date. These documents may include each side's witness and exhibits list, pre-trial motions, objections to evidence or trial exhibits, trial memorandums, and jury instructions, among others.

Going to trial in a wrongful death case usually requires a tremendous amount of resources, time, and preparation. The wrongful death attorney usually has to invest a substantial amount of money and time in the case to conduct depositions, hire and prepare experts, create trial exhibits, and draft and prepare the necessary documents that must be filed in court. The insurance companies and their attorneys know how expensive and time-consuming a wrongful death case is to pursue. As a result, they may use this fact to their advantage by intentionally delaying resolution of the case over a long period of time.

The wrongful death trial is usually more complex than other types of accident claims. Typically, there are more experts and other witnesses involved which means a wrongful death trial can easily take weeks or months to conclude. A wrongful death trial is usually much more physically and emotionally exhausting for all parties involved. By its very nature, the case involves a terrible fact: a person's life has been lost due to someone else's negligence. As a result, people's emotions usually run very high, especially those of the surviving relatives and family members.

Sometimes, the insurance company will go to enormous efforts to fight the case or attempt to minimize the damages being claimed. The value of a wrongful death case can easily involve multiple claims that run into the millions of dollars, so the insurance company may feel that it is in its best interests to defend the case vigorously when so much money is at stake.

Often times, the defendant's insurance carrier will make a settlement offer that is considered on the very low end of a reasonable settlement range on the theory that the wrongful death attorney will not want to incur the substantial expense and time of going to trial to beat that offer. This is why it is preferable that the wrongful death case is handled by an experienced and competent attorney who not only has the expertise to pursue the claim but also the financial resources to take the case all the way to trial if necessary.

Understandably, most people want to avoid going to trial. They are stressful and can cause additional anxiety for everyone involved. Usually a trial is the last resort to resolve the claim. Often times, the insurance company will not want a serious or significant wrongful death case to go to trial, particularly when there is no serious dispute about the defendant's negligence and the cause of death. However, some insurance companies have a reputation for utilizing "scorched earth" litigation tactics. This involves needlessly forcing and prolonging the litigation process in an effort to "wear down" the wrongful death attorney and the family so that they will accept a smaller settlement. Sometimes, this will include forcing an unnecessary trial, particularly if the insurance company is convinced that the wrongful death attorney has little experience in trying injury cases in court.

Often times, it is only by threatening and preparing for trial that a wrongful death attorney is able to secure a reasonable and just settlement offer for the estate and each surviving beneficiary. This is usually why it is extremely important that any wrongful death claim be handled by an attorney who has experience with wrongful death cases. You don't want to hire a lawyer for a wrongful death case only to find out a few weeks or months before trial that the lawyer has limited experience handling wrongful death cases or has never tried a significant case in court. In those situations, it may be too late to hire another attorney to take over the case.

Summary: The Litigation Process

Pre-Litigation Investigation

Filing a Lawsuit

Statute of Limitations

Authority to File a Wrongful Death Lawsuit

Initiating a Suit Against a Governmental Entity

The Discovery Process

Expert Witnesses

1. Liability Experts
2. Causation Experts
3. Damages Experts

Alternative Dispute Resolution or Mediation

Preparing for Trial

Chapter Nine

The Benefits of Hiring a Lawyer in a Wrongful Death Case

If you've carefully read the previous chapters of this book, there is probably no doubt in your mind that wrongful death claims are complicated. The laws and procedures which govern these cases are complex. Any case can be dismissed and/or lost based on a procedural and/or technical violations of the court rules and statutes which apply to these claims. Wrongful death cases can also be challenging from a factual standpoint because frequently, there are multiple claimants, claims, damage elements, and other legal issues involved. No wrongful death case should ever be filed or pursued without the assistance of a qualified wrongful death attorney.

That is why this chapter is devoted to discussing the benefits of hiring an experienced wrongful death lawyer. There are just too many things that can go wrong in a wrongful death case to leave the representation to an inexperienced attorney for this type of claim. You definitely want an attorney who is a professional and who has years of experience handling wrongful death cases. Your lawyer should also have a long history of dealing with insurance companies because the lawyer's negotiation skills need to be in top form.

Remember, the insurance company will be doing everything it can to minimize the wrongful death claim and avoid paying compensation to cover the damages incurred by the estate and surviving family members. In fact, most insurance companies take a rather aggressive approach to defending wrongful death cases, given the potential size of these claims. When a wrongful death case arises, the insurance company will often immediately hire counsel (or tap into counsel they have on retainer) and employ other experts to begin putting together a strong defense. Since important evidence that affects the wrongful death claim can be lost, misplaced, or even intentionally destroyed, the family should promptly

hire their own legal representation to protect their rights and increase their chance of making a successful recovery.

Which Lawyer to Choose?

There is no shortage of lawyers out there, especially in the field of personal injury and wrongful death law. So choosing a lawyer for your wrongful death case may seem like a daunting task. Many lawyers claim expertise in this area of law, but many of them have not even handled one wrongful death case from beginning to end during their entire career. You should choose a lawyer with at least ten (10) years of experience representing injured victims, since many of the laws that apply to personal injury claims also apply to wrongful death cases. You should also choose a lawyer who has handled at least five (5) wrongful death cases during his or her career. I believe it takes this much experience to become truly knowledgeable and comfortable with the subtle nuances and challenges that exist in these types of claims. You should also choose a lawyer who has successfully resolved a wrongful death case. I would advise choosing a lawyer who has settled or tried at least one seven-figure wrongful death case in his/her career.

Look for a lawyer who has **demonstrated expertise** in the field of personal injury and wrongful death law. Ask questions like: Has the lawyer authored books or articles on these subjects? Does the lawyer lecture in professional settings other lawyers in this field? If so, then there's a good chance the lawyer will have sufficient expertise to competently represent you or your family in a wrongful death case.

Finally, choose a lawyer who is recognized by other lawyers as being highly competent and successful with superb credentials and experience in the field of personal injury and wrongful death law.

Contingency Fee

Understandably, most people are wary of hiring an attorney because of the expense involved. Cases involving injury and wrongful death claims are usually handled by experienced lawyers on a contingency basis.

With a contingent fee agreement, the lawyer agrees to defer his or her fee until the case successfully resolves. The fee is based on a percentage of the recovery obtained by the lawyer. If there is no recovery, then no attorney fee is owed. Most contingency fees can range anywhere from 25% to 50% of the recovery, depending on the type and/or complexity of the case.

More often than not, a wrongful death case can take years to resolve and the lawyer will spend hundreds of hours and perhaps thousands of dollars on the case before he or she gets paid. Usually, the riskier and more complex the case, the higher the contingency fee will be charged. If a lawyer accepts a wrongful death case that is very complex and/or has a high risk of failure, then that lawyer will usually want to be paid a premium for accepting the risk, since he or she may not get paid after performing hundreds of hours of work on the case. Contingency fees allow families with limited financial resources to hire the best legal representation possible. This is important because the insurance companies usually retain some of the most expensive and experienced defense attorneys to help deny, delay and defend the wrongful death claim.

The costs associated with a wrongful death claim are a different matter. The term “costs” refers to those expenses that are incurred while investigating the claim and prosecuting the case in court, if necessary. Examples of typical costs include expert fees, court costs, deposition fees, record retrieval expenses, filing fees, etc. In wrongful death cases, these costs can add up fast and in some cases easily exceed \$100,000, depending on the size and/or complexity of the case. Washington law permits an attorney to advance payment for the costs and then deduct these advances from the recovery at the conclusion of the case. This is important because it allows the client to hire an attorney without ever having to pay up front or out of pocket. Since the amount of costs incurred in a wrongful death case can be substantial, you’ll want to retain an attorney who has the financial resources to pay for them, and the ability to carry this debt over a long period of time, if necessary, as the case proceeds through litigation and possibly trial.

What a Good Wrongful Death Lawyer Can Do For You

Often, people are unaware of the broad spectrum of services an experienced wrongful death lawyer provides in these types of cases. Here is a list of the types of services that the lawyer may provide:

- Initial interview with family members of the deceased
- Educate and teach family members (clients) about the claim process
- Educate and teach clients about the court approval and Settlement Guardian ad Litem process
- Educate and teach clients about laws and procedures applicable to wrongful death claims
- Begin probate proceedings and apply to court for appointment of Personal Representative
- Educate and teach clients about the litigation process
- Draft and file petition to appoint the Settlement Guardian ad Litem (SGAL) in cases that involve surviving minor children
- Gather written records and documents to support the claim, including medical records, school records, police reports, etc.
- Perform investigation of the wrongful death claim, including gathering witness statements, photographs, diagrams, and physical evidence

- Read and analyze insurance policies that may apply (e.g., auto, homeowners, health, life insurance, etc.) to see what coverage is available to pay for damages, like medical, hospital, wage loss, and death benefits
- Meet and confer with the medical doctors and other healthcare providers to fully understand cause of death, and/or mental condition of survivors
- Meet and confer with the SGAL to discuss the case and provide all relevant information regarding the claims of surviving minor children
- Obtain specific reports from experts to support the claims for estate and each beneficiary
- Analyze any pertinent legal issues that may affect the case, like contributory negligence, assumption of risk, comparative fault, etc.
- File necessary claim forms with the at-fault governmental agency
- Analyze health insurance or governmental benefit plan to determine whether any money they spent must be repaid
- Analyze and address any liens against the settlement recovery (various healthcare providers, insurers, governmental agencies may file liens seeking to be repaid money for benefits already paid to or on behalf of a surviving spouse and children).
- Help survivors in locating available resources to assist with their needs (local, state, federal, and non-profit assistance programs)

- Contact the insurance company about the claim and conduct periodic discussions with the carrier about the case so that appropriate reserves are set aside to settle the case
- Conduct negotiations with the insurance adjustor in an effort to settle the claim, either prior to litigation or trial
- If a lawsuit is filed, then prepare and draft the summons and complaint to file in court
- Perform investigation to locate the defendants and wrongdoers so that they can be served personally with the summons and complaint
- Arrange for defendants to be personally served with the summons and complaint as required by law
- Prepare and draft written questions for information from the other side (called interrogatories and requests for production)
- Prepare the surviving family members and other witnesses for their depositions
- Prepare for and conduct depositions of the defendant and other lay witnesses
- Discuss and/or meet teachers (or other education/daycare providers) to help understand the effect the loved one's death has had upon surviving children and their continuing educational resource needs
- When requested by the defense attorney, meet with experts to prepare for their depositions

- Prepare to take depositions of the defendant's experts, including medical experts, liability experts, damage experts, etc.
- Prepare surviving spouse and/or children for a medical examination requested by the defendant's medical experts
- Answer questions and produce information and records requested by the other side
- Review and analyze the deceased's medical records and billings
- Hire other necessary experts to support or prove the claim, including physicians, economists, appraisers, engineers, vocational experts, etc.
- Review and analyze expert reports about the case, including those addressing liability, injuries, cause of death, and damages
- File the necessary documents in court as required by the judge, including witness lists, trial readiness, settlement conferences, etc.
- Prepare the surviving family members and other witnesses for trial
- Create and prepare exhibits for trial
- Organize records and other documentary evidence intended to be introduced at trial
- Prepare for mediation and/or arbitration by organizing records and other documents for submission to the mediator or arbitrator

- Research and write briefs and file motions to keep out or let in certain evidence at trial
- Perform or participate in mock trials or focus groups to prepare for trial
- Over the course of several days, try the case before a judge or jury
- Analyze verdict and research any issues that occurred at trial
- Following the verdict, write briefs or motions to obtain post-trial relief, including motions for attorney fees, or to overturn the verdict
- Analyze trial record to determine if appeal is warranted
- If appeal is filed, research and write necessary briefs and motions
- Negotiate subrogation claims which are asserted by various insurance companies or governmental agencies that may have provided benefits to survivors
- Review and analyze the SGAL's report showing recommendation to approve or reject the settlement on behalf of surviving children
- Draft and prepare the petition asking the court to approve the minor child's settlement
- Attend and argue the court hearing regarding the approval of the minor child's settlement

- Create and establish blocked accounts for the surviving children
- Provide financial institution with information to open blocked account
- Contact furnisher of annuity and provide all necessary information to conclude the purchase of annuity
- Review and complete all necessary paperwork, release forms, disclosure statements, etc. regarding the annuity purchase
- Review and complete all necessary paperwork, release forms, disclosure statements, etc. regarding the creation of a trust account for benefit of the child
- Draft and file in court the appropriate written proof or receipts showing creation of blocked account, annuity purchase, or managed trust account

This is a general list of the various tasks that a wrongful death lawyer may need to perform in any given case. There may be additional tasks, depending on the facts of the case and the needs of the surviving family members. This list will, at least, give the reader some idea of the type of work that may be necessary to successfully pursue a wrongful death claim in the state of Washington.

"I highly recommend Chris Davis, who has done an outstanding job for me and my family in a case involving the wrongful death of my sister. Davis Law Group is dedicated to their clients and have the best possible resources available. I have always been kept informed and am very impressed with the knowledge of Mr. Davis and his team. Mr. Davis and the entire staff at Davis Law Group are very trustworthy and were responsive to my family's needs."

- Clarence H.

Family Member of Wrongful Death Victim

"As an experienced wrongful death attorney, Mr. Davis goes to great lengths to help family members understand Washington State's complicated wrongful death laws and procedures, the insurance claims process, and to make sure they protect their rights and remedies following such a tragic event. No family should proceed with a wrongful death case in Washington State until they read this book."

- Charles E. Boyk, Esq.

Boyk Law Offices, Toledo, OH

"Seattle attorney Chris Davis' wrongful death book is a must-read for anyone that has lost a loved one due to the negligence of others. Mr. Davis successfully breaks down the intricacies of a wrongful death claim into a more easily understood and more manageable format. I highly recommend reading this book before hiring an attorney!"

- Ken Christensen, Esq.

Christensen Law Firm, Salt Lake City, UT

"*Wrongful Death In Washington State* is a well written and extremely helpful guide for wrongful death survivors that covers virtually every aspect of handling the aftermath of a wrongful death family tragedy as well as applicable Washington state law. The book is written by a well respected Washington state personal injury attorney, Chris Davis, who's stated mission is to educate the public about legal matters. This book is just one more example of Mr. Davis carrying out his mission."

- John Bisnar, Esq.

Bisnar/Chase, California Personal Injury Attorney

Christopher M. Davis is the founder of Davis Law Group, a boutique law firm representing accident and malpractice victims for more than 16 years in Washington State. Since 2006 Mr. Davis has been named a Rising Star Attorney and Super Lawyer each year by Washington Law & Politics magazine. He's also been named in the "Top 100 Trial Lawyers" in Washington State by the American Trial Lawyers Association. Mr. Davis has also been active in the community by starting the Davis Law Group Scholar Athlete Program™, which awards scholarship prizes to high school athletes who perform well on the field and inside the classroom.

Davis Law Group has offices in Seattle, Bellevue, Mercer Island and Renton to serve accident victims all over Washington State. For a sampling of verdicts and settlements obtained by Davis Law Group, or to get more information about how we can help you, please visit

www.DavisLawGroupSeattle.com