Wrongful Death Overview

A “wrongful death” occurs when a person is killed due to the negligence or misconduct of another individual, company or entity. An action for wrongful death belongs to the decedent's immediate family members (often called "distributees"). The most common distributees are surviving spouses and children, and sometimes parents. A suit for wrongful death may only be brought by the personal representative of the decedent’s estate. Every state has a civil “wrongful death statute,” or set of statutes, which establish the procedures for bringing wrongful death actions. Actions for personal injury, conscious pain and suffering, or expenses incurred prior to the decedent's death are also brought by the personal representative. The damage awards from these actions belong to the estate and may pass to different parties as directed by the decedent’s will.

Elements of a Wrongful Death Lawsuit

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

- The death of a human being;
- Caused by another's negligence, or with intent to cause harm;
- The survival of family members who are suffering monetary injury as a result of the death, and;
- The appointment of a personal representative for the decedent’s estate.

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

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

Damages in a Wrongful Death Lawsuit

Pecuniary, or financial, injury is the main measure of damages in a wrongful death action. Courts have interpreted “pecuniary injuries" as including the loss of support, services, lost prospect of inheritance, and medical and funeral expenses. Most laws provide that the damages awarded for a wrongful death shall be fair and just compensation for the pecuniary injuries that resulted from the decedent's death. If the distributees paid or are responsible for the decedent's funeral or medical care, they may also recover those expenses. Finally, a damage award will include interest from the date of the decedent's death.

Determining Pecuniary Loss

When determining pecuniary loss, it is relevant to consider the age, character and condition of the decedent, his/her earning capacity, life expectancy, health and intelligence, as well as the circumstances of the distributees. This determination may seem straightforward, but it often becomes a complicated inquiry, keeping in mind that the measure of damages is actual pecuniary loss. Usually, the main consideration in awarding damages is the decedent's circumstances at the time of death. For example, when an adult wage earner with dependants dies, the major parts of the recovery are: 1) loss of income, and 2) loss of parental guidance. The jury may consider the decedent's earnings at the time of death, the last known earnings if unemployed, and potential future earnings.

Adjustments in the Jury’s Award

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

**Using Expert Testimony to Determine Pecuniary Loss**

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

**Punitive Damages**

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

**Survival Actions for Personal Injury**

In addition to damages for wrongful death, the distributees may be able to recover damages for personal injury to the decedent. These are called "survival actions," since the personal injury action survives the person who suffered the injury. The decedent's personal representative can bring such an action together with the wrongful death action, for the benefit of the decedent's estate.

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

**Getting Help**

If a loved one has dies after an accident or injury caused by the negligence or misconduct of another individual, company or entity, you may be entitled to bring a legal action for wrongful death against those responsible. Especially in light of time deadlines for filing such a lawsuit, you should contact an experienced personal injury attorney as soon as possible, to discuss your legal rights and your potential case.

**See also:**
- Wrongful Death Cases: Children and the Elderly
- Wrongful Death Claims: Time Limits and the ‘Discovery’ Rule
- Wrongful Death Cases: Physician-Patient Privilege
- Wrongful Death FAQ
- Wrongful Death Resources