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Wrongful Death Actions

“The survivors...may bring a lawsuit for wrongful death.”

Tragically, more than a thousand people die each year in automobile accidents on Arizona highways. The survivors of those persons may have wrongful death claims under Arizona law. In this chapter, we will examine the law governing wrongful death.

The survivors of a person whose death was the fault of another may bring a lawsuit for wrongful death. For a wrongful death action to exist, the deceased person (the “decedent”) must have had a valid personal injury claim. This means that the person causing the death would have been at fault if death had not occurred. The corollary to this rule is that if the person causing the death would not have been at fault if death had not occurred, there is no liability for wrongful death.

Illustration: The driver of Big Car causes an accident in which one person is injured and another killed. The injured person has an action for personal injury, and the survivors of the person killed have an action for wrongful death. Now, changing the facts. If the driver of Big Car was not at fault in causing the accident, the injured person would not have an action for personal injury and the survivors of the person killed would not have an action for wrongful death.

The Arizona Wrongful Death Statute allows a wrongful death action to be brought by the surviving husband or wife, or by the personal representative of the decedent's estate. If the decedent is a child, the action may be brought by either parent. The person bringing the action is called the plaintiff, but the action is pursued for the benefit of the beneficiaries. The beneficiaries on whose behalf the action is pursued are the surviving spouse, the children, and the parents of the decedent, or if none of these survive, the decedent's estate.

In a wrongful death action, there is a single recovery by the plaintiff on behalf of all the beneficiaries, identified in the above paragraph. The recovery will be allocated among the beneficiaries according to the loss suffered by each. If the recovery is on behalf of the decedent's estate, the money will be distributed according to the decedent's will or, if there is no will, according to the laws of intestate succession (which specify how property is to be distributed in the absence of a will).

In a wrongful death action, the jury must give such damages as it deems "fair and just." The amounts recovered are not subject to debts or liabilities of the deceased, unless the action is brought on behalf of the decedent's estate.

There are six types of damages that may be awarded in a wrongful death case. They are listed below:

Loss of love, affection, companionship, care, protection and guidance. These damages are commonly referred to as *loss of consortium* damages, and are largely discretionary.

Pain, grief, sorrow, anguish, stress, shock, and mental suffering experienced by the survivors. The survivors may recover damages for their pain and suffering, but except in an action for elder abuse, the survivors may not recover damages for the *decedent's* pain and suffering.

Loss of income and services. The survivors may recover damages for their economic loss caused by the death. The measure of these damages is the loss of economic support that each beneficiary would have received from the decedent. In cases where the wrongful death action is brought on behalf of

the estate, future earnings of the decedent can be used as the measure of damages.

Funeral and burial expenses. These expenses are recoverable if the beneficiary paid them or is liable for payment.

Medical expenses. Similar to funeral and burial expenses, discussed above, these damages are recoverable only if the beneficiary paid them or is liable for payment.

Punitive damages. Punitive damages, which are intended to punish the wrongdoer, are recoverable if the person causing the death acted with an “evil mind.” Punitive damages may be awarded in cases involving drunk drivers. The jury will determine the amount of punitive damages depending on the aggravating circumstances attending the wrongful act, neglect or default.

Legal Tips:

- A wrongful death action must be filed within two years of the death, or it will be forever barred by the statute of limitations. In some cases, especially those involving claims against government agencies, claims must be presented in a much shorter time period.
- Liability for wrongful death likely will be covered under an auto or homeowners policy of insurance.
- A person against whom a claim for wrongful death is made should immediately notify his insurance company and cooperate fully in the defense of the claim.