

HOW TO HANDLE A WRONGFUL DEATH CLAIM

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CHAPTER ONE

WHEN CAN A FAMILY PURSUE A WRONGFUL DEATH CLAIM?

UNDER TEXAS LAW, IF someone is killed due to violence or negligence, his or her surviving family members have legal claims for fair compensation against the person who caused the death. Since we cannot turn back the clock and prevent the violence or accident from occurring, the law provides legal claims to the survivors to try to account for their losses and bring justice against the wrongdoer.

Although it may seem morbid to think about legal claims after the death of a family member, the claims can help ease the financial burden caused by the sudden loss: medical bills, funeral and burial expenses, estate administration costs, and lost income to the family. Having the responsible person held accountable can also bring justice and help the family get closure after a wrongful death.

Like in any other Personal Injury case, the family has the burden to prove that the death was wrongful (caused by violence or negligence), and there are time deadlines for pursuing claims that must be strictly followed. In addition, unlike other Personal Injury cases, court approval is required to settle Wrongful Death cases, and there are tax implications that must be considered.

For all of these reasons, it is advisable to seek advice from an experienced Personal Injury attorney soon after the death so that the family's legal rights can be protected.

CHAPTER TWO

COMMON WRONGFUL DEATH CLAIMS

ALTHOUGH ANY DEATH CAUSED by violence or negligence can lead to a Wrongful Death claim, the following are several common claims:

MURDER

A criminal murder can give rise to a Wrongful Death claim for compensation. Probably the most famous Wrongful Death claim arising out of an alleged murder was the claim brought by the family of Ronald Goldman against O.J. Simpson. Although O.J. was acquitted of murder in the criminal courts, he was found liable for Wrongful Death, and a judgment for \$33.5 million was won by the Goldman family. Even so, the Goldman case illustrates a common challenge with a Wrongful Death case arising from criminal violence; namely, the problem of collecting the compensation. Insurance policies do not cover acts of intentional violence. So, collecting compensation requires pursuing the personal assets of the defendant. This can be difficult to accomplish, unless the defendant is wealthy. Fortunately, an experienced Personal Injury attorney will know how to find assets if they exist.

VEHICLE ACCIDENT CASES

Car, truck, motorcycle, bicycle, and pedestrian accidents are the most common Wrongful Death cases because each year thousands of people are killed by careless drivers. Fortunately for the survivors, most of the time the defendant will have insurance to cover the accident. Legal assistance will involve proving the negligence case, recovering the compensation, and navigating court approval and tax issues.

MEDICAL MALPRACTICE

Medical errors kill thousands of people each year. If a family member dies due to the negligence of a doctor, hospital, or other medical professional, a Wrongful Death claim can provide compensation to ease the financial burdens.

DANGEROUS PRODUCTS

Defectively designed and manufactured products can cause Wrongful Deaths. When they do, the survivors can present legal claims against the manufacturers and sellers.

CONSTRUCTION OR OTHER WORKPLACE ACCIDENTS

If a loved one is killed in a construction or other workplace accident, legal advice should be sought concerning potential Workers' Compensation and/or Wrongful Death claims. An experienced Personal Injury attorney can provide the advice that is needed to handle such claims.

CHAPTER THREE

WHAT COMPENSATION IS AVAILABLE IN DEATH CLAIMS?

IF A DEATH IS caused by violence or negligence, two claims arise: a Wrongful Death Action claim and a Survival Action claim.

WRONGFUL DEATH CLAIMS

The Wrongful Death claim is a claim available to immediate family members of the victim, such as the spouse, children, or parents. The following are the types of compensation that are available:

Hospital, Funeral, Burial, and Estate Administration expenses

Compensation for the immediate family's (wife, children, parents) loss of money contributions to their support for things like shelter, food, clothing, medical care, education, entertainment, gifts, and recreation

Compensation for the value of the services, society, and comfort the victim would have provided to his family, such as work around the house and the provision of society and comfort

If the victim was a parent, the value of the guidance, tutelage, and moral upbringing the victim would have provided to his children

Punitive damages if the act was done willfully or with gross negligence.

SURVIVAL ACTION CLAIMS

The Survival Act provides that any legal claims the victim would have had personally against the defendant survive his death and can be pursued by his Estate. The specific claims for compensation under the Survival Act are:

The net amount the victim would have earned between the date of his death and the end of his life expectancy, which is when he would have statistically been expected to die but for the defendant's violence or negligence. Net earnings are calculated by taking gross earnings minus probable living expenses and minus the monetary contributions the victim would have given to family members (which is awarded under the Wrongful Death claim).

An amount to fairly and adequately compensate for any mental and physical pain, suffering, inconvenience, and loss of life's pleasures that the victim experienced from the moment of the injury until the moment of death.

The main factor that makes up the value of the Wrongful Death and Survival Act claims is the economic claim of lost future earnings. So, the younger a person is and the more he or she was expected to earn based on education, experience, earning history, etc., the greater the value of the claim. Another major factor driving the monetary

value of a death case is whether or not the victim lived for any period of time so as to experience conscious pain and suffering. If so, the value of the case increases, and justice requires more compensation to make up for this sad fact.

CHAPTER FOUR

WHO CAN MAKE THE CLAIMS?

IN TEXAS, WRONGFUL DEATH claims may be filed by certain members of the decedent's family. This includes the surviving spouse, the children, and the parents of the decedent. In some cases, an adopted child may file a wrongful death claim if the adoption was legally and fully completed. Adoptive parents may also file a wrongful death claim for their adopted child. These claims may be filed as a single action, or the members of the family can group together to file a claim.

CHAPTER FIVE

WHO RECEIVES THE COMPENSATION FROM DEATH CLAIMS?

THE SURVIVING SPOUSE, CHILDREN, and parents of the decedent can be entitled to compensation from the Wrongful Death and Survival claims.

The proceeds from the Wrongful Death claim go to the family of the victim according to Texas's Intestacy Law (the law that says who gets your Estate if you die without having left a Will). Intestacy Law describes all of the rules, but these are the most common: If the victim had no spouse or children, the Wrongful Death proceeds go to his parents. If he had a spouse but no children, the first \$30,000 goes to the spouse and then half and half between spouse and parents. If he had a spouse and children, then the first \$30,000 goes to the spouse and then half and half between spouse and children.

The Survival Act proceeds go to the Estate of the victim. Then these monies are distributed to the people named in the victim's Will. If the victim had no Will, then the Survival Act proceeds go to the people named in the Intestacy Law.

When damages are awarded in a Texas wrongful death claim, they are divided among the surviving family members in proportion to the injury they suffered as a result of the untimely death. If all beneficiaries are adults and are agreeable, they can determine a distribution of the settlement. If an agreement cannot be made, these proportions will be determined by the court.

CHAPTER SIX

ARE DEATH CLAIM PROCEEDS TAXABLE?

THE GENERAL RULE IS that settlements or awards that are compensatory in nature are not considered taxable income by the IRS. Because they are intended to compensate the plaintiff for a loss that has already been sustained, awards should not be treated as new income. On the other hand, damages that are punitive are not intended to compensate a plaintiff for a particular loss, so in certain cases they may be taxed as income.

Unlike compensatory damages, punitive damages are imposed against a plaintiff to punish them for particularly egregious conduct and to discourage others from engaging in similar conduct. The IRS looks to the nature of the claim on which a particular settlement was based in order to determine what portion, if any, will be taxable. In addition, the IRS can challenge a settlement in which the allocation of punitive to compensatory damages does not accurately reflect the “economic substance” of the settlement.

As one may expect, there is an exception to the rule that punitive damages are treated as taxable income. Generally, courts look to the law of the state in which the settlement occurred in order to determine whether there could be compensatory or punitive damages awarded in a wrongful death case. In states in which only punitive damages are available for a wrongful death claim, the IRS allows people to exempt their settlement award from their taxable income.

YOUR TEXAS WRONGFUL DEATH SETTLEMENT MAY BE TAXABLE

Because Texas law allows for both compensatory and punitive damages in wrongful death cases, part of your wrongful death settlement may be considered taxable income by the IRS.

For this reason, people who think that they may have a wrongful death claim should always speak with an experienced lawyer before accepting a settlement offer or taking any other legal action with regard to their claim.

Finally, note that the IRS can change its interpretation at any time and, thus, you should speak to a lawyer about your specific situation.

CHAPTER SEVEN

WHAT A PERSONAL INJURY ATTORNEY DOES IN A DEATH CASE

LOSING A LOVED ONE due to violence or negligence is an overwhelming and emotionally devastating experience. Pursuing legal claims will be the furthest thing from your mind, the last thing you would think about. Nevertheless, bills will keep coming and income from the victim will not.

The job of a Personal Injury attorney is to thoroughly and efficiently investigate, pursue, and resolve all legal claims and to obtain justice and fair compensation for the family of the victim.

The claims must be investigated and a personal representative must be appointed. The claims are either settled through negotiation or proceed to litigation or trial. Once a resolution occurs, the attorney must negotiate tax issues with the state and obtain court approval of the resolution. The Estate of the victim must be administered and closed. Finally, the proceeds of the claims are paid to the beneficiaries.

To pursue a death case it's important to retain an experienced Personal Injury attorney and to ensure that he or she also has qualified estate and tax attorneys available to see the case through to a successful conclusion.