



Jeanne F. Loftis  
Portland, Shareholder

Direct Dial: 503.499.4601  
Fax: 503.295.0915  
Email Attorney

## Oregon Court of Appeals limits wrongful death claims

By Jeanne F. Loftis

Addressing the issue for the first time, the Oregon Court of Appeals has held that a personal representative may not bring a wrongful-death action on behalf of a decedent who, during life, had successfully sued the same defendant for personal injuries arising from the same wrongful acts. *The Union Bank of California v. Copeland Lumber Yards, Inc. et al.*, CA A131135.

Morris Nagl sued Dowman Products, Inc. for personal injuries allegedly resulting from exposure to asbestos-containing products. Nagl prevailed in that action.

After his death, Nagl's estate brought a wrongful-death action against Dowman Products based on the same allegedly wrongful acts that had been the basis for the previous personal-injury action. The action, however, sought some different types of damages than in the personal-injury action.

The Oregon Court of Appeals held that Oregon's wrongful-death statute did not permit the action because the decedent (during life) had previously sued the same defendant for damages arising from the same allegedly wrongful acts that were the basis for the wrongful-death action. The Court focused on the plain language of the wrongful death statute, which says that a wrongful-death claim may be brought only if the decedent might have maintained an action had the decedent lived:

When the death of a person is caused by the wrongful act or omission of another, the personal representative of the decedent...may maintain an action against the wrongdoer, if *the decedent might have maintained an action had the decedent lived*, against the wrongdoer for an injury done by the same act or omission. (emphasis added).

Other courts, including the United States Supreme Court, have developed a minority position reaching a different conclusion. The Oregon Court of Appeals distinguished cases from those courts on the grounds that those cases involved wrongful death statutes creating *independent* claims. For instance, in *Sea-Land Services, Inc. v. Gaudet*, 414 US 573, 579-95, 94 S Ct 806, 39 L Ed 2d 9 (1974), the United States Supreme Court found that a maritime wrongful death provision was intended to compensate victims, and consequently the Court held that statute created a claim independent from the decedent's prior personal injury claim. Oregon's wrongful-death statute, on the other hand, indicates that the estate's claim derives from the decedent's rights. In discussing the statute's interpretation and history, the court quoted from a nearly century-old Oregon Supreme Court case:

"[I]t would be unreasonable to hold...that the defendant, after fairly compensating the injured man for the negligent wrong inflicted upon him, should be compelled to search out all others of his relatives and litigate or settle with them." *Quoting Kosciolk v. Portland Ry., L. & P. Co.*, 81 Or 517, 160 P 132 (1916).

The opinion also suggests that a defendant would enjoy the same defenses against an estate, such as statute of limitations, as it would have had against the decedent, because wrongful death claims will be subject to the decedent's rights at the time of death.

By understanding the appropriate defenses available in Oregon, we can help obtain an early dismissal for our clients in many cases before incurring the expense of discovery. For further information, please contact your Bullivant attorney.