



Washington Enacts New Law Expanding the Scope of Wrongful Death Beneficiaries

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Washington State's Legislative Season this year was a busy one, with several key statutes getting passed. From a defense litigation perspective, a key and controversial bill was SB 5163, Relating to actions for wrongful injury or death. This bill was ultimately passed by both houses and signed by Governor Jay Inslee on April 26, 2019.

The new law mirrors bills that the Plaintiff's bar has sought to get passed in previous years. However, this year SB 5163 picked up significant public support because of media attention spotlighting the Ride the Ducks cases arising from a September 24, 2015 collision that killed five people and injured more than 60. While some plaintiffs have obtained significant verdicts because of these lawsuits, other beneficiaries have been precluded from filing suit because they lived abroad when their loved ones died. The Plaintiff's bar was able to use a seemingly pointless residency requirement to garner wide public support for this Bill despite significant efforts by the Defense bar to get it blocked.

Importantly, however, the larger effect of this new law is that it **widens the scope of potential plaintiffs for damages arising from a wrongful death.**

Washington divides claims arising from a tortious death into two types. The first is a survival action, in which a personal representative for the Estate of a decedent can pursue damages the decedent could claim for a personal injury had they lived. This includes special damages such as medical expenses or lost wages as well as general damages suffered in between the injurious act and death *so long as the injury was realized or death was contemplated as imminent*. This does not include damages for shortened life or loss of enjoyment of life after death. The second type of claim is a wrongful death claim, and allows for beneficiaries to claim any pecuniary losses relating to the death of their relative. Pecuniary losses include monetary loss (such as loss of family income) as well as intangible losses such as loss of the decedent's support, love, and companionship.

Before the new law was passed, there were two tiers of beneficiaries for each type of claim:

- The primary beneficiaries were the decedent's spouse, registered domestic partner, and children.
- The secondary beneficiaries were parents and siblings, but they were only entitled to recover if there were NO primary beneficiaries, AND if 1) they depended on the decedent financially and 2)resided within the United States at the time of death.
- Parents of a minor child could be a beneficiary only if they regularly contributed to the child's support. Moreover, both/all parents had a single, indivisible claim. The award would be apportioned between them as needed if the parents were unmarried.

With the change in the law, the beneficiaries are as follows:

- The primary beneficiaries are the decedent's spouse, registered domestic partner, and children.
- The secondary beneficiaries are parents and siblings. They may only recover if there are



not primary beneficiaries. That said, there are no requirements relating to financial dependency or residency of a secondary beneficiary.

- For parents of a minor child, they will be a beneficiary if they can demonstrate "significant involvement" of an emotional, psychological, or financial nature at any time "reasonably near" to the time of the tort or the time of death. Each parent now has their own individual claim as a beneficiary.

This effect of this change will be a widening of potential claims for each death involving a tort. Often, adult parents and siblings would not be able to establish the monetary support threshold in order to present a claim for the wrongful death of an unmarried decedent without children, causing a complete dismissal of a claim. Those plaintiffs will now be able to pursue those claims without difficulty.

Similarly, this change will likely increase the value of claims involving the death of a minor. Where all parents had one claim previously, now each parent has his or her own claim. Moreover, the threshold for this claim will be easier to establish such that even parents who are minimally involved with their child's care will be able to cognizably assert they were involved in an emotional, psychological, or financial fashion.

This law is to be applied retroactively, and therefore will apply to any live claim or lawsuit that exists at the time it goes into effect.

The law goes into effect 90 days after the adjournment of the legislative session. By our count, that means that **the law takes effect on July 28, 2019.**

A copy of the passed legislation may be found here.