

# WRONGFUL DEATH CASES IN KENTUCKY

By Michael A. Schafer, Attorney at Law



*The Schafer Law Office*

440 South Seventh Street, Ste. 200  
Louisville, Kentucky 40203

(502) 584-9511

[www.mikeschaferlaw.com](http://www.mikeschaferlaw.com)

## **WRONGFUL DEATH CASES IN KENTUCKY**

The death of a person that is caused by the actions of another person or company may give rise to what is called a “wrongful death” claim. A wrongful death is one where a person dies due to the negligent actions or intentional actions of another person or entity. The conduct can be intentional (e.g., assault or murder) or unintentional (i.e. negligent or mistake). An individual person can be responsible for causing a wrongful death, or a corporation or governmental entity may be responsible. When a wrongful death occurs, the law permits the surviving relatives of the deceased to recover certain types of damages against the responsible party.

In Kentucky, a wrongful death claim is controlled by statutes that were passed by the Kentucky legislature. The wrongful death statute has specific requirements that must be met before a case may be brought. To bring a wrongful death case, a “Personal Representative” must first be appointed by the Court on behalf of the decedent’s estate. The Personal Representative is known as the Executor or Executrix of the estate if there is a will or the Administrator or Administratrix of the estate if there is no will. A petition to appoint the Personal Representative must be filed in Probate Court, which is a division of District Court. The Judge enters an Order appointing the Personal Representative of the estate. The Personal Representative is then responsible for bringing the wrongful death case on behalf of the estate and surviving relatives (called beneficiaries).

In Kentucky, only those surviving relatives that are listed in the statutes can receive money as beneficiaries of a wrongful death case. They are known as “statutory beneficiaries” (because they are designated by the wrongful death statute). The beneficiaries in Kentucky are  $\frac{1}{2}$  to the surviving spouse and  $\frac{1}{2}$  to the surviving children. If there are no children then all would go to the surviving spouse. If there is no spouse all would be divided equally among the children. If any child predeceases the person killed in the accident than that child’s children would equally divide that share. If there is no spouse and no

children then the decedent's parents are the beneficiary. If no parents then the deceased's brothers and sisters are next in line. Should there be none of the above present then the estate escheats to the Commonwealth of Kentucky. That is the state receives the money.

When the Personal Representative brings the wrongful death action, he or she does so for the purpose of recovering damages on behalf of the legal beneficiaries. The personal representative may or may not be a beneficiary. Only the surviving beneficiaries can recover economic and non-economic damages caused by the person's death. Some damages include healthcare and funeral expenses. Also the decedent's power to labor and earn money over the course of their life had death not occurred is a recoverable damage. Also, the decedent's loss of services are recoverable.

Experts (such as a vocational economist) calculate the present value of the estate's expected power to labor and earn money and loss of services. This amount will vary according to the decedent's income producing capability. There can be wide disagreement among the experts on the amount of net accumulated earnings that would have been earned by the decedent had death not occurred. For this reason it is very important to involve competent and highly skilled experts in the case.

It is more difficult to come up with an accurate figure for loss of power to labor and earn money when the deceased is a child or when the deceased's earnings history is sporadic, or when the deceased's earnings potential has not been fully realized (as a college student). In these cases the insurance company and its lawyers will argue that any future expected earnings are too speculative to calculate. You must be able to prove that the decedent's potential earnings were substantial. This can be accomplished by using a siblings' earning history or a parents' earning history.

When using experts to calculate economic damages, it is important to involve the expert early in the case. You must

furnish the expert with all of the necessary documentation to help the expert calculate lost earnings and loss of power to labor and earn money. These records may include employment, tax, educational, medical, bank, insurance or other financial documents. In the case of a deceased child or young adult, the financial records of the parent may help. Many times the earnings potential of children closely resembles that of their parents.

Non-economic damages are more difficult to calculate or quantify. Non-economic damages include a recovery for the decedent's pain and suffering from the time of the accident until the death. Many times it may be necessary to hire a medical expert to help establish that the deceased person consciously felt pain, distress or anxiety before death occurred. Sometimes the testimony of witnesses who had contact with the decedent right before death can help establish that the person was in fact conscious before death and experienced pain and suffering. Occasionally the autopsy report will help prove the deceased was conscious before death.

A surviving spouse may recover damages for "loss of consortium" which includes the loss of emotional support, love, affection, care, services, companionship, including sexual companionship, as well as assistance, expected from the deceased spouse. (A surviving child may recover damages for the loss of a parent, to include the loss of love, care, companionship, and guidance expected from his or her father or mother under some circumstances.)

The non-economic damages portion of the case can be difficult to determine and present to an insurance company or a jury. There is no magic formula to apply. But certain facts may be relevant to deciding what amount of non-economic damages is fair and just. These factors may include the deceased person's life expectancy, the deceased person's health and habits, and the quality of the deceased person's relationships with surviving beneficiaries. Many times using an experienced and competent mental health expert (e.g., therapist, psychologist, psychiatrist, counselor, etc.) can help establish and prove the

“intangible” loss suffered by a surviving spouse, parent, child or sibling.

The death of a loved one is tragic. An unexpected death in the family is the most difficult experience one will ever face. But if you are a surviving relative of a person who was killed due to the intentional and/or negligent conduct of another party, it is important that you hire legal representation as soon as possible. A Personal Representative must be chosen and then formally appointed by the Court. In many cases the insurance company investigators and lawyers have already gathered a substantial amount of information to help mount a defense to the anticipated wrongful death action that will be filed. If you delay hiring a lawyer, it could cause substantial difficulties later on, especially if evidence is lost, destroyed or misplaced. Time is of the essence.