

# Losing Someone You Love

## An Ohio Family's Guide to Wrongful Death

In his new consumer handbook written for surviving family members, author and Ohio personal injury lawyer David M. Chester provides answers to many of the questions asked by the grieving families of victims of wrongful death. From his years of experience dealing with all types of wrongful death claims, Attorney Chester explains in simple, easy to understand language, what families must know to protect themselves while walking in the mine field of the wrongful death process. Building on his first book, entitled *The Insider's Guide to Handling Ohio Accident Claims*, Attorney Chester explains:

- What is a wrongful death claim?
- The types of situations that give rise to a wrongful death claim
- Who gets money from a wrongful death claim?
- Who is in charge of the wrongful death lawsuit?
- What responsibilities this person in charge of the lawsuit has to the other family members?
- What type of damages can be collected in a wrongful death claim?
- Who determines how much money each family member gets?
- How much proof is needed to win an Ohio wrongful death claim?
- How to prove the elements of a wrongful death claim?
- How long you have to file a wrongful death lawsuit in Ohio?  
It may be as short as 6 months.
- Common defenses that can destroy a wrongful death claim and how to avoid them
- 6 common places to find insurance in an auto accident wrongful death claim
- 4 places that you would never think to look for money in a wrongful death claim
- What an experienced personal injury lawyer actually does for you
- How to choose an Ohio wrongful death lawyer  
...and much more

*In this time of mourning, let Attorney David Chester provide you with some simple, easy to understand legal knowledge to protect the financial future of you and those you love. For more information or to obtain a free copy of Attorney Chester's other books or DVD's, go to [www.chesterlaw.com](http://www.chesterlaw.com) or call his office at 1-800-218-4243.*



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LOSING SOMEONE YOU LOVE AN OHIO FAMILY'S GUIDE TO WRONGFUL DEATH Chester Law Group Co., LPA

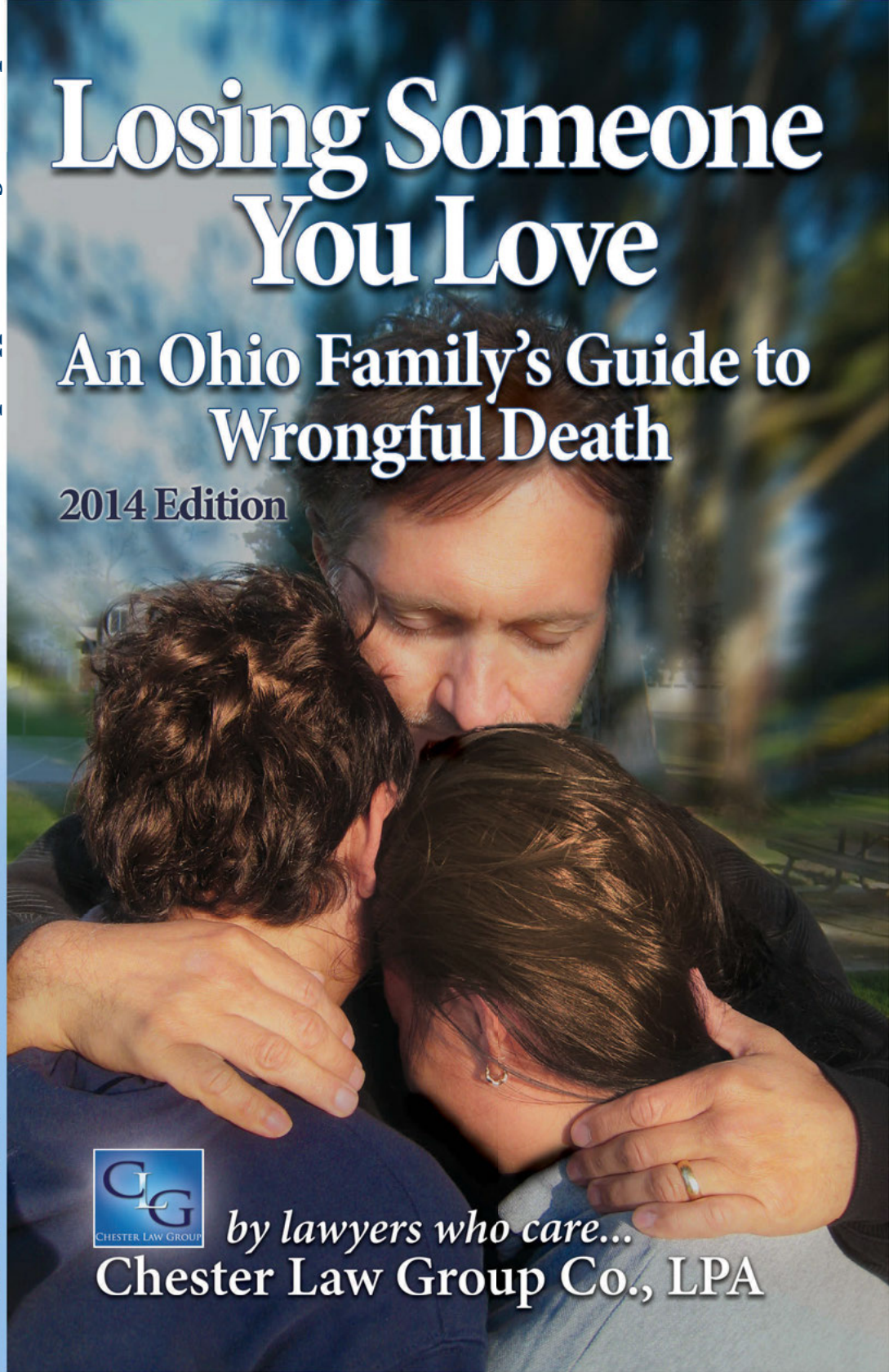
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2014 Edition



*by lawyers who care...*  
**Chester Law Group Co., LPA**



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BY ATTORNEY DAVID M. CHESTER  
THE CHESTER LAW GROUP CO., LPA

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# 1

## *Introduction*



The death of a loved one is an emotionally painful event; one that no person should have to endure alone. Even when death comes from natural causes, such as old age, the

scars left can be deep and lasting. In these situations, normally you have time to prepare to say goodbye to your loved one, to clear the air if necessary, and make final arrangements. I believe that the pain and suffering associated with the death of a loved one is made worse when the death is sudden and without warning. It is made even worse when another person needlessly endangered your loved one and caused their death because of carelessness, or worse yet recklessness or intentional actions.

If you are reading this book because you likely have lost a loved one, I want to say that I am truly sorry for your loss. Like you, I have lost people close to me. If my pain and suffering is any indication of how you are feeling, then I can understand how difficult it must be to think about legal issues at a time like this. I know that this book is little consolation for what you are experiencing at this time of sadness. I do hope, however, that this book can provide you with a map to navigate through the additional burden of dealing with the many complex legal issues that surround the wrongful death of your loved one. I know that the death of a loved one leaves you with many questions and you may not know where to turn or who to turn to for help. I will attempt to throw out the legalese and explain in every day terms what you need to know right now to protect your legal rights and create financial security for you and your family.

# 2

## Why I Wrote This Book







I believe that knowledge is power. Lack of knowledge can be a dangerous thing, especially given the complexities of law that we will touch upon in this book. For example, normally the family of a deceased person has two years to file suit against any person or company they believe wrongfully harmed their family member. If you wait more than two years, you lose your right to sue forever. If the party at fault dies, you may have only six months to sue their estate or lose your case. Six months. Unbelievable. It is this lack of knowledge about time limitations and many other things that I hope to eliminate in this book. I intend to write this book as if you are a potential client, thinking about calling me or actually sitting in my office talking to me about the wrongful death process. Much of the information from this book comes from actual conversations I have had

with grieving families that have lost a loved one over the years as I have moved quickly and fairly to resolve the wrongful death claims they bring to my office. I know of the emotional and financial struggles that come after a loved one dies unexpectedly. I have tried to anticipate your questions in this book by drawing on the issues my clients have raised through the years.

I am not going to bore you with my extensive experience or needless war stories regarding wrongful death claims. I know you are here to gain information you need to move forward on legal issues during this time of grief. You want answers. From the testimonials at the back of this book and video testimonials on my website, you will see that my clients feel that I have done right by them. I leave it to you to read this book, and judge for yourself if you need a wrongful death lawyer and whether my firm can help you. Trust your gut. If you would like more information about my firm and me, please go to my website **[www.chesterlaw.com](http://www.chesterlaw.com)**.

I believe that after you read this book you will understand that the law of wrongful death is a highly technical, complicated mine field where missteps can be very costly and hiring an experienced wrongful death

lawyer is a must. I hope you will come to see me as a guide on this path toward resolution of your claims against the person who has caused your family so much pain. Perhaps together we can make the journey a little less painful.

# 3

## **What Is A Wrongful Death Claim?**



I begin our discussion about wrongful death claims by discussing what exactly wrongful death claims are. Perhaps you are familiar with the term wrongful death. A wrongful death claim is an injury claim usually *brought by a family member on **behalf of the family** for the emotional pain and suffering **the family has suffered*** because of the death of their loved one. It is called “wrongful” because another party did something wrong to the deceased to cause him or her to die.

The family member who brings the claim for other family members is called the executor if a will exists or personal representative if there is no will. The family members who have been injured are called beneficiaries of the wrongful death claim. The personal representative represents the financial interests of the beneficiaries.

A wrongful death claim should not be confused with a survivor claim. A **survivor claim** is a claim brought on **behalf of the deceased family member** for the pain and suffering the **deceased may have suffered** before they died. It includes pain, suffering, lost wages, medical expenses, and these damages are an asset of the estate and are distributed according to the will or if no will, an Ohio law called the probate code’s intestacy statute.

The wrongful death claim, in contrast, does not belong to the estate but is brought by the executor if a will exists or personal representative if no will for the benefit of beneficiaries and damages are paid directly to family member beneficiaries. The survivor claim arises when the deceased person knew they were about to die or suffered after the accident but before they died. These legal terms are confusing as the wrongful death claim belongs to those family members who did not die and the survivor claim is an asset of the estate of the deceased family member who did not survive. Odd but true. These terms have little meaning to the average person, but it is important to be at least familiar with them. They do lead us into a discussion of the types of claims that must be investigated and potentially brought after the death of a loved one.

# 4

## Types of Wrongful Death Claims





You see, in many ways, wrongful death claims are very similar to traditional personal injury claims. You could say that when a traditional negligence personal injury claim results in a death, then it becomes a wrongful death personal injury claim, and many of the same standards apply.

### **Common Causes of Wrongful Death Claims are a Result of:**

- Car, truck or motorcycle accidents
- Pedestrians struck by cars
- Bicyclists struck by cars
- Defective products
- Medical errors
- Medical misdiagnosis or failure to diagnose
- Prescription drug mistakes
- House and building fires
- Construction accidents
- Slip and fall accidents
- Workplace accidents
- Airplane and train crashes

This is just a short list of all the ways a wrongful death claim can arise. Wrongful death claims can also arise from reckless or intentional conduct such as:

- Drunk driving
- Assault and battery
- Rape
- Murder

# 5

## **Who Gets the Money From a Wrongful Death Claim?**



The Ohio Revised Code identifies those family members who are potential beneficiaries of a wrongful death claim. The statute deals specifically with who can claim damages under the wrongful death statute and what damages can be claimed by beneficiaries of the estate.

Under Ohio law<sup>1</sup>, a beneficiary is a fancy term used to describe someone who can collect under the wrongful death statute. Remember, beneficiaries are the ones who were financially, emotionally, etc injured by the death of the loved one under Ohio law. Each situation is different in identifying entitlement to become a beneficiary. They include the decedent's surviving spouse, children, and parents. The law presumes the surviving spouse, children and parents suffered a loss, which is obvious. Other family members can present claims but are not presumed to have suffered a loss under the statute.

If a child has died, a parent who has been court determined to have abandoned the child cannot collect on the wrongful death suit. A decedent's unborn child is a beneficiary of the estate if the child is born alive.<sup>2</sup>

<sup>1</sup> RC 2125.02

<sup>2</sup> RC 2125.02(A)(1)

# 6

## **Who Actually Sues for the Wrongful Death Claim?**



Since the deceased family member cannot file a lawsuit, Ohio law contains a process whereby all family members can in a sense sue for damages, without having to list each family member as a plaintiff on the lawsuit. As we have said, the law requires an executor or administrator, called a personal representative, as discussed above, who will represent family members, called beneficiaries, in their personal injury claims. If the deceased has a will, then the executor can file the lawsuit. If there is no will, a personal representative must be appointed.

The personal representative acts much like a traditional personal injury client, even though they are making decisions for the benefit of all the beneficiaries of the wrongful death claim. The personal representative decides whether to file a lawsuit, who to sue, and whether or not to settle, with probate court approval. They respond to litigation discovery, participate in settlement negotiations attend pre-trials and other hearings, and act just like a regular personal injury client.

The actual lawsuit is brought in the name of the personal representative of the estate, for the exclusive benefit of the surviving spouse, children and parents.<sup>3</sup>

<sup>3</sup> RC 2125.02(A)(1)

This is why it is so important to have a personal representative who is willing to pursue the wrongful death claim vigorously and hire an experienced personal injury firm who has successfully handled wrongful death cases before. If there is no will, whoever opens the estate and whoever is named the personal representative in effect controls the wrongful death claim and which lawyer will handle it, of course subject to court oversight.



# 7

## **What Damages Do Beneficiaries Get To Collect In The Wrongful Death Claim?**



Ohio law provides a laundry list of damages that beneficiaries of a wrongful death claim can be compensated for.<sup>4</sup>

1. Loss of support from the reasonably expected earning capacity of the deceased.
2. Loss of services of the deceased
3. Loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education
4. Loss of any future inheritance from the deceased
5. Mental anguish suffered by beneficiaries

### **Importance of documenting injuries**

As you can see, beneficiaries are able to collect for a variety of physical, emotional, mental, sexual, spiritual and financial losses directly and indirectly caused by the death of their loved one. Each of these five types of damages requires testimony of some sort to explain to

<sup>4</sup> RC 2125.02 (B)

an insurance adjuster and possibly a jury the extent of damage done to each beneficiary. For this reason, it is a good idea for each family member to keep a journal so that later on they can remember each and every way they were damaged by the loss of their loved one. Of course, if a mental health professional is being seen, clear the diary with him or her. It is important to document every single way the death has affected each and every beneficiary.

# 8

## **Who Determines Which Beneficiary Gets What?**



The probate judge determines how much each statutory beneficiary gets from any settlement or jury award.<sup>5</sup> This keeps the personal representative from having to make the difficult decisions of which family members get how much money. It also avoids corruption or collusion between the personal representative and some beneficiaries to the detriment of other beneficiaries. The breakdown is based on the relationship each person has to the deceased and the loss each beneficiary has suffered. This is common sense. For example, if your deceased family member was your father, then you and your siblings and mother would more likely get a greater portion of the wrongful death award because the decedent was the bread winner and was supporting all of you, assuming that is the case. The law does allow beneficiaries of the same consanguinity to the deceased person, such as if all beneficiaries are children, to adjust the share of proceeds among themselves.<sup>6</sup> If they don't do it, the court will do it the way it does in a typical case with parents, children and spouse.

The judge will hold a hearing on the issue of disbursement of the wrongful death proceeds, and all

<sup>5</sup> RC 2125.03 (A)(1)

<sup>6</sup> RC 2125.03 (A)(1)

interested parties can speak or have counsel speak for them if they so choose.

The probate court can order a trust set up for any beneficiary under age 25 until they turn 25. To make sure the trustee of this minor's trust is honest, the law requires the trustee of this trust be approved by each adult beneficiary and the guardian of each minor beneficiary of the trust. This makes sure the money is safe until the minor turns age 25.<sup>7</sup>

<sup>7</sup> RC 2125.03(A)(2)

# 9

## **Proving Death Was "Wrongful"**





In general, in order to have a claim against anyone for injury or death to you or a family member, someone else has to do something wrong to you or your family member. The law has a lot of legalese terms for this wrongdoing, including negligence, recklessness, and intentional conduct. So if someone's negligence, recklessness, or intentional conduct injured you or a loved one, you have a claim against them for damages caused by their conduct. If the other person or company did nothing wrong, there is normally no claim. So as an initial matter, we have to determine if someone did something wrong to your loved one such that they are liable for damages. We must overcome this initial, often overlooked issue. Remember, just because someone dies does not mean anyone can be successfully sued over it. You and your personal injury lawyer have the burden of proving someone else's wrong behavior caused the death or injury. Proving someone did something “wrong” ranges from the simple, such as your loved one was hit from behind in a car by a truck to the incredibly complex and difficult, such as in many medical malpractice cases.

In practice, most wrongful death claims arise from the negligent conduct of another person. So what is negligence? If someone did something careless, or they

needlessly endangered your loved one, then they are said to be negligent. If that negligence caused the death of your loved one, then you may have a case for wrongful death.

To be more specific, let me give you some examples. Negligence claims that result in death can arise from many types of conduct, such as the:

- Negligent driver on the road who crosses the yellow line
- Negligent doctor who takes out the wrong organ or delivers a baby too late
- Negligent store owner who leaves water on the ground
- Negligent homeowner who leaves known dangerous conditions on their property nobody knows about
- Negligent amusement park operator who does not properly maintain rides
- Negligent car mechanic who negligently puts on a car tire

## Duty

Any person who owes you a legal duty can be negligent. Duties are established by law. Drivers owe a duty to not needlessly endanger you while driving. Doctors owe a duty to not needlessly endanger your health while operating. Store owners owe a duty to keep their floors dry. Homeowners owe a duty to not needlessly endanger their guests by having known holes in the yard covered by snow. Amusement park operators owe a duty to maintain the rides properly. Mechanics owe a duty to not needlessly endanger drivers by failing to put on tires properly, etc. You get the idea. Generally, if someone who has a duty to you fails to live up to their obligation to protect you, take care of you, or not needlessly endanger you, then the law deems them negligent.

Proving that the other party whose actions caused the death of your loved one was actually negligent or needlessly endangered your loved one is a key job of an experienced personal injury lawyer. Unless it is shown that the other party needlessly endangered (or recklessly or intentionally harmed) your loved one, and that conduct caused the death, there is probably no wrongful death claim. This assumes there are no strict liability claims where someone is found to be liable without having been negligent. You can talk to your lawyer about this area of law.

# 10

## **Standard of Proof in Wrongful Death Lawsuit**



As in all negligence personal injury claims, you must prove that the party at fault needlessly endangered your loved one which led to their death. You must prove this by a preponderance of the evidence. This fancy legal term actually means that you must prove it is more likely than not the case that the other party did what you claim they did.

Another way of looking at it is you must prove that it is at least 51 percent likely that the other party was negligent and caused the death. Looking at it this way, the burden of proof is much lower than the average person thinks. Most people think of criminal law, where the government must prove beyond a reasonable doubt the defendant was guilty. The standard in a civil wrongful death case is much, much lower than the criminal context.

A final way of looking at this confusing standard of care is to look at a scale with two sides to hold weight. On the left side is your evidence of negligence, on the right side is the evidence that the other party is not negligent. If at the end of trial the left scale is even a tiny bit further down than the right side of the scale, you have met your burden. This is another way of saying

more likely than not the defendant was negligent.

# 11

## **Statutes of Limitations: May Be As Short As Six Months**



For most wrongful death claims, the time limit that the personal representative has to file a lawsuit is usually two years from the death of your loved one.<sup>8</sup> Remember, the wrongful death claim belongs to the beneficiaries of the estate.

If the deceased family member died as a result of medical malpractice, the decedent's medical malpractice case must be filed within one year of the malpractice or one year from when a reasonable person would have known about the malpractice, with some exceptions. The wrongful death claim for the beneficiaries would still be two years.

One exception to the two year wrongful death rule is if wrongful death was caused by a defective product. If this is the case, then you must sue within ten years of the product being first delivered to the first purchaser or lessee.<sup>9</sup>

Another exception to the two year statute of limitations on wrongful death is if the party at fault also dies. Then you may have only six months to file suit against their estate or lose your claim forever. ***Six***

<sup>8</sup> RC 2125.02(D)(1)

<sup>9</sup> RC 2125.(D)(2)(a)



*months.* Unbelievable but true.

It is important to contact a wrongful death lawyer long before the statute of limitations comes up. The experienced wrongful death lawyer will determine the appropriate statute of limitations. The estate must be opened, the personal representative must be appointed, the lawyer must be hired, the case must be investigated, and a lawsuit would have to be filed, all before the statute passes. Things take time, so talk to an experienced wrongful death lawyer as soon as you are emotionally able to do so.

We have had clients come into our office the day before a statute of limitations and ask us to handle their wrongful death case. This puts our office in an impossible situation. Contact an experienced wrongful death lawyer immediately if you suspect a death was wrongful, especially if the death may have been caused by a medical doctor or other medical personnel.

# 12

## Meeting with A Wrongful Death Lawyer



Now that you have a general understanding of personal injury law and the wrongful death claim's place in it, what types of conduct gives rise to a wrongful death claim, the burden of proving negligence and the standard of proof, let's move to a discussion of the mechanics of the wrongful death claim process and your involvement in that process.

When I receive calls from family members of the deceased, they usually want to talk about how their loved one died and they are wondering if there is anything they can do to a person or company they believed caused their family member's death. Sometimes, the family members don't know what happened, and they want my firm to investigate the events around the death to see if anything improper occurred.

They may have a gut feeling that something went wrong or someone did something inappropriate that led to their family member's death, but they don't know exactly what. This occurs most often in the medical malpractice arena, where their family member died while under the care of a doctor or hospital. The family member does not know enough about medicine to know exactly what may have gone wrong, but they sense that a doctor made a mistake. Almost always the family is not

looking for a payday, but rather the peace of mind that comes from getting closure as to what exactly happened to their loved one. If my firm decides to take on these types of cases, we will usually get medical records and investigate the claim, having the records reviewed by experts to see if any party needlessly endangered your deceased loved one. Remember, just because your family member died does not mean that any person did anything wrong to cause that death, or at least anything wrong that can be proven in a court of law.

You may want to hire a wrongful death lawyer right away, but Ohio law has specific procedures that must be followed before a wrongful death lawyer can technically be hired by the personal representative and a wrongful death claim be filed.

# 13

## **Opening Up An Estate: The Right Personal Representative Is Key**



When a death occurs as a result of a personal injury, Ohio law requires that an estate be opened in probate court in order for the personal representative to bring a wrongful death claim. An estate is simply a fancy term for a legal process where the court oversees the affairs of the deceased person and the wrongful death claims that family members have. The probate court wants to make sure that any settlement is fair to all beneficiaries. The probate court assigns a personal representative, usually a family member chosen by the family, to handle the affairs of the estate with the probate court's approval. The probate court must approve any wrongful death settlement. The personal representative hires the personal injury lawyer to handle the wrongful death claim. This is why when family members come to my office without an estate opened, they can't technically actually hire me for the wrongful death claim until they are named executor (if there is a will) or personal representative (if there is no will) and then have the power to hire me. A wrongful death lawyer or a probate lawyer usually sets up the estate with the probate court by:

- Filing paperwork with the probate court
- Sending notice to all interested parties to show up and contest the appointment if they wish
- A hearing is held stating why this personal representative is best to handle the estate
- That personal representative hires the wrongful death lawyer of their choice.
- The hired wrongful death lawyer represents all beneficiaries of the wrongful death claims

You can see from above that whoever is named personal representative gets to hire their own personal injury lawyer to represent the beneficiaries.

### **Probate Fights:**

#### **What if multiple people want to be personal representative?**

If several family members want to be personal representative and hire their own personal injury lawyer, then the court has a hearing, sends notice to all interested parties, and decides who is best suited as personal representative, given statutory guidance and

common sense. There is one lawyer who will be hired by the personal representative and handle the wrongful death claims. Beneficiaries can hire their own lawyers to protect their interests, but those lawyers don't share in the contingency fee. Most beneficiaries don't endure the expense of hiring an hourly lawyer to protect their interest because the probate court takes on this role at settlement time, making sure that the settlement is fair to all appropriate beneficiaries.

Sometimes multiple family members want to be co-personal representatives. We discourage this because it requires multiple people to agree on everything regarding the wrongful death claim process and can slow things down considerably. This is especially true when there are statute of limitations issues.



# 14

## **What the Personal Representative Does and Why It Matters**



After the probate hearing, and after the personal representatives is appointed by the probate judge, the personal representatives hires a personal injury lawyer to pursue the wrongful death claim on behalf of all the beneficiaries. The personal representatives will make the key decisions regarding the claim, such as whether to sue, how much to accept as settlement, with the probate court having final settlement and distribution approval. The personal representatives chosen is very important because they have the power to choose which lawyer will protect all the beneficiaries' rights and get compensation for all beneficiaries. This is an important decision, and should not be made lightly. The lawyer chosen has a huge impact on the final settlement or jury verdict, as is the case in all personal injury cases. Insurance companies respect lawyers who go to court and threaten them financially, and so picking a confident, experienced wrongful death lawyer who has the financial wear with all to go to trial if necessary is key. A wrong pick by the personal representatives can have disastrous consequences for all beneficiaries. I discuss this topic more in my book entitled *The Insiders Guide to Handling Ohio Accident Claims*. Call me for a free copy at 1-800-218-4243 or go to my website to

order a hard copy of the book or download a digital copy right now at **[www. chesterlaw.com](http://www.chesterlaw.com)**

Once an experienced wrongful death personal injury lawyer is chosen to protect all the beneficiaries, the lawyer sets out to gather evidence and prove the elements of a wrongful death case, discussed in the next chapter.

# 15

## **The Four Pillars of Winning a Wrongful Death Lawsuit**



- 1. DUTY**
- 2. BREACH**
- 3. CAUSATION**
- 4. DAMAGES**

## Pillar 1. DUTY

In law school they teach young lawyers that in order to win a personal injury claim, including a wrongful death claim, you have to prove 4 things:

1. The Party at fault had a duty to the deceased
2. The Party at fault breached that duty by  
needlessly endangering the deceased
3. Those actions of the defendant actually caused  
the death
4. Damages directly and indirectly resulting

A jury, not a judge, gets to decide if you have proven these 4 elements of your wrongful death claim. But what the heck does duty, breach and all these legalese terms really boil down to. As we discussed, the law places a duty on certain people not to needlessly endanger other people. We discussed the duties:

- Doctors have to their patients
- Store owners have to customers
- Homeowners have to guests

- Amusement park have owners to visitors
- Car mechanics have to owners of cars they work on
- Drivers have to other drivers, passengers and pedestrians
- And many, many more...

You have to show that the person who caused the death had a duty to act reasonably with your loved one. Another way of saying this is that the defendant had to act like a reasonable person would in the circumstances.

## **Pillar 2. BREACH OF DUTY**

We also discussed that step 2, Negligence, is just a fancy way of saying that the other party with a duty to not be careless did in fact breach that duty by needlessly endangering the deceased by their actions or inaction depending on the case. The law places a burden on you to prove that the other party needlessly endangered your love one by their conduct. Ultimately, this is an issue for a jury to decide.

### **Pillar 3. CAUSATION**

As for step 3, causation, it is not an issue in every wrongful death case. For example, in many cases it is rather easy to see that the actions of the party at fault caused the death. For example, the doctor gave medication the patient was allergic to and the doctor should have known it because the patient checked the relevant allergy box on an intake form, and that giving of the medication caused or contributed to causing the death. The driver crossed the yellow line illegally and that action caused the death. The car mechanic failed to put the tire on properly, the tire came off and the driver died. The amusement park owner did not properly maintain the rides and the ride broke and killed someone. Many times, however, causation may be more difficult to prove, such as when the patient was already very sick and it is difficult to know if the doctor's actions caused the death or if the patient would have died anyways.

Say that a car wreck occurs at a red light, with no witnesses, and the guy who killed your family member says the deceased ran the red light. No matter how much damage was suffered, there can be no recovery if

the other party did not cause the injuries or death. Also, any time there is a lengthy delay between the time of the injury and time of death, such is common in medical malpractice and nursing home cases, causation becomes a problem. It is at these moments that experts are hired to reconstruct the accident, or medical experts hired to analyze medical records, to determine what actually happened.

Experts are also often needed in survivor claims. Proving the deceased was aware of his or her suffering is necessary to win a survivor claim, which you may remember is a claim the deceased's estate brings for the suffering the deceased suffered before his or her death. Proving the deceased endured this conscious suffering often requires medical experts to review medical records.

#### **Pillar 4. DAMAGES**

We all know that death is a horrible thing, but the wrongful death lawyer has the odd task of putting a dollar value on all of the physical, emotional, mental, sexual and financial consequences to all of the beneficiaries of the estate by the passing of the deceased at the hands of the other party. You see there is no



real justice in the civil justice system except money, and that can seem a cold outcome of any settlement or trial. However, the fact remains, that the death of your loved one damages each member of your family in many different ways, and each must be documented, demonstrated and a value placed on it by the wrongful death lawyer. College still must be paid for, bills must be paid. It's a cold reality. As a personal injury lawyer, my job is to calculate the amount of money each family member has lost for the rest of their lives because of the death of the loved one, and also place a value on all of the emotional pain and physical suffering caused by the loss. No small task. This is why we use experts such as accountants, medical experts, economists, accident reconstructionists, grief counselors, etc to calculate costs to every family member for the rest of their lives that will not be paid now that the family member has died.

Remember, as discussed above, there is laundry list of damages that beneficiaries of a wrongful death claim can be compensated for; loss of support from the reasonably expected earning capacity of the deceased, loss of services of the deceased, loss of companionship, consortium, care, assistance, attention, protection,

advice, guidance, counsel, instruction, training, and education, and loss of any future inheritance from the deceased, and Mental anguish suffered by beneficiaries. Each one must be discussed in detail with the insurance company adjuster, defense counsel or jury, depending how far the case goes before resolution.

# 16

**What if my  
Deceased Loved  
One is Partially  
at Fault for the  
Accident?**



One defense that the defendant in a lawsuit or his lawyers will often use is comparative negligence. In Ohio, if the deceased contributed in any way to his own death, the recovery for the beneficiaries will be reduced by the percentage of negligence of the. For example, if a deceased is found to be 30 percent at fault for an accident, then the jury award of say \$1,000,000 is reduced by 30 percent to \$700,000. The jury decides how much, if any, negligence the deceased committed. Another danger in Ohio is that if the deceased is more than 50 percent at fault for the accident, the beneficiaries collect nothing.<sup>10</sup> It seems barbaric to be talking about the negligence of the loved one killed by a drunk driver, or other defendant, but this is the current state of Ohio law and a good reason to talk with an experienced Ohio wrongful death lawyer, especially if these issues may arise.

You can see why it is so important to deal with the defense of comparative negligence and reduce or eliminate it from a case. At the very least, an experienced wrongful death lawyer can work to convince a jury that the defendant was more negligent than the deceased so that there is at least a partial recovery.

<sup>10</sup> RC 2315.33

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## Who Handles Funeral Expenses?



Unfortunately, unless the decedent had life or burial insurance, funeral expenses will most likely not be paid by the party at fault or their insurance company until final settlement and court approval. Usually, the family will have to pay the expenses and get reimbursed by the court at settlement time. Once the wrongful death claim is settled, the court will distribute the funeral and burial expenses to the personal representative for reimbursement of these expenses.<sup>11</sup>

<sup>11</sup> RC 2125.03 (B)

# 18

## **Comment About Grief Counselling**





Over the years, I have found that most of my wrongful death clients have benefitted from grief counseling of one form or another. I would strongly recommend that you talk to your family doctor about any thoughts of depression, suicide, etc. Your family doctor will be able to help you with either medication, referral to counseling, etc. Make sure that any counseling you go to accepts your health insurance plan as the out of pocket expenses of paying up front for therapy can get costly.



# 19

## What A Wrongful Death Lawyer Does



**DEALING WITH  
INSURANCE COMPANIES**

Needless to say there is a lot of investigation that goes into a wrongful death personal injury claim. The investigation can be similar to that performed in other types of personal injury claims. I cover this subject in more detail in my first book *The Insider's Guide to handling Ohio Accident Claims*. I do not want to repeat too much material in this book. You can receive a free copy of the book by calling 1-800-218-4243 or going to my website and requesting a copy of the book. You can download a digital copy immediately also on my site. Just go to **[www.Chesterlaw.com](http://www.Chesterlaw.com)**.

### **Dealing with which insurance company?**

You may think that the insurance company for the party at fault will pay all the medical bills for your deceased family member, pay for the funeral right away, and make a fair offer for all the pain and suffering that all of your family members have suffered. Think again. In my experience, insurance companies owe their loyalty to their insured, and they are profit making machines. The more money they pay out to you, the less money they have. They see it as a zero sum game.

## **Which insurance company? How many?**

The first thing you or your experienced wrongful death lawyer has to do is figure out which insurance company, if any, to deal with regarding negotiation of settlement of the claim. There can be multiple insurance companies to deal with, and in wrongful death claims, with high damages, it is important that you find every possible insurance policy that applies. You do not want to leave any money on the table so to speak. Insurance companies do not always volunteer all their policies. For example, in the wrongful death auto accident scenario, there can be many policies of insurance.

- Auto policy for the at fault driver
- Auto insurance policy for the owner of the car that the at-fault party was driving
- Auto policy for the owner of the car your loved one was in, if different than the at fault car
- Auto policy for the deceased family member
- Auto policy for the family member that the deceased was living with at the time of the accident

- Auto policy of the at-fault driver's employer, if the at-fault driver was on the job at the time of the accident. The employer is liable for the careless actions of their employees while the employees are on the job even when the employer itself does nothing wrong. It is called respondeat superior vicarious liability and must be investigated in each wrongful death vehicle accident case.

I know that you would not have known to look for all these policies unless you were a personal injury lawyer. Another example as to finding insurance is the corporate defendant. There can be multiple policies of insurance and multiple levels of coverage that kick in at different monetary amounts such that sometimes a lawsuit must be filed just to find and sort out all of these coverages correctly, and not cut corners. This is why it is so important to talk to an experienced wrongful death lawyer before doing anything else.

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## **What a Wrongful Death Lawyer Does**



**PLACES YOU WOULD  
NEVER THINK TO LOOK  
FOR MONEY**

**K**nowing where to look for deep pockets who are liable to pay for the wrongful death can turn a nightmare situation into one that provides life long financial security to you and your family. For example, in auto accident wrongful death cases, many times there is not enough auto insurance to fully compensate the family of the deceased loved one. This happens a lot in Ohio because Ohio has a mandatory financial responsibility law that only requires drivers to carry liability insurance of \$12,500 per person or \$25,000 total per accident. This amount is hardly enough to fully compensate a person with moderate injuries, let alone the family of a wrongful death victim. But an experienced wrongful death lawyer knows where to look for the deep pockets and big money that might be available and needed to create a lifetime of financial security for you and your family.

### **Respondeat Superior**

It is so important to talk to an experienced wrongful death lawyer who can look for other insurance or look to see if the careless defendant was on the job at the time of the accident such that his employer is on the hook

for any wrongful death. This is true even if the employer did nothing wrong, under the theory of respondeat superior vicarious liability. Many times an experienced wrongful death lawyer has to file suit to find out if the defendant was on the job. It is not unusual to find an employer with a larger commercial policy if the situation is appropriate. If a personal representative settles the wrongful death claim without investigating this source of money, it can be big trouble for the family's future financial well being.

### **Using Your UM/UIM Policy**

You may also be able to use the deceased family member's Uninsured or Underinsured policies to get compensation. They are designed to provide coverage when the party at fault had little or no auto insurance. I suggest all my clients carry large UM / UIM policies in case they are seriously injured by someone with no insurance. Most people do not realize the importance of UM/UIM policies and how they protect you and those you love from the carelessness of other drivers who don't carry enough auto insurance to fully compensate you or your family members.

## **Dram Shop Liability**

If the person who caused the death was drunk at a bar and the bar served him or her liquor knowing he was drunk by the way he acted, they may be liable to pay for the wrongful death injuries, and bars usually carry very big insurance policies for just this reason.

## **Defective Car or Repair Work?**

We had a case where a repair shop forgot to put a tire on correctly and that caused a wrongful death. We hired an expert who determined the tire was both defective in design and how it was put on the vehicle.

What you don't know will hurt you. This is another reason why you need an experienced wrongful death lawyer to find all available assets, and the personal representative of the estate should not try to settle with the first insurance company that contacts them. Don't leave money on the table and deprive your family of much needed financial resources just for the sake of expediency. Pick up the phone and call an experienced wrongful death lawyer. By now, you are seeing a pattern. I believe everyone who has suffered a loss should at least talk to an experienced wrongful death lawyer. You have



an hour to lose, but potentially a whole lot to gain.

## **What Else Do Experienced Wrongful Death Lawyers Do For Me?**

The list of activities that experienced wrongful death lawyers do for their clients would fill up a book by themselves. From obtaining police reports, obtaining witness statements, getting video or photographs of the accident scene and decedent, initial investigation, to medical expert hiring and preparation, accident reconstructionist, expert hiring and preparation to actuarial and lost wage expert hiring and preparation, to filing the lawsuit, to voluminous pre-trial discovery, including interrogatories and depositions of all expert witnesses and lay witnesses and parties to the lawsuit, to actual litigation, the list of individual actions the lawyer takes would fill volumes. A large case can take hundreds of hours or more to handle.

# 21

## **How to Choose An Ohio Wrongful Death Lawyer**



**TRUST YOUR GUT  
ON THIS ONE**

The first question I tell clients to ask a potential wrongful death lawyer is “do you take cases to jury or do you settle all of your cases?” You see, there are many Ohio lawyers who never make sure that appropriate cases are tried to a jury. Not every case has to turn into a lawsuit, but if a lawyer never sues, the insurance companies do not see him or her as a threat. You see, insurance companies only fear the risk of a huge jury verdict, and this can only occur if the wrongful death lawyer actually tries cases and puts the insurance company at risk. No jury trials mean no threat which means lower offers on average. Some lawyers actually brag that they settle all their cases out of court. In this low settlement offer climate with insurance companies tightening their belts and making lawyers work harder for settlements, how does that make sense? If a lawyer says he settles all cases out of court, you may want to look for another lawyer.

Another issue you will want to discuss with your lawyer is whether or not he will put up his or her own money to finance the costs of investigation and litigation and not require you to pay him or her back if you lose. If a lawyer does not advance costs of litigation, he or she may not believe in your case, or may not have the financial wear-with-all to pay for experts that are

necessary to get top dollar. You don't want a wrongful death lawyer who tries to save money and do things on a shoe string budget at the cost of a good settlement and verdict.

I would also go to the lawyer's website and read or watch client testimonials. What former clients think of a lawyer and his or her staff can tell you a lot about how you will be treated. While no two cases are alike, if the lawyer has raving fans as former clients, you can more probably rest assured that the lawyer did a good job for them and they were happy with the legal services and personal service they received.

Hiring a personal injury lawyer to handle your wrongful death claim may be one of the most important decisions you make in your life. Instead of thinking "who is the best lawyer?" think "who is the best lawyer for me?" Who has the expertise, financial resources, skill and compassion to make the wrongful death process as simple and painless as possible. You have enough to deal with the loss of your loved one. You don't need a wrongful death lawyer who stresses you out or makes you more afraid. The lawyer you choose should feel like a trusted friend in whom you are willing to place your

family's financial future, because that is exactly what you are doing.

When choosing an experienced wrongful death lawyer, you should also consider the intangibles, such as:

- Were you treated with respect, dignity and compassion?
- Did you feel heard in your meetings?
- Did you meet with an actual lawyer or just a paralegal?
- Do you feel safe that the lawyer and his firm will protect you and your family?

You should feel that the lawyer and his firm will get you the most compensation even if it means going all the way to a jury trial to get fair compensation

The recovery from your wrongful death settlement or jury verdict will be designed to replace any financial support you have lost, which is especially important if the deceased was a bread winner in the family. The

difference in the amount collected between an average lawyer and an experienced wrongful death lawyer could be a lot of money; money you will need for the uncertain future. While money is no real compensation for all the pain and suffering your family has undergone and will likely continue to suffer, at least the money will bring some financial stability and make one less thing to worry about. I encourage you to talk with an experienced wrongful death lawyer today. Most will not charge any fee for the initial consultation. I would like to discuss your family's situation personally, and you can call me at 1-800-218-4243. Help is just a phone call away. Also, please call if you have any questions about anything in this book, as I would be happy to discuss it with you. In any event I wish you the best of luck on this unfortunate, unplanned and unwanted journey you and your family are on.

A handwritten signature in cursive script, appearing to read "David". The signature is written in a dark ink and is positioned at the bottom of the page, centered horizontally.

# 22

## *Testimonials*

**Real Ohio clients explain the benefits of  
small-firm service and big firm-results  
with Chester Law Group Co., LPA**



Keith Zumsteg from Columbus, Ohio

*When I had problems with my surgery after being hit by a SUV, Chester Law Group was right there for us. We were stopped at a red light when a SUV plowed straight into us from behind. We were in quite a bit of pain and did not know how to proceed with this. As far as Chester Law Group, I do not know where we*

*would be without them and their assistance. They have genuine and sincerity I feel. I think I am pretty good at recognizing that. The paralegals are a keeper. One hundred percent customer service. Genuine. They always asked how we were doing. Seemed like there was never a delay. You can tell the lawyers at Chester Law Group have a genuine side to them. Not just the legal stuff. They have that compassionate side I don't think you would expect to find in an attorney. Thank You Chester Law Group.*

-Keith suffered through several lumbar surgeries to repair injuries from a Columbus SUV / truck accident.



Kathryn Zumsteg from Columbus, Ohio

*Whenever I had a question my paralegal was always there to answer my question. The lawyers are wonderful. They came to meet with us a couple of days after my husband got out of the hospital. There was no way that we could have made the trip. He came all the way to our*



*house. He has that special touch. I don't have any concerns or fears. I feel that they have been there and are there whenever we have needed them.*

-Kathryn suffers with herniated disc injuries from a Columbus SUV / truck accident.



Laura Weaver from Orwell, Ohio

*"The settlement I got with Chester law Group was amazing. I did not really expect it to be like that. It was great. It helped out a lot. Vince (Chester Law Group attorney) was very kind. I really enjoyed working with him. He explained everything clearly. They treated me very well . . . all the staff. I am very grateful. You helped out a lot. I think they are the best choice."*

-Laura suffered a brain injury and other serious bodily injuries in an Ohio motor vehicle / car accident.

*Attorney Chester is someone who cares and wants to protect the injured.* -Susan B.

*I would have made a very bad decision if it wasn't for Attorney David Chester. I was ready to settle for less than a 3rd of what I got. Thanks to David Chester. -Eugene D.*

*I am very grateful Attorney Chester and his staff made my life easier. I'm not afraid to call them and get answers to all the questions that I've had, and no worries. Thank You. -Sally S.*

*Attorney Chester provides a very valuable service. -Alvin S.*

*I very much appreciate the help from my attorney's quick response. Thank you very much. -Michael R.*

*I am glad that I called Attorney Chester. -James W.*

*Attorney Chester provides very valuable information that I'm going to benefit from in the long run. -Michele B.*

*Thank God for David Chester. He helped me get the medical attention I needed and the compensation I deserved. -Christine S.*

*Attorney Chester enabled me to make all the correct decisions and obtain the required information, medical care and documents that I would not have been able to do on my own. I was very confident and satisfied with Mr. Chester and his staff.*

*-Kathleen B.*



Cassandra Hill

*The Chester Law Group staff- they are amazing. They went out of there way, they came to where we were. Every call I made to the office was answered in a timely manner and they would always get someone on the line. The first accident I was hit from behind waiting to turn into my driveway. I had bruising, neck injuries, and I had to go through physical therapy.*

*In a 2nd accident we were pedestrians standing watching a live nativity when this girl pulled into the side of a truck and the truck lost control and came up over the curb and plowed into 4 of us that were standing there as a group. The next thing I knew I was flying through the air, my brother was hit and a friend Eli was injured seriously, it was pretty bad.*

*My brother died that night of the accident at Metro going into surgery. They took me down to CAT Scan and at that time they told me they*

*did not find anything, but since then I am going into surgery for problems with my neck.*

*The first case is settled but with the 2nd one there was a lawsuit. The Chester Law Group is wonderful, use them, do not try to handle a case like this by yourself.*

Cassandra Hill from Ashtabula, Ohio, suffers with serious neck injuries from a pedestrian accident.

*I was glad that Attorney Chester was willing to help me.*

-Donna L.

*I was told I would be in a wheelchair by a doctor. Thanks to Attorney Chester and the expert medical care he helped me get, I am walking good.* -Delcie L.

*I strongly feel that without Attorney David Chester, I would not have been fully informed of my legal rights regarding the auto accident and I would not have received the proper care.* -Dina N.

*I was pleased with the timely legal help you provided when I had my automobile accident.* -Asenith C.

*Attorney Chester protected me from the auto insurance companies.*

-Lena V.

*The accident turned our whole lives upside down. I thank our attor-*

*ney for all his help in this.* -Frances B.

*Attorney Chester helped me get fair treatment regarding my accident.*  
- Judy S.

*I did not realize there was any help out there for me. I thank you for your help and support.* -Fran H.

*I don't know what I would have done without them.* -Robert N.

*If it were not for Attorney Chester, I would have had to pay several thousands of dollars out of my pocket for doctor expenses.* -James H.

*The information Attorney Chester provided and the timely manner in which I received it truly made a difference.* -Kristy L.

*I was very pleased with my attorney and the help he gave me.*  
-Michael P.

*Attorney Chester gave me peace of mind.* -Tamera S.

*Thank God I had the help from David Chester.* -Kathy M.

*Attorney Chester guided me through the corrupt system.*  
-Mark M.

*Attorney Chester helped me to understand my rights and get the*

*proper attention for myself.* -Grace R.

*If it wasn't for Attorney Chester, I would have been in a very bad situation. Thank You for being available for me.* George W.

*I was glad when I heard from Attorney Chester.* -Patricia Z.

*If it hadn't been for Mr. Chester Attorney At law, I probably would have settled too soon.* -George C.

*Because of Attorney Chester I was able to get through everything and get my neck and upper back treated. Mr. Chester and his staff were honest and worked in my best interests. I am thankful.* -Jeffrey W.

*I didn't know where to turn or what to do.* -Melvin C.

*I needed help and I got it when I needed it.* -Glenn D.

*The information Attorney Chester provided helped me not answer questions from adjusters, claims representatives, etc. Keep up the good work.* -Linda D.

*Let me say our family is extremely grateful to your law firm for the prompt, efficient and effective service we have received.* -Michael C.

*I would like to thank Attorney Chester. Without him I would have held off care for fear of the medical expenses. After talking with him,*

*I was able to get the care that I needed. I only wish I'd talked to him sooner.* -Aaron H.

*Attorney Chester assists those of us in need, in shock, at the very time that we need representation the most.* -Barbara B.

*Without the services of Attorney Chester, I would not have known where to go to get help. I would have been injured and not known the extent of my injury, where to go for medical treatment, or know who to talk to about compensation for my pain and suffering.* -Maggie G.

*I was almost at the point of giving up. If it had not been for the advice I received about my rights, I probably would have given up already.* -J. J. B.

*It would be remiss of me if I did not express how important your firm has been when it came to looking out for my best interest. Thank God for your firm.* -Faustino G. Jr.

*Attorney Chester was very concerned with my rights when I spoke with him. I am glad I got to speak with the firm and I learned, and got help, and benefited in many ways.* -Mike S.

*We had to end up in litigation because the auto insurance company would not even make a settlement offer. I was glad I had a lawyer involved.* -Penelope A. S.

*God bless you.* -Doris K.

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**Ohio Revised  
Code Sections on  
Wrongful Death**





## **RC 2125.01 Action For Wrongful Death**

When the death of a person is caused by wrongful act, neglect, or default which would have entitled the party injured to maintain an action and recover damages if death had not ensued, the person who would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances which make it aggravated murder, murder, or manslaughter. When the action is against such administrator or executor, the damages recovered shall be a valid claim against the estate of such deceased person. No action for the wrongful death of a person may be maintained against the owner or lessee of the real property upon which the death occurred if the cause of the death was the violent unprovoked act of a party other than the owner, lessee, or a person under the control of the owner or lessee, unless the acts or omissions of the owner, lessee, or person under the control of the owner or lessee constitute gross negligence.

When death is caused by a wrongful act, neglect, or default in another state or foreign country, for which a right to maintain an action and recover damages is given by a statute of such other state or foreign country, such right of action may be enforced in this state. Every such action shall be commenced within the time prescribed for the commencement of such

actions by the statute of such other state or foreign country.

The same remedy shall apply to any such cause of action now existing and to any such action commenced before January 1, 1932, or attempted to be commenced in proper time and now appearing on the files of any court within this state, and no prior law of this state shall prevent the maintenance of such cause of action.

Effective Date: 07-06-2001

## **RC 2125.02 Parties - Damages**

(A)(1) Except as provided in this division, a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent. A parent who abandoned a minor child who is the decedent shall not receive a benefit in a civil action for wrongful death brought under this division.

(2) The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages authorized by division (B) of this section, as it determines are proportioned to the injury and loss resulting to the

beneficiaries described in division (A)(1) of this section by reason of the wrongful death and may award the reasonable funeral and burial expenses incurred as a result of the wrongful death. In its verdict, the jury or court shall set forth separately the amount, if any, awarded for the reasonable funeral and burial expenses incurred as a result of the wrongful death.

(3)(a) The date of the decedent's death fixes, subject to division (A)(3)(b)(iii) of this section, the status of all beneficiaries of the civil action for wrongful death for purposes of determining the damages suffered by them and the amount of damages to be awarded. A person who is conceived prior to the decedent's death and who is born alive after the decedent's death is a beneficiary of the action.

(b)(i) In determining the amount of damages to be awarded, the jury or court may consider all factors existing at the time of the decedent's death that are relevant to a determination of the damages suffered by reason of the wrongful death.

(ii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence of the cost of an annuity in connection with an issue of recoverable future damages. If that evidence is presented, then, in addition to the factors described in division (A)(3)(b)(i) of this section and, if applicable, division (A)(3)(b)(iii) of this section, the jury

or court may consider that evidence in determining the future damages suffered by reason of the wrongful death. If that evidence is presented, the present value in dollars of an annuity is its cost.

(iii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence that the surviving spouse of the decedent is remarried. If that evidence is presented, then, in addition to the factors described in divisions (A)(3)(b)(i) and (ii) of this section, the jury or court may consider that evidence in determining the damages suffered by the surviving spouse by reason of the wrongful death.

(B) Compensatory damages may be awarded in a civil action for wrongful death and may include damages for the following:

(1) Loss of support from the reasonably expected earning capacity of the decedent;

(2) Loss of services of the decedent;

(3) Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving

spouse, dependent children, parents, or next of kin of the decedent;

(4) Loss of prospective inheritance to the decedent's heirs at law at the time of the decedent's death;

(5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

(C) A personal representative appointed in this state, with the consent of the court making the appointment and at any time before or after the commencement of a civil action for wrongful death, may settle with the defendant the amount to be paid.

(D) (1) Except as provided in division (D)(2) of this section, a civil action for wrongful death shall be commenced within two years after the decedent's death.

(2)(a) Except as otherwise provided in divisions (D)(2)(b), (c), (d), (e), (f), and (g) of this section or in section 2125.04 of the Revised Code, no cause of action for wrongful death involving a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or

first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

(b) Division (D)(2)(a) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

(c) Division (D)(2)(a) of this section does not bar a civil action for wrongful death involving a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the decedent's death, has not expired in accordance with the terms of that warranty.

(d) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section but less than two years prior to the expiration of that period, a civil action for wrongful death involving a product liability claim may be commenced within two years after the decedent's death.

(e) If the decedent's death occurs during the ten-year period described in

division (D)(2)(a) of this section and the claimant cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, a civil action for wrongful death involving a product liability claim may be commenced within two years after the disability is removed.

(f)(i) Division (D)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(1), (2), (3), or (4) of section 2305.10 of the Revised Code and the decedent's death resulted from exposure to the product during the ten-year period described in division (D)(2)(a) of this section.

(ii) If division (D)(2)(f)(i) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(f)(i) of this section shall be commenced within two years after the

cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(g) Division (D)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(5) of section 2315.10 of the Revised Code. If division (D)(2)(g) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(g) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(E)(1) If the personal representative of a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from a civil action for wrongful death or if any person listed in division (A)(1) of this section who is permitted to benefit



from a civil action for wrongful death commenced in relation to a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from the action, the personal representative or the person may file a motion in the court in which the action is commenced requesting the court to issue an order finding that the parent abandoned the minor and is not entitled to recover damages in the action based on the death of the minor .

(2) The movant who files a motion described in division (E)(1) of this section shall name the parent who abandoned the deceased minor and, whether or not that parent is a resident of this state, the parent shall be served with a summons and a copy of the motion in accordance with the Rules of Civil Procedure. Upon the filing of the motion, the court shall conduct a hearing. In the hearing on the motion, the movant has the burden of proving, by a preponderance of the evidence, that the parent abandoned the minor . If, at the hearing, the court finds that the movant has sustained that burden of proof, the court shall issue an order that includes its findings that the parent abandoned the minor and that, because of the prohibition set forth in division (A)(1) of this section, the parent is not entitled to recover damages in the action based on the death of the minor.

(3) A motion requesting a court to issue an order finding that a specified

parent abandoned a minor child and is not entitled to recover damages in a civil action for wrongful death based on the death of the minor may be filed at any time during the pendency of the action.

(F) This section does not create a new cause of action or substantive legal right against any person involving a product liability claim.

(G) As used in this section:

(1) “Annuity” means an annuity that would be purchased from either of the following types of insurance companies:

(a) An insurance company that the A. M. Best Company, in its most recently published rating guide of life insurance companies, has rated A or better and has rated XII or higher as to financial size or strength;

(b)(i) An insurance company that the superintendent of insurance, under rules adopted pursuant to Chapter 119. of the Revised Code for purposes of implementing this division, determines is licensed to do business in this state and, considering the factors described in division (G)(1)(b)(ii) of this section, is a stable insurance company that issues annuities that are safe and desirable.

(ii) In making determinations as described in division (G)(1)(b)(i) of this section, the superintendent shall be guided by the principle that the jury or court in a civil action for wrongful death should be presented only with evidence as to the cost of annuities that are safe and desirable for the beneficiaries of the action who are awarded compensatory damages under this section. In making the determinations, the superintendent shall consider the financial condition, general standing, operating results, profitability, leverage, liquidity, amount and soundness of reinsurance, adequacy of reserves, and the management of a particular insurance company involved and also may consider ratings, grades, and classifications of any nationally recognized rating services of insurance companies and any other factors relevant to the making of the determinations.

(2) “Future damages” means damages that result from the wrongful death and that will accrue after the verdict or determination of liability by the jury or court is rendered in the civil action for wrongful death.

(3) “Abandoned” means that a parent of a minor failed without justifiable cause to communicate with the minor, care for the minor, and provide for the maintenance or support of the minor as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

(4) “Minor” means a person who is less than eighteen years of age.

(5) “Harm” means death.

(6) “Manufacturer,” “product,” “product liability claim,” and “supplier” have the same meanings as in section 2307.71 of the Revised Code.

(H) Divisions (D), (G)(5), and (G)(6) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after the effective date of this amendment, in which those divisions are relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to the effective date of this amendment.

Effective Date: 07-06-2001; 04-07-2005

## **RC 2125.03 Distribution to beneficiaries**

(A)(1) The amount received by a personal representative in an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code, whether by settlement or otherwise, shall be distributed to the beneficiaries or any one or more of them. The court that appointed the personal

representative, except when all of the beneficiaries are on an equal degree of consanguinity to the deceased person, shall adjust the share of each beneficiary in a manner that is equitable, having due regard for the injury and loss to each beneficiary resulting from the death and for the age and condition of the beneficiaries. If all of the beneficiaries are on an equal degree of consanguinity to the deceased person, the beneficiaries may adjust the share of each beneficiary among themselves. If the beneficiaries do not adjust their shares among themselves, the court shall adjust the share of each beneficiary in the same manner as the court adjusts the shares of beneficiaries who are not on an equal degree of consanguinity to the deceased person.

(2) The court may create a trust for any beneficiary who is under twenty-five years of age by ordering that the portion of the amount received by the personal representative for that beneficiary be deposited in trust for the benefit of that beneficiary, until the beneficiary reaches twenty-five years of age, and order the distribution of the amount in accordance with the provisions of the trust. Prior to appointment as a trustee of a trust created pursuant to this section, the person to be appointed shall be approved by each adult beneficiary and by the guardian of each minor beneficiary of the trust.

(3) The personal representative shall not distribute any amount received in

an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code to any person in relation to whom the court has entered an order pursuant to division (E)(2) of section 2125.02 of the Revised Code.

(B) The court shall distribute the amount of funeral and burial expenses awarded, or received by settlement, by reason of the death to the personal representative of the decedent, to be expended by the personal representative for the payment, or as reimbursement for the payment, of the expenses.

Effective Date: 10-01-1996

## **RC 2125.04 New action**

In every civil action for wrongful death that is commenced or attempted to be commenced within the time specified by division (D)(1) or (D)(2)(c), (d), (e), (f), or (g) of section 2125.02 of the Revised Code, if a judgment for the plaintiff is reversed or the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the personal representative of the plaintiff may commence a new civil action for wrongful death within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period specified by any of those divisions, whichever occurs later.

Amended by 128th General Assembly File No. 13, SB 106, § 1, eff.  
3/23/2010.

Effective Date: 07-06-2001; 04-07-2005

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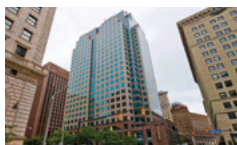
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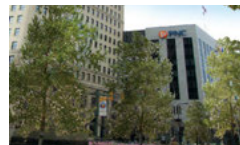
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## *About the Author*

David M. Chester

Attorney David M. Chester has been an Ohio personal injury lawyer most of his legal career. After suffering a childhood injury at the hands of a careless driver, Attorney Chester understood the suffering that an injured victim endures. When he decided to become a lawyer, representing injured Ohioans was the obvious choice. From a single office, Attorney Chester has built a law firm with 16 offices located around the state of Ohio. His early life experience showed him that injured victims need compassion as well as competent, professional, aggressive representation. It is this philosophy that has defined attorney Chester and brought him the success he currently enjoys.

Attorney Chester received his Bachelors degree in Business Pre-Law from Bowling Green State University. He obtained his Doctor of Jurisprudence from Cleveland State University College of Law, where he graduated 2nd in his law school class. After winning numerous law school awards, he finished in the top 3% on the Ohio Bar exam. He then moved from his home

in Parma, Ohio south to Akron, Ohio where he established his main office.



Attorney Chester is licensed to practice law in the State of Ohio and the Northern District Of Ohio Federal Courts, and he is a member of the **Ohio Bar Association** and the **Ohio Association of Justice**, a group of Ohio trial lawyers dedicated to fighting for the rights of injured Ohioans.

Attorney Chester lives in Northeast Ohio where he enjoys movies, going to sporting events, swimming and racket ball.

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