

# THE WRONG LAWSUIT AT THE WRONG TIME

## *The Limits of Wrongful Death Actions in California*

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### INTRODUCTION

No one ever wants to be a party to a lawsuit. When a lawsuit is filed, it means something went terribly wrong. But lawsuits are even more agonizing when they involve the death of a loved one.

When people die because of the wrongful act of another, the result is often a lawsuit for wrongful death. Whether a person dies suddenly in a car accident or from breathing in asbestos particles for decades, the relatives left behind can ask the judicial system

to compensate them for their loss.

In many ways, these lawsuits are similar to any other civil action that did not involve a death. But in other ways they are strikingly different.

Wrongful death actions can involve several plaintiffs. These plaintiffs will invariably claim that the loss of their loved one was tragic and has left them in a state of bottomless grief. The emotional testimony of plaintiff after plaintiff describing the loss of a mother, father, son, or daughter will deeply

affect a jury. For these reasons, wrongful death actions can be costly for defendants and their liability insurance carriers.

This article briefly explains two legal doctrines that can significantly limit a person's right to sue for the death of a relative.

### THE NATURE OF A WRONGFUL DEATH LAWSUIT

The logical starting point is to define what a wrongful death lawsuit actually is. When someone dies because of the neg-



ligence or intentional misconduct of another, specified heirs may sue the alleged wrongdoer for the loss they have sustained because of the victim's death. Such lawsuits are known as actions for wrongful death.

Not everyone who had a relationship with the victim is entitled to sue the alleged wrongdoer. Those who may sue are limited to the victim's spouse, domestic partner, children, stepchildren, parents, and the victim's minor dependents in certain circumstances.

A wrongful death action seeks to compensate the plaintiff for the gravity of his or her lost relationship with the victim. A plaintiff's recoverable damages include loss of support that the plaintiff would have received from the victim; loss of advice or training the plaintiff reasonably expected from the victim; loss of love, companionship, affection, and moral support from the victim; and funeral and burial expenses. Thus, the value of the plaintiff's wrongful death claim depends on the nature and extent of the plaintiff's relationship with the victim. A plaintiff who had a strong bond with the victim can expect to recover more in damages than a plaintiff who only met the victim once.

In sum, a plaintiff in a wrongful death action may sue the alleged wrongdoer for negligently or intentionally killing the plaintiff's family member. The plaintiff's damages are intended to compensate for a lost relationship with the victim.

### THE ONE ACTION RULE

In every wrongful death action, all of the victim's heirs must join as plaintiffs in a single lawsuit. Plaintiffs cannot file multiple lawsuits against the defendant. A person not already named as a plaintiff in an existing wrongful death lawsuit cannot later file a separate action against the same defendant. In California, this is known as the One Action Rule.

The easiest way to illustrate the effect of the One Action Rule is by an example. A man dies in a car accident. The man's wife and daughter file a wrongful death lawsuit against the defendant driver involved in the accident. But these plaintiffs never inform the man's son that they have filed the lawsuit. The lawsuit then settles and is dismissed under the terms of the settlement. Then, the son learns that his mother and sister filed and later settled a lawsuit. The son then files his own wrongful death lawsuit against the defendant. Because of the One Action Rule, the son's lawsuit will be barred, and the defendant could successfully move to dismiss it on that ground. In this hypothetical situation, the son's only

remedy is to sue his mother and sister for omitting him as a named plaintiff in the wrongful death action. But he cannot sue the defendant.

From the defendant's perspective, not having the son in the lawsuit was highly advantageous. Otherwise, the defendant would have had to pay more to settle the case. Importantly, the defendant never had any duty to investigate whether any additional plaintiffs should have been joined to the lawsuit.

### THE RELATION BACK DOCTRINE

The second important limitation on a plaintiff's right to bring a wrongful death action is timing. Statutes of limitation impose strict deadlines on a plaintiff's right to file a lawsuit after a plaintiff suffers compensable harm. Subject to narrow exceptions, no plaintiff is permitted to file a lawsuit after the statute of limitations on his or her claim expires.

In California, the statute of limitations for a lawsuit arising out of an injury or death is two years from the date of injury or death. So, if a motorist is injured in an auto accident on February 1, 2021, he has until February 1, 2023, to file a lawsuit for any injuries caused by the accident. If the lawsuit is filed even one day late, the defendant will ask the court to summarily dismiss the action or have a judgment taken in his favor.

But there are recognized exceptions to the rigid deadlines imposed by the statutes of limitation. One notable exception is the "Relation Back Doctrine." Simply stated, the Relation Back Doctrine treats an act done at a later time as though it occurred at an earlier time. This means that if the plaintiff timely files a lawsuit, new parties must be added to the lawsuit even after the statute of limitations expires.

For example, Plaintiff Jones is involved in a motor vehicle accident with Defendant Smith on November 1, 2015. On October 31, 2017, Plaintiff Jones timely files a lawsuit against Defendant Smith for personal injuries. During the course of gathering evidence in discovery, Plaintiff Jones learns that, at the time of the accident, Defendant Smith was operating his vehicle within the course and scope of his employment with a corporation.

Subsequently, on January 10, 2018, Plaintiff Jones files an amended complaint that names the corporation as a defendant, under the theory that it is vicariously liable for Defendant Smith's negligence. In this situation, Plaintiff Jones' amended complaint "relates back" to the date of filing of the original complaint. Since Plaintiff Jones has sued the corporation for the same auto

accident the original complaint was based upon, the corporation is legally considered to have been named as a defendant when Plaintiff Jones filed his original complaint on October 31, 2017.

But the Relation Back Doctrine does not apply to a wrongful death action. New plaintiffs cannot join an existing wrongful death lawsuit more than two years after the victim's death. This can be disastrous for wrongful death plaintiffs who are seeking to maximize the value of their claims by adding as many plaintiffs to the lawsuit as possible.

I have personally seen just how Draconian and unforgiving this rule can be. A few years ago, I defended a wrongful death case where the victim fell off a ladder and died on August 31, 2015. The three plaintiffs—the victim's wife and two daughters—filed a wrongful death lawsuit on August 31, 2017, the last possible day to do so. The plaintiffs' attorney later discovered that the victim had 11 other children living in Guatemala. In November 2018, the plaintiffs' attorney filed a motion to allow the plaintiffs to add the victim's 11 additional children as plaintiffs. I opposed that motion by arguing that the statute of limitations expired on August 31, 2017, and the Relation Back Doctrine could not be used to salvage the prospective plaintiffs' claims. The judge agreed. Shortly thereafter, the case settled. Had the plaintiffs' attorney been able to add 11 new plaintiffs to the lawsuit, it would have inflated the case settlement value by several orders of magnitude.

### CONCLUSION

Like any civil action, the number of plaintiffs suing the defendant in a wrongful death lawsuit matters. More plaintiffs means more relationships lost because of the victim's death. But unlike other lawsuits, wrongful death actions are subject to unique procedural rules that can limit the defendant's exposure to a large damages award. Defendants, their attorneys, and their insurance carriers must understand how to maximize the advantages presented by these rules.



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