

## Research re Claims/Claimants

### I. Wrongful Death Action

The Wrongful Death Statutes (RCW 4.20.010 and 4.20.020) create causes of action for specific surviving beneficiaries of the deceased. The wrongful death claim begins at the death of the decedent for the benefit of the persons named in the statute. The statutes govern post-death damages. They are designed to compensate specified statutory beneficiaries for the losses they sustained as a result of the decedent's death.

A wrongful death action shall be for the benefit of the "wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused." (RCW 4.20.020, emphasis added).

These "first tier" beneficiaries do not need to establish dependence on the deceased. Tait v. Wahl, 97 Wn. App. 765, 987 P.2d 127 (1999). (The "second tier" of beneficiaries, which include the parents and siblings of the deceased, may recover only if there are no first tier beneficiaries and only if the designed beneficiaries were dependent for support on the deceased.) Id.

In Otani v. Broudy, 151 Wn.2d 750, 92 P.3d 192 (2004), the trial court awarded damages under the wrongful death statute to each of Ms. Otani's two **adult children** as statutory beneficiaries.

Washington law recognizes a claim for loss of parental consortium by a stepchild. Higgins v. Intex Recreation Corp., 123 Wn. App. 821, 99 P.3d 421 (2004).

Under the Wrongful Death Statutes, the measure of damages is the actual pecuniary loss suffered by the surviving relatives. In addition to monetary contributions lost, this would include the loss of other services, love, affection, care and loss of consortium. Tait v. Wahl, supra; Parrish v. Jones, 44 Wn. App. 449, 722 P.2d 878 (1986). The benefits do not inure to the estate but belong to the survivors. Estate of Lee v. City of Spokane, 101 Wn. App. 158 (2000).

### II. Survivor Action

The Survival Statutes (RCW 4.20.046 and 4.20.060) continue the cause of action of the decedent for the damages which the decedent could have claimed had the death not occurred. Unlike the wrongful death statutes, the survival statutes do not create new causes of action for statutory beneficiaries, but instead preserve causes of action of injuries suffered prior to death.

#### RCW 4.20.046 – The General Survival Statute

The general survival statute, RCW 4.20.046, preserves all causes of action that a decedent could have brought if s/he had survived. Under RCW 4.20.046, the action which survives is for the benefit of, and passes through, the estate. (Any part of the fund allocated to the action under RCW 4.20.046 passes through the estate and is distributed as any other asset.)

Unlike the wrongful death and special survival statutes, the decedent's personal representative can recover damages under the general survival statute on behalf of the decedent's estate. Tait, supra.

The statute, as amended in 1993, allows recovery of damages for pain and suffering and other noneconomic damages suffered by the decedent prior to death, so long as specified beneficiaries exist. A claim for pain and suffering suffered by the decedent is recoverable by an estate. Otani, supra.

There is no recovery for post-death damages for loss of enjoyment of life, because the decedent could not have experienced that prior to death. Because the decedent could not have brought that claim had s/he survived, it is not preserved to the estate. Otani, supra.

#### RCW 4.20.060 – The Special Survival Statute

The special survival statute, RCW 4.20.060, is limited to personal injury causes of action that result in death. Under RCW 4.20.060 (referred to as the special survival or death by personal injury statute), the Personal Representative brings the action for the benefit of the statutory beneficiaries and damages for the decedent's pain and suffering are allowed. Walton v. Absher Construction, 101 Wn.2d 238, 676 P.2d 1002 (1984), Parrish, supra. It must be conscious, actual pain and suffering. Otani, supra.

Proceeds derived from an RCW 4.20.060 action, specifically all funds relating to decedent's pain and suffering, do not go through the estate, are for the benefit of and are distributed directly to the statutory beneficiaries. Otani, supra; Tait, supra.; Parrish, supra.