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Let's Win This!

A Monthly Newsletter - What You Need to Know
About Personal Injury Law

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Spring is just around the corner. Already the trees are budding, flowers are unfolding, and we've jumped ahead an hour with the change to daylight savings time.

Even during the season of rebirth, people experience loss - sometimes the ultimate loss - because of another's wrongful conduct.

Stephens Anderson & Cummings is here to help when the unthinkable happens.

Money damages - the recovery available to folks who have been injured or killed due to someone else's negligence - can never bring back a loved one. We know that.

But we also know that justice requires some effort at balancing the scales. We're humbled and honored when you trust us with that task.

Today, we continue looking at the type of damages the law allows when negligence or other wrongful conduct results in death.

We hope you are never in a situation to need this information. But if that need

arises - for you or someone close to you - knowing your options can help make things easier to bear.



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Wrongful Death Damages Part 2

The World on a String

Paul Payne had the world on a string.

A good job paying six figures plus benefits – insurance, 401K, vacation and PTO – a loving wife (*such* a relief after a failed marriage to his high school sweetheart – the only good thing to come from that was his son, Zac) great kids and money in the bank. As he sat at the intersection waiting for the light to change on a beautiful spring day, things were definitely going his direction.

Unfortunately, so was the semi with the faulty brakes that the company mechanic forgot to check, even though the policy manual required it.

The driver's side brakes caught but the other side didn't. The cab of the truck torqued, jack-knifing the trailer and slamming the whole rig into Paul's new

Tesla.

Paul's death was not instantaneous.

In fact, the ambulance report showed that Paul was conscious and writhing with pain shortly before he passed away *en route* to the hospital.

Paul Payne, age 36 at his death, was survived by his wife, Mary, and three children – Zac, from his first marriage, and Lilly and little Steve, from his marriage to Mary – his parents, Ron and Margaret, and his brothers, Phil and Jon, and (according to the obituary) scores of aunts, uncles, cousins, friends, and coworkers.



Wrongful Death Damages

We're discussing damages – the remedy the law provides when someone is killed because of someone else's negligent conduct.

First, a little review.

As we discussed last time (find that issue [here](#)), there are two different causes of action available when someone dies due to negligence of another: wrongful death and survival.

Both are creatures of statute.

Suit for wrongful death is *only* for the benefit of the surviving spouse, children, or parents of the person killed. So, although Paul apparently was well-loved and popular and had an extended family, a wrongful death lawsuit may be filed only by (or for the benefit of – a subject for a later edition of *Let's Win This!*) Mary, Zac, Lilly, Steve, Ron, and Margaret – the "wrongful death beneficiaries."

No Other Beneficiaries

Neither Phil, nor Jon, nor any of Paul's aunts, uncles, cousins, friends, or coworkers have a right to file suit on account of Paul's death – no matter how difficult his loss may be for them.

Another thing to particularly note: Zac's mother cannot file suit on her own behalf. (She might file suit as "next friend" for Zac but, as mentioned, that's a subject for another time.) It makes no difference whether she was receiving child support or alimony. Once the marriage between Paul and Zac's mother ended, so did her rights under the Wrongful Death Statute.

What Can Wrongful Death Beneficiaries Recover?

The damages the wrongful death beneficiaries may recover are for the injury that Paul's death *caused to them*, **not** for Paul's injuries.

Let's look at what Mary, Paul's surviving spouse, may recover:

- "Pecuniary Loss" – the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, *excluding loss of inheritance*, that Mary, in reasonable probability would have received from Paul had he survived.
- "Loss of Companionship and Society" – the loss of the positive benefits flowing from the love, comfort, companionship, and society that Mary, in reasonable probability, would have received from Paul had he lived.
- "Mental Anguish" – the emotional pain, torment, and suffering experienced by Mary because of Paul's death.
- "Loss of Inheritance" – the loss of the present value of the assets that Paul, in reasonable probability, would have added to the estate and left at natural death to Mary.

All of these damages, except loss of inheritance, are "past and future." That is, they can be recovered for the period of time between Paul's death and the date of the jury's verdict – "the past" – and what Mary likely will experience going forward – i.e., "in the future."

The elements of damage for which Zac, Lilly, and Steve may recover are exactly the same as those that Mary may recover - assuming there is evidence to support them. You can simply substitute their names for "Mary" the definitions above.

The same is true for Ron and Margaret, with the exception of loss of inheritance damages. In the normal course of events, parents will not be living at the natural death of their children and, thus, would not suffer a loss of inheritance.

What About Paul's Injuries? - Survival Damages

So. We've discussed the damages recoverable by the *wrongful death beneficiaries* for the harm that they personally experience because their loved one is killed due to another's negligence.



But what about Paul? What about the damages that *he* suffered because of the injuries that led to his death?

Enter the Survival Statute

The legislature didn't believe it was fair to deny close family members a recovery when their loved one was killed because of another's negligent conduct, and so enacted the wrongful death statute.

It was no fairer to allow the negligent party to go without consequence (at

least as far as the civil law is concerned) when their conduct resulted in the death of someone who left no wrongful death beneficiaries. So, the Survival Statute came into being.

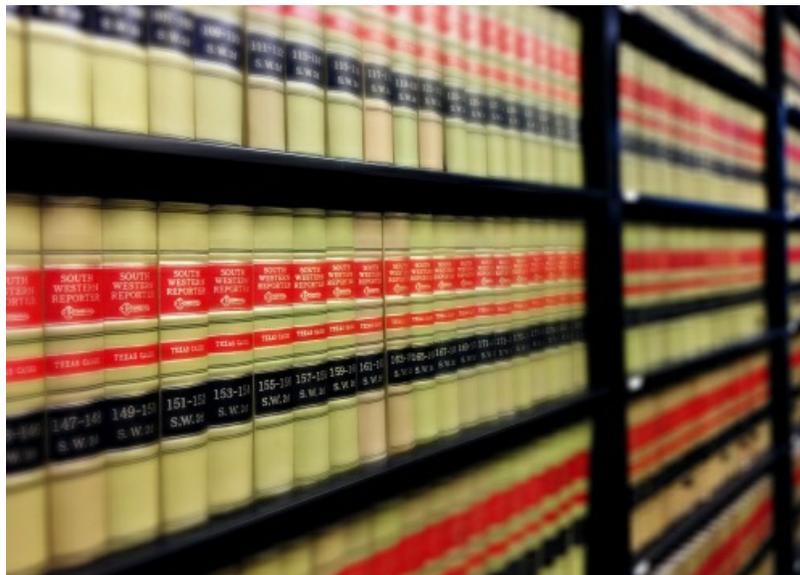
And that's where we'll start the next time Damages is the subject of

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