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Let's Win This!

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

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June 2019 - Issue 16



June.

We're nearly half way through 2019.

The biennial Texas legislative session is in the books and the Governor is deciding which bills to sign and which to veto. (Unfortunately, the one we really wanted to be on his desk never reached it.)

The weather, thankfully, has been pretty mild so far with more rain than normal and temperatures hovering in the 80s to lower 90s. Hope springs eternal but we probably won't avoid at least some blisteringly hot days in the coming months.

Meanwhile, here at Stephens Anderson & Cummings, we're working through the summer, seeking justice for those injured by the negligence of others and wronged by companies whose values

have been skewed by greed.

This month, *Let's Win This!* finishes up its series on damages recoverable when the tragedy of wrongful death strikes. It's not a pleasant subject but it's a

necessary one for those who lose a loved one through another's negligence.

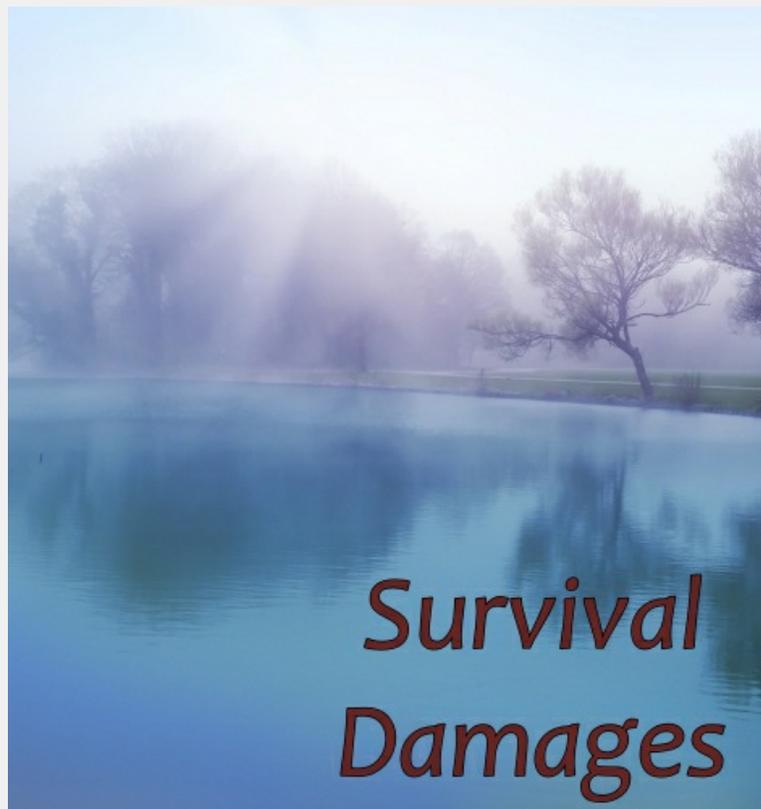
We hope that you're never in that situation. But, if you are, we're here to help.

Let us know if you have any questions about anything you see in this issue, or anything else related to the world of personal injury law. Helping good folks through bad times is why we get up every morning. When you're in need, let us work for you.



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Remember Paul Payne?

Previously in *Let's Win This!*

In the last installment of our series on Damages, we discussed the recovery available to the surviving family members of someone killed as a result of negligence. If you missed it, you can find it [HERE](#).

Our example was about the family of Paul Payne, killed in a tragic accident with an eighteen-wheeler because a company mechanic neglected to check the brakes.

We talked about the fact that Paul's surviving spouse, Mary, children, Zach, Lilly, and Steve, and parents, Ron and Margaret, are "statutory wrongful death beneficiaries." They can recover for their own mental anguish, loss of support, and other harm they experienced because of Paul's death.

We ended with the question: What about the damages that Paul suffered before he died?

Remember that, before the statute that's now known as Chapter 71, Texas Civil Practice and Remedies Code was passed by the legislature, Paul's claims would have died with him – the company responsible for his death would have escaped liability.

That's not fair, no matter how you look at it.

The Survival Statute

The law intended to remedy that injustice reads like this:

(a) A cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person or because of the death of a person liable for the injury.

(b) A personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person. The action survives against the liable person and the person's legal representatives.

(c) The suit may be instituted and prosecuted as if the liable person were alive.

The first thing to note here is that the people who are entitled to recover under the survival statute are different than under the wrongful death statute. The biological relationship to the decedent doesn't matter; the potential beneficiaries are "the heirs, legal representatives, and estate...."



Recall that wrongful death benefits are payable only to the surviving spouse, children, and parents. A person's heirs may include those but may also include many others, whether or not the decedent leaves a will. (The subject of just who is an "heir" when a person dies without a will is way beyond the scope of this issue.)

The key here is, as one Fort Worth Court of Appeals opinion put it, "[a]ny recovery flows to those who would have received it had the decedent obtained the recovery immediately prior to ... death...." *Cunningham v.*

2012)

That means: anyone in a position to inherit from Paul as of the day before his death would be entitled to receive the same share of any survival damages awarded against the trucking company. In another issue of *Let's Win This!*, we'll talk about the legal concept of *respondeat superior*, which explains how the company is liable for the negligence of its employee – the one who should have but didn't check and service the brakes on the truck.

Elements of Damages

But what would they be entitled to recover?

Remember that wrongful death damages are those the beneficiary suffers because of the death of a loved one – pecuniary loss, loss of companionship and society, their own mental anguish, and loss of inheritance of what Paul likely would have put into his estate throughout the years stolen from him. Again, if you missed that issue, find it [HERE](#).

The Survival Damage Beneficiaries, however, recover the damages that Paul, himself, would be entitled to, had he lived.

In a case involving death, those damages usually consist of: physical pain and mental anguish, perhaps medical expenses, and funeral expenses.

Sometimes, when an injury doesn't result in death until some significant period of time later, the other general elements of damage come into play: past (but not future) loss of earning capacity, physical impairment, and disfigurement. Obviously, the longer the period of time between the injury and death, the more significant these elements become.

If you'd like a refresher on the general elements of damages recoverable in personal injury actions, go [HERE](#).

Death from Unrelated Causes

What happens if death is from unrelated causes – if, for instance, Paul survived the truck wreck only to die from, say, an unrelated heart attack some time later?

Whether the injury *results* in death is immaterial to the application of the survival statute.

The question is whether Paul would have had a cause of action against the person or entity causing the injury, *if he had lived*. The point is that Paul's dying doesn't extinguish the right to sue. That right simply transfers to the heirs, legal representatives, or estate.

And Vice-Versa

If the person *causing* the injury dies before suit can be brought against them?

Let's assume for a minute that the truck driver was negligent in causing the accident, rather than the company mechanic, and that the driver was killed in the accident. Can Paul's heirs and wrongful death beneficiaries still sue the

driver's estate?

Yes, according to the survival statute.

"The action may be instituted and prosecuted as if the liable person were alive."

In other words, the law allows an opportunity for wrongs to be righted, even if the wrongdoer is no longer living.



Looking Ahead

Now that we have some of the basics down, *Let's Win This!* will begin to examine other important concepts in personal injury law like, what types of acts or injuries give rise to "causes of action," who can be sued, and what are some different theories of liability?

So, stay tuned. And, remember, if you have questions about anything you read here or anything else related to the world of personal injury law, we're a short call, email, or chat through the website away. We'd love to hear from you!

Let's Win This!

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***Stephens Anderson & Cummings
News Briefs***



Texas Senate Drops the Ball

In the last issue of Let's Win This! - which you can find [HERE](#) - we told you about a bill passed through the Texas House of Representatives by Representative Charlie Geren. HB 1739 would have removed significant obstacles for ordinary people obtaining justice from their own insurance companies.

The law in Texas, unlike 48 other states, requires you to sue and go all the way to judgment against an uninsured or underinsured at-fault driver in order to recover on *your* UM/UIM policy. Representative Geren and the Texas House thought that was wrong and sent a bill to the Senate that would have changed it.

The Texas Senate didn't think it important enough to act upon it.

The website that tracks bills through the legislature shows simply that it was "not reached" by the Senate.

So, we don't know what the Governor would have done if the bill had reached his desk for signature.

But we *do* know that the Senate apparently thinks your right to easily, quickly, and efficiently get benefits from your insurance company that you've paid for is just not any big deal - not worthy of attention.

That's something you might want to remember the next time your state Senator is up for election.

Children's Cereals Still Show Contamination

Recent tests show that many brands of cereal marketed specifically to children show signs of contamination with the Bayer-Monsanto chemical glyphosate - a chemical classified as "probably carcinogenic" by the World Health

Organization and as a "known carcinogen" by the California Office of Environmental Health Hazard Assessment.

You can find the levels of glyphosate and the specific cereal products tested [HERE](#).

#ProtectYourKids

At Stephens Anderson & Cummings, we're concerned about all our children's health and well being. An informed consumer can be a careful consumer.

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