THE BEGINNER’S GUIDE TO
WRONGFUL DEATH CASES
As a law firm specializing in wrongful death, the attorneys of Cline Farrell Christie & Lee have seen our fair share of unique cases through the years. A big part of our job as attorneys is to first and foremost educate clients and potential clients on some of the key terms and concepts relating to wrongful death law. In this guide, we hope to do just that. So while we can’t offer a specific roadmap to every single case, we can highlight some of the general situations and scenarios involved with a majority of cases. Specifically, read on for an introduction to the following:

- **Glossary of Key Terms**: Understand the specific language used in wrongful death cases.

- **The First Two Weeks**: Learn about the critical time period immediately following an incident.

- **Determining Liability**: Gain insight into what circumstances tend to indicate liability in a wrongful death case.

- **Pursuing a Case**: Familiarize yourself with some of the key considerations an attorney may make when deciding whether or not to advise moving forward with a wrongful death suit.
Glossary of Key Terms

There are a number of terms related to wrongful death cases that are used in a specific way. Before digging in any further, familiarize yourself with the following terms and their definitions as they relate to wrongful death law:

- **Trial Lawyer** - An attorney who specializes in defending clients before a court of law.
- **Civil Complaint** – A legal document describing the facts and legal reasons that a person has to make a claim or file suit against another person.
- **Plaintiff** – The person filing a civil complaint.
- **Defendant** – The person against whom a civil complaint is filed.
- **Personal Injury Case** - Refers to a legal action in which a person files a civil complaint against another person, business, corporation, or government entity, in which they assert that they were caused injury or harm because of a negligent or careless action of the defendant.
- **Wrongful Death Case** – Similar to a personal injury case, a wrongful death case involves legal action taken by a plaintiff against a defendant, in which the plaintiff asserts that the defendant’s negligence caused someone’s death.
- **Liability Insurance** - A type of insurance policy that protects the insured from the risk of lawsuits as the result of legal liability for things like malpractice, personal injury, or other forms of negligence.
- **Claim** - This is another word for the legal action filed by a plaintiff in a personal injury case. This term can also be used in reference to insurance, meaning the formal request made for payment from the insurance company to cover medical bills or other expenses.
- **Autopsy** – A specialized surgical procedure performed by a coroner in which a corpse is thoroughly examined in order to determine the cause and manner of death.
- **Death Certificate** – An official document detailing the time, place, and cause of a person’s death.
- **Evidence** - The available facts and information used to establish an individual’s claim.
- **Direct Evidence** – Evidence that directly proves an alleged claim, and stands on its own to do so. This can include evidence such as an eyewitness report or surveillance footage.
- **Circumstantial Evidence** – Evidence that indirectly proves an alleged claim, and requires either additional evidence or an inference in order to establish proof. This can include evidence such as a fingerprint found at a crime scene; while such evidence may prove something like the presence of its owner at the scene, it cannot alone prove guilt.
- **Wrongful Death Estate** – A legal entity set up in the name of the deceased for the purposes of pursuing a wrongful death case. All legal activity in a wrongful death case is conducted in the name of the estate, and not the deceased’s representatives.
- **Dependent** – Any person, child or adult, who relies upon another for financial support.
WHAT IS A WRONGFUL DEATH CASE?

Any person, business, or organization that fails to follow standard safety practices can be liable for a wrongful death.

A wrongful death case is very similar to a personal injury case in many ways. In both types of cases, someone claims that another person or entity’s negligence caused them harm; for personal injury cases, that negligence caused an injury. In wrongful death cases, however, the plaintiff tends to be a close relative or spouse of someone who was killed due to another person or entity’s negligence.

Any person, business, or organization that fails to follow standard safety practices can be liable for a wrongful death. This can happen when conditions aren’t safe for workers, or when a private area isn’t properly secured. That said, a majority of wrongful death cases come from the healthcare industry. Wrongful death cases commonly involve the death of babies during birth (or in utero), with surgery patients whose procedures went wrong, and with senior citizens in nursing homes.

In any of these scenarios, the common thread is simple: negligence. No wrongful death case can move forward if it cannot be proven without a reasonable doubt that somebody did or did not do something that should have been done or not done, which directly lead to the death in question. This might mean that a healthcare provider fails to report abnormal findings during a test, or neglects to react to that information. It might mean that senior citizens did not receive proper care from nursing home staff, leading to a fatal fall or infection. It may also mean that a construction worker falls to his death because certain safety requirements were ignored on site.

If someone believes their loved one died because of negligence, a hunch is not enough to move forward with a case. In the next section, we’ll explore some of the evidence that must be present and the steps that must be taken in order to build a case.
FIRST STEPS

Should an attorney decide to take someone’s wrongful death case, they will depend on evidence that could have only come from the days and weeks surrounding the death in question. For that reason, it’s important for anyone suspicious about a death to take the right steps immediately to make sure that evidence is available to support the case.

1. AUTOPSY AND DEATH CERTIFICATE

First and foremost, an autopsy may mean the difference between a case having a chance or never getting started to begin with. The only problem? Many families don’t think to get an autopsy before burial. After all, the days following any death are difficult for the loved ones of the deceased. Even in circumstances where someone may suspect negligence, it can be difficult to make the decision to have an autopsy performed.

This is largely because unless a hospital or government agency orders an autopsy, it’s not standard procedure. Hospitals will sometimes request them if a patient dies within a short period of time after admission, or in unusual circumstances. Otherwise, a family can choose to pay around $5,000 for an autopsy, which is another large expense and can be a difficult decision for families to make.

Keep in mind that the reason an autopsy is often needed is because death certificates aren’t necessarily specific enough to make a compelling case. With any death certificate, a medical professional of some kind—maybe it’s a coroner, or a physician in a hospital—has to make a determination of their own about what caused a death. That can lead to cause of death being registered as something like “natural causes” or “cardiovascular event,” which makes it difficult to prove that a specific, negligent action led to that death.

2. WRONGFUL DEATH ESTATE

In almost all circumstances, no wrongful death case can be pursued in the name of the spouse or loved one representing the deceased. In order to file a claim, a special legal entity must be created, called a wrongful death estate. In probate court, the person pursuing the case must establish this estate in the name of the deceased and also be made a representative of that estate. That way, it is not one individual family member who stands to win or lose the case, but instead a separate estate representing only the interests of the deceased.

3. ESTABLISHING DEPENDENCE AND INTENT

Part of the reason for wrongful death estates is the fact that an individual may have many dependents, and may also have a will that clearly outlines how they’d like their assets handled after their death. Most wrongful death cases come down to those dependents; any money sought or won in a case is usually claimed for the purposes of taking care of any dependents the deceased has left behind. Keep in mind that these damages are not typically punitive in nature (meaning they aren’t designed to punish the negligent party), but instead are to remedy a burden placed on someone due to the death of their loved one.

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PURSUING A CASE

When it comes time to pursue a case, typically a plaintiff will seek out a trial lawyer who specializes in wrongful death cases to help them explore the complexities of their own case and determine whether or not it’s possible or worthwhile to move forward with legal action. An attorney will review the following information before determining whether to pursue a case:

■ **Dependents:** As we explored in the last section, an attorney will want to know if the deceased had any dependents who may be in need of damages won in a case.

■ **Evidence:** Is there sufficient evidence to prove the negligence and liability of the presumed defendant? This is where it becomes important for a family to have completed an autopsy. Six months later, when many cases actually begin, it’s too late to secure that evidence. Additionally, an attorney will want to know if other forms of evidence exist to strengthen a case, including safety reports, eyewitness testimonies, x-rays, CT scans, lab reports, and other medical records. This information can help to make a case for how long someone may have had a disease, or what could have happened should that disease have been caught sooner, or what medically could have been done to save someone’s life.

■ **Will and Family Circumstances:** While the presence of a will is not likely to impact many attorneys’ decision whether or not to take a case, an attorney will want to know what (if anything) was present in the will, and what the current situation in the family is. Emotions run high when anybody dies, and get especially difficult if the deceased left behind a large sum of money or, in the event of a wrongful death case, potentially large settlements. By reviewing the will, an attorney may be able to see a clear set of guidelines for how to use that money, or get a better sense of the wishes of the deceased. Additionally, an attorney may consider the family’s relationship with the deceased; if surviving children hadn’t visited their deceased parent in the nursing home for the past 17 years but suddenly want to file a lawsuit, that could be a red flag.

■ **Caps and Available Money:** Finally, and this is a consideration often overlooked by would-be plaintiffs unfamiliar with wrongful death law: are there available funds that would sufficiently remedy the plaintiff’s financial need? In most cases, an attorney will seek to understand what liability insurance coverage the presumed defendant would have, or if there are other funds available to pursue. This becomes especially important if there aren’t clear dependents in need of money; in Indiana, claims in a wrongful death suit absent of dependents are capped at $300,000 plus attorney’s fees and expenses.

Keep in mind that the aim of most wrongful death cases is to help dependents of the deceased pay for expenses and loss of income as a result of a wrongful death, and not to seek punitive damages against the defendant. In many states, it’s not even legally possible to pursue such punitive damages.

If the attorney decides that there isn’t enough of an impact on the dependents’ lives, that there isn’t enough evidence to prove negligence, that a will or other family circumstance suggests a lawsuit isn’t the correct course of action, or that there just isn’t enough available money to make a case worthwhile, the attorney will discuss with the plaintiff whether it is advisable to move forward with the case.
Hopefully this guide has made you more familiar with some of the important terms and concepts relating to a majority of wrongful death cases. Keep in mind that every case is unique, and there is no such thing as a “normal” case.

This document only reflects trends we have noticed which have caused case to fail or succeed, and is in no way intended as legal advice or legal counsel. If you have further questions, or have a specific case you wish to pursue, please make sure you contact a licensed, experienced attorney to help you explore the specific details of your situation.

ABOUT CLINE FARRELL CHRISTIE & LEE

Cline Farrell Christie & Lee are an Indianapolis, Indiana law firm with over 20 years of experience serving clients in the areas of personal injuries, wrongful death, medical malpractice, and truck and motor vehicle accidents. With compassion and a focus on fairness, Cline Farrell Christie & Lee are deeply committed to helping their clients move forward in life with peace of mind.

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