

## **Wrongful Death: Do Not Overlook Any Category of Damages**

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Recovery for the wrongful death of a loved one is a statutory action. Since under common law, no action exists by or for a deceased person, legislation has been enacted by most states to create a recovery for wrongful death. The elements of damages for wrongful death vary greatly from state to state, so it is essential that the trial lawyer be well versed with the applicable law in the appropriate state.

In Virginia, Code Section 8.01-52 outlines the elements of damages recoverable for wrongful death:

1. Sorrow, mental anguish, and solace, which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;
2. Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;
3. Expenses for the care, treatment and hospitalization of the decedent, incident to the injury resulting in death;
4. Reasonable funeral expenses; and
5. Punitive damages may be recovered for willful or wanton conduct, or such recklessness as evinces a conscious disregard for the safety of others.

The trial lawyer, in putting together proof of all pecuniary damages, not only should claim all medical, funeral and burial expenses, but also quantify under Paragraph 2 of Va. Code Section 8.01-52: (1) the loss of income of the decedent and (2) the loss of services, protection, care and assistance provided by the decedent. It often is advisable to have an economist or other financial expert assist in projecting and itemizing the lost income and lost services to the beneficiaries. Lost services is an often overlooked element of damages. "Lost services, protection, care and assistance" may include whatever the decedent provided to the beneficiaries that has been lost as a result of the wrongful death, including such items as: house maintenance and repairs; yard maintenance; car maintenance and repair; cooking; cleaning; financial recordkeeping and banking; and special care provided to beneficiaries in need of such special care. These elements sometimes add up to an even higher projected total than the loss of income of the decedent.

Of course, it is the non-pecuniary damages that usually constitute the largest component of wrongful death recoveries in Virginia. Virginia's statute provides for recovery of a broad spectrum of such damages, ranging from lost companionship to recovery for the sorrow and mental anguish suffered as a result of the death of a loved one. It is essential that the trial lawyer put together evidence of the nature of the unique relationship between the decedent and each beneficiary in laying the foundation for an award of non-pecuniary damages. This task typically requires identifying those lay persons who can best describe these relationships. Sometimes expert witnesses can also serve to strengthen the case, such as: grief counselors and grief specialists, clinical psychologists, and therapists.

It is incumbent on the trial lawyer not to overlook any category of damages in putting together the wrongful death case.

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