



A NEWSLETTER FROM THE PERSONAL INJURY ATTORNEYS AT PARR RICHEY FRANDSEN PATTERSON KRUSE

INDIANAPOLIS

Capital Center South
251 North Illinois Street
Suite 1800
Indianapolis, IN 46204
P: 317.269.2509
F: 317.269.2514

LEBANON

225 West Main Street
PO Box 668
Lebanon, IN 46052
P: 765.482.0110
F: 765.483.3444

INJURY ATTORNEYS

TONY PATTERSON

tpatterson@parrlaw.com
765.482.0110
317.269.2509 X127

PAUL KRUSE

pkruse@parrlaw.com
765.482.0110
317.269.2509 X136

JOHN McLAUGHLIN

jmclaughlin@parrlaw.com
765.482.0110
317.269.2509 X123

INDIANA WRONGFUL DEATH STATUTES: WHAT ARE THE REMEDIES? By Tony Patterson

When a loved one is killed as a result of the negligence of another, Indiana law provides remedies to the survivors. In handling wrongful death claims, it is important to understand that the appropriate remedy and the recoverable damages in each case are dependent upon the status of the victim as well as the relationship to the persons he or she leaves behind.

Indiana's General Wrongful Death Act (GWDA) is found at Ind. Code 34-23-1-1. This statute was originally enacted in 1881 and has been revised on several occasions until it reached its current form in 1998. The GWDA provides in relevant part that "When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action

therefore against the latter, if the former might have maintained an action had he or she...lived." The recoverable damages under the GWDA include "reasonable medical, hospital, funeral and burial expenses and lost earnings of such deceased person resulting from said wrongful act or omission." Ind. Code 34-23-1-1. In addition to the specific damages provided under the statute, Indiana courts have held that the surviving spouse, dependent children, and dependent next of kin may recover for the loss of love and affection of the decedent. *Richmond Gas Corp. v. Reeves*, 302 N.E.2d 795 (Ind. Ct. App. 1973).

Damages for the medical, funeral and burial expenses inure to the exclusive benefit of the estate. However, the remainder of the damages inure to



INDIANA WRONGFUL DEATH STATUTES [CONTINUED FROM COVER]

the surviving dependents only, to be distributed not by their individual loss of love and affection, but in the same manner as the personal property of the decedent. Attorney fees are not recoverable under the GWDA when the decedent dies with dependents. *SCI Propane, LLC v. Frederick*, 39 N.E.3d 675 (Ind. 2015).

While the GWDA statute allows dependent family members of wrongful death victims to seek damages for loss of love and affection, the same could not always be said for non-dependent children and parents of those lost to the negligence of another. For years, Indiana law provided that the only damages recoverable for the death of unmarried adults with no dependents were for funeral, burial and medical expenses, and attorney fees for the administration of the Estate. However, in 1999, the legislature decided that family members of an adult with no dependents who dies as a result of another's

negligence should also receive damages for loss of love and companionship.

Specifically, the Indiana Adult Wrongful Death Act (AWDA), Indiana Code 34-23-1-2 provides that “[I]f the death of an (unmarried) adult person is caused by the wrongful act or omission of another...the personal representative may maintain an action against” the negligent party. In doing so, the Estate may seek damages for “reasonable medical, hospital, funeral, and burial expenses” and for the “(l)oss of the adult person’s love and companionship” suffered by the non-dependent parent and children of the decedent.¹ Further, the Estate may recover for attorney fees and expenses under the AWDA. *McCabe v. Commissioner of Indiana Dept. of Insurance*, 949 N.E.2d 816 (Ind. 2011).

Just as in the GWDA, damages under the AWDA for medical, funeral, and burial expenses inure to the exclusive benefit of the

estate. However, under the AWDA, damages for loss of love and companionship are determined by each survivor’s particular loss and distributed accordingly, rather than in the manner of personal property distribution as in the GWDA.

While the legislature provided a remedy for the family members of those who die without dependents, it did so with limitations on the recoveries. Specifically, damages for the lost earnings of the deceased are not recoverable. Further, in order to recover for loss of love and companionship, a non-dependent adult or child must establish a “genuine, substantial, and ongoing relationship” with the deceased, and the total cumulative damage for collective loss of love and companionship is capped at \$300,000.00.²

While claims for the wrongful death of adults must be pursued by the estate of the deceased, the same is not true for

the death of a child. In fact, under the Indiana Child Wrongful Death Act (“CWDA”) Indiana Code 34-23-2-1, when an unmarried child less than twenty years of age or less than twenty-three years of age and enrolled in technical school or college dies, the action must be maintained by the parents, not by the child’s estate. For this reason, under most circumstances, the claim must be pursued by the parents jointly, or by either of them personally and by naming the other parent as a defendant to answer as to his or her interest.

In claims involving the death of a child, parents may seek recovery for loss of the child’s services, love and

companionship, health care expenses, funeral and burial expenses, uninsured debts of the child and the reasonable expense of counseling services required by the parents or minor siblings caused by the death of the child. Attorney fees are also recoverable under the CWDA. *Angel Shores Mobile Home Park, Inc. v. Crays*, 78 N.E.3d 718 (Ind. App. 2017). With regard to allocation of the recovery for loss of love and affection, the damages inure to the parents jointly if both parents had custody of the child. If the parents did not have joint custody of the child, the damages are apportioned to the parents according to their respective losses.



¹Only parents and non-dependent children of the deceased may recover for loss of love and companionship under the AWDA.

²There is no corresponding cap on damages for loss of love and affection under the GWDA.



IMMIGRATION STATUS INADMISSIBLE AT TRIAL

The Indiana Supreme Court issued a recent opinion holding that unauthorized immigrants may sue for decreased earning capacity damages in a tort action and that the immigrant's immigration status is not admissible at trial. In *Escamilla v. Shiel Sexton Co., Inc.*, Cause No. 54S01-1610-CT-546 (May 4, 2017), the plaintiff, who was an unauthorized immigrant working as a masonry laborer, fell as a result of icy and snowy conditions at a worksite. He was injured, incurred a permanent disability, and sued the general contractor for the project. Experts were enlisted to testify as to the plaintiff's lost wages and earning capacity due to his disability caused by his fall. The trial court and

Court of Appeals determined the plaintiff's immigration status was admissible and relevant to the issue of lost earning capacity, and that the plaintiff's experts should be excluded because they failed to take his immigration status into account when determining his lost earning capacity.

The Indiana Supreme Court reversed and determined unauthorized immigrants may pursue claims for decreased earning capacity damages because Art. 1, section 12 of the Indiana Constitution guarantees that "all courts shall be open; and every person...shall have remedy by due course of law," and that "Justice shall be administered...completely, and without denial." The Court reasoned that "every person" cannot be read to exclude

unauthorized immigrants, as an immigrant is a person.

The Court consulted Indiana Rule of Evidence 403 and determined an unauthorized immigrant's legal status is only admissible if it is more likely than not that the immigrant will be deported. While immigration status is relevant in a tort case on the issue of lost earning capacity, the relevance is outweighed by the high risk of confusing the issues and prejudicing the jury. The Court noted that while it maintains a "strong faith in the ability of the jury to decide" complex questions like immigration issues, inserting immigration status into a tort case to help determine lost earning capacity "would result in a collateral mini-trial on immigration." Immigration is a complex and ever-changing area of law, and the Court reasoned admitting evidence as to immigration status would create "an unacceptably high risk of confusing the issues" and might make the jury dislike or disprove of a party without considering the merits of the case. Because of both of these determinations, the Court ruled that immigration status is inadmissible unless it is shown that it is more likely than not that the unauthorized immigrant will be deported.

PARR RICHEY OBTAINS \$18.5 MILLION JURY VERDICT

Tony Patterson and Peter Obremesky of Parr Richey, along with co-counsel Scott Montross and John Muller obtained a personal injury jury verdict in the Hendricks Circuit Court in the amount of \$18,500,000 on behalf of a man severely injured in a collision with a semi-tractor trailer owned and operated by Werner Enterprises, LLC.

The case arose out of a January 13, 2013 crash, which occurred on I-74 in

Hendricks County. As a result of the crash, the 42-year-old plaintiff sustained significant brain injuries, which resulted in the requirement for life-long medical care. Following the collision and at trial, Werner denied fault and the case proceeded to trial. The jury returned a verdict in favor of the plaintiff in the amount of \$18,500,000 and found the Werner semi-truck driver to be 100% at fault.

FIRM NEWS

PARR RICHEY
FRANDSEN PATTERSON KRUSE

As you may have noticed, effective January 1, 2017, our firm name has changed to Parr Richey Frandsen Patterson Kruse.

We are also pleased to announce that the firm has recently relocated its Indianapolis office to 251 N. Illinois, where we occupy the complete top floor in Suite 1800.



PARRRICHEY
FRANDSEN PATTERSON KRUSE



INDIANA
CO-COUNSEL

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NURSE PRACTITIONER QUALIFIED AS EXPERT WITNESS

In *Aillones v. Minton*, the Indiana Court of Appeals held a nurse practitioner had sufficient knowledge, skill, experience, training, or education to testify as an expert witness in a personal injury case arising out of a motor vehicle collision. 2017 Ind. App. LEXIS 226 (May 30, 2017). The injured plaintiff suffered a cervical sprain and pain in his lower back and had been treated by the nurse practitioner. The court held there is no blanket rule that prevents a nurse from acting as an expert witness, and that a nurse practitioner is a highly trained and educated medical professional in a highly regulated field. The nurse practitioner was allowed to testify and give an expert opinion that the plaintiff's injuries were consistent with injuries from an automobile accident.



251 North Illinois Street
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Indianapolis, IN 46204

IN THE NEWS

John McLaughlin was recognized as a Rising Star for 2017 in the Indiana Super Lawyers magazine. He was selected in his primary area of practice of Plaintiff's Personal Injury. This is his fourth consecutive year making the list.

Paul Kruse was also voted a Super Lawyer in personal injury litigation for the ninth straight year.

Tony Patterson was listed as one of the Top 50 overall Super Lawyers in the State of Indiana and is one of only nineteen Indiana attorneys to earn this distinction for the past six years in a row.



John McLaughlin

Paul Kruse

Tony Patterson

317-269-2509