

## WRONGFUL DEATH IN VIRGINIA

Every death caused by the negligence of another is horrific and brings with it untold pain to friends and loved ones of the decedent. I do not mean to diminish that point in this note. Nonetheless, all deaths are not the same under the law and my purpose here is to point out a few of the things that make a difference in resolving such a circumstance for the ones left behind.

Virginia like most states has a procedure set forth in its statutes for dealing with the civil ramifications arising from the death of an individual due to the negligence of another person or persons. The same procedure would also apply when the death is caused by the intentional act of another person but those instances are thankfully not as common. I have dealt with a number of those cases both as a plaintiff attorney and as a defense attorney. These are complex cases involving a number of significant issues and the results can vary dramatically based upon all the facts that surround the tragedy. Every life does not have the same verdict or settlement value under the law. That is not a comment on the morality of legal doctrine but instead is a comment on the fact that the law of negligence is designed to compensate the victim not to punish the wrongdoer. Because the law cannot undo what has been done, compensation of the victim equals payment of money to the victim or in wrongful death cases to the victim's survivors (beneficiaries under Virginia law). The question becomes: how much?

The most significant fact that affects the compensation available to the victims' beneficiaries is the source of payment. I know that sounds crass but the truth of the matter is that if a derelict accidentally causes the death of another, regardless of how much that death inflicts pain and suffering on the family, there is no source of payment from him/her for the loss. On the other hand, when the accident is caused by a corporate giant with abundant funds, the "value" of the case rises because it can be recovered. This is the "deep pocket" scenario about which much has been written. Not surprisingly then, when the big companies get involved in these types of cases, they take them very seriously, both morally and civilly and put their resources to work to be sure that the case is resolved appropriately under the law. As a corollary, because every personal injury lawyer lives by the deep pocket concept they are inclined to stretch the

circumstances to try to create fault on the part of the deep pocket with the hope that a settlement can be reached. In other words to try to convince the “pocket” that paying something is better than risking losing a much greater amount. This risk analysis is crucial on both sides of a case because faulty analysis can prevent fair settlements and lead to trials with disastrous results. I am proud to say I have undertaken that task for several national companies and am equally proud to report that each acted appropriately under the circumstances sometimes by going to trial and sometimes by seeking alternative solutions.

Assuming that there is a viable and valid source for recovery, the next biggest factor to come into play is the nature of the beneficiaries. Under Virginia law, there are classes of beneficiaries that include spouse and children, parents and siblings, and others. If there are no surviving beneficiaries in the first class then the recovery is divided by members of the second class and so on. Not surprisingly, a deceased bread winner who leaves behind a spouse and two small children with all the emotional and financial damages attendant to that leaves a totally different claim from that of a senior citizen who had no surviving children or parents. Most cases fall somewhere in between and thus the compensation appropriate varies dramatically from case to case. Make note that Virginia law make no provision for couples of the same sex since they are not “spouses”.

The next most significant factor is the degree of culpability of the defendant. Under Virginia law the doctrine of contributory negligence applies which means that there is no recovery available for the statutory beneficiaries if the deceased was at all negligent in the incident causing his/her death. Thus, it may seem odd that I reference a degree of culpability when, as a matter of law, every successful case requires that the defendant be one hundred percent at fault but a particularly bad set of facts can lead to an enhanced result. For instance an interstate accident in which a driver is speeding a little over the speed limit and loses control on a rain soaked highway causing a mortal accident is an entirely different case from one in which the defendant has consumed alcohol and while racing on the highway loses control. In some instance where the behavior is particularly dangerous and reckless, an award of “punitive damages” may be available but they are the exception rather than the rule. Still, all negligence is not the same

and to the degree that a jury may feel that the defendant was particularly negligent the jury award will go up.

The above are just a few of the issues that may arise in prosecuting or defending a tragic death whether arising from automobile accidents, hunting accidents, product defects or some other means of death. While we all acknowledge the senselessness of the loss of life in those circumstances, the law has its own way of dealing with the aftermath. Justice is blind but not ignorant and neither should the lawyer be.

Samuel W. Meekins Jr.

**\*\*Legal notes are not legal advice. Because legal problems are factually intensive, the reader must always consult their counsel before acting on any legal matter.**