



THE WASHINGTON
WRONGFUL DEATH
ACCIDENT GUIDE

CHONG H. YE

DISCLAIMER

THIS BOOK IS NOT LEGAL ADVICE.

This book is in the nature of general information, not specific legal advice. Our law firm will not be your attorney until we enter into a written agreement that our law firm will be your attorney. Every personal injury case is different. Once our law firm fully understands your case, we will be able to give you proper legal advice. Receiving this book does not imply an attorney-client relationship between The Ye Law Firm, Inc. P.S. and the reader. Do not take any legal action based upon the information contained in this report without first seeking professional counsel.

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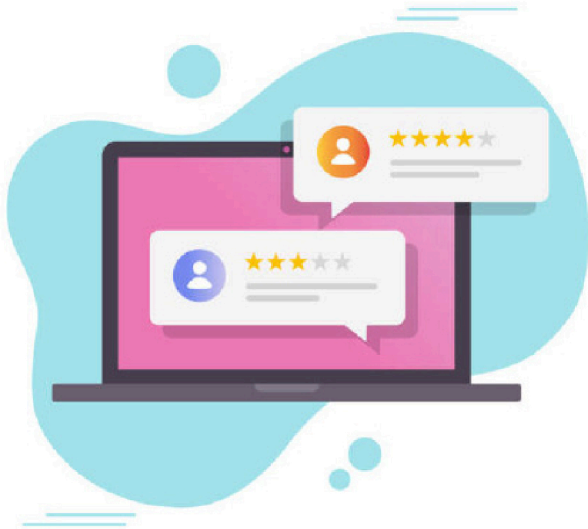
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Client TESTIMONIALS



Before I met Mr. Ye, I had a life of promise, goals, aspirations, and stability.

Also before my accident, I was going to church, being a spiritual person, and afterwards by not being able to attend on a regular basis precipitated me to becoming homeless, loss of wages and livelihood. Just prior to this accident my husband passed away leaving me little and no funds and having me depend on Public Assistance and State Aid.

Little did I know that by choosing The Ye Law Firm what I received was a new lease on life, new direction with employment and positive outlook with a sense of direction.

The Ye Law Firm has been fighting Pierce Transit, the largest transit company in the Northwest and in the State of Washington. Mr. Ye was not only determined to see justice served, but also helped renew my faith in a sense of self-worth and direction with attainable goals.

I now have a great job at a hospital and I graduated from Highline Community College with an Associated Degree in Business Administration.

Upon arriving at The Ye Law Firm, I had zero dollars to speak of and Mr. Ye took my case not knowing that he would have such an uphill battle and taking an enormous risk and amount of time but did so with the pursuit of justice in mind.

I was a passenger on Pierce Transit whose driver ran a red light in downtown Seattle, which ultimately resulted in an oncoming yellow cab T-boning the bus. I was seated right above where the cab hit the bus and the image of the scene still haunts me today. Luckily, by hiring The Ye Law Firm, I was able to receive compensation for my injury and I have a renewed self-worth and life.

I have been truly blessed in knowing that I was led and spiritually directed to The Ye Law Firm and received more than I could ever imagined. And to hear of other successful outcomes of The Ye Law Firm contact Mr. Ye at The Ye Law Firm. - **Tessie**

My wife and I highly recommend The Ye Law Firm to those who are involved in car accidents. He and his staff are knowledgeable and were readily available to answer our questions whenever questions arose when dealing with insurance companies and later on about her medical treatments. Since this was our first accident, we didn't know what to expect, but we realize why having an attorney represent the injured is so important. His office took the stress out of dealing with auto accidents. Furthermore, we were very happy with how the case was later resolved. - **Steve**

Customer service was excellent! Professional attitude, Mr. Ye was in no rush, he was very patient, nice and consistent. I had an impression that he genuinely wanted to help me, instead of trying to rush me into hiring him. I appreciate him. - **Simon**

For sure, the best lawyer in Washington state, me and my wife, got in a car accident on a Saturday. By Sunday, he was already helping us, and we didn't have to worry about anything. Every time I had a question, they responded right the way! And I was really happy about the settlement! Thank you so much!!!! - **Lucas**

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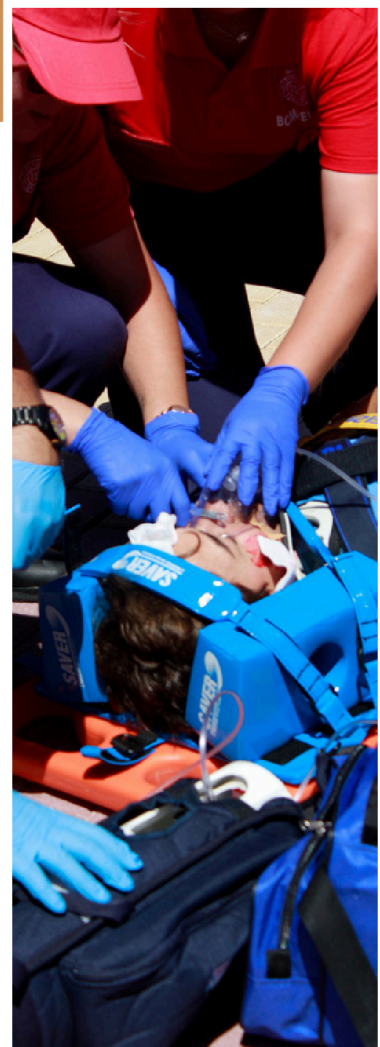
A SUMMARY OF WRONGFUL DEATH

CASES

A few questions arise in every wrongful death case, and we will attempt to answer those questions in this book. In this section, I will try to provide some brief answers to some of those questions:

- What are the different types of wrongful death cases?
- Who has the right to file a wrongful death lawsuit?
- Who receives the wrongful death settlement?
- What is the monetary value of a wrongful death case?

Every wrongful death case is based on negligent or wrongful conduct that resulted in the death of another person. Most cases are based on negligence, which is legally defined as a failure to exercise ordinary care for the safety of others—in other words, carelessness. A medical malpractice wrongful death case is also possible,

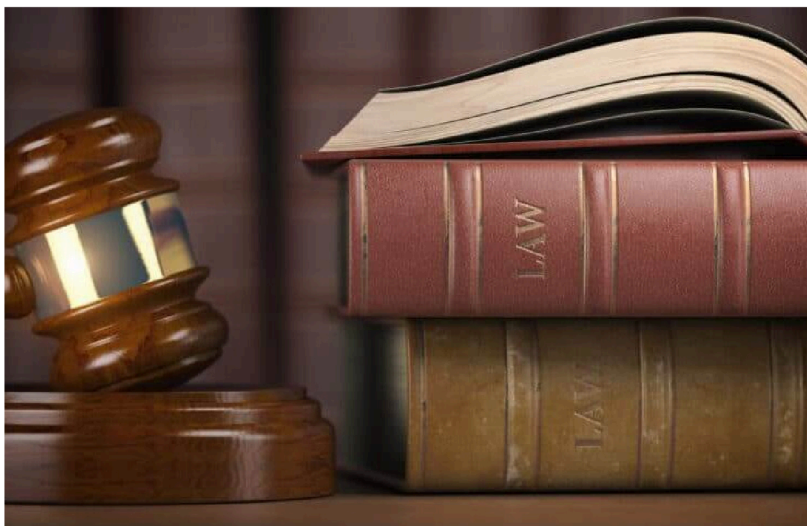


but “medical malpractice” is simply another term for medical negligence. You must first prove that someone was responsible for the accident or incident that led to the death of your loved ones before you can recover money in a wrongful death case.

A wrongful death suit cannot be filed solely by the estate of a deceased person. The law requires that a person be designated to handle the estate's legal affairs. When someone dies with a will, the person named by the deceased—the executor of the estate—must file the lawsuit. If there was no will, one must obtain a court order naming someone as the estate's personal representative.

A wrongful death case is divided into two parts: the survival action and the wrongful death action. While the survivor action seeks compensation for the deceased's pre-death injuries, the wrongful death action compensates the surviving beneficiaries for the losses sustained because of the decedent's death. The estate is entitled to the survival action. According to the terms of the will or, in the absence of a will, it is distributed according to the Washington intestacy statute – (RCW 11.04.015). In contrast, the personal representative brings the wrongful death claim on behalf of the beneficiaries. As we will see later, the distinction between wrongful death and survival action can be critical.

The amount of money that one can recover in a wrongful death case can be substantial, but the facts heavily influence this. It is important to know the events of the accident, the amount and extent of insurance coverage, the amount of medical cost, if any, the time between the accident and death the number and relationship of the deceased's surviving beneficiaries, and other factors are all critical.



LAWSUITS FOR WRONGFUL DEATH

Most wrongful death lawsuits in Washington are based on negligence. The law imposes a legal obligation on a person or company to act with reasonable care for the safety of others in certain circumstances. Negligence is defined as doing something that would not be done by a reasonable person or not done in the circumstances by a reasonable person.

To recover damages in a wrongful death lawsuit, the person bringing the suit (known as the plaintiff) must demonstrate that the person being sued (known as the defendant) was negligent AND that the defendant's negligence caused the deceased's injuries and death.

Comparative fault is one type of lawsuit defense. The defense asserts that the plaintiff's actions contributed to his injuries. In essence, the defense is holding the plaintiff responsible for his injuries.

In almost all Washington personal injury cases, the jury, not the judge, decides on negligence and comparative fault issues. During a personal injury trial, the jury is asked to determine the plaintiff and defendant's degree of fault. If the plaintiff is found to be comparatively at-fault, the award of damages is reduced proportionately. For example, if a jury determines that an injured person's damages are \$100,000 but that he was 20% comparatively at-fault, the damage award is reduced from \$100,000 to \$80,000.

In Washington, not every case is decided using a negligence standard. Some cases necessitate a higher level of misconduct on the part of the defendant, referred to as willful and wanton conduct. When a statutory violation is proven, other cases result in a plaintiff's verdict. Most cases, however, are decided based on negligence.



TYPES OF WRONGFUL DEATH

CASES



The first thing to prove in any wrongful death case is that the defendant was responsible for the accident that resulted in the death. Below are some of the types of wrongful death accident cases we handle and what must be proven in each to help you understand what must be proven to show that the other person is liable for the accident.

CAR ACCIDENTS

Car accidents are a common cause of wrongful death. The Rules of the Road, which are incorporated into the Washington Motor Vehicle Code, play a significant role in determining fault in a car accident. Some of the grounds for negligence in a car accident suit are as follows:

- Following too closely, which resulted in a rear-end collision;
- Failing to slow their vehicle properly, resulting in a rear-end collision;

- Excessive speed;
- Driving at excessively high speeds for the conditions;
- Failure to come to a complete stop at a stop sign;
- Failure to stop at a stop sign;
- Failing to yield the right-of-way when a “Yield” sign is posted;
- Failure to yield to a pedestrian;
- Failure to yield the right of way when turning left;
- Failure to yield the right-of-way when exiting a driveway;
- Failing to maintain a safe and proper watch;
- Failure to stay in a single lane;
- Changing lanes when it was dangerous to do so;
- Driving in the wrong lane without signaling;
- Make unsafe turns;
- Failure to use a turn signal before making a turn;
- Driving under the influence of alcohol;
- Failure to maintain vehicle control.

Although Washington has a mandatory auto insurance law, the required limits are extremely low. Drivers are required by state law to have automobile liability insurance with policy limits of \$25,000 per person and \$50,000 per accident. These are insufficient to provide a fair measure of compensation to the accident victim in all but the most minor non-fatal car accident cases, let alone the survivors of a wrongful death car accident. Many drivers have higher liability limits than that, but most drivers do not have enough liability insurance to cover the damages required in a wrongful death car accident.



Different States >
Different Campaigns >
SAME MESSAGE



Keeping this in mind, our firm investigates the following issues in every wrongful death car accident:

- Was there any drinking and driving involved? If this is the case, it may put additional pressure on his or her auto liability insurance carrier to make a reasonable settlement offer. Importantly, if the at-fault driver became intoxicated while visiting a bar, restaurant, or another licensed liquor establishment, the seller may be held liable under the Washington Dram Shop Act. Furthermore, if the drunk driver was a minor, those who provided the minor with alcohol are liable. Identifying a dram shop or individual who provided liquor to a minor enables the injured parties to seek additional insurance policies that serve as sources of compensation for the death or injuries.

- Is respondeat superior applicable? Employers are liable for their employees' negligence under the legal doctrine of respondeat superior, even when driving their personal vehicles. As a condition of settlement in serious car accident cases, we require the at-fault driver to provide us with an affidavit proving that they were not engaged in any employment-related activity at the time of the accident.
- Is there a legal basis for a product liability suit involving the car? Failures of the car itself cause many serious injuries. Suppose there are truly catastrophic injuries or death, and the vehicle remains. In that case, it may be worth considering an automotive product liability suit based on defects in the vehicle's design or manufacture.
- Did faulty repair work cause the crash? If this is the case, the mechanic or repair shop may be held liable.
- Is there any other insurance? Other insurance policies that provide additional layers of coverage are sometimes purchased. Umbrella policies, as they are known, are not always voluntarily disclosed by insurers. Where umbrella coverage exists, it provides significant additional insurance coverage to the injured party. Before entering into a settlement agreement, we also require an affidavit from the defendant stating no other insurance coverage.
- Is there a possibility of an underinsured motorist claim? When you purchase full coverage for your vehicle, you also receive underinsured motorist coverage. With underinsured motorist coverage, your own insurance company will step in and pay the difference between the at-fault driver's insurance coverage and the amount of your underinsured motorist coverage.

TRUCKING ACCIDENTS

Truck accidents are not the same as other types of car accidents. Tractor-trailers' enormous size and power provide them with a tremendous capacity for causing death and catastrophic injury. They are operated by professional drivers who have received specialized training in the operation of these deadly machines. The drivers are employed by trucking companies, which have a special responsibility to the public to ensure that the trucks are driven in accordance with the applicable regulations and standards.

Trucking companies must carry a minimum of \$750,000 in liability insurance, according to federal regulations. Certain types of trucks, such as those transporting hazardous materials, must maintain higher levels of insurance. Many of the larger trucking companies carry multiple layers of insurance, providing them with significantly higher levels of insurance coverage. Trucking companies can hire skilled lawyers, investigators, accident reconstructionists, medical experts, and other people to mount an aggressive defense against any claim or lawsuit filed against them.

Another factor that distinguishes trucking accidents from other types of car accidents is the documentation involved. Trucking companies keep detailed records of their drivers' activities and the upkeep of the vehicles they drive. The records maintained by trucking companies have proven extremely useful in demonstrating truck driver negligence and violations of regulations and statutes by the trucking companies. While federal laws require trucking companies to keep records for a certain amount of time, litigation-savvy trucking companies begin destroying records relating to the truck driver and truck involved in a serious accident as soon as they are legally permitted. For some records, this period is as short as 90 days.

There are theories of liability other than the obvious (e.g., the truck rear-ended me) that may apply in trucking accidents:

- **Unsafe tractor or trailer**—The equipment, including all components of the power unit and the trailer, must be inspected to ensure that it is roadworthy. This is necessary to ensure the safety of other drivers.
- **Unsafe driving practices**—Truckers, like all motorists, must follow the rules of the road and federal regulations. Furthermore, their vehicle operation must consider the vehicle's unique operating characteristics, such as braking capacity and blind spots.
- **Overweight truck**—Trucks must abide by maximum weight rules and regulations. Failure to do so limits the trucker's ability to drive safely.
- **Driver was over-tired**—Many studies show that being over-tired while driving a truck has nearly the same effect as being intoxicated.

on the trucker's ability to operate their truck safely. Regulations limit the number of hours a trucker may be on the road, but these limits are frequently ignored to meet their employers' demands.

- Truck underride guards–Underride guards are designed to prevent cars from driving underneath the trailer. Trucking companies may be held liable if there is no or insufficient underride guard.

On June 27, 1967, actress Jayne Mansfield died when the car she was riding in rear-ended a tractor trailer. The car didn't just hit the trailer, it slid under the back of the trailer, in the process, it sheared off the top of the car.



Bettmann/Getty Images

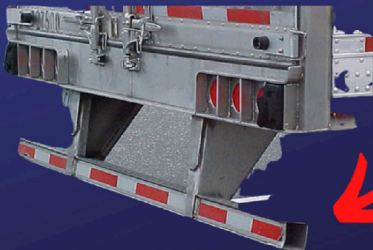
The crash killed the three adults in the car (three of her children were also in the car and survived).

The accident led directly to rule by the National Highway Traffic Safety Administration (NHTSA) that mandated under-ride bumpers on the back of all semitrailers. In the industry, these bumpers are also called "Mansfield bars."



Vehicle After
The Crash
That Killed
Jayne
Mansfield

This trailer doesn't have any safety bars to protect occupants in crashes.



"Rear Underrun
Protection System"
a/k/a
"Mansfield Bar"

Because the stakes in trucking accidents are so high, insurers for trucking companies and their lawyers have assembled "Go Teams" of investigators, photographers, and reconstructionists who are dispatched to the scene of trucking accidents, sometimes arriving within minutes of the accident. Meanwhile, the trucking company is counting down the days until it can destroy the records that will establish its liability for the trucking accident.

Hiring a skilled truck accident lawyer who understands the trucking industry and the regulations it must follow can help level the playing field. One can overcome the advantage that trucking companies have by being the first on the scene by ensuring that scene evidence is documented and preserved. The trucking company is promptly warned not to destroy any vital records that will help establish its liability. These are steps that anyone dealing with a recent death because of an accident is unlikely to consider.

TOP 4 MOTORCYCLE SAFETY TIPS



1. Know The Weather

2. Wear a Helmet and Protective Gear



3. Stay Alert & Sober

4. Get Extra Rest



MOTORCYCLE ACCIDENTS

There are so many differences between motorcycle accidents and car accidents that it would be foolish to compare them. It is true that motorcycles are subject to many of the same provisions of the Washington Motor Vehicle Statute as cars and that the same basic road rules apply to both cars and motorcycles. Some of the key differences between motorcycle and car accidents are as follows:

- Most people who do not ride motorcycles believe that riders are reckless, which diminishes their status in the eyes of those who do. While some motorcyclists weave in and out of heavy traffic at speeds exceeding the speed limit, this leads others to believe that motorcyclists lack respect for rules and traffic safety. When random people have motorcycle accidents, the evidence presented tends to help other people relate. Experienced motorcycle accident lawyers understand how to shift those attitudes during the jury selection process to have them removed

and, if possible, make the defendant appear foolish, as they show what the deceased had done and how he attempted to prevent himself from falling in the event. In contrast, the latter must do everything he can to demonstrate how he avoided the accident, as well as safe practice.

- Jurors who have never ridden a motorcycle have no idea how to operate one and must be instructed in the basics. Because they do not know how to ride a motorcycle, it is difficult for them to put themselves in the shoes of a motorcyclist. Nonetheless, it is far easier for them to put themselves in the defendant's shoes by following the routine procedures for driving a car. Most jurors are unfamiliar with concepts like maintaining speed to help maintain motorcycle stability and laying the bike down, both of which contradict their normal way of thinking. Riders understand that laying the bike down is a way to avoid a catastrophic crash, but this screams excessive speed and loss of control over the motorcycle to most non-riders. This is especially important if the deceased rider is not present in court to explain why he acted the way he did in the moments preceding the crash.

The death of the deceased rider is undoubtedly devastating to his family. It also makes winning a case against the at-fault driver more difficult due to preconceived notions that many jurors have about motorcycles and motorcycle riders. This challenge is made even more difficult by hiring a lawyer who does not understand those challenges and is not prepared to address them in court.



5

Types Of Construction Accident Liability

1. Product Liability
2. Unsafe Equipment
3. Unsafe Work Practices
4. Dangerous Working Conditions
5. Failure To Control The Job Site



When someone other than the injured worker's employer or co-worker is at least partially to blame for the accident, the family of the deceased worker can file a liability lawsuit against the responsible parties as well as a worker's compensation claim against his employer. Among the theories of liability we have advanced on behalf of injured construction workers are:

- Unsafe Work Practices—When another contractor or its employees engage in unsafe work practices that endanger other contractors' employees on the job site.

- **Unsafe Equipment**–When contractors use unsafe equipment on the job site, putting the employees of other contractors in danger, or when equipment used by all contractors on the site, such as ladders, ramps, or scaffolding, is not kept in a safe condition by those responsible, including the general contractor and others in charge of safety on the job site.
- **Dangerous Working Conditions**–When there are hazardous conditions such as uncovered floor openings, deep ruts or mud, missing guard rails, or other tripping, slipping, or falling hazards. In this case, both the contractor who created the danger and the entity in charge of overall job site conditions (usually the general contractor or owner), are liable for failing to prevent and/or correct unsafe job site conditions.
- **Failure To Control The Job Site**–On most construction sites, the general contractor has the right to control the work performed by the subcontractor hired by the general contractor. When the general contractor fails to do this to protect workers on the job site, he or she may be held liable for the worker's injuries. This responsibility may include putting a stop to the injured worker's employer's unsafe work practices and properly coordinating the work done by the various contractors on the job.
- **Product Liability**–If there is a flaw in the design, manufacture, or maintenance of the equipment used by the injured worker, this may be grounds for a lawsuit against the manufacturer or maintenance company responsible for the injury-causing equipment.

A third-party liability suit is a technical term for a lawsuit arising from a work-related construction accident.

SLIP AND FALL

In the legal world, slip-and-fall cases are known as premises liability cases. Premises liability cases are also decided based on negligence. It is insufficient that your loved one died on someone else's property.

You must demonstrate (1 that a hazardous condition existed on the property, (2 that the property owner was negligent in allowing the hazardous condition to exist or failing to correct it, and (3 that the property owner's negligence

caused the accident. You must also prove that the owner created the hazardous condition, that he was aware of it, or that it existed for a long enough period that he should have been aware of it.

What caused the person to fall is a critical question that one must answer in every slip and fall case. Even in slip and fall cases where the victim was not killed, this is an important question. If we cannot prove what caused the fall, we cannot prove the property owner was negligent in either causing the hazardous condition or failing to fix it. If you trip over your own feet or feel faint and fall, the property owner is not liable for your injuries simply because you fell on his property. We cannot prove a case for you if you do not know why you fell. Something about the property, such as a flaw or a foreign object or substance, must have caused your fall.

This question is complicated in a wrongful death case because the person who can best explain what caused him or her to fall is no longer alive. As a result, we look to eyewitnesses, police reports, paramedic records, or emergency room records to help us determine what caused the client's fall.

We strongly advise you to retain well-qualified counsel as soon as possible if you are considering

5 Ways To Reduce Your Risk

SLIPS, TRIPS, & FALLS

Use Proper Lighting & Pathways

1.



Keep Your Walking Area Clear

2.



Slow Down & Pay Attention

3.



Keep Flooring In Good Condition

4.



Place Each Foot Firmly On Floor

5.



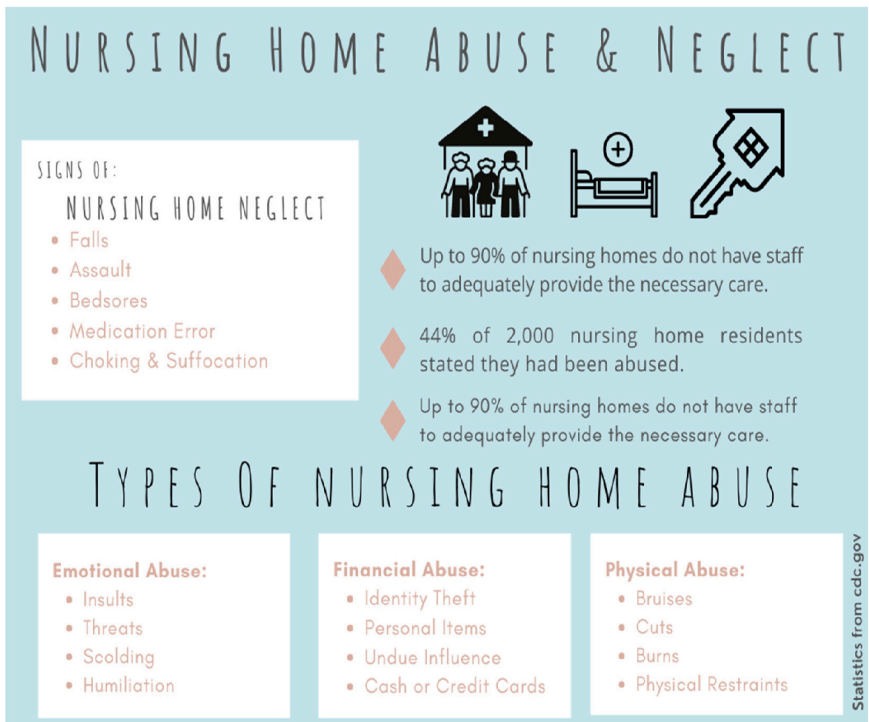
YE LAW The Ye Law Firm, Inc. P. S.
Chong Hoe Ye, Attorney at Law

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filing a premises liability wrongful death suit. Identifying the property owner and determining who was responsible for the hazard's creation can be a tricky business. Furthermore, where there is a death, proving the cause of the fall becomes even more difficult. You want to ensure that there is enough time before the statute of limitations expires to conduct a thorough investigation into these issues. When there is not enough time to conduct a thorough investigation, there is a chance that a defendant who should be named will go unnoticed.

NURSING HOME ABUSE AND NEGLECT

Nursing home abuse and neglect cases are a subset of personal injury law. One reason for this is that, unlike medical malpractice cases, there is a strong regulatory framework for nursing homes that provides a framework for the care that nursing home residents must receive. To hold a nursing home accountable for poor care, a lawyer handling a nursing home case must be familiar with these regulations.



NURSING HOME ABUSE & NEGLECT

SIGNS OF:
NURSING HOME NEGLECT

- Falls
- Assault
- Bedsores
- Medication Error
- Choking & Suffocation

- ◆ Up to 90% of nursing homes do not have staff to adequately provide the necessary care.
- ◆ 44% of 2,000 nursing home residents stated they had been abused.
- ◆ Up to 90% of nursing homes do not have staff to adequately provide the necessary care.

TYPES OF NURSING HOME ABUSE

<p>Emotional Abuse:</p> <ul style="list-style-type: none">• Insults• Threats• Scolding• Humiliation	<p>Financial Abuse:</p> <ul style="list-style-type: none">• Identity Theft• Personal Items• Undue Influence• Cash or Credit Cards	<p>Physical Abuse:</p> <ul style="list-style-type: none">• Bruises• Cuts• Burns• Physical Restraints
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Statistics from cdc.gov

Substandard nursing home care can result in a wrongful death suit for a variety of reasons, but some of the more common ones are as follows:

- **Bedsore**—The terms "bedsore," "pressure ulcer," and "decubitus ulcer" all refer to the same thing—any skin lesion or wound caused by unrelieved pressure that damages the underlying tissue. According to state and federal regulations, if a resident enters a nursing home without bedsores, they must not develop them unless clinically unavoidable. This means that the nursing home and its staff must take all necessary precautions to prevent bedsores from developing. Pressure ulcers, if left untreated, can become infected and lead to amputation of a limb or even death. These wounds are graded from I to IV, with I being a minor reddening of the skin and IV being an open wound with exposed muscle or bone. However, none of these terms adequately describe how heinous these injuries are.
- **Falls**—Unlike falls involving normal, healthy adults, falls involving nursing home residents are, for the most part, preventable, and special plans must be put in place to prevent them. Because of declining physical condition, medications, and/or the need for assistive devices such as canes or walkers, nursing home residents are frequently at risk of falling. Nursing homes are required to conduct ongoing assessments of each resident's fall risk and develop plans to prevent them from occurring. Hip fractures are frequently the result of a nursing home fall, and numerous studies have shown that hip fracture complications are a surprisingly common cause of death.
- **Medication Errors**—Many nursing home residents take multiple medications for various conditions on a long-term basis. Medication errors can have disastrous consequences for a nursing home resident's health and well-being. Medication interactions can also cause harm to nursing home residents. When residents take multiple medications, including those prescribed by more than one doctor, there is a chance that the drugs will interact in a way that is harmful to the resident.
- **Choking And Suffocation**—Anytime a nursing home resident is deprived of oxygen; a wrongful death suit may be filed. This could be due to the resident choking on food, becoming asphyxiated because of restraint, or poor care regarding the equipment that provides supplemental oxygen.

- Resident-On-Resident Assaults—Almost all nursing home residents have been admitted because they have conditions that make them unable to live independently in the community or with the assistance of their families. Mental illness is the condition that prompted some nursing home residents' admission, and in most cases, the resident does not have accompanying physical disabilities. Nonetheless, they become part of a patient population that frequently includes severely disabled residents. When a mentally ill resident acts aggressively toward a severely disabled resident, serious injury is often the result. The nursing home staff is obligated to protect all residents and to anticipate and intervene in situations that have the potential to escalate into violence.

Another distinction between nursing home cases and other types of cases is that nursing home resident victims frequently have complex, long-standing medical conditions that must be considered when prosecuting the case. According to one well-known nursing home defense lawyer, they do not try the case based on the care (which is frequently indefensible) but rather on the nursing home resident's pre-existing medical conditions. In short, they defend the cases by claiming that the victim was "old and sick." However, when they were admitted to the nursing home, they were already "old and sick"—that is why they went into the nursing home in the first place. When the nursing home promised to take care of your parents, they were already old and sick, and they knew it. It means they had to try harder rather than throw up their hands and give up. Lawyers who prosecute nursing home wrongful death cases must be prepared to deal with the complex medical issues that affect nursing home residents.

Unlike almost all personal injury cases, most nursing home cases do not involve an event that occurs at a specific point in time. In a car accident, a split second of inattention can result in a rear-end collision. However, most serious nursing home injuries occur because of substandard care for days, weeks, or months. Pressure ulcers do not develop overnight; it takes a long period of poor care for them to progress to Stage III or Stage IV. Even falls are frequently the result of months of poor care—poor monitoring of the resident leading to a poor care plan that was not implemented. Skilled nursing home attorneys understand how to review the chart to identify missed opportunities to avoid the tragic outcome.

Do You Believe A Loved One Was A Victim Of Medical Malpractice?

Medical Malpractice Is Challenging To Prove!

Expert witnesses must prove:

- The standard of care, or what a reasonably well-qualified health care professional would have done in the same or similar circumstances;
- A breach of the health care professional's standard of care;
- Injuries resulting from a breach of the standard of care.

We Have The
Skills and Experience
You Need To Get The Justice You Deserve!!



The Ye Law Firm, Inc. P. S.
Chong Hae Ye, Attorney at Law

Medical malpractice cases are among the most challenging and complex areas of law. The factual, legal, and medical issues are always extremely complex, and highly skilled defense attorneys aggressively defend the cases. In every medical malpractice case, expert testimony must establish three things:

- The standard of care, or what a reasonably well-qualified health care professional would have done in the same or similar circumstances;
- A breach of the health care professional's standard of care;
- Injuries resulting from a breach of the standard of care.

An expert witness must establish each of these points. An expert witness has the same type of license as the health care professional whose care is under scrutiny and who has training and experience in medicine under consideration. A doctor, for example, must be the expert witness in a case involving another doctor, and so on. His examination of the care records must support the expert's testimony. Expert witnesses typically bill by the hour. The cost of reviewing extensive medical records and taking pre-trial depositions may total several thousand dollars by the time the case goes to trial. Furthermore, it is difficult to find a doctor willing to testify against a fellow physician, particularly in specific fields of medical specialty.

The first step in any medical malpractice case is to obtain all records about the care and/or condition in question. Often, cases that appear to be promising at first glance turn out to be reasonably good care after reviewing the records. After obtaining the records, they must be submitted for review to a medical expert. Obtaining medical records after a death can be difficult, and you may have to go to court to get them.

Proving that a death was caused by malpractice is frequently a difficult issue. In other cases, this is a straightforward problem. For example, if you are a pedestrian who is hit by a car and suffers a broken leg as a result, proving that the car accident caused the broken leg is a simple matter. This is often more complicated in medical malpractice cases. It is frequently difficult to demonstrate that a different outcome would have occurred if the malpractice had not occurred.

Because there is so much work to be done before filing a lawsuit, we always strongly advise you to hire a well-qualified lawyer as soon as possible. This helps to ensure that all appropriate defendants are identified and that properly credentialed experts can be located before the statute of limitations expires.

DANGEROUS AND DEFECTIVE PRODUCTS

Product manufacturers are required by law to manufacture their products so that they are reasonably safe for the intended users of the product. When hazards are present in the product, they should be eliminated from the design as much as possible. If this is not possible, then the hazard should be avoided.

Finally, when it is not possible to eliminate or mitigate the risk, warnings should be issued. These are the fundamental principles of product design.



In defective product lawsuits, three main theories are used:

- **Manufacturing Defect:** This applies when a product is manufactured in a way that does not comply with product specifications or when the materials used in the product are defective.
- **Design Defect:** When there is a flaw in the product's design that was not eliminated or guarded against, and there was a viable alternative design available;
- **Failure to Warn:** When there are hazards inherent in the product, but the necessary warnings about the flaw are not provided.

Defective product suits can be filed against the manufacturers of the following products:

- Asbestos;
- Prescription drugs;
- Medical devices;
- Industrial products and tools;
- Motor vehicles;
- Tires;
- Exercise and recreational equipment; or
- Food products.

OTHER TYPES OF ACCIDENT CASES

Other types of accident cases may also result in a wrongful death suit. When there is an accident that results in the death of another, there is the possibility of a wrongful death suit, regardless of how the accident occurred or what theory of liability will be pursued.

DISTINGUISHING BETWEEN WRONGFUL DEATH AND SURVIVAL CASES

Wrongful Death Or Survival Cases



A wrongful death suit had two parts: (1) the survival action and (2) the wrongful death action. One must understand some significant differences between the two.

The survival action covers the damages suffered before death. Conscious pain and suffering, disability, disfigurement, lost wages, and medical expenses would all be included. Because these are pre-death damages, the right to sue for the damages belongs to the deceased person's estate. This means that the estate's damages from the survival claim are an asset.

Because the damages from the survival portion of the case are an asset of the estate, they will be distributed according to the provisions of the deceased person's will. If there is no will, the Probate and Trust Law provision known as the statute of descent and distribution takes precedence. This is the law that governs what happens to a deceased person's assets when there is no will.

In contrast, the wrongful death portion of the claim is brought by the estate for the benefit of the decedent's surviving beneficiaries for their losses caused by the decedent's death. The surviving beneficiaries are entitled to recover damages for their "losses" caused by the decedent's death under the provisions of the Washington Wrongful Death Statute. Losses entitled under the Wrongful Death Statute include:

- Loss of society or loss of a family relationship
- Loss of economic support
- Bereavement

Because the damages for the wrongful death portion of the case are for the losses suffered by the beneficiaries, the damages generated for that portion of the case are not part of the decedent's estate. They are instead paid directly to the survivor's beneficiaries.

The distinction between the survival and wrongful death portions of the case can be significant in the final distribution of any money from the case settlement. This is a problem that we will address later.

THE IMPORTANCE OF MEDICAL EVIDENCE

The medical evidence of death and injuries is an essential component in every wrongful death case. That is not to say that I am talking about proving that someone is dead—there is never any debate about that.

However, in some cases, it is debatable whether the death was caused by an accident. One of the things a plaintiff must prove in a wrongful death suit is that the accident caused death. If there is no proof that the accident caused the death, the defendants are not required to pay any damages for death, no matter how severe they are. This is a common issue in medical malpractice suits, nursing home abuse and neglect cases, and any other case where there is a long time between the accident and the death.

We review medical records to find evidence that links the cause of death back to the initial accident to help establish the necessary proof. We identify the doctors who must testify in court about the cause of death and provide the necessary link between the accident and the ultimate cause of death. We retain the services of highly qualified experts to review medical records and other materials to determine the cause of death when there are no readily identifiable doctors. Medical proof issues can also be important in the survival portion of a wrongful death case. Only conscious pain and suffering prior to death can be recovered in a survival action. In some cases, the medical issue of whether the death was instantaneous or whether the deceased was able to perceive pain may be critical in determining whether compensation will be awarded under the survival aspect of the case. When this is an issue, we not only review the medical records for forensic evidence of conscious pain and suffering, but we also look for witnesses who can testify about the deceased's appearance and actions in their final moments before death.

Medical evidence is critical in every wrongful death case and should not be left to chance.

WHO IS ENTITLED TO FILE A WRONGFUL DEATH CASE?

A wrongful death case can only be filed when someone has the legal authority to sue on behalf of the deceased person's estate. That "someone" is usually (but not always) a relative, but it does not have to be a living "person" at all—it could be a bank or a trust company, for example.

When there is a will, it names one or more people to be the estate's executors. The executor(s) would be the person(s) with legal authority to act on behalf of the estate. When there is no will, someone must be designated to take on the same role as the executor in the case of a will.

In theory, more than one person could be appointed as executor or administrator. In practice, it is not very effective. We try to encourage the appointment of a single executor or administrator in our approach because it promotes efficient decision-making.

The executor or administrator has the legal authority to make decisions for the estate, such as:

- Whether or not to file a lawsuit;
- Who to file the lawsuit against; and
- Whether or not to settle the case.

Along with the powers granted to them in the wrongful death suit, the executor or administrator is also responsible for the following:

- Responding to pre-trial discovery requests from defense lawyers;
- Fairly representing the interests of all suit beneficiaries;

- Participating in settlement negotiations;
- Attending the trial and other necessary court hearings;
- Keeping beneficiaries informed of the progress of the case and settlement negotiations;

You will notice that the executor or administrator cannot do the following:

- Manipulate the lawsuit to benefit themselves or other lawsuit beneficiaries;
- Decide who receives what compensation from the lawsuit; and
- With a few exceptions, arrange for themselves to be paid for serving as executor or administrator.

The bottom line on who files the lawsuit is that there must be one person in charge of the lawsuit who can make decisions regarding the lawsuit. That person cannot manipulate the process to his or her benefit or the detriment of any of the suit's beneficiaries.





WHO IS A WRONGFUL DEATH CLAIMANT'S BENEFICIARY?

Those who are left behind after a wrongful death accident have a genuine concern about who will receive the money paid as part of a wrongful death settlement or judgment. To some extent, this will be determined by whether there is a will and whether we are discussing the wrongful death or survival portions of the case.

The money from the settlement allocated to the survival portion is an asset of the estate because it compensates the decedent for the events that occurred before death. That is, where a will exists, the money must be distributed in accordance with the will. If there is no will, the descent and distribution statute governs how the money is distributed.

The estate brings the wrongful death portion of the case under the Wrongful Death Statute for the benefit of the surviving beneficiaries. The Statute specifically identifies the spouse, state registered domestic partner, child or children, including stepchildren as beneficiaries. If there is no surviving spouse, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the surviving parents or siblings of the deceased.



FAMILIES IN DISARRAY

Some families do not get along, and in some cases, do not even trust one another. Unfortunately, both the accident that resulted in the wrongful death and the prospect of monetary compensation from a lawsuit can bring underlying family tensions to the surface and cause the problems in the first place. This is not meant to cast aspersions on families who are in this situation. It occurs in various situations, including divorced parents who lose a child, siblings who never got along, children who are estranged from their parents, and a spouse and her stepchildren.

In this case, one of the beneficiaries may have a legitimate concern that the executor or administrator will not treat them fairly based on their personal history with them. In response, there are a few points. First and foremost, the executor or administrator has a legal obligation to treat all beneficiaries fairly. Second, if the beneficiaries cannot agree on an allocation of funds between the wrongful death and survival portions of the case, as well as the division of the wrongful death proceeds, a court hearing must be held in which all parties can present testimony and evidence concerning the proper distribution of the settlement proceeds.

If a beneficiary still believes that their interests will not be adequately protected during the lawsuit, they can file a petition to intervene in the lawsuit. They will need to explain why they believe the executor or administrator will not adequately protect their interests in the petition and ask for a right to intervene in the lawsuit, giving them the right to notice all proceedings and direct participation in the lawsuit. Generally, we do not encourage people to file intervening petitions because doing so informs the insurance company that there is a damaged family relationship, which may give them the incentive to continue fighting the lawsuit, knowing that they may have a chance to present evidence of the difficult family relationship to the jury, which can drive the case value down.

DEFENSES IN A CASE OF WRONGFUL DEATH

Wrongful death cases have the potential to result in a judgment against the defendant in the thousands, if not millions, of dollars. As a result, you can be confident that the insurance company will choose competent counsel for the defendant who will thoroughly investigate the case and assert any defenses that may apply to the wrongful death suit. In general, the defenses will address issues of liability and damages.

On the liability side of the case, you might expect to see the following defenses:

- Contributory negligence on the part of the decedent
- Contributory negligence on the part of the beneficiary
- Settlement before death
- The Worker's Compensation Act provides the sole remedy.
- Statute of Limitation
- Any possible defense to the underlying case

On the damages side of the case, you might expect to see the following defenses:

- There is no evidence of medical causation.
- There is no evidence of conscious pain or suffering.
- Uncertainty about economic damages
- A poor relationship between the deceased and the beneficiary.

THE IMPORTANCE OF INSURANCE IN WRONGFUL DEATH CASES



As previously stated, wrongful death cases are a subset of personal injury cases. They may have an emotional component that is not present in other personal injury cases where the injured party survives the accident. Still, in the end, the survivors of the wrongful death accident seek compensation for the loss of their loved one. There are often other goals, such as changing how things are done, obtaining recognition of the wrongfulness of the conduct, and holding others accountable. Still, in the end, the only thing a wrongful death suit can do is compensate the survivors.

There must be a way to compensate the surviving beneficiaries. In almost all cases, the responsible parties' insurance will be the source of that compensation. Sometimes the responsible party is a large, solvent entity with the resources to pay compensation. Still, in almost all cases, insurance is the primary source of compensation. Sometimes the amount of compensation that can be obtained is limited by the amount of insurance coverage that has been purchased. Unfortunately, there are some cases where the insurance coverage is minimal. The state minimum for automobile liability insurance,

for example, is \$25,000. If a car accident occurs with a driver who carries the state's bare minimum of insurance, that may be all the compensation available, regardless of how severe the losses are.

It is possible that the amount of compensation that can be recovered will be limited by insurance policy limits because most people and businesses do not have the financial resources to fund a settlement or pay a judgment after a case has gone to trial. A person cannot be forced to contribute to the cost of a settlement before a judgment is entered following the conclusion of a trial. If you obtain a judgment after a trial and the amount of the judgment exceeds their insurance coverage, you can try to force them to hand over assets in a collection proceeding. When this occurs, the defendant's most likely response is to declare bankruptcy. Declaring bankruptcy automatically halts all collection efforts, and the bankruptcy court must approve any additional payment on the judgment. After a bankruptcy, the chances of recovering any significant portion of the judgment are extremely slim.

As experienced wrongful death lawyers, one of the things we do is conduct a thorough investigation to identify any potentially liable persons or entities and any potentially available insurance coverage to ensure that the families of the deceased receive the full measure of compensation due to them.

It is also critical to understand that not all wrongful death cases are covered by insurance. Insurance is designed to protect people from accidental injuries.

ABOUT THE AUTHOR

Chong H. Ye is the Founder and Senior Attorney of The Ye Law Firm, Inc. P.S. He is dedicated to helping those seriously injured by the negligence of others. He prides himself on being down-to-earth, reliable, accessible, but capable and comfortable winning a battle, whether via negotiations or court rooms.

Chong has handled thousands of car accident cases and claims ranging from minor injuries to catastrophic injuries/wrongful death. He aggressively advocates for his clients against insurance companies and has recovered tens of millions of dollars for his clients.

Chong emigrated from South Korea at the age of 10. Instilled with a sense of hard work and determination while growing up in the immigrant community in the Seattle-Tacoma area, Chong is a zealous advocate. He especially has a heart for those whose first language is not English. He has personally witnessed his own parents and other non-English speakers injured from collisions due to someone else's fault, he witnessed their attorneys not standing up for them but were much more interested in quick payouts by pressuring their clients to accept what amounted to be less than fair settlements, and thus he decided to fight for the voiceless and the vulnerable. Chong's mission is to represent the helpless fight against the Goliaths of the personal injury industry.

Chong lives with his wife and two children and in Northeast Tacoma. He is a member of the Lifeway Church in Federal Way. He sits on the board for Nest Mission, non-profit homeless mission organization helping the local homeless communities in Tacoma and Lynnwood.

Professionally, he is a member of the Washington State Bar Association. He is an Eagle member of the Washington State Association for Justice, a Washington plaintiff's trial lawyer association and holds membership with American Association for Justice. He a member of National Trial Lawyers Top 100 Trial Lawyer and The Ye Law Firm has been nominated as 10 Best Law Firms by the American Institute of Personal Injury Attorneys.

He earned his undergraduate degree at Bushnell University/University of Oregon. He completed his graduate studies at Dallas Theological Seminary. He earned his law degree at Mitchell Hamline School of Law.



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