



Roger Krause

1720 Peachtree Street, Suite 336

Atlanta, Georgia 30309

404-835-8080



CHAPTER 9

SPECIAL PROBLEMS OF WRONGFUL DEATH CLAIMS AT WORK

If a loved one is killed at work, the family may have two different, but related, actions. The first is against the employer under the workers compensation program. The second is a potential claim against a third party under a statutory wrongful death action.

A. Claims Against the Employer

Claims against the employer, and under the workers compensation system, are significantly different than the other claims described in this book. This is because the workers compensation system is really the administration of insurance benefits. In the event of a death, the recovery is limited to lost wages, medical expenses, and funeral expenses up to \$7,500.

Under the workers compensation system, the claimant does not need to prove the liability of the employer or the liability of a fellow employee. Likewise, it does not matter if the employer was just a little bit negligent or grossly negligent. The litigation issues

in workers compensation cases focus on the issue of eligibility, and the amount of lost wages that can be recovered.

An injured worker's family must first show that the loved one was eligible under workers compensation. Was his or her employer large enough to make a claim under workers compensation? Second, the family must show that the injury occurred at work, and not merely on the way to or leaving work. The death must be due to a work condition, and not due to some natural process. Finally, claims must be filed within one year of the event that caused the death or the claim is lost.

The amount of money that a family can recover for the loss of wages depends on how many years remaining the decedent would have or could have worked, his/her yearly earnings, the decedent's married status, and the number of minor children in the household. As a general rule, in Georgia, the surviving spouse can receive a benefit of up to \$125,000 if there are no other dependents, i.e., children or others. If the deceased employee has children under the age of eighteen, the children are able to receive weekly benefits until age twenty-two if enrolled in college or other secondary education.

If there is a dispute regarding the claim, the injured family files a petition with an administrative law judge, at the State Board of Workers' Compensation. There are no jurors; rather, the administrative law judge makes findings of both fact and law.

B. Claims against Third Parties

If another party beyond the employer is responsible, the family may pursue a wrongful death claim as described earlier in this book. This means that the family has the right to a trial by jury, to recover all damages, including non-economic damages such

as the simple enjoyment of life, and there are no caps on the amount of the recovery.

Third-party claims can range from claims against a third party for driving unsafely, or against a doctor for malpractice, to a manufacturer for an unreasonably dangerous piece of equipment. If the third party's wrongful acts caused or contributed to the wrongful death, then that party can be held responsible.

Unfortunately, there are two important limitations. First, the third party must be a truly different party than the employer. Stated differently, the decedent and the wrongful actor cannot be employed by the same employer. Second, the employer has a claim of subrogation against any recovery from a third party. In other words, if there is a recovery against a third party, money previously paid by the workers compensation system must be repaid. At the same time, a good lawyer can have this claim for compensation released.

Claims against third parties must be filed within the statute of limitations, which is generally two years. Yet, interestingly enough, to bring a third-party claim, one is not required to file a workers compensation claim. Therefore, even if the family of the decedent does not make a claim against the employer, there is still a possibility that the family has a claim against another third party.