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PREVIOUSLY EXCLUDED WRONGFUL DEATH BENEFICIARIES GRANTED THEIR DAY IN COURT AFTER WASHINGTON STATUTE IS AMENDED

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In 2019, the Washington State Legislature amended the wrongful death statute to include certain second tier beneficiaries, including siblings of the deceased. Previously, parents and siblings could only sue for wrongful death in Washington if they were financially dependent on the decedent. With the precedent set by the Washington Supreme Court in *Kellogg v. Nat'l R.R. Passenger Corp.*, No. 99724-1, 2022 WL 552605 (Wash. Feb. 24, 2022), it is clear that Washington courts will now allow wrongful death cases to proceed for second tier beneficiaries who are not financially dependent on the decedent. Moreover, claims by second tier beneficiaries which are not yet time-barred may also proceed, even if the death occurred prior to the amendment of the wrongful death statute.

RELEVANT FACTS

In *Kellogg*, siblings of a decedent who died in an Amtrak train derailment filed wrongful death actions against Amtrak as newly eligible second-tier beneficiaries under Washington's amended wrongful death statute. The decedent, James Hamre, was survived by his mother and three adult siblings. The decedent's mother lived with him and was dependent upon him for financial support. Under the wrongful death statute in place at the time, the decedent's mother could recover because she was a financial dependent, but his siblings could not because they did not rely on him for any financial support. In 2018, one of decedent's brothers signed a settlement and release with Amtrak in the capacity of a personal representative of the estate on behalf of their mother. She was the only qualifying beneficiary under the statute at the time.

The release that was signed by the estate and Amtrak stated, "Any and all claims, demands, actions, causes of action of every kind...for any injuries or damages...and losses now existing, or which may hereafter arise whether known or unknown restored or received by the Release and Decedent James Hamre as a passenger of

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Amtrak train 1501... but executing this release, it is the realtor's intention to enter into a final agreement with releases and to ensure that releases have no further obligations to releasor." It also stated that anyone who succeeds to the signatory's rights and responsibilities would also be bound. Amtrak paid an undisclosed amount of which 100% of the distribution went to the decedent's mother as the sole heir under the statute at that time.

In 2019, the Washington Legislature amended RCW 4.20.020 to allow parents and siblings who were not financially dependent on a decedent to recover for other intangible losses caused by a wrongful death. The Legislature also explicitly permitted retroactive application to claims not time-barred. Pursuant to the changed terms of the statute, the siblings brought wrongful death actions against Amtrak. Amtrak argued that the claims were invalid because they violated the terms of the settlement and release signed by the estate, and also violated Amtrak's due process rights under the law since the release was executed before the amendment was implemented.

DO THE 2019 AMENDMENTS TO THE STATUTE APPLY RETROACTIVELY TO ALLOW THE SIBLINGS IN THIS CASE TO RECOVER?

Washington's wrongful death statute reads as follows: "When the death of a person is caused by the wrongful act, neglect, or default of another person, the decedent's personal representative may maintain an action against the person causing the death for the economic and noneconomic damages sustained by the beneficiaries listed in RCW 4.20.020 as a result of the decedent's death, in such amounts as determined by a trier of fact to be just under all the circumstances of the case."

Damages related to wrongful death actions include not only the loss of financial support, but may also include loss of companionship, services, care and attention, protection and advice. *Gray v. Goodson*, 61 Wn.2d 319, 329 (1963). The statute of limitations to bring a wrongful death action in Washington is three years.

With the passage of the 2019 amendment, second tier beneficiaries who did not rely on the decedent for financial support could entertain an action for damages related to the death. This meant that the decedent's siblings could now recover for intangible losses outside of financial support. Amtrak argued that the release originally signed by the decedent's brother prohibited any further claims relating to his death despite the change in the law.

While the general rule is that statutes will not apply retroactively, there are three exceptions—(1) where the legislature explicitly provides for retroactivity; (2) where the statute is curative; or (3) the statute is remedial. *Densley v. Dep't of Ret.Sys.*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007). Because the legislature made it clear that it intended the statute to apply retroactively when it passed the amendment to the wrongful death statute, the Washington Supreme Court held that the amended statute could be applied retroactively, and was not in violation of the state constitution or any other provision.

DOES RETROACTIVE APPLICATION OF THE 2019 AMENDMENT VIOLATE DUE PROCESS, OR RUN CONTRARY TO THE CONTRACTS CLAUSE?

Despite the fact that the legislature retains the power to enact retroactive legislation, it must still adhere to certain constitutional standards such as due process as well as basic contract law principles. Amtrak argued that because a release was signed by a personal representative of the decedent, the retroactive application of the amendment violates the Contracts Clause and the right to due process

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Contracts Clause

The contracts clause provides that, “A statute may not be given retroactive effect even where the legislature intended it if the result would unconstitutionally impair the obligation of a contract.” *Gillis v. King County*, 42 Wn.2d 373, 255 P.2d 546(1953). The primary question is whether a retroactive application of the 2019 amendment of the wrongful death statute imposed a substantial impairment of a contractual relationship between the parties. It is important to note that even if a statute does impair a contract, it may still be applied by the court if it determines that the enactment of the statute was reasonably necessary.

Wrongful death beneficiaries are vested at the time of the decedent’s death. In *Amtrak*, the decedent’s mother was the only vested beneficiary at the time of his death because the statute did not yet allow recovery for his siblings. The Washington Supreme Court reasoned that allowing the siblings to bring a wrongful death suit after the amendment of the statute did not interfere with the terms of the release, or the contract rights of Amtrak, because damages such as loss of love, care, protection and guidance are unique in scope to each beneficiary. As such, the amount awarded to the decedent’s mother via the release did not apply to or block the rights of the siblings to bring their own actions retroactively under the amended statute.

Because the parties to the release were Amtrak, the decedent’s estate, and the decedent’s brother as a personal representative of the estate, no contractual relationship existed between Amtrak and the siblings. Therefore, it would be impossible to violate any contractual rights of Amtrak.

Due Process

Generally a statute may not be enforced retroactively if it would cause a party to be deprived of a property right or interfere with some other vested right without due process of law. Wash. Const. art. I §3. Parties do not have a vested right in the law remaining the same for their benefit. A property right must be more than a mere expectation or reliance on law as it was written at the time the agreement was made. *Godfrey v. State*, 84 Wn.2d at 959, 963 (1975).

Amtrak argued that it had the right to enforce the law as it was written at the time the release was executed. The Court disagreed, finding that Amtrak did not have a vested right in then-existing law and potentially indefinite protection from any changes that may alter the validity of their agreement. As such, applying the amended statute retroactively did not violate any due process rights of Amtrak. The agreement as it applied to the decedent’s mother, who was covered under the previous statute would be honored, but the causes of action of the siblings whom the retroactive application of the law the legislature expressly intended to preserve, could be pursued.

IMPLICATIONS OF THE AMENDMENT OF THE WRONGFUL DEATH STATUTE AND SUBSEQUENT COURT INTERPRETATION

Under the amended wrongful death statute, siblings and parents of decedents may pursue wrongful death claims for intangible losses, such as love, care, protection and guidance, even when the family member did not rely on the decedent for financial support. Such claims are allowed even for deaths which occurred before the 2019 amendment, so long as the claims are not barred by the statute of limitations. However, because the statute of limitations for wrongful death claims in Washington is three years, retroactive application of the statute will no longer be an issue after July 28, 2022, which marks three years after the effective date of the amendment.

The damages available to these newly designated second-tier beneficiaries will be limited to general damages for loss of consortium, care and affection. Unlike other jurisdictions, Washington does not have a cap for these general damages, so the potential exposure for these claims will be dependent upon the nature of the decedent’s death and the relationship between

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the decedent and the second-tier beneficiaries.