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CALIFORNIA'S NEW SURVIVAL STATUTE INCREASES COMPLEXITY, VALUE, AND COSTS OF SURVIVAL ACTIONS

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A significant change in California law regarding survival actions took effect on January 1, 2022. All plaintiffs who file civil actions on or after this date are now permitted to recover damages for a deceased party's pre-death pain, suffering, or disfigurement. California is the 46th state to permit this form of recovery and joins the majority in modifying its survival statute. Going forward, the value of survival actions and attendant costs of defending them will increase.

As background, a survival action is a lawsuit brought by a decedent's successors or heirs for the recovery of damages that the decedent would have had from the time of injury up until death. If an injured party died before the case resolved, any damages arising from pain, suffering, or disfigurement were extinguished and no longer recoverable. In addition to the ability to seek punitive damages, the decedent's damages, pursued by his or her successors or heirs, were limited to economic damages like lost wages and medical expenses. Arguably, despite the availability of punitive damages which are not available in wrongful death cases, this outcome unfairly punished the plaintiff for injuries allegedly caused by the defendant.

The California Code of Civil Procedure section 377.34 as amended by Senate Bill 447 was co-sponsored by the Consumer Attorneys of California and the Consumer Federation of California who supported the bill because of the perceived "death discount" afforded when a plaintiff died before the resolution of his or her action under the prior statute. Plaintiff attorneys have long claimed that this incentivized the defense to employ bad faith delay tactics in case resolution.

Opponents of this amendment argue that because California already authorized successors and heirs to sue for punitive damages, the new law will allow them to effectively double dip resulting in markedly higher verdicts. As such, the new law does not carry out the purpose of "balancing the scales of justice," but rather creates a new avenue to achieve larger awards. A likely practical consequence will be an increase in insurance premiums which will directly impact the out-of-pocket costs for individuals and businesses.

Interestingly, these conflicting positions will be critically examined by the Legislature through the reporting requirement of the amendment. Plaintiffs who recover under this section must report their awards to the Judicial Council within sixty (60) days of case resolution. This information will be collected and reported to the California Legislature. The law expires on January 1, 2026 at which time the California Legislature will amend or extend it.

NEWS

The attorneys at WSHB are committed to monitoring the impact of this change and will keep all interested parties updated.