

WASHINGTON CASE UPDATE

Wrongful Death Requires that Deceased Could Have Sued At Time of Death

From the Desk of Kyle D. Riley: Washington law provides that a wrongful death action accrues at the time of death. But when the deceased was aware of the injury and the statute of limitations lapsed prior to death, should the deceased's dependents have a separate cause of action? Read on to find out how the Washington Supreme Court analyzed this question.

Claims Pointer: In this case arising out of asbestos exposure, the Washington Supreme Court held that while a wrongful death action accrues at the time of death, there must be a subsisting cause of action in the deceased at the time of death. The case affirms an important limitation on wrongful death claims.

case in point...

Deggs v. Asbestos Corp. Limited, et al., No. 91969-1, Washington Supreme Court (October 6, 2016)

Throughout his working life, Ray Sundberg ("Sundberg") was exposed to asbestos, both during his time in the Navy and while working in dockyards and lumberyards. Between 1998 and 2000, he was diagnosed with lymphoma, pleural disease, and asbestosis relating to asbestos exposure. In 1999, he filed a personal injury suit against nearly 40 defendants who had some part in exposing him to asbestos. Most of the defendants settled, although in 2001, he proceeded to trial against one defendant and prevailed. In 2009, at the age of 84, he died of asbestos-related disease.

Acting as personal representative of her father's estate, Judy Deggs ("Deggs"), Sundberg's daughter, brought a wrongful death action against multiple defendants, the majority of which were not named as defendants in Sundberg's 1999 personal injury action. However, Asbestos Corporation Limited ("ACL") was named in both suits. One of the defendants moved to dismiss the suit as time barred because it was filed more than three years after Sundberg learned he had asbestos-related diseases. The motion was later joined by other defendants.

Deggs opposed the motion, arguing that because she had brought the wrongful death

claim within three years of Sundberg's death, her claim was timely. However, the trial judge agreed that at the time of his death, Sundberg did not have a cause of action against these defendants, and it granted the motions to dismiss. Deggs appealed, and the Court of Appeals affirmed, concluding that because Sundberg could not have brought a second suit based on his asbestos exposures before he died, Deggs could not bring a wrongful death suit after he died. Deggs appealed to the Supreme Court.

Under Washington law, a wrongful death action is for the benefit of statutory heirs, not the deceased or the deceased's estate. A wrongful death action accrues at the time the deceased's personal representative discovered, or should have discovered, the cause of action.

However, the Supreme Court noted that while the wrongful death action exists for the benefit of the deceased's family, it is not completely separate from actions the deceased could have brought during life. For example, in a prior case decided in 1916, the deceased had settled an underlying personal injury case while he was still alive, so the trial court dismissed a wrongful death action based on the same facts on the grounds that the deceased would not have had a cause of action. The appellate courts affirmed, establishing the rule that while the wrongful death action accrues at the time



Contact: Kyle Riley | www.smithfreed.com | email: kdr@smithfreed.com

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

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of death and the statute of limitations then begins to run, the deceased must also have had a subsisting cause of action at the time of death.

Here, Sundberg brought suit and prevailed against multiple defendants, and the statute of limitations lapsed while he was still alive. Thus, the Supreme Court determined that the trial court's dismissal of the wrongful death claims was proper because the decedent was incapable of bringing the claims at the time of death.

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