



little kids, The Ultimate Guide to
Child Injury Cases in Ohio
BIG ACCIDENTS

By Charles E. Boyk, Michael A. Bruno, and Dale R. Emch
Charles E. Boyk Law Offices, LLC.
www.charlesboyk-law.com



Little Kids, Big Accidents

THE ULTIMATE GUIDE TO
CHILD INJURY CASES IN OHIO

Charles E. Boyk Law Offices, LLC

405 Madison Ave., Suite 1200, Toledo, OH 43604

We also have offices in West Toledo, South Toledo,
Findlay, Bowling Green, and Swanton.

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INTRODUCTION

The most difficult cases we handle in our office involve the death or serious injury of a child. It's heart-breaking to see the emotional devastation parents, grandparents, and siblings experience after a child has been killed or injured in an accident. As we all have children in our lives, we understand how traumatic these experiences can be for families.

When tragedy strikes, the lives of parents are turned upside down. If their child has been seriously injured, parents are left trying to navigate the medical community and health insurance. If someone has lost a child, just trying to get out of bed can seem like a monumental task. Deaths or injuries caused by someone else's careless conduct adds even more stress because it entails dealing with a legal system with which most people have little familiarity.

That's why we wrote this book. We've found that parents whose kids have been hurt or killed in accidents have so much on their minds that they don't need more confusion when they're exploring their legal options.

The attorneys in our office believe *knowledge is power*. Our goal with this book is to help parents understand how they can best protect their rights and their children's rights. When parents meet with us, they're often confused and heartbroken. They're looking for straightforward answers and guidance. We hope this book provides solid information for parents so they feel like they have a grasp on the basics before they consult with an attorney.

When an accident causes a child's death or injury, parents aren't thinking about lawyers and litigation. They're either grieving or trying to make sure their child recovers as fast as possible. But at some point, parents find that they have legal issues they need to address. People who haven't been in this situation expect that the negligent person's insurance company will pay for their medical bills, and compensate them for the loss of their child, or for the pain their child experienced. Of course, when a parent loses a child, no amount of money can ever make things right.

Unfortunately, it's rarely that simple or straightforward. Parents may find that their emotional trauma compounded by the unfair treatment some insurance companies seem to incorporate into their business models. Insurance companies often want to close a file for as little money as possible regardless of whether the child and parents are treated fairly. Though this likely is a new experience for you, it's certainly not for the adjusters and lawyers who defend these claims for insurance companies. Even sophisticated people who are successful in other areas of their lives often find themselves shocked when they seek compensation on behalf of their child.

We hope this book helps level the playing field and gives parents a basic education on the legal issues they'll face in these unique cases. If you're reading the book and you find you have some questions, the lawyers in our office would be happy to answer them. Just call 419-241-1395 or 800-637-8170. After business hours,

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our phones are forwarded to an attorney in case you have an urgent situation to address. You can also visit our Web site at www.charlesboyk-law.com.

We have six offices in northwest Ohio where we meet clients: Downtown Toledo, West Toledo, South Toledo, Bowling Green, Findlay, and Swanton.

CHAPTER 1
Our Kids Are At Risk

STATISTICS SHOW THE IMPACT
ACCIDENTS HAVE ON KIDS

A quick look at statistics involving accidents where we would expect to affect kids – in cars, school buses, on bicycles, on foot, and by dog bites – reveals how common it is for children to be injured.

Motor vehicle accidents

In 2007, motor vehicle accidents in Ohio resulted in injuries to 9,159 children under the age of 15, according to the Ohio Department of Public Safety. Traffic accidents caused the deaths of 39 children under the age of 15, according to statistics compiled by the department.

Using safety seats is the best thing parents can do to safeguard their young children. When the children outgrow safety seats, parents should require their children to wear seatbelts and, preferably, to ride in the back seat.

School bus accidents

Also in 2007, which is the most recent year in which accident statistics from the Department of Public Safety were available at the time this book went to press, 275 passengers of school buses experienced injuries in Ohio.

In many situations, school buses are not equipped with safety belts, which can increase the risk of injury to

children.

Pedestrian accidents

Pedestrian accidents in which children are injured or hurt tend to be particularly heart breaking. In many situations, parents or relatives have backed over a child who happens to be playing in a driveway. Young kids can be particularly difficult to see for drivers, especially when the person is driving a vehicle like a minivan or SUV. Unfortunately, we've seen the tragedy families endure in these types of situations.

In 2007, according to the Department of Public Safety, 610 children 15-years-old and younger were injured and 13 were killed as the result of pedestrian accidents in Ohio.

Bicycle accidents

As all parents know, children also face dangers when riding their bicycles. Of the incidents reported in Ohio, 486 children through the age of 15 were injured in bicycle accidents in 2007, according to the Department of Public Safety. Two of those accidents were fatal.

Injuries attributed to bicycle accidents dropped off in 2007 for children over the age of 16, perhaps because children that age don't ride their bikes as much once they reach driving age.

Across the United States, 15 percent of all bicyclists killed and 29 percent of those injured in 2007 were under the age of 16, according to the National Highway Traffic Safety Administration. That number actually has

fallen pretty dramatically compared to statistics compiled for 1997. That year, 31 percent of all bicyclists killed and 44 percent of those injured were under 16 years old.

Those numbers may have dropped because of the increased emphasis on having children wear bicycle helmets. Wearing a helmet can reduce the risk of a head injury by 85 percent, according to the NHTSA. Brain injuries can be cut by 88 percent through helmet use, the national organization found.

Dog bites

Unfortunately, we often see the devastating consequences that can result from dog bites. We've seen injuries ranging from scars our clients will bear on their faces for the rest of their lives to wounds so deep that muscle and ligaments were exposed. Obviously the bites and resulting medical treatment are painful. But being attacked by a dog also can be tremendously scary, particularly if the victim is a child.

In the United States, approximately 800,000 people a year suffer injuries from dog bites that are significant enough to require medical treatment, according the Centers for Disease Control and Prevention. Children are particularly vulnerable. Of the dog-bite victims needing medical attention, half are children, the CDC found. Kids between the ages of 5 and 9 years old experienced the most bites, according to the CDC.

Some bites, while painful, require little recovery time. Others, though, cause damage to muscles, broken

bones, and serious disfigurement. Victims with serious injuries may face numerous physical therapy sessions and multiple surgeries. Children, particularly those with facial scars, may have to endure a number of scar-revision surgeries as they grow up.

We don't present these numbers in order to frighten you. Rather, we think they show just how vulnerable our kids are. Again, *knowledge is power*. If we have a better understanding of how our kids get hurt, maybe we can take steps to prevent those injuries. Of course, none of us can completely insulate our children from harm. If you're reading this book because your child was injured or killed, we hope you'll find some answers that might help you during this difficult period.

CHAPTER 2

Who We Are

Our office has been representing children who have been injured in accidents for more than 25 years. We've also represented parents who have suffered the greatest loss of all – the death of a child. We take a team approach to the cases we handle for families. We believe that our job is to:

1. Provide family members with all their legal options along with our analysis about how the case should be approached.
2. Develop strategies to maximize the recovery for grieving family members who may find themselves struggling financially.
3. Take charge of the situation and solve problems as quickly and easily as possible.
4. Recommend grief counseling and help connect families with the resources they'll need to cope with their loss.

Over the years we have represented children and families in injury and wrongful death cases arising from among the following situations:

Car accidents

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Truck accidents

Bicycle accidents

Pedestrian accidents

Dog bites

Playground accidents

Medical malpractice

Falls from windows

Failure to install safety glass

Food poisoning

Prescription drug reactions

Shootings

Assaults

The authors of this book have more than 50 years of combined legal experience. **Chuck Boyk** has been in private practice for 25 years and heads the Charles E. Boyk Law Offices, LLC. During his career, he has handled more than 4,000 injury cases to completion. Many of his cases have involved the injury or death of a child,

which has given him a special appreciation for how difficult these situations are for parents.

Chuck has conducted numerous seminars for other attorneys to help them understand the world of personal injury law. In addition to his personal injury work, Chuck has represented thousands of criminal defendants, handling everything from routine traffic offenses to murder cases.

Mike Bruno also has been practicing law for 25 years. Mike, who has been named an Ohio Super Lawyer, has a unique background that benefits our clients. As an assistant Lucas County prosecutor, he handled thousands of felony cases, including death penalty murder cases. As an insurance defense attorney, he handled serious personal injury cases representing insurance companies. That experience has provided him with invaluable insight into how insurance companies will view our cases. Mike has handled more than 100 jury trials, is Board Certified by the National Board of Trial Advocacy, and is AV rated by Martindale Hubbell, the highest rating an attorney can receive.

Dale Emch focuses his practice on helping adults and children who have been injured in accidents or by dog bites. He writes a column for the Toledo Blade called "Legal Briefs," in which he answers readers' questions about a variety of legal issues. Dale graduated *cum laude* from the University of Toledo College of Law, where he was an associate member of Law Review. He serves on the Lucas County Public Defender Commission, the Lucas County Dog Warden Advisory

Committee, and the Media Relations Board for the Toledo Bar Association.

Our attorneys' varied experience gives us a unique perspective on the cases we handle and benefits the families of those who have lost a loved one. Understanding the way insurance adjusters and defense attorneys will analyze the case gives us an added advantage we can pass on to our clients.

THIS BOOK DOES NOT OFFER LEGAL ADVICE

We're happy that you've taken time to read our book. You should note, however, that ordering or reading our book does not create an attorney-client relationship. We also aren't offering a legal opinion in these pages because every case is different based on the facts of the situation. If you want our legal opinion, please contact us at 800-637-8170 or 419-241-1395. We'll be happy to set up a free meeting with you.

CHAPTER 3
Don't Wait!
Consult a Lawyer Immediately

TOP 5 REASONS FOR HIRING A LAWYER NOW

1. Missing deadlines can destroy your child's case

In any accident case, parents need to understand that there are important deadlines that cannot be missed. The most crucial deadline is that for filing a lawsuit, which is called the statute of limitations. If this deadline is missed, the child will be forever barred from making a claim.

The court system understands that kids, especially young ones, will have little to no control over whether they can advance a claim. In order to protect an injured child's rights, the statute of limitations doesn't begin to run until the child is 18. In a typical accident case, the statute of limitations is two years. So, in a typical claim involving an injury to a child, the case would have to be filed by the time the child turns 20 years old.

In a dog-bite case, the statute of limitations is six years, so the suit would need to be filed by the child's 24th birthday.

The statute of limitations for claims involving medical malpractice or intentionally harming someone is one year from the point the child turns 18.

A claim a parent may have for loss of the child's society lasts as long as the child's claims. The reason for this is to promote a more efficient judicial system and to

keep the claims together.

2. Important evidence may be lost or destroyed

After an accident, parents want to ensure that their child gets the proper medical treatment and makes the best recovery possible. Oftentimes, a fair amount of time passes before they consult an attorney, and sometimes that delay can greatly damage any claim the child might have.

An attorney understands that the only way to prove a case is through the presentation of evidence. Preserving evidence before it gets lost or destroyed can make or break a case. While certain documents or items may not seem important to you, an attorney may realize that they must be gathered and saved, and sometimes may require immediate legal action.

In some cases, it's important to have the vehicle the injured child was riding in inspected before it's repaired or destroyed. In other cases, witness statements must be gathered while memories are still fresh.

In dog bite cases, experienced attorneys know the critical importance in documenting the severity of the injuries. In our office, we have a sophisticated digital camera that we use to take photos of the wounds caused by a dog attack. In some circumstances, we hire professional photographers to take the images.

Cases involving injuries caused by failure of a business or apartment complex owner to install safety glass make for another example where preserving evidence can be very important. Photographing the scene

as soon as possible, hiring an expert to determine the standards the property owner should have met, and retaining a private investigator to interview witnesses about prior injuries caused by broken glass are examples of the necessary evidence gathering.

There are countless different scenarios in which acting quickly to preserve evidence could be crucial. Don't delay in consulting an attorney regarding your child's case, even if you have many years left to file the case.

3. Signing medical authorization forms can hurt claim

Signing documents before consulting a lawyer could sink your child's claim. When representatives of insurance companies ask you to sign certain documents shortly after your child has been injured, alarm bells should be going off in your head.

Insurance companies often will parents to sign authorization forms that allow them to access all of the child's medical records. It happens all of the time, and parents often think they have no choice but to do what's being asked of them. Signing an authorization form allows the insurance company to comb through your child's medical records, even those that are completely unrelated to the case. This not only violates your child's privacy, but could yield information that, taken out of context, could hurt your child's claim.

4. Don't settle claims before consulting an attorney

Rushing into a settlement with an insurance com-

pany could cause serious financial harm to your family. Insurance companies often try to contact the parents of an injured child within a few days of the accident in order to settle the claim quickly.

The money may look good initially until it's discovered that the child was more seriously injured than initially thought, or that the entire settlement will be gobbled up having to pay medical bills.

The way it works is that the insurance company sends a check and a document for the parents to sign that effectively ends the case. So, even if it later becomes apparent that the child's injuries are far more serious than originally thought, no further recovery is possible.

In one case we handled – and this example is just one of many we could point to – the child had a broken arm and a scar on his face. The insurance company offered an amount to settle the case that was tens of thousands too low, which the adjuster surely knew. Fortunately, the parents realized they might need some guidance and they consulted our office before signing any paperwork.

Do not be in a hurry to settle the case. Just politely inform the insurance adjuster that you're going to consult with an attorney to make sure your child's rights are protected.

5. Lawyers know how to protect your child's rights

Lawyers help level the playing field between parents and adjusters. As we wrote earlier, insurance adjust-

ers handle claims for a living. Naturally they have a tremendous advantage over most parents in negotiating a settlement. This is true even if the parents are very sophisticated and have successful careers.

Injury cases, particularly those involving children, are far more complicated than they often appear. The number of legal issues that arise even in seemingly straightforward cases can be tricky even for lawyers who specialize in representing injured people.

For example, we've handled tragic cases involving children who were injured or killed when struck by a car in a driveway. Because our office is experienced in handling such cases, we know the importance of doing things like hiring a private investigator to interview witnesses, gathering the child's school records, and making sure the family members of the child were receiving the proper psychological treatment to cope with their loss.

Apart from legal issues, an attorney experienced with child injury cases may be able to help guide you to the best medical care in the area. We've had a number of situations in our office where an accident has left a child with a broken arm or leg. That's a problem for anyone, but growing children can experience issues with growth plates that can cause situations such as one leg being shorter than the other. Because we deal with physicians on a daily basis, we're able to connect our clients with the top medical providers in the region.

So, if your child has been injured, contact a lawyer as soon as possible to protect your son or daughter's rights. Consulting a lawyer early in the case could make the

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difference between whether your child is taken advantage of or receives fair compensation.

CHAPTER 4

Do You Have A Case?

The fact that a child died or was injured in an accident doesn't mean a claim can be maintained. A person or business entity who caused the death or injury has to be deemed negligent, or at fault, under the law. Someone is at fault when it is his responsibility to act or behave in a certain way, but fails to, which causes injury or death. There's a lot of nuance to negligence law, but that's a boiled down version of the concept.

In addition to negligence actions, claims can be brought on behalf of children who were intentionally hurt or abused by someone.

Winning a lawsuit probably would seem like a hollow victory compared to the injury suffered by a child or the loss to a parent through a child's death, but the court system is purposely set up to allow us to work out our differences with other parties in a civil, organized way.

The insurance industry, acting in concert with state and national chamber of commerce organizations, have worked their propaganda machines overtime to paint everyone who files a lawsuit as a money grubber. That's ridiculous and it's shameful. People shouldn't be made to feel guilty for pursuing legitimate claims, especially when a child was injured or killed as the result of negligent conduct. You have nothing to be ashamed of when you look out for the best interests of yourself and your family.

**VERY YOUNG CHILDREN ARE NOT
NEGLIGENT FOR CAUSING INJURIES**

In many cases, children injure other children whether through play or some careless act.

Children under the age of 7 are not liable for their conduct as a matter of law. For example, if a child less than 7 years old injures someone by running into them with a bicycle, the injured person will not be able to succeed on a negligence claim against the child, no matter how severe the injuries.

The idea behind the rule is that children who are less than 7 years old are simply incapable of fully appreciating how their acts may impact others. Therefore, the reasoning goes, it would be unfair to hold them responsible for injuries caused by accidental or even reckless behavior.

This can be an important issue if a child under the age of 7 gets injured in an accident caused partially by the child's actions. Under Ohio law, juries can weigh the negligence of the person who caused the accident and the injured person. The concept is called comparative negligence. So, let's say that the driver of a car runs a stop sign at a 4-way stop intersection, and a 6-year-old child on a bicycle also fails to stop at the intersection and is struck while crossing the car's path. In that situation, the 6-year-old cannot, as a matter of law, be found to be contributory negligent. Therefore, the driver of the vehicle would be solely responsible for causing the child's injuries.

Children 7 or older - and adults, for that matter -

also cannot be held liable for causing injuries that occur during recreational activities such as games of tag or baseball, unless their conduct was somehow reckless. In other words, a child who injures someone during some type of play activity won't be held liable for a run-of-the-mill accident. And, the recreational activity doesn't have to be confined to sports. For example, if a child accidentally wacked someone with a hammer while building a tree fort, they likely couldn't be found negligent. That may not seem fair to the injured person, but that's the law in Ohio.

In some situations, a parent can be liable for a child's negligent conduct. If the parent entrusts the child with something like a gun or a car that is potentially dangerous to others because of the child's age or inexperience, a claim can be made against the parent. Parents also can be liable if they don't exercise the proper control over a child despite knowing that the child's conduct could cause an injury, or if the parent somehow consents or directs a child's wrongdoing.

CHAPTER 5
Smart Moves to Help Your Child's Case

TEN TIPS TO MAXIMIZE YOUR RECOVERY

If your child has been injured in an accident, the initial steps you take can make a big difference to the outcome of the case. We've compiled ten tips to help you avoid insurance company traps and receive fair compensation for your child's injuries.

1. Seek treatment immediately.

The best thing you can do for both your physical and financial health is to get the proper medical treatment for your child's injuries. You need to go to your family physician or to the emergency room to make sure that your child gets the treatment necessary to recover from the injuries suffered in the accident.

Once you go to the doctor, follow his or her orders so your child can make the best recovery possible. If your doctor tells you to take your child to a physical therapist, do it.

This makes sense not only for your child's physical health, but for the child's financial health as well. An insurance adjuster is going to base any settlement offer on the medical care received because it provides a way to measure your child's injuries and resulting pain. Getting treatment demonstrates to the insurance company that the injuries are legitimate. Compensation for the pain and suffering your child endured as a result of the accident will be based to some degree on the amount of

the medical bills.

2. Don't rush to settle your child's claim quickly.

If you're reading this book because your child recently was involved in an accident caused by another driver, you may already have received a call from an insurance adjuster trying to settle the claim. Typically, an adjuster will wave a few thousand dollars under your nose to settle the claim quickly. It sounds good until you realize your child may be hurt more seriously than you anticipated or the medical bills end up eating into that money.

If you're tempted to settle the case below its value just because you need money for your child's medical bills, hold off. If you hire an attorney, the attorney often will be able to work out an arrangement with your health-care provider that allows your provider to be paid out of the proceeds of any settlement. This allows the child to continue getting the necessary treatment, while ensuring the doctor is paid at the end of the case.

3. Don't underestimate the insurance adjusters.

Insurance adjusters handle claims for a living. They're judged by their bosses by how they settle claims and how much money they save for the company. This doesn't make them bad people; they're just doing their jobs and looking out for the best interests of their employers. It's up to you and your lawyer to look out for your child's interests.

So, when an adjuster representing the person who

caused the accident gives you a call, keep in mind where their loyalties lie. They'll likely be extremely pleasant, but they have one goal: to settle your child's claim as cheaply as possible. They do this for a living, all day and every day. Because this is probably the first time you've been in this situation, you are at an obvious disadvantage. Be smart when you're dealing with them – or better yet, hire a lawyer who deals with insurance companies on a daily basis. After all, the insurance companies have professionals working for them, so you should too.

4. Don't provide a statement to the adjuster.

If an insurance adjuster contacts you, don't make any statements about the accident, your child's physical condition, and whether your child is being treated by a doctor. The adjuster may be recording your conversation and certainly will be taking notes. You can settle any claims dealing with the damage to your vehicle, but any statements you make about your child's injuries could come back to haunt you. Simply thank the adjuster for calling, state that you don't want to make any statements, and that you or your lawyer will call back at the appropriate time. You don't have to be rude, but you need to be firm. The adjuster can't make you talk.

One way to avoid awkward conversations with an adjuster or making statements that could hurt your case is to contact a lawyer to represent you. Your lawyer will stop the adjuster from having any further contact with you or your child.

5. Don't sign any medical authorization forms.

Insurance companies often try to get accident victims to sign and return authorization forms that allow them to obtain their medical records. The forms usually are drafted so the insurer gains access to all of the injured person's medical information, not just information caused by the accident. It allows an insurance company to go on a fishing expedition for any other medical problems that might explain the pain your child is experiencing.

If your child's injuries are serious, you should consult an attorney to deal with these issues. Your attorney will ask you to sign medical authorization forms that will be used to obtain the information that's related to your child's accident. This helps control the flow of private information to the insurance company.

6. Document everything connected to your child's case.

Make sure you keep every bill, police report, and document connected to your child's claim. The insurance company has a right to see evidence of medical bills for which you're seeking reimbursement. Certified copies are available through your child's healthcare provider. If your attorney handles a significant number of injury cases, he or she will know how to obtain these important records.

7. Honesty is the best policy.

Be honest when it comes to dealing with your

child's injury claim. Be honest with the insurance adjuster, be honest with your doctor, and be honest with your lawyer. Nothing will kill your child's claim faster than being caught in a lie.

8. Don't hide information from your lawyer.

This tip goes hand-in-hand with our advice about being honest. You'll be making a big mistake if you hide information that is embarrassing or that you think will hurt your child's claim. You may get away with it, but usually the truth comes out. And if it comes out at the wrong time in a deposition or at trial, your child's case may be damaged beyond repair. Your lawyer needs the complete picture in order to provide your family with the best possible representation. Don't put your lawyer in a bad situation by hiding something.

9. Don't exaggerate the impact of your child's injury.

You're entering a world you likely didn't know existed. As we've said earlier in this book, insurance companies prosper by paying accident victims as little as possible. In an effort to do that, they may resort to what you may regard as underhanded behavior. They may hire a private investigator to spy on your family, they may have someone engage you in conversation about your child's injuries, or they may videotape your child at play.

If you exaggerate the extent of your child's injuries and then your child is filmed doing back flips on the playground, don't be surprised when the case tanks.

Don't play games when it comes to dealing with your child's injury case.

10. Hire an attorney devoted to personal injury cases.

Earlier, we wrote about insurance adjusters who negotiate settlements every day. They're good at it because it's their profession. That's why you'll need a lawyer to handle your child's case. Your lawyer not only will deal with the insurance adjuster, but he'll navigate you through the complex world of personal injury litigation.

And it's crucial to hire an attorney who specializes in personal injury and child accident cases. That just makes sense. For instance, while most doctors are extremely smart people who worked hard to get through medical school, generally you look for doctors who have the knowledge and skills to help you with a specific problem. For instance, if you need brain surgery, you aren't going to consult a doctor who specializes in knee operations. Similarly, if your child has been injured in an accident, it wouldn't make sense to seek out a lawyer who specializes in corporate law. You need a lawyer who understands the many nuances of injury law.

Armed with knowledge of the law and the ploys of adjusters, a lawyer can help you obtain a fair settlement for your child's case. Numerous studies have shown that you're far more likely to end up with more money at the end of a case if you hire a lawyer rather than trying to settle the case on your own. By virtue of handling injury cases every day, lawyers develop a

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sense of how much a case is worth.

Furthermore, you're not likely to have experience with the types of arguments you're going to hear from insurance adjusters. Hiring a lawyer lessens the amount of hassles you'll face and you'll almost certainly net more money for your child, even after attorney fees and expenses are subtracted.

CHAPTER 6
The Probate Process and Your Child

**SETTLEMENTS MUST BE APPROVED
BY PROBATE COURT**

Any lawsuit brought on behalf of an injured child is done in the name of the parent or legal guardian. The parent or guardian is presumed to act in the best interest of the child. Therefore, any settlements, either before or after the lawsuit is filed, must be agreed to by the parents.

Parents, though, don't have complete control over the settlement. Some parents have the mistaken belief that they are entitled to collect their child's settlement proceeds and do what they want to with the money. The settlement is for the benefit of the child and should be protected until the child turns 18. Sometimes parents can get a portion of the settlement for loss of consortium, but it's usually a relatively small amount of money. The county's Probate Court acts to protect the settlement so the funds are available when the child reaches adulthood.

For all settlements over \$10,000, the county's Probate Court will conduct a hearing to ensure that the settlement is in the best interest of the child. Getting the Probate Court to approve a settlement for a child adds additional time to the process. Unfortunately, this can't be avoided, but an experienced attorney generally can move the settlement through the system in an efficient manner.

An application to settle a minor's claim must first be filed in the Probate Court. The application provides a breakdown of the settlement as well as the expenses coming out of the settlement. It lists the unreimbursed expenses, medical and otherwise, the attorney fees, and any money going to the child's parents for loss of consortium.

The application also tells the court where the child's money will be kept until the child is 18. Sometimes the money will be kept in an interest bearing CD or bank account. In other situations, depending on the child's age and the amount of the settlement, the money will be placed in a structured settlement that will disperse payouts to the child over a period of years. We've written more on the tremendous benefits offered by structured settlements in the next chapter.

After receiving the application, the Probate Court sets a hearing that the parents and child must attend. In some cases, one parent will file a document with the court waiving his or her appearance and consenting to the settlement. This can be helpful if one parent may have a hard time getting time off from work.

At the hearing, the judge or magistrate will review the settlement proposal in order to make sure it is in the best interest of the child. The judge or magistrate asks the parents if they approve the settlement and asks the attorney for specific information about the deal.

Perhaps the most important thing parents can do to protect their child's interest is to find an attorney experienced at handling injury cases, particularly those in-

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volving children. These cases can be complicated for the reasons we've discussed above, but the Probate Court application process and hearing require a certain amount of legal sophistication.

CHAPTER 7
Protect Your Child's Recovery

**PROTECTING YOUR CHILD'S MONEY WITH
A STRUCTURED SETTLEMENT**

Attorneys who are experienced at handling child injury cases understand that one of the best ways to help the child in cases involving significant recoveries is to structure the settlement.

A structured settlement pays out a set amount of money to the child over a period of years, typically starting when the child turns 18. In most cases involving a large settlement, a structured settlement makes sense.

For instance, let's say a young child is seriously injured in a car accident. The settlement for that case is placed in investments guaranteed to produce a certain amount of money every year once the child is 18. The structure can be set up in a variety of ways. For example, the child could receive a lump sum at age 18, and then get set payments every month or year for a certain period of time. Often, parents will agree to a structured settlement that provides most of the money in yearly sums payable when the child is ready for college so tuition payments can be covered.

Usually, the structure plan is funded by an annuity purchased through a life insurance company. The insurance companies are highly rated and regulated by the state to ensure that the money actually will be there when the child reaches 18.

Structured settlements have a number of benefits.

First, the settlement will be worth significantly more than it would have been had it just been paid out at the conclusion of the case. For instance, our office handled a case where the child would have received approximately \$60,000 in a lump sum payment, but under the structured plan, she'll receive approximately \$160,000 by the time the payments are made. Obviously the numbers change based on the settlement, the age of the child, interest available at the time of the settlement, and the structure plan chosen.

Structured settlements also offer the benefit of providing tax-free income to your child. Personal injury settlements are not taxed, but any income generated by investing the settlement will be taxed. In a structured settlement, the money paid to your child every month or year does not have to be claimed as income. Contrast that to what would happen if you placed your child's settlement in a bank or money market account. While the principle couldn't be taxed, any income generated by the investment could be. So structuring a large settlement makes good sense when considering the tax consequences.

Structured settlements also take a burden off parents who may be unsure how to best manage their child's settlement. Parents will know as soon as they choose a structured settlement exactly how much the settlement eventually will yield and what their child will receive through the periodic payments. That's different than parents who try to manage the settlement on their own because there aren't a whole lot of investment vehi-

cles that guarantee a decent fixed return. And, again, any investment income yielded would be taxable if not structured.

Structured settlements have the further advantage of letting parents set up plans that hedge against unwise expenditures that some 18-year-olds might make. We can probably all relate to the teenaged kid whose biggest priority is buying an expensive car. We've represented plenty of teenagers who can't wait to get their hands on their money to buy a new sports car. While many of us can relate to similar desires when we were that age, most parents would probably not want their child to blow through the cash in less than a year by making those types of impulsive purchases. The structured plan spreads the payments out over time, which preserves the settlement over a period of years.

In some tragic situations, we're not dealing with fun decisions like how a fully recovered kid wants to spend his newfound wealth. Sometimes children are injured so severely that they'll have medical expenses and pain that will last a lifetime. Provided that there's enough insurance coverage to pay for those expenses, a structured plan would be particularly beneficial. Payments made in monthly increments hopefully would be sufficient to pay for a lifetime of treatment and living expenses.

If your child is injured, speak with your attorney about whether a structured settlement makes sense. It's important to make the decision before you accept any settlement money. You can't accept a lump sum pay-

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ment and then try to enter a structured plan because you lose the tax-free benefit that makes structures so appealing.

CHAPTER 8

Dealing With the Loss of A Child

Wrongful death claims are mostly controlled by Ohio Revised Code §§ 2125.01, 2125.02, and 2125.03. Those code sections come from the state's probate laws.

The law allows the executor or administrator of the deceased child's estate to bring a claim against the person or entity whose negligent conduct or wrongful act caused the child's death.

A case can be brought if the child could have maintained a claim for negligence or wrongful conduct had the death not occurred. That means the executor would need to show that the other party acted in a negligent or wrongful way and that conduct caused the death. Wrongful death cases can be brought for negligent acts such as car accidents and medical malpractice, or criminal acts like murder and manslaughter.

To prove the case in a negligence context, the executor must show that the defendant owed a duty of care to the child; that duty of care was breached; the breach caused the child's injuries and death; and that the child's estate and beneficiaries suffered damages.

The case must be proven by a standard called "preponderance of the evidence," which essentially means that the evidence must tilt more in the favor of the executor than the defendant. Attorneys often explain the standard by telling jurors they just need to prove their case by 51 percent, which is well short of the reasonable doubt standard that we've all seen in television

dramas depicting criminal trials.

Relatives are beneficiaries

Under state law, wrongful death suits are brought in the name of the executor of the child's estate in the name of various beneficiaries. A beneficiary is someone who is entitled to financial compensation should the case be proven.

In Ohio, the beneficiaries in a case involving a child's death are relatives such as parents and siblings. A parent who a court determines had abandoned a minor child may not be a beneficiary in a wrongful death claim stemming from the child's death.

The probate court judge determines how a settlement or award is to be distributed among the potential beneficiaries based on the relationship to the child and the degree of loss to the beneficiary.

If all the beneficiaries are at the same level in the law's eyes – for instance a group of siblings – they can decide among themselves how to divide up the money and ask the court for approval.

Beneficiaries under 25 years old can be treated differently by the Court in order to protect their interests. The Court can create a trust for beneficiaries under 25 and order that the money be held in trust until the beneficiary turns 25 or that it be distributed in accordance with the terms of the trust.

Damages available to beneficiaries

Though it offers little consolation to people who

have lost a child, our court system compensates the beneficiaries of a decedent by awarding money. Damages – the term used to refer to the various reasons for which financial compensation can be awarded – are available for the estate and to the beneficiaries.

The estate of the deceased child can be compensated for the medical bills incurred to treat the child prior to death and for the pain and suffering the child experienced as a result of the accident or wrongdoing.

Under state law, the following damages are available to the beneficiaries in all wrongful death cases, not just those involving children:

Loss of society – Under this category, beneficiaries can seek financial compensation for such things as the loss of companionship, care, assistance, protection, advice, guidance, and education provided by the decedent. Obviously, whether we're talking about the death of a child or an adult, it is difficult to put a dollar figure on these types of damages because they're not easily quantifiable. For instance, you can't look in a book to find a dollar amount that would compensate a mom or dad deprived of the time and companionship they would have had with their deceased child. That's the job of your attorney – to place a dollar amount on the loss of a child's society and to justify that amount with a reasoned argument to a jury. Though it's not readily quantifiable, it's certainly a huge and legitimate loss to the beneficiaries – a loss for which they deserve to be compensated.

Mental anguish – Family members can be awarded compensation for the mental anguish they endured as a result of the loss of their loved one. Like loss of society, this may be a hard figure to quantify because there's no formula for setting a dollar value on one's pain stemming from the loss of a child. Nonetheless, it can account for a significant amount in a damages award because most people can relate to the grief experienced as the result of the death of a family member.

Making a case for mental anguish is similar to asking for pain and suffering damages in a routine personal injury case. Your attorney could ask the jurors to award money based on the anguish endured over a set time period such as months or years. Your lawyer may take a different approach by not suggesting a formula and simply asking the jurors to determine a fair figure to compensate family members for the mental anguish they've suffered.

Loss of prospective inheritance – Under this category, beneficiaries can seek financial compensation for the inheritance they might have received from the decedent had the decedent lived a normal lifespan. This likely wouldn't apply in a case involving the death of a child.

Loss of support – This refers to the lost earning capacity of the decedent had he or she not died. The factors taken into consideration for loss of support would be the salary at the time of the decedent's death as well

as the amount of money the decedent reasonably could have been expected to earn in the future had the death not occurred. Charts called “life tables” are used to calculate how long the decedent would have been expected to live based on such factors as age at the time of death, gender, and race. As in the case of prospective inheritance, this probably wouldn’t be an issue for a case involving the death of a child.

Loss of services – Damages for loss of services are available to beneficiaries. It’s a sort of vague claim, but essentially the law allows beneficiaries to collect compensation for services the decedent provided the beneficiaries.

BOOKS FOR GRIEVING FAMILIES

While we understand that literature is no substitute for human contact after the loss of a child, we have compiled a list of books on the grieving process that can help explain some of the emotions you are dealing with.

This Thing Called Grief: New Understandings of Loss
by Thomas Ellis

When Bad Things Happen to Good People
by Harold Kusner

Lessons of Loss: A Guide to Coping
by Robert A. Neimeyer

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The Bereaved Parent
by Harriet Sarnoff Schiff

Who Dies?
by Stephen and Ondrea Levine

On Death and Dying
by Dr. Elizabeth Kubler-Ross

Awakening from Grief: Finding the Road Back to Joy
by John E. Wishons

CHAPTER 9
Let Your Lawyer Be Your Guide

**HIRE A LAWYER EXPERIENCED WITH
CHILD INJURY AND DEATH CASES**

All but the most straightforward of child injury cases can become very complicated even for experienced attorneys. Dealing with insurance adjusters, healthcare insurers, doctors, chiropractors, insurance-company attorneys, and structured settlement plans can make resolving a child-injury claim a long, frustrating journey. Hiring a lawyer to help you obtain fair compensation makes sense unless you've been involved in a very minor accident.

If you hire a lawyer, he has a few options when trying to resolve your child's case. Some lawyers file a lawsuit immediately, which has the benefit of putting you quickly on a trial track. The other path the attorney might take is negotiating with the insurance adjuster to resolve the case without having to file a lawsuit. Most attorneys, including those in our office, prefer the second approach.

Lawsuits are time-consuming, expensive, and unpredictable. The benefit of settling a claim with the adjuster is that we can give the parents and child a certain outcome. We only file suit quickly if the adjuster makes an unfair offer that we know isn't going to get any better or if the statute of limitations is about to expire. For a routine traffic accident case, the injured person has two years after the accident to file a lawsuit. The statute of

limitations for a minor's traffic-accident case is two years after the child turns 18.

Even with our approach, you shouldn't expect a quick settlement. As we stated earlier, we think it's best for the child to follow a doctor's treatment plan – even if it takes more than a year – rather than settling the case prematurely. This benefits the child's health and case. Ultimately, the settlement or verdict will be based to some degree on the cost and length of your child's treatment.

Sometimes going to trial becomes the only option. When you're looking for a lawyer, make sure you hire someone who is willing to try cases if necessary and understands the nuances related to injury cases involving children. It can take a long time to get to trial, but it may offer your only chance of getting fair compensation for your child's injury. If you have to go to trial, be prepared for a long wait because judges have to juggle numerous criminal and civil cases. It's not unusual for a trial date to be set anywhere from six months to a year after the complaint is filed.

YOUR LAWYER DOESN'T GET PAID UNLESS YOU DO

People are understandably nervous about hiring a lawyer. Fear that it will cost too much stops some from consulting an attorney, especially when expenses may be adding up as a result of a recent accident. Child accident victims, however, don't pay their lawyer anything unless a settlement is reached or they win in a trial.

Most attorneys who represent children injured in accident cases take what's called a contingent fee, which means that the lawyer's fee depends on his success in resolving the claim. If you win your case or get a settlement, the lawyer takes a fee. If you lose at trial or the insurance company won't settle, you don't get anything, but you typically won't owe the lawyer a fee. Usually, the lawyer takes one-third of the gross award or settlement, but the fee can increase if a trial becomes necessary. The arrangement works for both parties. The lawyer takes a risk that he or she won't get paid if the case bombs. The client gets to pursue his claim without having to come up with thousands of dollars in legal fees. Without this arrangement, some people never would be able to bring a claim because they couldn't afford it.

Trying cases can be expensive because court reporters have to be hired to take depositions, those depositions have to be transcribed, medical records have to be ordered, expert witnesses such as doctors have to be consulted, exhibits have to be compiled, and court costs have to be paid. The attorney usually will cover those expenses because most people couldn't come up with that much money. If the case settles or the client wins at trial, the lawyer is reimbursed for the expenses he incurred in handling the case. Again, this arrangement benefits the client. Our firm handled one case where the expenses alone were in the neighborhood of \$100,000. If we hadn't paid for those expenses, our client never would have been able to pursue his claim even though he had an excellent case that eventually settled for

nearly \$2 million.

When you meet with a lawyer, you will have to sign an agreement that spells out how the attorney will be compensated and how the expenses will be paid. Make sure that the contingency fee arrangement – typically 33 1/3 percent of the gross settlement or award – is clearly spelled out in the contract. If you don't feel comfortable with the contract, don't sign it. You're in control of the situation. If you have questions, make sure the lawyer answers before you sign the document. You can walk away after the case starts, but the lawyer will be entitled to get paid for the time and expenses he's incurred out of whatever settlement another lawyer obtains.

When the case is resolved, your child will get a check that represents the award or settlement, minus the attorney's fee and expenses. In some situations, the attorney could be entitled under the contract to more money than the client ultimately receives after expenses and medical bills are paid off, but that shouldn't happen. The attorneys in our office cut their fees so the client always ends up with more money.

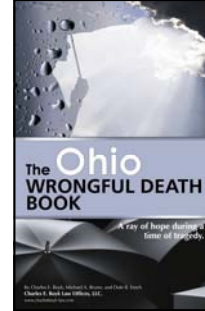
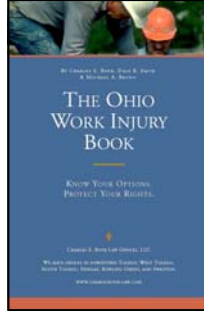
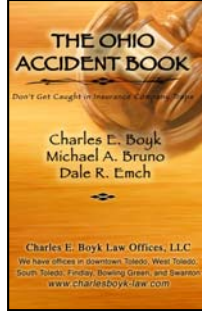
CHAPTER 10
Let Us Know If We Can Help

We hope this book serves as a helpful reference tool for understanding injury and wrongful death cases involving children. Though the process can be long and complicated, an attorney can guide your family through this journey. When picking an attorney for your child's case, select someone who handles a lot of personal injury cases, particularly those involving children. Personal injury lawyers deal with the legal issues specific to this field of law on a daily basis.

If you think we can help you with your family's case, please call us at 419-241-1395 or 800-637-8170. A receptionist will gather some information and connect you with a lawyer. Calls that come into our office after hours are forwarded to a lawyer. To learn more about our firm, visit our Web site at **www.charlesboyk-law.com**.

We'll schedule a free consultation with you and give you our professional opinion about whether or not we can help your family. You can also order one of the other books we've written about car accident cases, dog bites, workplace injuries, or wrongful death claims. We have six offices in northwest Ohio where we can meet with you to discuss your situation. We'll work hard to get the best result for your child's case.

NEED MORE FREE BOOKS?



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Phone Number: _____ Fax Number: _____

Number of **FREE** books requested:

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We have six offices in northwest Ohio to serve you.



little kids, The Ultimate Guide to
Child Injury Cases in Ohio

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