



The **Ohio**
WRONGFUL DEATH
BOOK

A ray of hope during a
time of tragedy.

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

The Ohio Wrongful Death Book

A RAY OF HOPE DURING
A TIME OF TRAGEDY

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Findlay, Bowling Green, and Swanton.

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A family member's passing causes tremendous pain, but the emotional and financial fallout of a death caused by another's negligence can be devastating. We hope you haven't picked up this book because you've lost a loved one through traumatic circumstances. If that is the case, we're sorry for your loss.

We hope this book provides an overview of wrongful death cases that allows people having to navigate these difficult waters to make informed and educated decisions before ever talking to a lawyer.

Wrongful death cases are inherently complicated, involving everything from probate matters to negligence issues. These types of cases are often made more difficult because insurance companies representing the wrongdoer often try to avoid liability or offer unfair or inadequate compensation. Most people have never been through this process and, understandably, don't understand what they're up against when they decide to pursue a wrongful death claim.

Those who haven't been involved in a wrongful death case usually expect that an insurance company will pay off medical bills and compensate them for the loss of their loved one. But for many the nightmare is just beginning. The pain caused by the accident can be compounded by the unfair treatment the victim receives from some insurance companies that have one objective – closing the file for as little money as possible without fair compensation for the injured.

In short, insurance companies have teams of adjusters and lawyers that they can put to work on defend-

ing such claims. They're professionals – they handle claims involving death and serious injuries all day and every day. Naturally, they have an advantage over most people who are encountering these issues for the first time. In our office, we believe knowledge is power. We think this book will be helpful in leveling the playing field between insurance companies and those who have lost loved ones as a result of someone's wrongful acts. 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. You can also visit our Web site at www.charlesboyk-law.com.

WE CAN HELP YOU

Our office has been representing families who have suffered the tragic loss of a loved one for the past 25 years. We take a comprehensive approach to the wrongful death cases we handle. 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 families in wrongful death cases arising from among the following situations:

- Car accidents
- Truck accidents
- Motorcycle accidents
- Medical malpractice
- Construction or workplace accidents
- Nursing home negligence
- Airplane crashes
- 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 numerous wrongful death claims for family members who have lost loved ones. He also has a thriving personal injury practice. He 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 anything 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 personal injury cases, but also handles criminal cases ranging from felonies to traffic offenses. He graduated *cum laude* from the University of Toledo College of Law, where he was an associate member and note and comment editor of Law Review. Dale writes a column for the Toledo Blade called “Legal Briefs,” in which he answers readers’ questions about a variety of legal issues. He is a member of the Toledo Bar Association, the Lucas County Bar Association, the Ohio Academy of Trial Lawyers, and the Association of Trial Lawyers of America. He serves on the Lucas County Public Defender Commission and the Media Relations Board for the Toledo Bar Association.

Our attorneys’ varied experience gives us a unique perspective on the cases we handle, benefits the

families of those who have lost a loved one, and helps maximize their recovery. Understanding the way each party 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.

WRONGFUL DEATH CLAIMS CONTROLLED BY STATUTE

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 person's estate to bring a claim against the person or entity whose negligent conduct or wrongful act caused the decedent's death.

A case can be brought if the decedent 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 decedent; that duty of care was breached; the breach caused the decedent's injuries and death; and that the decedent's estate and beneficiaries suffered damages.

The case must be proven by a standard called "preponderance of the evidence," which roughly 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.

TIME TO FILE LAWSUIT IS LIMITED

Generally, the statute of limitations on a wrongful death claim is two years, which means if a lawsuit has to be filed, it must be filed within two years of the decedent's death. It's extremely important to keep track of this date. If the two-year period lapses, a claim will be barred forever. The idea behind a statute of limitations is that crucial evidence that someone needs to defend such a lawsuit could be lost or destroyed if too much time passes.

If the decedent's death was caused by a defective product, generally the product can't have been delivered to the first purchaser more than 10 years prior to the

death.

RELATIVES ARE BENEFICIARIES

Under state law, wrongful death suits are brought in the name of the executor of the decedent'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 are relatives of the decedents, such as the decedent's surviving spouse, children, parents, and siblings. A parent who a court determines had abandoned a minor child may not be a beneficiary in a wrongful death claim should the child die.

The probate court judge determines how a settlement or award is to be distributed among the potential beneficiaries based on the relationship to the decedent and the degree of loss to the beneficiary. For instance, if the decedent was the breadwinner in the family, the surviving spouse and children would be given more money than a sibling of the decedent.

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 is little consolation to people who have lost a loved one, the way our court system compensates the beneficiaries of a decedent is 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 for the damages of the decedent and to the beneficiaries.

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

Under state law, the following damages are available to the beneficiaries:

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.

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. For example, assume Betty was killed as the result of someone's negligence. If Betty provided daycare for her daughter Leslie's children, Leslie could seek compensation for the money it cost her to secure daycare. That's not to say that the estate must show all the claimed lost services are attached to a specific dollar amount. The jury can determine a dollar figure for each lost service.

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, 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 figure that would fairly compensate a wife deprived of decades of a future with her deceased husband. That's the job of your attorney – to place a dollar amount on the loss of a decedent'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.

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.

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. 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.

WRONGFUL DEATH STANDARDS

As mentioned earlier in the book, wrongful death cases are brought because of another party's negligence or wrongful conduct. It might be helpful to understand a little bit about those concepts.

Just because someone dies doesn't mean a wrongful death case can be justified. For example, if Bill trips in a grocery store over cans stacked in an aisle, causing him to hit his head and die, there won't be a case. Under Ohio law, those cans would be deemed an open and obvious hazard that Bill should have seen, so the store

wouldn't be negligent.

If, however, a grocery store employee spilled some clear, liquid soap on an aisle and left it there for hours without cleaning it up or posting a warning sign, and Bill took the same fateful tumble, the store would be negligent.

The point is that a person or entity who causes the death 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.

So, one basis for a wrongful death claim is to prove negligence. The other way is to prove wrongful conduct such as an intentional act that resulted in a death. For example, if Steve punched Tony without provocation, causing Tony to fall down, hit his head, and die, Steve could be sued for causing Tony's death. In that case, Tony's estate would have to prove that Steve's intentional and wrongful conduct caused Tony's death.

Bringing a civil suit for wrongful death would be appropriate in both of the above examples. Winning a lawsuit probably would seem like a hollow victory compared to the loss suffered, 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 person was killed as the result of negligent conduct. Family members deserve to be compensated for the mental anguish and loss of financial support they experience due to the wrongful death of a loved one. You have nothing to be ashamed of when you look out for the best interests of yourself and your family.

SEEK LEGAL HELP

In a routine personal injury claim, sometimes it's possible to proceed without a lawyer, even though it's usually unwise. People shouldn't even think about trying to handle a wrongful death claim on their own. These cases generally are far too complicated and technical for most people to tackle by themselves.

For instance, wrongful death claims need to be made through the administrator or executor of an estate. That means an estate has to be opened through the probate court, which requires an understanding of that legal process. The lawyer handling your wrongful death claim will do that for you or will consult with a probate attorney to get it done. The estate will remain open until the claim resolves.

Sometimes these already complicated cases get trickier because the person who caused the decedent's death also dies in the incident. In that case, the claim is made against the wrongdoer's estate. If no one opens that estate, your lawyer will have to open it if you plan

to go after estate assets. Again, that's a technical process that a layperson shouldn't try to handle.

As we discussed earlier, your lawyer has to show the decedent's death was caused by negligent or wrongful conduct. On top of that, the lawyer must prove the various elements of the beneficiaries' claims for damages. The issues involved are complicated even for attorneys who operate in this world every day.

Seek a lawyer who focuses his or her practice on personal injury claims and who has experience working on wrongful death cases. Lawyers in this field understand the issues the insurance industry and defense attorneys will raise to defeat your claim, and will have the knowledge and experience to fight for your rights.

Your lawyer will have a few options when trying to resolve your 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 the client gets compensated sooner and has a certain outcome. We only file suits quickly if the adjuster makes an unfair offer that we know isn't going to get any better or if the two-year statute of limitations discussed above is about to expire.

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. It can take a long time to get to trial, but it may offer your best chance of getting fair compensation for your wrongful death claim. If you have to go to trial, be prepared for a long wait. It's not unusual for a trial date to be set anywhere from six months to a year after the complaint is filed, and trial dates often get postponed.

11 WAYS A LAWYER CAN HELP YOUR CASE

Attorneys with experience handling wrongful death cases can help maximize your recovery by making key decisions at the right time in the case. Each case is different, but we've assembled a list of 11 issues that may make a difference for your case.

1. Hire an attorney to start investigating as soon as possible

The earlier you find an attorney, the better. The investigation into the facts of the case could be crucial to your claim. Witnesses need to be found and sworn statements may need to be taken. Police officers need to be interviewed, photos of the scene need to be made, and crucial evidence needs to be preserved.

Sometimes the attorney can conduct the investigation. In many cases, however, a qualified private investigator must be hired for a proper investigation. Not all investigators possess the same skills. An attorney who handles these types of cases will know the most qualified investigators for each circumstance. We tend to use investigators with whom we have a long-term rela-

tionship and will provide priority to our individual case.

Using the right investigator can be crucial. For example, one of our cases involved a disputed liability car accident. Witnesses gave differing accounts and police officers refused to cooperate with either side. We hired a private investigator who previously had worked for the same police department. Suddenly, the police became more cooperative, additional witnesses were found, and our client received a good settlement short of trial. As the old saying goes, it's not always what you know, but who you know.

2. Accident Reconstruction

An accident reconstructionist uses math and physics to determine the cause of an accident. In a disputed liability situation, both sides often use a reconstructionist to try to prove their cases. The qualifications of these experts vary from individuals with high school degrees and continuing education classes to professors who teach at universities.

As private investigators, the attorney's experience and connections can find the right expert for your case. In one case, the defense team turned the tables on us and hired an expert who usually testified for the plaintiff. We used our connections to find a defense-oriented expert to add credibility to our case.

3. Find all the defendants

One of the jobs of the attorney is to maximize recovery for the client. In order to do that, the attorney

needs to find all the potential individuals or businesses responsible for causing the death. Sometimes this is easy and obvious. If a defendant ran a red light and caused the death, it's pretty clear who will be the target of the lawsuit. But if the driver was on the job at the time, it may be difficult to determine the business for whom the driver worked. That's crucial information because under the doctrine of respondent superior, the employer also may be liable for the accident.

Sometimes it's tough to figure out who may be responsible. In a complicated and serious electrical injury case involving a construction job, we sued the employer, an electric company, the general contractor, and 10 different subcontractors to determine the responsible parties. After two years of litigation and lots of depositions we were able to get an extremely good settlement.

4. Find the right experts.

Experts can make or break your case. Experts are witnesses with a specialized knowledge base whose testimony is necessary to prove a case. Examples include economists, grief counselors, psychologists, accident reconstructionists, coroners, doctors, scientists, and engineers.

In our office, we have many ways to find the right experts. We belong to state and national plaintiff attorney organizations that have databases of various experts. Those organizations also have scouting reports on the experts who tend to testify mostly for defense attorneys. We also have a network of fellow plaintiff lawyers that

we consult with on a regular basis to find the best experts.

In one case, we hired an expert on a complicated liability issue. As the case progressed, a different issue emerged as the central theme of the case. The original expert referred us to the preeminent expert in the United States on the key issue. The second expert's testimony essentially forced the defendants to pay our client a large settlement to resolve the case.

5. File in the proper court

A lawsuit can be filed either where the defendant resides or where the incident causing the death occurred. For instance, if a car accident happened in Lucas County and the defendant lived in Wood County, the lawsuit could be filed in either county.

Certain jurisdictions are more friendly to plaintiffs than other jurisdictions. Sometimes that's because certain judges have previously ruled on a particular issue that might be highly relevant to a case. Your attorney's experience and insight will be helpful in picking the best court for your case.

For example, in one catastrophic car injury case, we filed suit in Detroit because the company of one defendant was based there. The realization that the case would be tried in front of a plaintiff-friendly Detroit jury forced the defendants to own up to their responsibilities. That resulted in a huge settlement for our client..

6. Find the insurance coverage

Insurance coverage is essential to getting the best recovery possible in most cases. Most defendants do not have enough money or assets to adequately compensate the family members of someone killed as the result of negligence.

In one case, we represented three seriously injured people and the insurance company told us there was only \$500,000 in coverage. After we threatened to file suit against the large corporate defendant, we were finally told that a “mistake” had been made and there actually was \$2 million in coverage. Our attorneys demand to see certified copies of insurance policies and signed affidavits that the defendant does not have an “umbrella policy,” which covers claims that exceed a basic insurance policy.

7. Document economic loss

Families can suffer a huge economic loss when a loved one dies. In order to prove the amount of that loss, our office hires an economist. Most economists are university professors who look at the decedent’s income level, the income they would have earned had they lived, prior tax returns, and other economic data to determine the value of the economic loss caused by the death.

In addition to having excellent academic credentials and real-world experience, an economist also must be a superb communicator with the jury.

8. Psychological injuries

The death of a loved one is usually devastating, especially when the cause is someone else's negligence. The loss typically causes psychological injury to the survivors. Depression, post-traumatic stress disorder, and anxiety are the most common results. The report of a highly qualified clinical psychologist can help document these very real psychological injuries, which can be presented to the defendant and the jury.

9. Grief Counseling

The grief counselor can document loss and help the survivors deal with the tragic situation. The grieving process is an expected part of the wrongful death of a loved one with various stages the family needs to work through with the help of the counselor. The attorney can help the family locate trained professionals who can best deal with these issues.

10. Eliminate bills of the decedent

A wrongful death case is brought on behalf of the estate of the deceased individual for the benefit of their heirs. Often, the decedent will have accumulated debts that are outstanding at the time of the death. The attorney's job is to minimize the debts for which the estate would be responsible.

In one situation, a family's loved one died with large outstanding credit card bills as well as other debt. As part of the wrongful death settlement, we allocated all of the proceeds of the settlement to the heirs of the

estate, which allowed the estate to escape all of the debt.

In another situation, the decedent's health insurance had paid for the hospital bills that were accumulated prior to death and the insurer sought reimbursement for the payments. We allocated the wrongful death proceeds to the surviving heirs which allowed the family to avoid the substantial health insurance reimbursement.

Creative and strategic planning by the attorney can help provide favorable results for the heirs of the estate.

11. Demonstrate the relationship

The Ohio Wrongful Death Statute is designed to benefit the survivors of the person who died as a result of the conduct of a negligent party. The more survivors who depended on the loved one for companionship, guidance, and income, the greater the value of the case.

For example, several years ago we represented a truck driver killed in a truck accident. He was single, had no children, no living parents, and two adult siblings with whom he had a distant relationship. Unfortunately, we settled the case for less than it would normally have been worth because there were few damages to claim as a result of the limited number of relationships.

In a more recent case, we represented the surviving parents in the tragic death of a small child. When a child dies, generally there are no significant economic damages. However, we were able to prove the intense personal loss felt by the parents and the child's siblings.

The parents wrote heart-wrenching letters that spelled out the devastating impact the loss of their child had caused. Psychologists also wrote reports that discussed the grief everyone in the family had experienced. Photos of family celebrations, holidays, sporting events, and school concerts helped tell the story of a close-knit family that would never be the same again.

Your attorney should work with you as a team to develop the best strategy for your family's case.

YOUR LAWYER DOESN'T GET PAID UNLESS YOU DO

Most of us don't have to hire lawyers very many times in their lives, so there's an understandable apprehension. One source of anxiety is the fear that hiring a lawyer will cost too much money. In a wrongful death case, though, that shouldn't be a concern. The vast majority of lawyers handling cases like these will work on a contingent-fee basis. That means that the attorney's fee is covered through the settlement proceeds or jury award.

The benefit of this type of arrangement is that the client doesn't have to pay the lawyer a big retainer up front and doesn't have to cover the numerous expenses involved in wrongful death cases. Litigating cases is an expensive endeavor. Most people would never be able to come up with enough money to pay a lawyer by the hour for these time-consuming cases, let alone cover the big-ticket items such as payments to medical experts and the creation of complicated exhibits. Under a con-

tingency fee agreement, family members who lost a loved one don't have to be rich to get their day in court.

The lawyer takes on considerable risk with this arrangement. If the case has flaws that cause it to get dismissed before trial or the claims can't be proven in court, the attorney doesn't get paid. That's why most attorneys will be careful about what cases they decide to take on. That's good for everyone. The lawyer doesn't want to waste time, energy, and money on a weak claim. And prospective clients don't want to get their hopes up when there may not be a case.

In most situations, the attorney's fee will be one-third of the gross settlement or jury award. In some situations, the attorney may set the contingent fee at 40 percent if the case has to go to trial to cover the additional time and expense required to take a case that far. In the event of a settlement or jury award, the case expenses are taken from the client's portion of the recovery.

When you meet with a lawyer, you will have to sign a contract that specifies how the attorney will be compensated and how the expenses will be paid. Make sure that the contingency fee arrangement is clearly spelled out. If you don't feel comfortable with the contract, don't sign it. If you have questions, make sure you get answers before you sign the document.

CONCLUSION

This book was written with the goal of providing

useful information for people considering a wrongful death claim. In our office, we believe knowledge is power, and we hope that our book gave you the power to make some informed decisions.

Wrongful death litigation can be long and complicated, which is why we've advised that you consult with an attorney whose practice focuses on personal injury claims. Ask if the attorney has experience handling wrongful death claims because these cases often are more nuanced and complicated than normal personal injury claims.

If you think we can help you with your 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 an attorney. You can learn more about our firm by visiting our Web site at **www.charlesboyk-law.com**.

We'll schedule a free meeting with you at one of our six offices in northwest Ohio or at your home. At the meeting, we'll give you our professional opinion about whether or not we can help you. If we do accept your case, you can be assured that we'll work hard to get the best result for you and your family.

APPENDIX

Key laws for wrongful death cases

§ 2125.01. Action for wrongful death

When the death of a person is caused by wrongful act, neglect, or default which would have entitled the party injured to maintain an action and recover damages if death had not ensued, the person who would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances which make it aggravated murder, murder, or manslaughter. When the action is against such administrator or executor, the damages recovered shall be a valid claim against the estate of such deceased person. No action for the wrongful death of a person may be maintained against the owner or lessee of the real property upon which the death occurred if the cause of the death was the violent unprovoked act of a party other than the owner, lessee, or a person under the control of the owner or lessee, unless the acts or omissions of the owner, lessee, or person under the control of the owner or lessee constitute gross negligence.

When death is caused by a wrongful act, neglect, or default in another state or foreign country, for which a right to maintain an action and recover damages is given

by a statute of such other state or foreign country, such right of action may be enforced in this state. Every such action shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state or foreign country.

The same remedy shall apply to any such cause of action now existing and to any such action commenced before January 1, 1932, or attempted to be commenced in proper time and now appearing on the files of any court within this state, and no prior law of this state shall prevent the maintenance of such cause of action.

§ 2125.02. Persons entitled to recover; determination of damages; limitation of actions

(A) (1) Except as provided in this division, a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent. A parent who abandoned a minor child who is the decedent shall not receive a benefit in a civil action for wrongful death brought under this division.

(2) The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages au-

thorized by division (B) of this section, as it determines are proportioned to the injury and loss resulting to the beneficiaries described in division (A)(1) of this section by reason of the wrongful death and may award the reasonable funeral and burial expenses incurred as a result of the wrongful death. In its verdict, the jury or court shall set forth separately the amount, if any, awarded for the reasonable funeral and burial expenses incurred as a result of the wrongful death.

(3) (a) The date of the decedent's death fixes, subject to division (A)(3)(b)(iii) of this section, the status of all beneficiaries of the civil action for wrongful death for purposes of determining the damages suffered by them and the amount of damages to be awarded. A person who is conceived prior to the decedent's death and who is born alive after the decedent's death is a beneficiary of the action.

(b) (i) In determining the amount of damages to be awarded, the jury or court may consider all factors existing at the time of the decedent's death that are relevant to a determination of the damages suffered by reason of the wrongful death.

(ii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence of the cost of an annuity in connection with an issue of recoverable future damages. If that evidence is presented, then, in addition to the factors described in

division (A)(3)(b)(i) of this section and, if applicable, division (A)(3)(b)(iii) of this section, the jury or court may consider that evidence in determining the future damages suffered by reason of the wrongful death. If that evidence is presented, the present value in dollars of an annuity is its cost.

(iii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence that the surviving spouse of the decedent is remarried. If that evidence is presented, then, in addition to the factors described in divisions (A)(3)(b)(i) and (ii) of this section, the jury or court may consider that evidence in determining the damages suffered by the surviving spouse by reason of the wrongful death.

(B) Compensatory damages may be awarded in a civil action for wrongful death and may include damages for the following:

- (1) Loss of support from the reasonably expected earning capacity of the decedent;
- (2) Loss of services of the decedent;
- (3) Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, dependent children, parents, or next of kin of the

decedent;

(4) Loss of prospective inheritance to the decedent's heirs at law at the time of the decedent's death;

(5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

(C) A personal representative appointed in this state, with the consent of the court making the appointment and at any time before or after the commencement of a civil action for wrongful death, may settle with the defendant the amount to be paid.

(D) (1) Except as provided in division (D)(2) of this section, a civil action for wrongful death shall be commenced within two years after the decedent's death.

(2) (a) Except as otherwise provided in divisions (D)(2)(b), (c), (d), (e), (f), and (g) of this section or in section 2125.04 of the Revised Code, no cause of action for wrongful death involving a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

(b) Division (D)(2)(a) of this section does not apply

if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

(c) Division (D)(2)(a) of this section does not bar a civil action for wrongful death involving a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the decedent's death, has not expired in accordance with the terms of that warranty.

(d) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section but less than two years prior to the expiration of that period, a civil action for wrongful death involving a product liability claim may be commenced within two years after the decedent's death.

(e) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section and the claimant cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, a civil action for wrongful death involving a product liability claim may be commenced within two years after the disability is removed.

(f) (i) Division (D)(2)(a) of this section does not bar

a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(1), (2), (3), or (4) of section 2305.10 of the Revised Code and the decedent's death resulted from exposure to the product during the ten-year period described in division (D)(2)(a) of this section.

(ii) If division (D)(2)(f)(i) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(f)(i) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(g) Division (D)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(5) of section 2315.10 of the Revised Code. If division (D)(2)(g) of this section applies

regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(g) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(E) (1) If the personal representative of a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from a civil action for wrongful death or if any person listed in division (A)(1) of this section who is permitted to benefit from a civil action for wrongful death commenced in relation to a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from the action, the personal representative or the person may file a motion in the court in which the action is commenced requesting the court to issue an order finding that the parent abandoned the minor and is not entitled to recover damages in the action based on the death of the minor.

(2) The movant who files a motion described in division (E)(1) of this section shall name the parent who abandoned the deceased minor and, whether or not that parent is a resident of this state, the parent shall be served with a summons and a copy of the motion in accordance with the Rules of Civil Procedure. Upon the filing of the motion, the court shall conduct a hearing. In the hearing on the motion, the movant has the burden of proving, by a preponderance of the evidence, that the parent abandoned the minor. If, at the hearing, the court finds that the movant has sustained that burden of proof, the court shall issue an order that includes its findings that the parent abandoned the minor and that, because of the prohibition set forth in division (A)(1) of this section, the parent is not entitled to recover damages in the action based on the death of the minor.

(3) A motion requesting a court to issue an order finding that a specified parent abandoned a minor child and is not entitled to recover damages in a civil action for wrongful death based on the death of the minor may be filed at any time during the pendency of the action.

(F) This section does not create a new cause of action or substantive legal right against any person involving a product liability claim.

(G) As used in this section:

(1) "Annuity" means an annuity that would be pur-

chased from either of the following types of insurance companies:

(a) An insurance company that the A. M. Best Company, in its most recently published rating guide of life insurance companies, has rated A or better and has rated XII or higher as to financial size or strength;

(b) (i) An insurance company that the superintendent of insurance, under rules adopted pursuant to Chapter 119. of the Revised Code for purposes of implementing this division, determines is licensed to do business in this state and, considering the factors described in division (G)(1)(b)(ii) of this section, is a stable insurance company that issues annuities that are safe and desirable.

(ii) In making determinations as described in division (G)(1)(b)(i) of this section, the superintendent shall be guided by the principle that the jury or court in a civil action for wrongful death should be presented only with evidence as to the cost of annuities that are safe and desirable for the beneficiaries of the action who are awarded compensatory damages under this section. In making the determinations, the superintendent shall consider the financial condition, general standing, operating results, profitability, leverage, liquidity, amount and soundness of reinsurance, adequacy of reserves, and the management of a particular insurance company involved and also may consider ratings, grades, and classifica-

tions of any nationally recognized rating services of insurance companies and any other factors relevant to the making of the determinations.

(2) "Future damages" means damages that result from the wrongful death and that will accrue after the verdict or determination of liability by the jury or court is rendered in the civil action for wrongful death.

(3) "Abandoned" means that a parent of a minor failed without justifiable cause to communicate with the minor, care for the minor, and provide for the maintenance or support of the minor as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

(4) "Minor" means a person who is less than eighteen years of age.

(5) "Harm" means death.

(6) "Manufacturer," "product," "product liability claim," and "supplier" have the same meanings as in section 2307.71 of the Revised Code.

(H) Divisions (D), (G)(5), and (G)(6) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after the effective date of this amendment, in which those divisions are relevant, regardless of when the cause of action accrued and not-

withstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to the effective date of this amendment.

§ 2125.03. Distribution to beneficiaries

(A) (1) The amount received by a personal representative in an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code, whether by settlement or otherwise, shall be distributed to the beneficiaries or any one or more of them. The court that appointed the personal representative, except when all of the beneficiaries are on an equal degree of consanguinity to the deceased person, shall adjust the share of each beneficiary in a manner that is equitable, having due regard for the injury and loss to each beneficiary resulting from the death and for the age and condition of the beneficiaries. If all of the beneficiaries are on an equal degree of consanguinity to the deceased person, the beneficiaries may adjust the share of each beneficiary among themselves. If the beneficiaries do not adjust their shares among themselves, the court shall adjust the share of each beneficiary in the same manner as the court adjusts the shares of beneficiaries who are not on an equal degree of consanguinity to the deceased person.

(2) The court may create a trust for any beneficiary who is under twenty-five years of age by ordering that the portion of the amount received by the personal rep-

representative for that beneficiary be deposited in trust for the benefit of that beneficiary, until the beneficiary reaches twenty-five years of age, and order the distribution of the amount in accordance with the provisions of the trust. Prior to appointment as a trustee of a trust created pursuant to this section, the person to be appointed shall be approved by each adult beneficiary and by the guardian of each minor beneficiary of the trust.

(3) The personal representative shall not distribute any amount received in an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code to any person in relation to whom the court has entered an order pursuant to division (E)(2) of section 2125.02 of the Revised Code.

(B) The court shall distribute the amount of funeral and burial expenses awarded, or received by settlement, by reason of the death to the personal representative of the decedent, to be expended by the personal representative for the payment, or as reimbursement for the payment, of the expenses.

