

UTAH WRONGFUL DEATH GUIDE

*Helping You Hold
Negligent People Accountable*

KEVIN SWENSON AND BRIAN SHELLEY





The dedicated Utah wrongful death attorneys at Swenson & Shelley understand that surviving through the death of a loved one, no matter how they have passed, is the most difficult thing many will ever deal with. This is especially difficult when a loved one's death was the result of a wrongful death situation. Wrongful

death applies when a person's life was taken by negligence or cruel intent. Losing a loved one in this manner is devastating for those left behind. These bereaved family members shouldn't be left to struggle, financially or otherwise, after a wrongful death.

After losing a loved one to a wrongful death, the surviving family has the right to seek compensation for the resulting financial and emotional struggles. The victim's family will have to decide if they have a case, determine how much compensation they deserve, and become informed about the legal matters of wrongful death lawsuits. Rather than having to deal with all these matters, bereaved families should hire a knowledgeable attorney to represent them. By using a reputable personal injury attorney, like Swenson and Shelley, the victim's family will have a much better chance of getting the compensation they deserve.

DETERMINING IF A WRONGFUL DEATH CLAIM CAN BE FILED

Before deciding to file a wrongful death lawsuit, it is important to understand which circumstances warrant a suit, who is entitled to damages, and if someone else is at fault. These are the basic guidelines that must be met to proceed with a wrongful death lawsuit. If these criteria are met, the next step will be to find a trustworthy, experienced attorney, like Swenson and Shelley, to represent them in their case.

Death was Caused by Cruel Intent or Negligence

A wrongful death is one where someone, other than the victim, is at fault. In a wrongful death case, the person or entity that is to blame is usually very apparent. The person at fault will have committed either a cruel, or negligent act, which directly caused the death. Cruel intent, like homicide, in a wrongful death case does not require a criminal conviction. If a person who is believed to be at fault for someone's death escapes criminal punishment, they can still be sued in civil court by the family of their victim.

Loved Ones are Struggling Financially

To be granted compensation for the wrongful death of a loved one, the deceased usually must have surviving family who depended on them financially, at least partially. The main reason for seeking financial compensation after a wrongful death is to help with medical bills, final expenses, and compensate for the victim's lost earnings. If there are people depending on that person, they are much more likely to get a larger sum for compensation.

A Person or Entity is at Fault

If fault can't be determined, it is difficult to claim wrongful death. Unusual circumstances, acts of God, and other faultless accidents, often leave no one to blame. If there is nothing or no one to blame, it is difficult to seek compensation. Therefore, wrongful death claims must have a person or entity to seek compensation from.

COMMON CIRCUMSTANCES OF WRONGFUL DEATH INCIDENTS

No matter the circumstance, a wrongful death is devastating. The circumstances under which a person was killed can affect the compensation a family will receive. While there are many different circumstances which can lead to wrongful death, there are a few that are more common than others.

Medical Malpractice

When a doctor, or another medical professional, fails to competently carry out their duties, terrible consequences can result. When the patient dies because of their incompetence, the family of the victim can file a wrongful death claim.

Automobile Accidents

Automobile accidents are the leading cause of wrongful death lawsuits. If an accident was caused by an irresponsible driver, they can be sued for wrongful death. This can happen whether it was a driver in another vehicle, or if it was a passenger of the irresponsible driver. Distracted driving, driving under the influence, and aggressive driving are all common causes of vehicle accidents. Also, pedestrians or road crews struck and killed by irresponsible drivers can warrant a wrongful death suit.

Criminal Activity

When a person is a victim of criminal activity, the family of the victim can sue for wrongful death. Homicide, drunk driving, and, in some states, supplying illegal drugs, are a few common criminal activities that lead to wrongful death. When criminal activity results in the death of a loved one, the victim's family should seek justice and receive compensation. Since criminal and civil court are separate, even if criminal charges were never handed down, the victim's family can still file a lawsuit. A knowledgeable attorney, like Swenson and Shelley, can get what the bereaved family deserves.

Some other common causes of wrongful death are:

- » Airplane accidents
- » Workplace accident
- » Exposure to hazardous substances in workplace
- » Death during a supervised activity
- » Faulty products
- » Providing or administering an illegal drug



DAMAGES AVAILABLE FOR BEREAVED LOVED ONES

There are many types of compensation that come from wrongful death suits. If there are eligible surviving family members who were affected by the wrongful death, compensation can be claimed. Before a suit is filed, the family will need to decide the type of compensation they are looking for. They may want to claim just one type of compensation, or they may want to file for every type they can. An attorney can point bereaved families in the right direction and help them decide what compensation they deserve.

Medical and Funeral Expenses

After a tragedy, bills related to the death of a loved one can start to pile up. If efforts were made to save the victim's life, or there was an extended hospital stay, the family should not be responsible for those expenses. Additionally, any costs for a proper funeral and other final expenses should be covered by the person at fault. These expenses can accumulate quickly, leaving the family in financial ruin. By hiring an attorney to recover these damages, the victim's family will be able to focus on moving forward with their lives, rather than worrying about the financial demands of medical bills.

Lost Earnings

When a victim has people depending on them financially, those dependents will be left without the financial support they were used to. Since wrongful deaths occur suddenly and unexpectedly, dependents of the victim will not have time to arrange other sources of earnings. This can be especially devastating for those with children and those who do not have a significant amount of savings. The loss of a loved one who also was the main provider can be so devastating that families lose their homes and other possessions. This burden should never

befall bereaved family members. By hiring an attorney, the victim's family can avoid this terrible fate and keep the home and comforts provided by their loved one.

Pain and Suffering

The mental and emotional scars from losing a loved one can be devastating. In Utah, punitive damages, for the pain and suffering of the bereaved family, can also be awarded. These damages are intended to be used to help the family recover, mentally and emotionally, from their loss. Therapy, counseling, and other professional help can be instrumental in allowing the family to accept the loss of their loved one. Facing the wrongful death of a loved one is never easy, but the damages claimed from pain and suffering can help to ease the burden.

BENEFICIARIES OF A WRONGFUL DEATH CLAIM

Those who can benefit from a wrongful death claim are clearly spelled out. Only those who were close to the victim, and those who were financially dependent on the victim, can sue for wrongful death. In most cases, those who seek compensation after a wrongful death will be immediate family members, such as a spouse or children. However, financial dependents and other family members may have a case if there are no immediate family members. For the bereaved to find out if they can sue on behalf of their loved one, they should contact an attorney, such as Swenson and Shelley, immediately.

Immediate Family Members

Spouses, life partners, children, adopted children, and any other dependents, have a legal right to file suit against those who caused the wrongful death of their loved one. Immediate family will usually take precedence in a case. This



means if any other family members, such as siblings or parents, are attempting to sue for wrongful death, the immediate family will be considered first.

Financial Dependents

Anyone who is financially dependent on a wrongful death victim has the right to seek compensation. Since the victim was providing and, presumably, intended to continue to provide, financial resources to their dependents, they should continue to receive the financial help they deserve. Though immediate family will take precedence, all financial dependents may be able to seek compensation.

Extended Family

If immediate family and close financial dependents do not exist, extended family may be able to sue for wrongful death. Extended family includes blood relatives who will serve as an heir to the victim. Parents, spouses, adult children, and other dependents may fall under the extended family category.

IMPORTANT INFORMATION FOR WRONGFUL DEATH SUITS

The rules that surround a wrongful death lawsuit differ from other personal injury suits. There are many deadlines, rules, and guidelines that are important to be aware of. These are just a few of the important pieces of information to know before, and during, a wrongful death suit. For a more comprehensive understanding of the rules and guidelines that affect wrongful death cases, contact a knowledgeable personal injury attorney, like Swenson and Shelley.

Filing Deadline

When filing a wrongful death lawsuit, time is of the essence. Every wrongful death case is subject to a filing deadline. This means that the suit must be filed within a certain amount of time after the wrongful death occurred. When the suit is being filed against a person or entity, like a business, there is a two-year filing deadline on the case. For cases against the government, the filing deadline decreases to just one year. In some cases, there may be a way to extend

these deadlines slightly. However, it is best to file the suit as quickly as possible to avoid any deadline issues.

Punitive Damages Limit

While there is no way to put a monetary figure on the suffering from a loss, the courts do try to limit the amount that can be awarded. Grossly excessive punitive damages claims are not likely to be granted. Though, in the state of Utah, punitive damages can be sought in wrongful death cases, there are limits to what can be awarded. The victim's family should first seek financial compensation for bills, final expenses, and lost wages, and then proceed to the punitive damages recommended by an attorney.

Compensation Depends on Many Factors

Certain facts about the victim and the accident will affect how much compensation is likely to be awarded. When considering the victim, the amount of compensation that is usually given will depend on many things.

Some information about the victim that may be considered when granting compensation is:

- » The age and health of the victim
- » The victim's dependents
- » The financial situation of the victim
- » The victim's potential earnings

There are many other factors that may come into play when seeking damages for a wrongful death. To learn what these factors may be, contact an informed attorney.



FREQUENTLY ASKED QUESTIONS | UTAH WRONGFUL DEATH GUIDE

How Do I Find the Right Attorney?

If you are looking for a wrongful death attorney, unfortunately, that probably means that somebody close to you has died. For that, we're sorry. You may be wondering how to find a good attorney in the state of Utah to help you with this claim.

You should get somebody who's experienced in handling wrongful death, who understands the laws dealing with wrongful death and understands the damages you have incurred. Second, get somebody who focuses on that area and it's a significant part of their practice. Wrongful death cases can be difficult, so prepare right from the beginning as if you were going to have to go to trial. Hopefully, you won't, but you need to prepare as if you were.

Hire a trial lawyer and have somebody preparing the case right from the beginning for that. Have an insurance company know right from the beginning that you're willing to go to trial, that you know how to get to trial, and you know what to do when you get there.

Who Can File a Wrongful Death Claim?

I received a call from an individual asking me if they could bring the claim for a wrongful death of an individual. In the state of Utah, a wrongful death claim can be brought by any heir of the decedent or by a personal representative that's appointed by the Court. If you have any questions about who's entitled to bring a claim or any questions about wrongful death in the state of Utah, feel free to call our office.

Can I Afford an Attorney?

Oftentimes when we're meeting with somebody who has a wrongful death claim, one of their big concerns is how much the claim is going to cost. Sometimes the loved one that they've lost was their economic support.

We explain to them that to run the case, it's not going to cost them anything. We pay for all of the costs of the case to prove their damages, to prove the loss of income, to pay any of the court fees, and any of the litigation costs. In the end, we only get compensated if we are successful in getting a settlement or a jury verdict on your case.

What Damages Are We Entitled To?

If you have a wrongful death claim in the state of Utah, you're entitled to damages for what was lost as far as the economic loss that would have been provided by the individual who died, plus you're entitled to pain and suffering and other general damages.

What Are Wrongful Death Claims?

If you have a claim for wrongful death in the state of Utah, it's important to understand the different areas of damages that you can claim. The first area of damages is for economic loss. It allows you to claim for any of the economic support that the deceased individual would have provided you had that individual continued to live.

The second area of loss is non-economic loss. These are sometimes categorized as loss of love, loss of affection, or a loss of guidance. It's important if you have a wrongful death claim that you come and speak with an attorney; preferably a trial attorney who understands wrongful death cases.

How Long Will This Case Take?

I'm often asked, "How long is it going to take to settle a wrongful death claim in the state of Utah?" The answer to that question depends on a number of factors. We need to understand who the heirs or potential claimants are. We need to understand what the economic losses are, how much income was this

individual earning, and what effect that loss of income has on the individuals that have been left behind, in addition to how to value somebody's life from a perspective of the pain and suffering that is caused by losing a loved one.

We compile this information and we create the stories to help the insurance company understand what the harms, and losses, and damages are when a loved one has been lost. In many cases, we're able to negotiate a fair, full settlement on a wrongful death case. In the event that the insurance company is unwilling to make a fair offer, we then would push your case into the court system and into litigation. We are always pushing cases to a resolution as quickly as we can, but also understand that you only get to settle these cases one time. We want to make sure that we have a good understanding of what the damages are before we bring your case to a resolution.

How Much is My Case Worth?

If you're looking at a wrongful death claim and are trying to determine the value of that case, the main areas you're going to be looking at are what was lost by those who relied on the individual who was wrongfully killed. You're also going to be looking at the love, and support, and those types of damages. They're damages that are very difficult to put a number on.

If you've got a wrongful death claim that you're trying to work through that, we can help you talk about the damages, and the types of damages that are allowed, and how a jury looks at those, and how they calculate damages.

HIRE SWENSON AND SHELLEY TODAY

Filing a wrongful death suit can be a difficult, time-consuming, and painful process. The legal documents that must be filed, the restrictions that apply to cases, and the length of time it may take to get compensation, are arduous matters to deal with. The loved ones who are left behind after a wrongful death should not have to take on this burden alone. Rather, they should seek the help of a professional, experienced law firm. At Swenson and Shelley, we take the time to listen to every case, then proceed with each wrongful death lawsuit with

determination. We care about bereaved families, and believe they deserve to seek justice and compensation on behalf of their loved ones. Our aggressive approach and wealth of knowledge give our clients the best chance at being awarded what they deserve. For more information about filing a wrongful death suit, contact Swenson and Shelley, the St. George, Utah personal injury attorneys, today.

ABOUT THE AUTHORS



Kevin Swenson

Kevin Swenson was raised in Bountiful, Utah, and is a co-founding partner of Swenson & Shelley. After graduating from Bountiful High School, Kevin attended business school at Westminster College. While in college, Kevin owned and ran a sign company and also worked as an ambulance driver and firefighter. Kevin loved his work in the emergency medical arena. His career as a personal injury attorney allows Kevin to continue devoting his time to assisting injured people.

Kevin graduated from law school at the University of Utah and then worked as a defense attorney for insurance companies. Through that experience he learned how insurance companies work, how they think, and how they attack a claim. In 2010 Kevin “changed camps” and switched to representing injured individuals in his community rather than the multi-billion dollar insurance companies that fight those claims of those individuals.

He now feels a greater sense of purpose, and fulfillment, by assisting people who were injured by the wrongful acts of others. Understanding the reluctance of insurance companies to pay claims, and the strategies they use to get out of paying claims, Kevin is now able to use that first-hand knowledge to fight for injured parties and collect the money rightfully due to them from insurance companies.

Kevin has been involved in thousands of lawsuits over the course of his 27 years as an attorney, many of which have gone to a jury verdict. Kevin is passionate about what he does, he is devoted to helping individuals get the medical care they need, and he enjoys seeing his clients heal and move on from their injuries.

When Kevin isn't working he enjoys the outdoors, family and travel.



Brian Shelley

Brian Shelley is a co-founding partner of Swenson & Shelley. As a child, Brian felt a strong connection to the underdog. During his short-lived career of playing football, some of Brian's teammates determined they would hit the most undersized, least athletic opponent to "send a message." As the plot unfolded, Brian performed a surgical-like leg sweep of his own teammate in order to keep the unsuspecting rival out of harm's way. After receiving both physical and verbal repercussions from

his team, Brian decided to stick with his life-long passion...soccer.

Helping injured individuals recover lawful benefits from insurance companies gives Brian the satisfaction of representing the underdog daily. He enjoys balancing the playing field by holding insurance companies responsible to pay claims fairly.

Brian completed his undergraduate degree in Business, Finance at Brigham Young University. He then pursued a law degree from Pepperdine University School of Law, graduating cum laude. He is licensed to practice law in Utah and California.

Brian has a wife and four young children. When not working, Brian can be found coaching three soccer teams, rock climbing, cooking, and traveling. Brian loves Lake Powell and the beaches of Southern California and Hawaii. Having lived on three continents and having visited over 25 countries, Brian deeply values the opportunity to see new places, experience new cultures, and meet the wonderful people that can be found in all places.



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