

TRANSPORTATION

JUNE 2023

IN THIS ISSUE

This article addresses proposed legislation for changes in recovery for wrongful death actions in Illinois.

Punitive Damages Amendment Seeks to Provide Statutory Authority Altering the Landscape of Wrongful Death Recovery

ABOUT THE AUTHORS



Lara Lickhalter is a partner at Wilson Elser, LLP in Chicago, Illinois. Lara Lickhalter has more than a decade of experience litigating catastrophic trucking and transportation claims involving motor carriers, freight brokers, bus lines and contract carriers in the areas of bodily injury, property damage, Federal Motor Carrier Safety Regulations and DOT compliance. She can be reached at lara.lickhalter@wilsonelser.com.



Justin Dobek, of counsel at Wilson Elser, LLP in Chicago, Illinois, is a member of Wilson Elser's transportation practice group. Justin's practice focuses on representing the interests of the Firm's common carrier clients in a variety of issues from cargo loss, rapid response investigation and litigated claims. He can be reached at Justin.Dobek@wilsonelser.com.

ABOUT THE COMMITTEE

This IADC Committee was formed to combine practices of aviation, rail, maritime with trucking together to serve all members who are involved in the defense of transportation including aviation companies (including air carriers and aviation manufacturers), maritime companies (including offshore energy exploration and production), railroad litigation (including accidents and employee claims) and motor carriers and trucking insurance companies for personal injury claims, property damage claims and cargo claims. Learn more about the Committee at www.iadclaw.org.



Adam Rust
Vice Chair of Newsletters

Lewis, Thomason, King, Krieg and Waldrop, P.C.
arust@LewisThomason.com

The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Change may be coming to Illinois under House Bill 219, a bill that will drastically expand the landscape of recoverable damages under the Wrongful Death Act. For nearly 50 years, the Illinois Supreme Court has held that punitive damages are not recoverable under the Wrongful Death Act absent a legislative amendment permitting their recovery. HB 219 is that amendment.

Background

Currently in fast-track posture, HB 219 was introduced on January 12, 2023, in the 103rd General Assembly of the Illinois House of Representatives by Rep. Emanuel Welch to amend the Wrongful Death Act, 740 ILCS 180/1. The proposed amendment permits the recovery of punitive damages in civil actions brought by personal representatives of the decedent to recover where the general criteria for punitive damages have been met, in addition to recovery for grief, sorrow, and mental suffering currently available.

The bill also carves out exceptions for (1) state or local governments, (2) medical malpractice actions, and (3) legal malpractice actions. There was little movement on the bill after its introduction until May 11, 2023, when Rep. Jay Hoffman became its chief sponsor. In the week that followed, the bill added 16 co-sponsors in the House and 12 co-sponsors in the Senate and passed both chambers on May 18, 2023. The legislation now resides with Gov. J.B. Pritzker for approval. If signed into law, the

amendment will apply to wrongful death actions filed on or after its effective date.

Illinois is currently one of 16 states prohibiting the recovery of punitive damages in wrongful death cases. With the fate of this limitation hanging in the balance, businesses and individuals alike have weighed in on the far-reaching consequences of HB 219. For example, the transportation industry, which traverses approximately 2,250 miles of interstate highways in Illinois daily, is one of the most vocal opponents to the bill. And for good reason. The amendment has the potential to turn every motor vehicle collision fatality into a shock verdict.

What is certain, the proposed amendment would transform the application of punitive damages by courts under the Wrongful Death Act, which has largely remained undisturbed for 50 years.

Illinois Supreme Court Has Firmly Prohibited Punitive Recovery under the Wrongful Death Act Absent Legislative Authority

For decades, the Illinois Supreme Court has resisted the push by the plaintiffs' bar for punitive damages in wrongful death and survival actions. In *Froud v. Celotex Corp.*, 98 Ill.2d 324 (1983) the Court noted that legislation to add punitive damages had been rejected by the legislature and therefore was not permitted in survival actions. More recently, in 2009 the First

District cited to the Supreme Court position, confirming that absent specific statutory authority or very strong equitable reasons, punitive damages are not permitted in Illinois as a part of a common law action for wrongful death. See *Marston v. Walgreen Co.*, 389 Ill. App 3d 337 (1st Dist. 2009).

In *Marston*, the First District Court provided, “actions for punitive damages will not survive the death of the original plaintiff unless the legislature specifically authorizes such action or there are strong equitable reasons for allowing recovery of punitive damages.” The Supreme Court has long recognized that the Illinois Wrongful Death Act has a very broad definition of pecuniary damages, which “...has received an interpretation that is broad enough to include most of the items of damages that are claimed by plaintiffs...” See *Ballweg v. City of Springfield*, 114 Ill.2d 107, 119 (1986) (citing *Hall v. Gillins*, 13 Ill. 3d 26, 31 (1958)). Should HB 219 become law, the plaintiffs’ bar will acquire the statutory authorization discussed in *Marston*. Given the expansive definition of damages under Illinois tort law, the proposed amendment would give plaintiffs the opportunity to significantly increase recovery in wrongful death actions.

The Proposed Amendment Would Effectively Lead to Larger Recoveries for Plaintiffs and Punish Defendants with Larger Exposure

The amendment as proposed creates the potential to effectively give a plaintiff double recovery and punishes defendants with greater exposure. In short, the current draft

is not sufficiently narrow to prevent misapplication to cases in which punitive damages are not otherwise warranted.

The plaintiffs’ bar cites to other states that allow punitive damages in wrongful death cases to support this broad amendment. However, a closer look at those states that allow for punitive damages reveals that many of them tailor their laws to certain circumstances or provide statutory caps or restrictions. For example, in Texas, punitive damages are capped at the greater of \$200,000 or two times the amount of economic damages plus the amount equal to noneconomic damages up to \$750,000. In Nevada, punitive damages are capped at \$300,000 for compensatory damages less than \$100,000 and three times the compensatory total if the verdict exceeds \$100,000. The proposed Illinois amendment offers no such restrictions.

The precise constitutional and economic impacts of uncapped punitive damages in Illinois wrongful death actions remain to be seen, but this much is clear: a plaintiff’s ability to recover both compensatory and punitive damages in a wrongful death action will dramatically increase the exposure for Illinois businesses, increase the value of claims at settlement and impact claims administration as a whole.

Past Committee Newsletters

Visit the Committee's newsletter archive online at www.iadclaw.org to read other articles published by the Committee. Prior articles include:

MAY 2023

[Trucking Accident Critical Initial Decision—Points](#)

Floyd G. Cottrell

APRIL 2023

[I Spy with My Little Eye... but Should I? The 10 Dos and Don'ts of Monitoring Your Competition](#)

Heather C. Devine and Michael Furyk

DECEMBER 2022

[The Biometric Data Fallout - What are Biometrics and Why Businesses Should Beware](#)

Lara Lickhalter

OCTOBER 2022

[Lessons Learned from the Trenches to Defeat the Reptile Strategy](#)

John Spainhour

SEPTEMBER 2022

[Motor Carriers Will Need to Learn the ABCs of AB 5](#)

Jaion Chung

AUGUST 2022

[A Disconnect from Work Policy Does Not Require Employee Disconnection... Yet!](#)

Heather C. Devine and Michael Furyk

APRIL 2022

[The Stakes Just Got Higher! With the \\$150 million Pizza Hut Class Action – Do Independent Contractors Fit Your Business Model?](#)

Heather C. Devine and Johann Annisette

MARCH 2022

[THE MCS-90 Endorsement](#)

Floyd G. Cottrell

FEBRUARY 2022

[A Privilege to Remember: The Protection of Accident Registers in the Discovery Process of a Trucking Lawsuit](#)

Adam Rust

NOVEMBER 2021

[New German Supply Chain Act – New Challenges and Exposure for Companies Doing Business in Germany](#)

Kurt B. Gerstner

OCTOBER 2021

[Six Degrees of Transportation Law](#)

Andrew M. Bowman

JULY 2021

[When Trucker's Insurance Morphs into a Surety Bond](#)

David W. Kash