

## **GENERAL EXPLANATION OF WRONGFUL DEATH LAW**

By: George T. Sinas

If a person sustains wrongful death as a result of the negligence of a third party, the estate of the injured person is entitled to pursue a wrongful death liability claim against the party at fault for purposes of recovering noneconomic damages and certain economic loss damages. Wrongful death liability claims are controlled by the **Michigan Wrongful Death Act (MCL 600.2922)**. In addition, where the wrongful death arises out of a motor vehicle accident, then the provisions of the **Michigan No-Fault Automobile Insurance Act (MCL 500.3101, et seq)** will also control the claim. In this situation, it is imperative that the requirements and procedures of both statutes be strictly observed.

Under the Michigan Wrongful Death Act, close relatives of the decedent are entitled to be compensated for certain specific damages they may have suffered as a result of the decedent's death. These damages include loss of financial support, loss of services, and most importantly, loss of the love, affection, companionship and society of the decedent. Those relatives entitled to be compensated for such losses include surviving spouses, children, parents, grandparents, brothers and sisters of the decedent and step-children of the decedent. However, in order to pursue a wrongful death claim, the statute requires that an Estate be formally opened in the name of the decedent and that a Personal Representative be appointed for that Estate by the Probate Court with jurisdiction over the matter. The wrongful death claim is then pursued in the name of the decedent's Estate, not in the individual names of the surviving relatives.

The designation of the Personal Representative is controlled by the Michigan Probate Law. Under probate procedures, certain individuals are given "*preference*" in terms of the appointment of a Personal Representative. In this regard, the parents of a deceased child have statutory preference to be appointed Personal Representative of the child's Estate. Similarly, a surviving spouse has statutory preference to be appointed Personal Representative of the Estate of his or her deceased spouse. Where the decedent is a non-married adult with children, the statutory preference regarding the appointment of a Personal Representative resides with the children, but it can only be enforced by an appropriate adult acting on the child's behalf after being formally appointed by the Probate Court. Therefore, the first order of business in pursuing a wrongful death claim is to identify the person or persons who should be appointed Personal Representative of the decedent's Estate and file an appropriate petition in the Probate Court seeking to open an Estate and appoint a Personal Representative. Once this is done, the wrongful death claim can be officially pursued.