



HEMMINGS & STEVENS

HEMMINGS & STEVENS, P.L.L.C.
Attorneys at Law

Injury Law Alert

Spring 2013

Wrongful Death Lawsuits Help Surviving Family Members

What do the following accident and injury scenarios have in common?

- Automobile Driver Collides with a Pedestrian
- Medical Doctor Botches a Surgery
- Poorly Designed SUV Rolls Over on the Interstate
- Customer Is Assaulted in a Poorly Lit Parking Lot

The answer is that any one of these can result in a fatal injury for the victim due to someone else's negligence. When someone dies as a result of another party's negligence, legally it is known as a "wrongful death."

Obviously, losing a family member can be emotionally devastating. But when the death is related to carelessness on the part of another person, then the loss becomes much harder to accept. The death of a person has an IMMEDIATE impact on the family members left behind. In an instant, lives are changed forever. That's why the law provides a legal remedy for surviving family members in the

form of a wrongful death claim. If successful, the family members may be rewarded compensation for:

- Medical Expenses
- Funeral Expenses
- Loss of Future Wages
- Mental Suffering

It is important to remember that just because a person dies in an

accident, the death may not be "wrongful." Instead, a wrongful death suit is valid only where someone else causes the person's death through a wrongful act, neglect, or carelessness. In other words, a suit for a wrongful death should be filed only if the death is

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Let Us Help You

The last thing most people think of after the death of a family member is calling a lawyer, but there are many important reasons to do so. First, we can help you determine if you have a wrongful death claim at all. And, the sooner you contact our firm, the sooner we can work to preserve valuable evidence that will help you win your case.

We can help you negotiate the often complex legal world and arrange for the necessary expert witnesses and others essential to proving your claim. We will work out an arrangement that means you do not have to pay for this expert advice and assistance by the hour.

Please call us if you ever have any questions on these issues. Remember, the better your case, the more likely that an insurance company representative will contact you offering a fraction of what you deserve.

HEMMINGS & STEVENS, P.L.L.C.

5613 Duraleigh Road, Suite 111 • Post Office Box 90698 • Raleigh, NC 27675-0698
Telephone (919) 277-0161 • Fax: (919) 277-0162 • www.hemmingsandstevens.com

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Fracking: A New Frontier for Law

In the past decade, the growth of the practice known as hydraulic fracturing (or “fracking”) has exploded. Fracking is used to drive natural gas out of formations of shale rock, and many see it as an important way to meet our nation’s future energy needs. However, for every fan of fracking there is an opponent, and it remains to be seen how the law in the area will develop.

Many of the complaints about fracking are based on how it is done. The technique involves drilling a deep hole into a formation of shale rock. A large amount of water, mixed with a smaller amount of sand and chemicals, is then pumped down the hole at very high pressure. This mixture of pressurized water, sand, and chemicals opens up fissures in the shale from which the trapped natural gas can escape and be captured for use.

Shale formations are common throughout the United States, with at least 36 states boasting enough shale to make fracking economically viable. Advances in directional drilling (which allow wells to be drilled sideways instead of up and down) have expanded the reach of fracking operations, resulting in their reaching into places where there has never been drilling before. All this fracking has led to many different kinds of lawsuits.

Some are to be expected. Like any industrial operation, fracking can be dangerous, and many of the suits are brought by workers alleging that they were injured on the job. Others are breach-of-contract lawsuits, brought by property owners who claim that the company that leased the rights to the shale

under their property has paid them less than they are owed or has otherwise breached the lease. Some suits allege that the fracking operations are a nuisance, interfering with the property owners’ right to use and enjoy their land without outside interference. However, many suits are based on things unique to fracking.

Some of the suits claim that the water/sand/chemical mixture used in fracking has polluted or even poisoned the groundwater in the area. Property owners claim that they can no longer drink out of their wells and that the value of their land has been reduced because they now have to truck in water for their

families to drink.

In a famous video (available on YouTube), one homeowner showed why the water coming out of his sink was undrinkable—when lit, it caught fire. Other property owners claim that they have been exposed to some of the chemicals used in fracking (either through their drinking water or otherwise) and that this exposure has caused them to suffer personal injuries, mental anguish, or both. Still others have alleged that fracking operations have disturbed the shale formations in a way that has caused earthquakes.

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Employer Liable for Dangerous Mosquito Bite

Employers have a duty to provide their employees with a safe place to work. A recent case may help define just how far that duty goes.

The suit was brought by a worker who had been bitten by a mosquito. Unfortunately, the mosquito carried the West Nile virus, and the worker contracted encephalitis. As a result, he suffered a severe loss of cognitive function, and he can no longer walk without a cane.

He sued his employer, a railroad. The evidence showed that the railroad knew of the dangers mosquitoes presented but that it had neither warned the employees nor

provided those who were working outside and around mosquito-infested areas with bug spray.

The railroad argued that there was no evidence showing that the worker had been bitten while working, that it had no duty to protect its employees from “wild” animals, and that in any case the danger that someone working outside might be bitten by a mosquito is well known.

The parties initially had trouble finding 12 jurors willing to consider whether the employer should be held liable, but once the jury was seated, the trial took just a few days. The jury returned a verdict in favor of the worker for over \$780,000.

The Dangers of Distracted Driving

Talking on the phone. Sending a text. Using your GPS. Adjusting your stereo. Talking to passengers. All of these things can lead to distracted driving.

Distracted driving occurs when a driver is trying to do something else while driving and so does not give his or her full attention to the road. Although some may see these distractions as trivial, the National Highway Traffic Safety Administration estimates that 9% of all traffic deaths (3,000 out of 33,000) are caused by distracted drivers.

Given that new technologies like cell phones and GPS systems are a common source of distractions, it should come as no surprise that in 2010, 13% of the distracted drivers involved in fatal crashes were between 15 and 19 years old. However, teenagers are not the only culprits—48% of young drivers saw their parents talking on the phone while driving, and another 15% saw their parents texting while driving.

Many of these crashes involved sending or receiving a text. Looking at the average text takes your eyes off of the road for almost five seconds. At 55 miles per hour, this is the equivalent of driving the length of an entire football field without looking where you're going.

A number of different approaches are being taken to try to reduce the amount of distracted driving. Many states have enacted laws forbidding texting while driving and all cell phone usage by novice drivers, and several states limit cell phone usage for all drivers to hands-free devices so that the driver can keep his or her eyes on the road.

Some states are enforcing their

vehicular manslaughter laws against those who kill someone because they were driving while distracted. For more information, go to www.distraction.gov.

Parents should try to set a good example for their children by not allowing themselves to be distracted while driving. Many parents are asking their teen drivers to

sign a "safe driving contract," where the teen pledges not to talk or text while driving and to do other things to increase safety, such as wear a seatbelt and not drive with someone who has been drinking.

There is nothing you need to say or see that is worth risking your life or the lives of others. Remember to "Put It Down" when you're driving.

Fracking

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Unfortunately, these suits are not easy to win. In 2005, the federal government excluded oil and gas companies from both the Safe Drinking Water Act and the Clean Water Act. The effect of this exemption is that the companies most responsible for pollution in many areas cannot be held liable under the laws designed to prevent such pollution, leaving injured landowners to proceed under a patchwork of state environmental laws.

In other cases, the exact mixture of chemicals used in fracking operations is kept hidden from the public, with gas companies claiming that the information is proprietary and secret. This can make it hard for those who may have been injured by those chemicals to prove the cause of their injuries.

However, there is the potential for positive change. A bill, called the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act, was introduced in the Senate. Although it has not been passed, if it should be, it will both require energy companies engaged in

fracking to disclose what chemicals they are using in their operations and close the loopholes that allow them to avoid the requirements of the Safe Drinking Water and Clean Water Acts.

Help Is Here

The period of time following an accident is one of confusion and uncertainty. There are many things to take care of. Hiring a good lawyer is one of them.

Many times, people don't know where to go when they need legal help. If you or a loved one has been injured in an accident, call us. We will vigorously represent you and make sure that you are justly compensated for your injuries. That's our job.

Painkillers Can Be Deadly



According to the Food and Drug Administration, four out of the six most deadly prescription medications given to Americans are members of a class of powerful painkillers known as opioids.

Opioids are related to opium, long known for its painkilling effects. Modern opioids, however, are up to 100 times more potent and are therefore relatively much more dangerous. Although all of these drugs, which include oxycodone (also known as OxiContin), fentanyl, morphine, and methadone, have legitimate medical uses, they also have all proven to be very deadly.

As powerful painkillers, these drugs are used to treat those suffering from great pain, including patients recovering from surgery and those with severe long-term pain, such as some cancer patients.

However, opioids are often overprescribed by doctors, leading to patient addiction. Even if properly prescribed, accidental misuse of these drugs is common and can result in a deadly overdose.

Overuse of or overdosing on any of these drugs can cause respiratory arrest or respiratory depression, both of which can lead to death. The drugs also have other side effects, which can get worse the longer their use is continued.

If you or someone you know has used these opioids and suffered a bad outcome from using them, contact us. You may be eligible to file a lawsuit and be compensated for your loss.

While nothing can replace a lost loved one, a successful wrongful death lawsuit can provide some level of comfort and assurance in the face of uncertainty and grief. No one would trade the life of a family member for a check, no matter how large. However, there are some kinds of losses the law cannot fix, such as death. The damages that can be recovered in a wrongful death suit are intended to make the loss more bearable by compensating the family.

Wrongful Death

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A wrongful death lawsuit is complex, so you need our firm on your side to help you. And remember: If a family waits too long to file a wrongful death suit it may lose the right to file suit at all.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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