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## Articles

### Tort and Insurance Law

*The Colorado Wrongful Death Act*

by Anthony J. Viorst

**Tort and Insurance Law articles provide information concerning current tort law issues and insurance issues addressed by practitioners representing either plaintiffs or defendants in tort cases. They also address issues of insurance coverage, regulation, and bad faith.**

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## About the Author

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***This article discusses the fundamental aspects of a claim brought under Colorado's Wrongful Death Act, including the permissible claimants, the applicable time limits, and the Act's damages limitations.***

Colorado common law subscribes to the maxim that "Actio personalis moritur cum persona," which means that a personal right of action dies with the person.<sup>1</sup> Thus, under the common law, there is no right of recovery against one who tortiously causes the death of another.<sup>2</sup> However, a statutory right of recovery exists in this state.

The Colorado Wrongful Death Act (Act)<sup>3</sup> was enacted in 1877.<sup>4</sup> It was modeled on Britain's "Lord Campbell's Act," which authorized an award of indemnity to the heirs of a person whose death resulted from a wrongful act.<sup>5</sup> Colorado's Act created a new cause of action.<sup>6</sup> The purpose of the statute is to protect the interests of those who, through no fault of their own, must bear the financial and emotional burden of the decedent's death.<sup>7</sup>

The provisions of the Act and related legislation impose many potential pitfalls, of which the personal injury practitioner should be aware. Those potential impediments are discussed in more detail below.

### **The Colorado Wrongful Death Act**

In its present form, the Colorado Wrongful Death Act provides, as to liability and damages, in relevant part, as follows:

#### **CRS § 13-21-202**

When the death of a person is caused by a wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable, if death had not ensued, shall be liable in an action for damages notwithstanding the death of the party injured.

#### **CRS § 13-21-203(1)(a)**

[I]n every such action the jury may give such damages as they may deem fair and just, with reference to the necessary injury resulting from such death, including damages for noneconomic loss or injury as defined in section 13-21-102.5 and subject to the limitations of this section and including within noneconomic loss or injury damages for grief, loss of companionship, pain and suffering, and emotional stress, to the surviving parties who may be entitled to sue. . . . There shall be only one civil action under this part 2 for recovery of damages for the wrongful death of any one decedent. Notwithstanding anything in this section or in section 13-21-102.5 to the contrary, there shall be no recovery under this part 2 for noneconomic loss or injury in excess of two hundred fifty thousand dollars, unless the wrongful act, neglect, or default causing death constitutes a felonious killing. . . .

## **Wrongful Death Statute vs. Survival Statute**

The Act should not be confused with Colorado's survival statute. The Act gives the claim to surviving family members or designated beneficiaries, for the damages suffered by those persons.<sup>8</sup> In contrast, the survival statute<sup>9</sup> preserves the decedent's claim against the tortfeasor for the cognizable damages suffered by the decedent, and the decedent's estate is

the entity to bring the claim.<sup>10</sup> Under the survival statute, damages are limited to pecuniary losses sustained before the decedent's death, in the form of earnings and expenses.<sup>11</sup> The survival statute explicitly states that "[a]n action under this section shall not preclude an action for wrongful death," thus permitting two claims for the death of a victim. For example, a tortfeasor can be sued under both statutes when the deceased victim lingers for a period of time and incurs causally related medical expenses and wage loss before death.

## **The Statute of Limitations**

The statute of limitations for wrongful death, like claims for other acts of negligence, is two years.<sup>12</sup> Before 1987, a wrongful death claim accrued on the date the plaintiffs discovered, or should have discovered, the alleged negligence resulting in death.<sup>13</sup> In 1987, this rule was changed. The rule was changed, in part, due to the anomalous possibility that a wrongful death claim could expire before the decedent passed away.<sup>14</sup> Now, the two-year statute of limitations begins to run on the date of the decedent's death.<sup>15</sup> The statute of limitations can extend past that date if the plaintiff is operating under a disability,<sup>16</sup> or where the defendant engages in fraudulent concealment of facts pertinent to the existence of a claim.<sup>17</sup>

## **Who May Bring a Wrongful Death Claim**

The parties entitled to bring a wrongful death claim are listed in CRS § 13-21-201(1).<sup>18</sup> The parties entitled to bring a wrongful death lawsuit consist of the decedent's spouse, "heir or heirs," or "designated beneficiary."<sup>19</sup> In addition, potential claimants may include the surviving parents of an unmarried and childless decedent.<sup>20</sup>

The term "heir or heirs," as used in the Act, has been held to refer to lineal descendants.<sup>21</sup> Thus, the term does not apply to nieces or nephews,<sup>22</sup> siblings,<sup>23</sup> or adult adoptees.<sup>24</sup> The rationale for limiting heirs to lineal heirs, instead of to all persons who would be entitled to inherit, is that "collateral kindred, however remote, who would derive no pecuniary benefit from the continuance of the life of deceased" should not be entitled to benefit from his or her death.<sup>25</sup>

Similarly, the parents of a decedent are not entitled to file a wrongful death claim if the decedent had a spouse or a child, even when the decedent's spouse or child declines to do so.<sup>26</sup> Again, the rationale is that the parents of an unmarried and childless decedent are more likely to suffer death-related financial losses than are the parents of a decedent who is married or has children.<sup>27</sup> The Colorado Supreme Court has held that these distinctions are reasonable and that, although the Act denies standing to nonlineal heirs,<sup>28</sup> as well as to parents of a married decedent,<sup>29</sup> the statute does not violate the constitutional guarantee of equal protection.<sup>30</sup>

The right of a designated beneficiary to bring a wrongful death claim is a new development under Colorado law, effective since July 1, 2009.<sup>31</sup> A "designated beneficiary" is one who:

has entered into a designated beneficiary agreement, [by which] two people . . . designat[e] each person as a beneficiary of the other person and for the purpose of ensuring that each person has certain rights and financial protections based upon the designation.<sup>32</sup>

## **Timing of a Wrongful Death Claim**

Regarding the timing of a wrongful death claim, the statute creates two tiers, one for the first year following the decedent's death, and another for the second year. During the first year following the decedent's death, only the decedent's spouse can file a claim, with three exceptions.<sup>33</sup> The spouse may file a written election to include the heirs as plaintiffs or, if the decedent is unmarried, the heirs or designated beneficiary of the deceased may serve as plaintiffs for a wrongful death claim.<sup>34</sup> If the decedent died without a spouse, heirs, or a designated beneficiary, the decedent's parents may file a wrongful death claim.<sup>35</sup>

In the second year following the decedent's death, any of the three classes of plaintiffs (spouse, heirs, or designated beneficiary) may file a lawsuit, separately or in combination with another class.<sup>36</sup> However, if the heirs commence a separate lawsuit in the second year, the spouse and/or designated beneficiary have the right to join that action within ninety days after filing.<sup>37</sup>

The Act's provisions regarding the timing of a wrongful death claim have been strictly construed by the Colorado appellate courts. Parties who are entitled to file a claim only during the second year following the decedent's death have been precluded from doing so during the first year.<sup>38</sup>

Although a surviving spouse has sole authority to bring a lawsuit within the first year following the decedent's death, he or she does so not only in his or her personal capacity, but also as a representative of the interests of the decedent's children.<sup>39</sup> Thus, there is a presumption that the surviving spouse will make a good-faith effort to adequately represent the rights of all of the decedent's children.<sup>40</sup> Recognizing the spouse's dual role, the Colorado Model Jury Instructions explicitly provide that, in determining liability and awarding damages, the jury should consider not only what is owed to the plaintiff, but also what is owed to "those the plaintiff represents."<sup>41</sup>

## **Liability Under the Act**

The claimants in a wrongful death case must prove that the tortfeasor negligently caused the decedent's death.<sup>42</sup> The right of the claimants to collect damages in a wrongful death case does not arise from a separate tort committed against those claimants,

but instead is wholly derivative of the fatal injury sustained by the decedent.<sup>43</sup> Thus, "the survivors' right of action is derivative of and dependent upon the right of action which the decedent would have had, had she survived her injuries."<sup>44</sup> Based on the derivative nature of the action, any affirmative defense the defendant would have had against the decedent, had he or she lived, also is available in a wrongful death claim brought by the surviving family of the decedent.<sup>45</sup> The potential affirmative defenses include but are not limited to comparative negligence.<sup>46</sup>

The standing of the decedent to bring a personal injury claim on his or her own behalf dictates whether the surviving family members can bring a wrongful death claim.<sup>47</sup> Thus, because a decedent who becomes inebriated at a bar and falls down the stairs lacks standing to bring a dramshop claim against the bar, his or her heirs likewise lack standing to bring a wrongful death claim.<sup>48</sup> On the other hand, a wrongful death claim may be brought for the death of a viable fetus who dies in utero,<sup>49</sup> or a nonviable fetus who is born alive, because those persons would have had standing to bring a personal injury claim if they had survived.<sup>50</sup>

Although the standing of the decedent is generally dispositive of the standing of the surviving family members to bring a wrongful death claim, there are several situations in which the standing of the surviving family, rather than the decedent, is dispositive. If the decedent, at the time of his or her death, would have been barred from bringing a personal injury claim due to the applicable statute of limitations, his or her surviving family members nonetheless may bring a wrongful death claim within two years following the death.<sup>51</sup> Where one spouse was killed in a car accident due to the negligence of the surviving spouse, the surviving spouse may not bring a wrongful death claim against himself or herself, even if the deceased spouse could have done so.<sup>52</sup>

## **Damages Under the Act**

Under the Act, there are several complex issues relating to damages. The computation of economic and noneconomic damages suffered by the claimants, rather than the decedent, can be problematic. Also, the damage caps contained in the Act, as well as related Colorado statutes, can reduce the claimants' total recovery. These issues are discussed more fully below.

### ***Economic Damages***

The issue of damages under the Act is extremely complicated. There is no cap on economic damages, but such damages can be recovered only by the decedent's dependents, usually a spouse and/or minor children. The dollar value associated with economic damages, or net pecuniary losses, is based on funeral expenses, as well as the "financial benefit the plaintiff [and those the plaintiff represents] might reasonably have expected to receive from" the decedent if he or she had lived.<sup>53</sup> This latter figure, in turn, is based on the decedent's

life expectancy, his health and age, his ability to earn, the probable life expectancy of the plaintiff, and the disposition of the deceased to provide pecuniary assistance and aid to the plaintiff.<sup>54</sup>

In the determination of net pecuniary losses, the decedent's future income tax liability is not a proper consideration.<sup>55</sup>

### ***Noneconomic Damages***

Before 1989, net pecuniary losses were the only category of damages available in a wrongful death action.<sup>56</sup> In 1989, the Colorado General Assembly amended the wrongful death statute, so as to make noneconomic damages available.<sup>57</sup> Specifically, the amendment to CRS § 13-21-203 authorized recovery for "noneconomic loss or injury . . . including grief, loss of companionship, pain and suffering, and emotional stress. . . ."<sup>58</sup> At that time, the statute also capped noneconomic damages at \$250,000.<sup>59</sup> However, the statute subsequently was amended to permit the Colorado Secretary of State to adjust that number for inflation.<sup>60</sup> The number currently stands at \$341,250.<sup>61</sup>

Although the amount of the noneconomic damage cap is clear, until recently it was not clear whether those caps could be stacked, based on the number of defendants in the litigation. *Lanahan v. Chi Psi Fraternity*<sup>62</sup> is a 2008 case involving the death of a college student during fraternity hazing. The defendants were the fraternity and nine fraternity brother defendants. The Colorado Supreme Court held that the cap on noneconomic damages in wrongful death actions applies on a per-claim basis, rather than a per-defendant basis. Thus, contrary to the argument of the plaintiff parents in that case, the cap could not be multiplied by the number of defendants.

### ***Solatum***

The Act also provides for a flat solatium award, in lieu of noneconomic damages.<sup>63</sup> The original solatium award was \$50,000 but, like the cap on noneconomic damages, that figure has been adjusted for inflation.<sup>64</sup> The adjusted solatium amount now stands at \$67,250.<sup>65</sup> The general assembly authorized this modest damage recovery because it

realized that wrongful death actions are emotionally painful experiences for surviving family members and can often translate into years of additional grief and suffering because of the protracted litigation involved in proving their non-economic loss: their feelings of mental anguish, bereavement, and sorrow.<sup>66</sup>

Thus, if wrongful death plaintiffs accept a solatium award, in lieu of noneconomic damages, they need to prove only liability, and do not need to prove the extent of their noneconomic damages.<sup>67</sup> Once liability is proven, the solatium award cannot be reduced, regardless of whether the decedent also was found to be comparatively negligent.<sup>68</sup>

## ***Felonious Killing and Exemplary Damages***

The Act also contains separate damages provisions for felonious killing and exemplary damages. Felonious killing occurs when the tortfeasor commits first-degree murder, second-degree murder, or manslaughter.<sup>69</sup> When a wrongful death claim is based on a felonious killing, the noneconomic damage cap does not apply.<sup>70</sup> Exemplary damages are permitted when "the death complained of is attended by circumstances of fraud, malice, or willful and wanton conduct."<sup>71</sup>

Unlike a claim for felonious killing, an exemplary damages claim cannot be included in the initial complaint, but instead must be added by amendment and approved by the trial court.<sup>72</sup> When an exemplary damages claim is allowed, the plaintiff may recover as exemplary damages an amount that cannot exceed the award of actual damages.<sup>73</sup> Thus, the elements of a claim for felonious killing and of a claim for exemplary damages under the Act are similar but not coextensive.<sup>74</sup>

## ***Conflicts With Other Damage Caps***

The caps contained in the Act are different from the damage caps in several other statutes, which can cause conflict when the Act intersects with one of those statutes. For instance, under the Health Care Availability Act, which governs medical malpractice actions, noneconomic damages are capped at \$300,000,<sup>75</sup> a lower cap than that of the Act. To address this conflict, the general assembly has explicitly stated, in the text of the Act itself, that when a wrongful death is predicated on medical malpractice, the "damages recoverable for noneconomic loss or injury . . . shall not exceed the limitations on noneconomic loss or injury set forth in section 13-64-302 of the [Health Care Availability Act]."<sup>76</sup>

Likewise, the Ski Safety Act contains a noneconomic damage cap of \$250,000,<sup>77</sup> a lower figure than the Act's noneconomic damage cap. The Colorado Supreme Court has held that because the Ski Safety Act also provides that it prevails over inconsistent laws or statutes, a wrongful death that occurs at a ski facility is governed by the damages provisions of the Ski Safety Act.<sup>78</sup>

Similarly, when an injury is caused by a government employee, the Colorado Governmental Immunity Act (CGIA) limits damages to \$150,000 for each person injured, up to a total of \$600,000 for all injured persons.<sup>79</sup> The Colorado Supreme Court has held that the CGIA's \$150,000 cap prevails over the Act's larger cap.<sup>80</sup> In addition, the Court has held that when a wrongful death is caused by the negligence of a government employee, the injury suffered is the death of the decedent, rather than the damages of the surviving family members. Therefore, the CGIA's \$150,000 cap (and not its \$600,000 cap) applies.<sup>81</sup>

Finally, there is no damage cap in federal civil rights actions brought under 42 U.S.C. § 1983 for a deprivation of the victim's

constitutional rights. The Colorado Supreme Court has held that when a wrongful death is caused as a result of a violation of the decedent's civil rights, the Supremacy Clause of the U.S. Constitution prohibits the imposition of wrongful death damage caps for noneconomic damages.<sup>82</sup>

### ***Allocation of Damages***

Regarding the allocation of damages, CRS § 13-21-201(2) provides:

The judgment obtained in an action under this section shall be owned by such persons as are heirs at law of the deceased under the statutes of descent and distribution and shall be divided among such heirs at law in the same manner as real estate is divided according to said statute of descent and distribution.

Thus, when a surviving spouse exercises his or her exclusive right to file a wrongful death action within the first year following the decedent's death, the decedent's children nonetheless are entitled to share in the award, as mandated by the descent and distribution statute, CRS § 15-11-102.<sup>83</sup> Notwithstanding the surviving spouse's obligation to allocate wrongful death damages in this manner, the attorney or insurance company in possession of wrongful death damages is not obligated to oversee this process, but instead may distribute the entire wrongful death award to the surviving spouse.<sup>84</sup>

When a wrongful death claim is filed by the decedent's children rather than by his or her spouse, the distribution of damages still is governed by CRS § 13-21-201(2), such that any surviving spouse is entitled to share in the proceeds.<sup>85</sup> Thus, regardless of when or by whom the lawsuit is filed, the damages are "possessed, collectively, by the heirs at law of the decedent, and any proceeds derived from the prosecution of such claim are to be divided among those heirs."<sup>86</sup>

The only exception to this general rule occurs in cases brought by the parents of an unmarried and childless decedent. In such cases, if

the father and mother are divorced, separated, or living apart, a motion may be filed by either the father or the mother prior to trial requesting the court to apportion fairly any judgment awarded in the case. . . .<sup>87</sup>

### **One Wrongful Death Action**

In addition to capping damages, the Act clearly provides that "[t] here shall be only one civil action under this part 2 for recovery of damages for the wrongful death of any one decedent." This rule is consistent with the principle of judicial economy, because it "avoids the duplicative proceedings and inconsistent outcomes that could result from multiple actions arising from the wrongful death of one individual."<sup>88</sup> This rule does not apply to survival actions, which are brought by the decedent's estate, although as



a practical matter, survival and wrongful death actions generally are filed together, rather than separately.

## Conclusion

The goal of Colorado's Wrongful Death Act is to indemnify the heirs of a person who has died as a result of a wrongful act. Although it contains many nuances and potential pitfalls, it is designed to fairly compensate the decedent's surviving family members.

### Notes

1. *Fish v. Liley*, 208 P.2d 930, 932 (Colo. 1949); *Black's Law Dictionary* 31 (6th ed. 1990).
2. *Taylor v. Welle*, 352 P.2d 106, 108 (Colo. 1960).
3. CRS §§ 13-21-201 *et seq.*
4. *Crownover v. Gleichman*, 574 P.2d 497, 498 (Colo. 1977).
5. *Ferrara v. Auric Mining Co.*, 95 P. 952, 954 (Colo. 1908). Due to the prevalence of deaths caused by common carriers at the time the Wrongful Death Act (Act) was enacted, the Act contains not only a general cause of action for wrongful death, but also a specific provision relating to transportation companies. See CRS § 13-21-201; *B.G.'s, Inc. v. Gross*, 23 P.3d 691, 697 (Colo. 2001) (Kourlis, J., dissenting); *Letson v. Brown*, 52 P. 287, 288 (Colo.App. 1898).
6. *Taylor*, *supra* note 2 at 108.
7. *First Interstate Bank of Fort Collins, N.A. v. Piper Aircraft Corp.*, 744 P.2d 1197, 1199 (Colo. 1987).
8. *Gonzales v. Mascarenas*, 190 P.3d 826, 829 (Colo.App. 2008).
9. CRS § 13-20-101.
10. *Espinoza v. Perez*, 165 P.3d 770, 773 (Colo.App. 2006).
11. CRS § 13-20-101(1).
12. CRS § 13-80-108(2). If a death is committed intentionally or recklessly, as opposed to negligently, it constitutes a felonious killing. See CRS §§ 13-21-203(1)(a) and 15-11-803(1)(b).
13. See *Rauschenberger v. Radetsky*, 745 P.2d 640, 643 n.4 (Colo. 1987).
14. See *Crownover*, *supra* note 4 at 498 ("[T]o hold that the statute of limitations, under the wrongful death act, begins to run before death occurs creates an anomalous situation. It is possible . . . for the statute of limitations to run before death occurs and thus bar the claim.").
15. CRS § 13-80-108(2).
16. *Pub. Serv. Co. v. Barnhill*, 690 P.2d 1248 (Colo. 1984).

17. *First Interstate Bank of Fort Collins v. Piper Aircraft Corp.*, 744 P.2d 1197(Colo. 1987).
18. CRS § 13-21-203(1)(a) provides that "[a]ll damages accruing under section 13-21-202 shall be sued for and recovered by the same parties and in the same manner as provided in section 13-21-201."
19. CRS § 13-21-201(1)(a) and (b).
20. CRS § 13-21-201(1)(c).
21. *Hindry v. Holt*, 51 P. 1002 (Colo. 1897); *Espinoza*, *supra* note 10 at 772; *Whitenhill v. Kaiser Permanente*, 940 P.2d 1129, 1131 (Colo.App. 1997); *Howlett v. Greenberg*, 530 P.2d 1288 (Colo.App. 1974).
22. *Hindry*, *supra* note 21.
23. *Albin v. Richard O'Brien Plastering Co.*, 885 P.2d 289, 291 (Colo.App. 1994).
24. *Martin v. Cuellar*, 279 P.2d 843 (Colo. 1955); *Herrera v. Glau*, 772 P.2d 682 (Colo. 1989).
25. *Albin*, *supra* note 23 at 291. In *Albin*, the court of appeals found that this rationale was reasonable; therefore, denying siblings of the decedent a right of recovery did not violate the constitutional guarantee of equal protection.
26. *Pub. Serv. Co. v. District Court*, 674 P.2d 383, 385 (Colo. 1984); *McGill v. General Motors Corp.*, 174 Colo. 388, 484 P.2d 790 (Colo. 1971).
27. *McGill*, *supra* note 26 at 792.
28. *Albin*, *supra* note 23 at 291.
29. *McGill*, *supra* note 26 at 792.
30. *McGill v. Richard O'Brien Plastering Co.*, 885 P.2d 790, 792 (Colo. 1971); *Albin*, *supra* note 23 at 291.
31. CRS § 15-22-103.
32. CRS § 15-22-103(1) and (2).
33. CRS § 13-21-201(1)(a)(I).
34. CRS § 13-21-201(1)(a)(II) and (III).
35. CRS § 13-21-201(c).
36. CRS § 13-21-201(1)(b)(I).
37. CRS § 13-21-201(1)(b)(II). Also, if the decedent died without beneficiaries or a spouse, during the second year after death, the decedent's parents may file a wrongful death claim. CRS § 13-21-201(1)(c).
38. See *Klancke v. Smith*, 829 P.2d 464, 466 (Colo.App. 1991) (decedent's children were properly denied leave to join wrongful death action filed in first year following decedent's death; during

first year, "the surviving spouse . . . had the exclusive right to sue under § 13-21-201. . . ."); *Whitenhill, supra* note 21 (term "heirs," as used in the Act to describe persons who may bring wrongful death action in first year on written election of a deceased's spouse, does not include deceased's parents).

39. *Landsberg v. Hutsell*, 837 P.2d 205, 208 (Colo.App. 1992).

40. *Campbell v. Shankle*, 680 P.2d 1352 (Colo.App. 1984).

41. See *CJI-Civ.* 10:3 (4th ed. 2010).

42. CRS § 13-21-202.

43. *Steedle v. Sereff*, 167 P.3d 135, 140 (Colo. 2007).

44. *Pizza Hut of America, Inc. v. Keefe*, 900 P.2d 97, 101 (Colo. 1995).

45. *Willy v. Atchison, T. & S.F. Ry. Co.*, 172 P.2d 958, 962 (Colo. 1946) (if decedent's claim would have been barred by comparative negligence, beneficiary's claim likewise is barred); *Fay v. Kroblin Refrigerated Xpress, Inc.*, 644 P.2d 68, 70 (Colo.App. 1981) (same).

46. *Id.*

47. *Sigman v. Seafood Ltd.*, 817 P.2d 527, 530-31 (Colo. 1991).

48. *Id.*

49. *Espadero v. Feld*, 649 F.Supp. 1480 (D.Colo. 1986).

50. *Gonzales, supra* note 8.

51. *Rowell v. Clifford*, 976 P.2d 363 (Colo.App. 1998).

52. *Tanski v. Tanski*, 820 P.2d 1143 (Colo.App. 1991).

53. See *CJI-Civ.* 10:3 (4th ed. 2010).

54. *Morrison v. Bradley*, 655 P.2d 385, 388 (Colo. 1982), *citing* Colorado Model Jury Instructions. The current model jury instruction, Instruction 10:3, provides that in determining economic damages, the jury should consider "the age, health, and life expectancy of [name of decedent], the age, health, and life expectancy of the plaintiff, the [decedent's] industriousness, ability to earn money, willingness to assist the plaintiff, and the nature of the relationship between [decedent] and the plaintiff." *CJI-Civ.* 10:3 (4th ed. 2010).

55. *Hoyal v. Pioneer Sand Co.*, 188 P.3d 716 (Colo. 2008).

56. *Hill v. United States*, 854 F.Supp. 727, 734 (D.Colo. 1994).

57. *Lanahan v. Chi Psi Fraternity*, 175 P.3d 97, 99 (Colo. 2008).

58. CRS § 13-21-203; *Hill, supra* note 56 at 734. The current model jury instruction, Instruction 10:3, provides that in determining economic damages, the jury should consider "grief, loss of companionship, impairment of the quality of life, inconvenience, pain and suffering, and emotional stress the plaintiff had had to the present, and any grief, loss of

companionship, impairment of the quality of life, inconvenience, pain and suffering, and emotional stress the plaintiff will have in the future." *CJI-Civ. 10:3* (4th ed. 2010).

59. CRS § 13-21-203(1)(a).

60. CRS § 13-21-203.7.

61. See Colorado Secretary of State Adjusted Limitation on Damages Certificate, available at [www.sos.state.co.us/pubs/info\\_center/files/damages\\_new.pdf](http://www.sos.state.co.us/pubs/info_center/files/damages_new.pdf).

62. *Lanahan*, *supra* note 57.

63. CRS § 13-21-203.5.

64. CRS § 13-21-203.7.

65. See Colorado Secretary of State, *supra* note 61.

66. *Dewey v. Hardy*, 917 P.2d 305 (Colo.App. 1995), *citing* 1989 hearings in the General Assembly on Senate Bill 93.

67. See *B.G.'s, Inc.*, *supra* note 5 at 693 and n.3 (noting that solatium option eliminates need to prove noneconomic damages and that wrongful death claimant "presented no evidence of damages of any kind").

68. *Id.*

69. CRS §§ 13-21-203(1)(a) and 15-11-803(1)(b).

70. CRS § 13-21-203(1)(a).

71. CRS § 13-21-203(3)(a).

72. CRS § 13-21-203(3)(c).

73. CRS § 13-21-203(3)(a).

74. *Stamp v. Vail Corp.*, 172 P.3d 437, 448 n.13 (Colo. 2007).

75. CRS § 13-64-302.

76. CRS § 13-21-203(1)(b).

77. CRS § 33-44-113.

78. *Stamp*, *supra* note 74 at 444.

79. CRS § 24-10-114.

80. *Steedle*, *supra* note 43.

81. *Id.*

82. *Espinoza*, *supra* note 10 at 461.

83. *Clint v. Stolworthy*, 357 P.2d 649 (Colo. 1960); *In re Daigle's Estate*, 634 P.2d 71, 73 n.3 (Colo. 1981); *Williams v. Trailmobile, Inc.*, 745 P.2d 267, 269 (Colo.App. 1987).

84. See *Klancke*, *supra* note 38 (affirming dismissal of children's claim against stepmother's attorneys based on attorneys' distribution of wrongful death proceeds to stepmother);

*Campbell*, *supra* note 40 (affirming dismissal of claim against insurance company for distributing wrongful death proceeds to stepmother).

85. See *Steedle*, *supra* note 43 at 140.

86. *Aiken v. Peters*, 899 P.2d 382, 384 (Colo.App. 1995).

87. CRS § 13-21-201(1)(c)(I).

88. *Hernandez v. Downing*, 154 P.3d 1068, 1971 (Colo. 2007) (holding that the specific "one civil action" rule trumped the venue provisions of C.R.C.P. 98, such that two defendants could be sued for wrongful death in the same county, even though venue was proper only as to one of them).

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