

New Ruling Affects Prelitigation Settlements of Wrongful Death Claims

Pre-litigation
settlement of a
wrongful death claim
with one heir does
not bar a subsequent
wrongful death
action by the
remaining heirs
under the one-action

Where the heir of a decedent files an informal claim with a defendant's insurance company and the insurance company voluntarily settles the claim prior to any lawsuit being filed, that settlement does not bar the filing of a subsequent wrongful death action by the remaining heirs. (*Moody v. Bedford*, 12 C.D.O.S. 385 (2012).) In *Moody*, the adult child of a woman killed in a vehicle collision tendered a claim to the insurance company which insured the driver involved in the collision. Before any lawsuit was filed, the driver's insurer settled for the policy limits after receiving the adult child's written assurance that she was the decedent's sole surviving heir. Subsequently, the decedent's minor children filed a wrongful death action against the driver. The trial court granted summary judgment for the driver, ruling that the one-action rule, which bars individual heirs from filing separate and successive wrongful death actions against a defendant, barred the minor children's action. In reversing the judgment, the Court of Appeal held that the one-action rule applies only after a wrongful death action has been filed, but is not triggered by a pre-litigation settlement of a wrongful death claim by one heir, even where that heir secures the settlement by fraudulently misrepresenting that she was the decedent's sole heir. The court reasoned that if the adult daughter had filed a wrongful death action she would have had a legal duty to join the other heirs and if she failed to do so she would have been exposed to liability in an action by the minor children to recover any losses suffered as a result of being excluded from the wrongful death action. Thus, to gain the protection of the one-action rule, the alleged tortfeasor must require a wrongful death claimant to file suit before settling the claim.

This decision's significance is apparent – alleged wrongful death tortfeasors surrender the protection of the one-action rule if they choose to settle the claim prior to any lawsuit being filed, thus, running the risk that an omitted heir may thereafter file a wrongful death action, exposing the alleged tortfeasor to liability to that heir in that action. This is so even if the alleged tortfeasor does his or her due diligence in identifying all potential heirs, or requires the settling heir to sign a sworn statement as to the nonexistence of other heirs. Such a rule arguably contravenes the public policy favoring early settlement of disputes, a point raised by the defendant in *Moody* and rejected by the court. The court reasoned that defendants are still at liberty to settle wrongful



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death claims prior to litigation but, if they do so, will give up the procedural protection afforded by the one-action rule in the bargain. The court believes its decision “strikes a fair balance” between heirs’ rights to be included in wrongful death claims and alleged tortfeasors’ rights to be free from multiple wrongful death claims. Thus, following the decision in *Moody*, alleged wrongful death tortfeasors should weigh the risk of entering into a pre-litigation settlement with an heir as doing so leaves open the possibility that the alleged tortfeasor will be subject to a wrongful death action by other heirs.

UPDATE – On April 25, 2012, the California Supreme Court ordered the Court of Appeal’s opinion depublished. The defendant had petitioned the Supreme Court for review, which was denied. However, the Court ordered the opinion depublished. As a result, the Court of Appeal’s decision cannot be cited as precedent in California.

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