



Everybody counts: Death of our older clients

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We often hear in wrongful death cases involving our elderly clients that the claims have little or greatly reduced value because they were old, in compromised health, not working and they were going to die real soon anyway. While presenting these claims may have the limitation that the life of the elderly victim may have been short, there are many ways to present these claims in both a compelling and powerful manner.

When claims adjusters and defense attorneys regularly suggest that the death of an old person has little value, my response against this mindset is always: *either everybody counts or nobody counts*. I truly believe that is how we view life.

Our society places great value on life. Outside of litigation and the courtroom, no one rates the value of folks' lives by age when we see people walking around the mall, at a school event or at church. We, for the most part, look at each life as having an equal value; as having great importance; as being priceless. It is with this foundation that we need to begin our thoughts on the wrongful death claim of an elderly loved one.

Death is final. It is the permanent end of a life and the end of all living moments with that person. Each of us knows that death is a part of life and that we are all going to have to deal with the death of someone close to us at some point.

Here, we are talking about the death of an elderly loved one. Someone that we understood had only a short time to live. Someone that we understood was not going to be with us for that much longer. But, regardless of the short time that our loved one may have had with us, when they are wrongfully taken from us there needs to be an appropriate accounting for the wrongful acts that caused the taking. And remember, when you view these cases, it is about wrongful taking. The life taken did not get to live its natural course. The life was shortened, regardless of how little it may have been shortened.

A good friend once told me that we are all going to die sooner or later. It is the sooner to which we are seeking damages. A life, even an elderly life, that is wrongfully taken means that a full life was not lived.

To tell the story of this loss, we must look at what was taken and what the survivors have been left with.

I have given a lot of thought to this issue over the past holiday season. I watched and listened to the interactions of the elderly with their loved ones during the holidays and New Year. I did this both in my own family and by observing others in my community, at

the mall and at various holiday events. The love that was shared between the elderly and their family members was clear in my observations. It was clear that the family events and interactions would have been less fulfilling without the presence of the elderly person. No one valued the interaction and experience less because it was one of the last opportunities for the elderly person to be a part of the events and activities; rather, the interaction and experience was more treasured and valued. The last known interactions and experiences have the most value, in my mind.

One of my friends lost his mother about a year ago, and we recently talked about that loss. She said that she missed just talking with her mom. Even though her mom was confined to a wheelchair and not able to get around without assistance, she talked about what a great support her mom was to her. She would call her mom for advice on a regular basis. She told me that her mom would support her in so many ways, whether it was getting a call from her mom the day before a presentation at work or whether it was receiving a note from her mom expressing how proud she was of her. These are the little things that meant so much to my friend. These little things were really big things and the types of things that each of us thrive on. These are the little things that allow us to carry on each day. When they are gone, a little bit of us is taken away. At the end of our conversation, my friend summed up her loss by saying that she just could not get enough of her mom.

During the holidays, I attended a play and watched as an elderly woman was brought into the theater in a wheelchair surrounded by her family. I watched the smiles on the family's faces as they interacted with the elderly woman and how they laughed together. It was clear to me that they were having the time of their life. As I was standing in the concession line, a man, I guessed to be the son of the elderly woman, stood behind me. I said, it looks like you are all having fun. He said that they were enjoying each moment with his mom and that her being with all of them was the best gift of the holiday season. Later that night I thought about what I had seen and what this man had told me. It is memories and experiences like the ones created by that evening that will give that family great joy and peace in the future. They will likely remember that evening when they go to future holiday plays, and when that man's mom is no longer with them, they will find joy in the fact that they had this evening with her. If an elderly person is taken wrongfully, it is these types of memories and experiences that would never have occurred, regardless of how limited that may have been by age.

Another friend of mine recently lost his father to cancer. After his father passed away, I called him to share my condolences. He said that what was most important to him was that his dad had been able to attend his son's graduation prior to his death. His dad had saved up enough strength to go to the event and to sit in the bleachers. His dad cheered as his grandson walked across the stage and received his diploma. After the ceremony, they took a bunch of photographs together and his dad was able to share cake with the entire family. It is this type of story that allows us to understand the meaning of a loss caused by the wrongful act of another.

When an elderly person is wrongfully taken, the memories and experiences that would have been shared are wiped out. A wedding occurs and the elderly person is missing. A birthday with the elderly person can no longer happen. A play is not attended by the elderly person. The argument that they would not have lived much longer, may be true,

but, the value of the memories and experiences taken, even if they would have only gone on for just a short period of time, are forever lost. These types of losses are really at the core of our lives; for, at the end of the day, if we do not have memories and experiences with our loved ones, what do we have?

I have mentioned above the fact that we place great value on life. As I thought more about this fact, what came to mind was how much effort and expense is undertaken with the elderly who are taken to a hospital for emergency treatment. No one in the emergency room spares any effort in treating the elderly patient. No one puts the elderly at the end of the “treatment” line. Think about this fact when you are reviewing the medical records of an elderly deceased. Look at the efforts by medical staff. It is these efforts that

symbolize how we value a life, regardless of age or how much more time they have with us. Think about the fact that when two accident victims arrive at an emergency room at the same time, their treatment, for the most part, is not provided based upon their age or their life expectancy.

No one should be wrongfully taken away from their loved ones. I have spoken with many clients over the years about their loss of a loved one, and I have heard from nearly every one of them that they would give anything to have just one more day with their loved one. If they had just had one more day with their loved one and their loved one had not been taken from them, they would have, at least, some peace with their loss.

Find the meaning of the losses resulting from the wrongful death of an elderly. Don't let the age of the elderly person limit your ability to present the significance of the loss. Remember that it is the little things in each of our lives that have the greatest value. Take the time to gather and understand the loss and its meaning to those that have been left to experience the loss.

I recently picked up a calendar and on the back it read – “Life is a special occasion.” Every life, regardless of age, is just that, a special occasion.

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