



Alerts

California Expands Non-Economic Damages In Survival Actions

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Hinshaw Alert

Effective January 1, 2022, plaintiffs in survival actions in California will be able to obtain damages for predeath pain, suffering, or disfigurement. This marks a dramatic change in California law that will likely impact the value of litigated cases as well as the costs of defending these matters.

Background

A survival action is an action brought by a decedent's successors or heirs to recover damages that the deceased would have been entitled to from the time of their injury up until the time of their death. Survival actions in California are governed by § 377.34 of the California Code of Civil Procedure (CCP).

Prior to January 1, 2022, if an injured party died before their legal case was resolved, either by settlement or by verdict, the recovery in that lawsuit could not include predeath pain, suffering, or disfigurement. The only recovery permitted was economic monetary losses and possible punitive damages under other statutes. California was one of only five states that prohibited recovery of non-economic damages (the others being Florida, Idaho, Colorado, and Arizona).

On Friday October 1, 2021, California Governor Gavin Newsom signed SB 447, modifying the existing law. Under the newly amended CCP 377.34, plaintiffs in survival actions can be awarded damages for predeath pain, suffering, or disfigurement.

When Does this Law Go into Effect?

January 1, 2022.

Is the Law Retroactive?

No. Only plaintiffs that file their lawsuits on or after January 1, 2022, will be permitted to recover damages for pain, suffering, or disfigurement in survival actions. There is one caveat, however. Cases filed before January 1, 2022, where the case was granted a trial preference before January 1, 2022, will be able to obtain these damages.

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Does the Law Have a Sunset Provision?

Yes, the law is set to expire on January 1, 2026. At that time, the California Legislature can reassess the bill. During that four-year period, plaintiffs who recover under the new statutory framework must report their awards to the Judicial Council, and the Judicial Council will report this information to the California Legislature.

What Type of Cases Are Impacted?

Negligence actions and medical malpractice actions will be impacted, though the Medical Insurance Compensation Reform Act cap still applies to non-economic damages for pain and suffering. The bill also applies to all other personal injury and employment cases.

Notably, the law does not impact the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA), as EADACPA already permits predeath pain and suffering damages up to \$250,000 in enhanced remedies actions.

What Does the New Law Mean to Me?

In short, the change to the survival statute will likely increase the recoverable damages and discovery costs when litigating a matter.

Previously, defendants in survival actions were able to argue that any evidence of predeath pain and suffering was irrelevant. Therefore, the argument could be made that there should be no discovery or evidence at trial on that issue.

Under the new law, plaintiffs in survival actions will be entitled to introduce evidence at trial regarding the suffering that a deceased person experienced before death. This evidence has the potential to increase the sympathy factor for the jury. Additionally, this introduces a new area of discovery during the pretrial phase of a case. This will likely drive up defense fees.