

FILED
MAR 07 2008

CLERK OF SUPREME COURT
STATE OF WASHINGTON

No. 81195-4

SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals - Division I No. 58831-1)

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 MAR -7 P 2:46

BY RONALD R. CARPENTER

CLERK

CASCADE ORTHOPAEDICS, a partnership,

Appellant/Respondent,

vs.

JOSIE ARMANTROUT and WARREN ARMANTROUT, husband and
wife and the marital community composed thereof,

Respondents/Petitioner.

RESPONSE TO PETITION FOR REVIEW

Steven F. Fitzer, WSBA #6792
Melanie T. Stella, WSBA #28736

Attorneys for Respondent
BURGESS FITZER, P.S.
1145 Broadway, Suite 400
Tacoma, WA 98402-3584
(253) 572-5324

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	IDENTITY OF RESPONDENT	1
III.	ISSUES PRESENTED FOR REVIEW	2
IV.	COUNTER-STATEMENT OF THE CASE	2
V.	ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED	2
A.	<u>The Court of Appeals' Decision That the Provision of Services Does Not Constitute Substantial Financial Dependence Does Not Conflict with this Court's Decision in <i>Cook v. Rafferty</i>, 200 Wash. 234, 93 P.2d 376 (1939)</u>	4
B.	<u>The Expansion of the Wrongful Death Statutes to Allow the Provision of Services to Be Considered When Determining Whether a Potential Beneficiary Is Substantially Financially Dependent upon a Decedent Is Not an Issue of Substantial Public Interest for this Court. The Expansion of the Statutes to Allow Additional Classes of Beneficiaries Is a Legislative, Not Judicial, Function</u>	8
C.	<u>The Court of Appeals' Decision Does Not Prevent the Armantrouts from Presenting Their Case on Remand. On Remand, the Jury Will Decide Whether the Armantrouts Were Substantially Financially Dependent upon Kristen's Monetary Contributions Without Consideration of the Value of the Services Kristen Provided</u>	15

VI. CONCLUSION17

TABLE OF AUTHORITIES

Washington State Cases

Armijo v. Wesselius, 73 Wn.2d 716, 440 P.2d 471 (1968) 12, 13

Bortle v. Northern Pac. R. Co., 60 Wash. 552,
111 Pac. 788 (1910) 6, 7, 8

Cook v. Rafferty, 200 Wash. 234, 93 P.2d 376 (1939) 4, 5, 6, 7

Geschwind v. Flanagan, 121 Wn.2d 833, 854 P.2d 1061 (1993) 11

Johnson v. Seattle Elec. Co., 39 Wash. 211, 81 Pac. 705 (1905) 9

Masunaga v. Gapasin, 57 Wn. App. 624, 790 P.2d 171,
rev. denied, 115 Wn.2d 1012 (1990) 7, 11

Morgan v. Johnson, 137 Wn.2d 887, 893 n.1,
976 P.2d 619 (1999) 11, 12

Philippides v. Bernard, 151 Wn.2d 376, 88 P.3d 939 (2004) 8, 10, 14

Roe v. Ludtke Trucking, Inc., 46 Wn. App. 816,
732 P.2d 1021 (1987) 11

Schumacher v. Williams, 107 Wn. App. 793,
28 P.3d 792 (2001), *rev. denied*, 145 Wn.2d 1025 (2002) 10

Whittlesey v. City of Seattle, 94 Wash. 645, 163 Pac. 193 (1917) . . 11, 14

Wilson v. Lund, 74 Wn.2d 945, 447 P.2d 718 (1968) 12, 13

Other Statutes and Authorities

RCW 4.20.020 1, 12, 16

RCW 4.24.010 8

WPI 31.03.02 17

Substitute Senate Bill 6696 12

I. INTRODUCTION

The question presented to this Court is whether it should accept review for the single purpose of expanding the class of persons qualifying as second-tier beneficiaries under Washington's current wrongful death statute.

The parents of an 18 year old young woman claim they are beneficiaries under **RCW 4.20.020** because their adult daughter provided them with services which had monetary value. This claim, while sympathetic, is in complete contravention of both the Legislature's narrow designation of second-tier wrongful death beneficiaries and of this Court's long-standing interpretation of the requirement that a parent be "substantially financially dependent" upon his or her adult child for support.

In this case, the Court of Appeals correctly held that the provision of services does not constitute substantial financial dependence under the law. Review by this Court of that holding is not warranted because the law is clear and because the parents' policy arguments are better directed to the Legislature, not the courts.

II. IDENTITY OF RESPONDENT

Cascade Orthopaedics, a defendant in the trial court and the appellant in the Court of Appeals, is the respondent in this Petition.

At the trial level, a jury found Cascade Orthopaedics was liable for the death of Kristen Armantrout, the adult daughter of petitioners Todd and Josie Armantrout. (CP 100-101) Cascade Orthopaedic's liability is not at issue in this appeal. The only issue concerns the Armantrouts' purported status as second-tier beneficiaries under the wrongful death statute.

III. ISSUES PRESENTED FOR REVIEW

Cascade Orthopaedics acknowledges the issues presented for review by the Armantrouts. For the reasons stated below, none of these issues warrant review by this Court.

IV. COUNTER-STATEMENT OF THE CASE

The Armantrouts' Statement of the Case is generally correct, though largely irrelevant. *See Petition at 2-7*. For purposes of responding to the Petition only, and without waiving any rights on remand, Cascade Orthopaedics concedes that the Armantrouts presented evidence at trial that Kristen provided services to her parents, that those services had some monetary value, and that the Armantrouts found those services to be helpful. The sufficiency of that evidence is not at issue in the Armantrouts' petition.

V. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

The Court of Appeals correctly held that the provision of services,

even if those services have monetary value, does not make a parent “substantially financially dependent” on his or her adult child within the meaning of Washington’s wrongful death statutes. (P-App. 15)¹ As such, the trial court committed reversible error by instructing the jury that it could consider “services, or other material benefits” when it decided whether the Armantrouts were substantially financially dependent upon Kristen. (P-App. 10-11 (Instruction 14)); (P-App. 16-17 (concluding that erroneous instruction prejudiced outcome of trial)). The pertinent instruction is Instruction 14, which states:

The plaintiff has the burden of proving Kristen Armantrout’s mother and father were substantially financially dependent upon her for support. Substantial financial dependence requires a showing of a need or necessity for support on the part of the parents and an agreement by Kristen to provide such support. In determining whether Josie and Todd Armantrout were substantially financially dependent upon Kristen, you should consider the extent of Kristen’s financial contributions to her parents and whether or not such support was likely to continue for a period of time. **The support may include money, services, or other material benefits, but may not include everyday services a child would**

¹References to the petitioners’ appendix are designated “P-App.” References to the respondent’s appendix (attached to this brief) are designated “D-App.”

routinely provide to her parents. You may not consider emotional support Kristen may have provided her parents.

Substantial financial dependence may be partial, but must be based on current financial contributions, not the promise of future contributions or services.

(CP 92) (emphasis added).

The Court of Appeals' decision that Instruction 14 misstated the law does not warrant review by this Court. The determination that "substantial financial dependence" is limited to the provision of money or income, and not merely services, is a holding well-grounded in Washington law. Further, any expansion of the class of second-tier beneficiaries is a legislative, not judicial, function. The Court of Appeals' decision does not conflict with any prior decisions, and it does not present an issue of substantial public interest for this Court. Review should be denied.

A. **The Court of Appeals' Decision That the Provision of Services Does Not Constitute Substantial Financial Dependence Does Not Conflict with this Court's Decision in *Cook v. Rafferty*, 200 Wash. 234, 93 P.2d 376 (1939).**

The Armantrouts first contend that review is appropriate because the Court of Appeals' decision conflicts with this Court's decision in *Cook v. Rafferty*, 200 Wash. 234, 93 P.2d 376 (1939). *Petition at 8-9.* The

Armantrouts' contention is incorrect.

In *Cook*, a twenty-one year old unmarried woman living with her parents was killed in a car accident. Her mother brought suit against the allegedly at-fault driver, who counterclaimed against the driver of the vehicle in which Ms. Cook was a passenger. *Id.* at 235-36; 239. Following a bench trial, the court entered judgment for the plaintiffs. *Id.* at 236. The trial court also awarded Ms. Cook's parents \$1,000.00 in damages based on the parents' claimed financial dependency upon Ms. Cook. The defendant driver appealed both the finding of negligence and the award of damages to Ms. Cook's parents.

After consideration of Ms. Cook's financial well-being, the fact that she contributed to the finances of the household, and her parents' apparent inability to financially support themselves, the court affirmed the award of damages to the parents based on its conclusion that the parents "suffered a pecuniary loss by reason of her death." *Id.* at 240.

The fact that the court recognized that Ms. Cook's parents suffered a pecuniary loss by reason of her death in no way establishes, as a matter of law, that the voluntary provision of services by a deceased adult child may make the parents substantially financially dependent upon that child. The

Cook court made no mention of what, if any, services Ms. Cook provided her parents. Instead, the court focused exclusively on Ms. Cook's monetary contributions (her monthly earnings and her contributions to the household expenses) and the parents' inability to financially provide for themselves (the father was an invalid and had been unable to work for the past ten to twelve years, the mother was unemployed, and the mother's sister had been sending them money monthly, which amounts were reduced after Ms. Cook obtained permanent employment). *Id.* at 239-40.

The *Cook* court's focus on the adult child's financial contributions and the parents' financial abilities tells us two things. One, the *Cook* court sustained the award of damages to the parents on the long-standing rule that the condition of substantial financial dependency is established only by a showing of substantial financial need on one side and a *financial* recognition of that need on the other. *Id.* at 240 (citing *Bortle v. Northern Pac. R. Co.*, 60 Wash. 552, 556, 111 Pac. 788 (1910)). Two, the parents in *Cook* were nearly completely dependent upon their daughter for financial support and court found no reason to believe that Ms. Cook's financial contributions would not have continued had she survived. *Id.* at 239-40. Notably, and contrary to the Armantrouts' position, the *Cook* court made no holding that

services could establish the condition of substantial financial dependency.

The Armantrouts appear to argue that this Court has previously held that services may form the basis of substantial financial dependence because it used the phrase “continued to care for her parents” in the *Cook* opinion. *Petition at 9*. This is too tortured a reading of the *Cook* opinion. Nothing in that single phrase discloses any intent on the part of the *Cook* court to make any statement that services constitute substantial financial dependence, or that a claimed dependence on services would constitute substantial financial support. The same is true for the Armantrouts’ parsing of a sentence in *Masunaga v. Gapasin*, 57 Wn. App. 624, 790 P.2d 171, *rev. denied*, 115 Wn.2d 1012 (1990). *Petition at 15*.

Neither *Cook* nor *Masunaga* hold that dependence upon services constitutes substantial financial dependence within the meaning of the wrongful death statutes. Washington courts have long held that dependence must be both financial and substantial — “an actual inability to support themselves, and an actual dependence upon some one [*sic*] else for support.” *Bortle, supra*, 60 Wash. at 555. The Court of Appeals’ opinion does not conflict with any prior decision of this Court or any of the three divisions of the Court of Appeals. Review should be denied.

B. The Expansion of the Wrongful Death Statutes to Allow the Provision of Services to Be Considered When Determining Whether a Potential Beneficiary Is Substantially Financially Dependent upon a Decedent Is Not an Issue of Substantial Public Interest for this Court. The Expansion of the Statutes to Allow Additional Classes of Beneficiaries Is a Legislative, Not Judicial, Function.

The Armantrouts appear to suggest that, simply because this Court previously accepted review in *Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004), that any case involving the interpretation of our wrongful death statutes is a matter of substantial public importance. *Petition at 10*. The Armantrouts are incorrect.

This Court's decision in *Philippides* does not necessarily mean that any issue involving our wrongful death statutes are *per se* matters of substantial public interest. The *Philippides* case was primarily concerned with whether "the [L]egislature's 1998 amendment to **RCW 4.24.010** redefined who can bring a cause of action under that statute and [whether] the amendment allows the parent of an adult child to recover upon a showing of emotional support upon the child." 151 Wn.2d at 383. In contrast here, the requirement of substantial financial dependence was been well established for

nearly 100 years. *See Bortle, supra*, 60 Wash. at 556 (“There must be a substantial need on one side and a substantial financial recognition of that need on the other side, to make out a dependency within the meaning of this statute.”). The Armantrouts’ claim simply required an application of the facts to this well-established law.

Cascade Orthopaedics does not intend to suggest that the interpretation of our wrongful death statutes is either unimportant or uninteresting to either this Court or the public. Rather, it is Cascade Orthopaedic’s position that the Armantrouts’ request for an expansion of those statutes — *e.g.*, either an elimination or loosening of the financial dependency requirement — must come from the Legislature, not this Court.

The right of an individual to sue for the wrongful death of another “must depend upon legislation authorizing it.” *Johnson v. Seattle Elec. Co.*, 39 Wash. 211, 213, 81 Pac. 705 (1905). The question of whether a certain individual ought to recover or whether the individual’s argument for recovery is a sound one, is a matter of “legislative consideration” and not a judiciary function. *Id.* (rejecting argument regarding the “spirit and intent” of the wrongful death statutes). It is thus our Legislature’s prerogative to decide whether to expand the class of wrongful death beneficiaries. “A review of

the history of the wrongful death and survival of action statutes reflects a consistent conservatism on the part of the Legislature with regard to the beneficiaries of those statutes.” *Schumacher v. Williams*, 107 Wn. App. 793, 801-02, 28 P.3d 792 (2001), *rev. denied*, 145 Wn.2d 1025 (2002). The Legislature’s conservatism must be respected by the courts, no matter how compelling the case. As this Court stated in *Philippides*,

The courts of this state have long and repeatedly held, causes of action for wrongful death are strictly a matter of legislative grace and are not recognized in the common law. The legislature has created a comprehensive set of statutes governing who may recover for wrongful death and survival, and there is no room for this court to act in that area. It is neither the function nor the prerogative of courts to modify legislative enactments.

The legislature has identified the statutory beneficiaries. While we may agree that the value parents place on children in our society is no longer associated with **the child’s ability to provide income to the parents**, the legislature has defined who can sue for the wrongful death and injury of a child and we cannot alter the legislative directive. The change the plaintiffs seek must come from the legislature rather than this court.

151 Wn.2d at 390 (internal citations and quotation marks omitted) (emphasis added).

The Armantrouts complain that adherence to the appellate courts' "bright line rule" that financial dependence means monetary dependence will produce harsh results. *Petition at 11*. This argument fails to appreciate the fact that the wrongful death statutes do not — and were never intended to — provide a cause of action to every person affected by another's death. *Whittlesey v. City of Seattle*, 94 Wash. 645, 647, 163 Pac. 193 (1917) (the wrongful death statutes "should receive a strict construction in determining the persons or classes of persons who are entitled to their benefit"); *Masunaga*, 57 Wn. App. at 621 (wrongful death statutes should be read strictly and literally when determining proper beneficiaries); *Roe v. Ludtke Trucking, Inc.*, 46 Wn. App. 816, 818, 819, 732 P.2d 1021 (1987) (a wrongful death action may be maintained only on behalf of the beneficiaries designated in the wrongful death statutes; "a liberal construction of the statute is appropriate only after the beneficiaries have been determined.").

The Armantrouts' disagreement with the limited class of second-tier beneficiaries created by the Legislature is understandable. But this Court cannot remedy that. As this Court recognized in *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993), it is "obliged to give the plain language of a statute its full effect, even when its results may seem unduly

harsh.” It is then the Legislature’s prerogative to amend the statute to ameliorate any consequences of judicial interpretation, as it did in response to the *Geschwind* decision. See *Morgan v. Johnson*, 137 Wn.2d 887, 893 n.1, 976 P.2d 619 (1999) (citing Laws of 1994, ch. 275, § 30).

Indeed, it appears the Legislature may be doing just that. With Substitute Senate Bill 6696, the Legislature has proposed amending **RCW 4.20.020** to allow a wrongful death action to be maintained for the benefit of the parents of a deceased adult child “if the parents are financially dependent upon the adult child for support or if the parents have had significant involvement in the adult child’s life[.]” (R-App. 1) The Legislature also proposes to define financial dependence as including “dependence based on the receipt of services that have an economic or monetary value, or dependence based on actual monetary payments or contributions.” (R-App. 2) If the Legislature had previously intended the phrase “dependent . . . for support” to include forms of support other than monetary contributions, there would be no need for this amendment.

The Armantrouts also claim that this Court has previously extended the “literal scope” of the wrongful death statutes in order to protect beneficiaries clearly contemplated by the statutes. Neither of the cases cited

by the Armantrouts — *Armijo v. Wesselius*, 73 Wn.2d 716, 440 P.2d 471 (1968), and *Wilson v. Lund*, 74 Wn.2d 945, 447 P.2d 718 (1968) – are helpful here.

In *Armijo*, this Court was called to decide an issue of first impression: “whether the words ‘child or children’ in the [wrongful death] statute are qualified *sub silentio* by the word ‘legitimate.’” 73 Wn.2d at 718. In *Wilson*, this Court considered whether a divorced mother was entitled to bring an action for the wrongful death of her child in her own name. 74 Wn.2d at 947. In both of these cases, the statutes were silent on each of their respective issues: in *Armijo*, this Court noted that the statute’s literal language did not distinguish between legitimate and illegitimate children. 73 Wn.2d at 718. In *Wilson*, this Court noted that the statute was silent as to which parent could bring a wrongful death action for the death of a child when the parents are divorced. 74 Wn.2d at 948. In contrast to the Armantrouts’ claims, neither of these cases called upon this Court to create a class of beneficiaries not previously contemplated by the Legislature. Further, both *Armijo* and *Wilson* were premised on the refusal of this Court to perpetuate antiquated social stigmas attaching to “illegitimate” children and divorced women, a unique characteristic not present in the Armantrouts’ claims.

Finally, the Armantrouts assert that case law from other jurisdictions supports their requested expansion of Washington's wrongful death statutes. *Petition at 16-18*. The fact that other states may have interpreted their own wrongful death statutes differently that Washington is not cause for review by this Court given (1) that Washington law is clear that financial (*i.e.*, monetary) dependence is required; and (2) that our Legislature is currently contemplating the very expansion requested by the Armantrouts.

For many years, courts have interpreted the wrongful death statutes consistently to require substantial financial dependence; *i.e.*, the payment of money. *Philippides*, 151 Wn.2d at 386 ("The phrase 'dependent for support' as used in these statutes has consistently been interpreted by the courts to mean financial dependence."). This Court has also cautioned against creating, rather than construing, a statutory cause of action. *Whittlesey*, *supra*, 94 Wash. at 654. Yet the Armantrouts ask this Court to accept review to do precisely that — to create a cause of action for parents allegedly dependent upon services provided by an adult child, rather than respecting the Legislature's intent to create a narrow class of second-tier beneficiaries. The Armantrouts' request that the definition of "substantial financial dependence" be expanded to include both the payment of money and the provision of

services having monetary value is a position entirely unsupported by Washington law. Any expansion of the wrongful death statutes must be addressed to — and is currently being addressed by — the Legislature. This Court must respect the Legislature’s function and purpose, and deny review.

C. **The Court of Appeals’ Decision Does Not Prevent the Armantrouts from Presenting Their Case on Remand. On Remand, the Jury Will Decide Whether the Armantrouts Were Substantially Financial Dependent upon Kristen’s Monetary Contributions Without Consideration of the Value of the Services Kristen Provided.**

The Armantrouts’ final basis for review concerns their contention that “[t]he Court of Appeals did not explain how the evidence regarding Kristen’s services to her parents can be excluded without substantially prejudicing the Armantrouts’ ability to present their damages case.” *Petition at 20*. The Armantrouts’ confusion regarding the effect of the Court of Appeals’ decision is not a basis for review.

As the Armantrouts acknowledge in their petition, the Court of Appeals ruled simply “that services cannot be considered when determining whether a parent is dependent for support.” *Petition at 8*. More specifically, the Court of Appeals held that Instruction 14 “prejudiced the outcome of the trial” because it allowed the jury to consider inadmissible evidence in deciding whether the Armantrouts depended upon Kristen for support;

namely, evidence regarding the services Kristen provided for Josie and their amount. (P-App. 16-17) Thus, the Court of Appeals remanded the Armantrouts' claims for a new trial:

[A] jury could reasonably find that the Armantrouts were dependent on Kristen for support within the meaning of the statute and case law based solely on the payments of \$588 per month. But whether a jury actually would is not presently before us and should more properly be addressed after remand[.]

(P-App. 6)

The Armantrouts contend that it is unclear what issues are to be retried on remand. *Petition at 20*. To the contrary, the Court of Appeals' instructions for remand are quite clear. The issue of whether the Armantrouts were substantially financially dependent upon Kristen must be determined by the jury without regard to the fact that Kristen provided services to her family or the amount of those services; the jury may only consider the \$588.00 per month in Social Security benefits Kristen turned over to her parents. (P-App 2: "The services Kristen provided to her parents cannot be considered in assessing whether they were 'dependent . . . for support' on her."; P-App. 6) The services Kristen provided to her parents could be considered by the jury in determining the Armantrouts' damages, so long as the jury finds that the

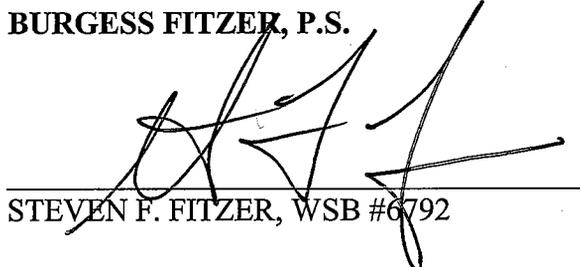
Armantrouts were substantially financially dependent without regard to those services. **RCW 4.20.020** ("In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just"); *see also* **WPI 31.03.02**.

VI. CONCLUSION

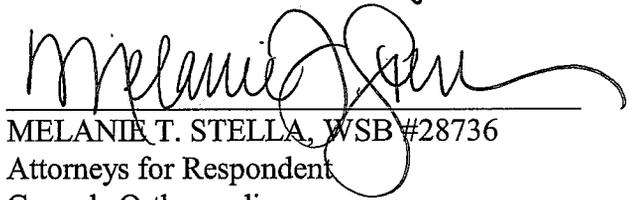
For the foregoing reasons, Cascade Orthopaedics respectfully requests that this Court deny the Armantrouts' petition for review.

Submitted this 5th day of March, 2008.

BURGESS FITZER, P.S.



STEVEN F. FITZER, WSB #6792



MELANIE T. STELLA, WSB #28736

Attorneys for Respondent
Cascade Orthopaedics

RESPONDENT'S APPENDIX

(R-APP.)

SUBSTITUTE SENATE BILL 6696

State of Washington

60th Legislature

2008 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Fairley, Prentice, Kohl-Welles, Tom, Weinstein, Kline, McDermott, and Murray)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to actions for wrongful injury or death; amending
2 RCW 4.20.020, 4.20.046, 4.20.060, and 4.24.010; creating new sections;
3 and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.20.020 and 2007 c 156 s 29 are each amended to read
6 as follows:

7 Every (~~such~~) action under RCW 4.20.010 shall be for the benefit
8 of the (~~wife, husband~~) spouse, state registered domestic partner,
9 (~~child~~) or children, including stepchildren, of the person whose
10 death shall have been so caused. If there (~~be~~) is no (~~wife,~~
11 ~~husband~~) spouse, state registered domestic partner, or (~~such~~) child
12 (~~or children, such~~), the action may be maintained for the benefit of:
13 (1) The parents(~~r~~) of a deceased adult child if the parents are
14 financially dependent upon the adult child for support or if the
15 parents have had significant involvement in the adult child's life; or
16 (2) an individual who is the sole beneficiary of the decedent's life
17 insurance and has had significant involvement in the decedent's life.
18 If there is no spouse, state registered domestic partner, child,
19 parent, or such life insurance beneficiary, the action may be

1 maintained for the benefit of sisters((τ)) or brothers((τ)) who ((may
2 be)) are financially dependent upon the deceased person for support((τ
3 and who are resident within the United States at the time of his
4 death)).

5 In every such action the jury may ((~~give such~~)) award economic and
6 noneconomic damages as((τ)) under all circumstances of the case((τ))
7 may to them seem just.

8 For the purposes of this section, "financial dependence" includes
9 dependence based on the receipt of services that have an economic or
10 monetary value, or dependence based on actual monetary payments or
11 contributions.

12 **Sec. 2.** RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as
13 follows:

14 (1) All causes of action by a person or persons against another
15 person or persons shall survive to the personal representatives of the
16 former and against the personal representatives of the latter, whether
17 such actions arise on contract or otherwise, and whether or not such
18 actions would have survived at the common law or prior to the date of
19 enactment of this section(~~(: PROVIDED, HOWEVER, That))~~).

20 (2) In addition to recovering economic losses, the personal
21 representative ((~~shall only be~~)) is entitled to recover on behalf of
22 those beneficiaries identified under RCW 4.20.020 any noneconomic
23 damages for pain and suffering, anxiety, emotional distress, or
24 humiliation, personal to and suffered by ((α)) the deceased ((~~on behalf~~
25 of those beneficiaries enumerated in RCW 4.20.020, and such)) in such
26 amounts as determined by a jury to be just under all the circumstances
27 of the case. Damages under this section are recoverable regardless of
28 whether or not the death was occasioned by the injury that is the basis
29 for the action.

30 (3) The liability of property of a husband and wife held by them as
31 community property and subject to execution in satisfaction of a claim
32 enforceable against such property so held shall not be affected by the
33 death of either or both spouses; and a cause of action shall remain an
34 asset as though both claiming spouses continued to live despite the
35 death of either or both claiming spouses.

36 ((+2)) (4) Where death or an injury to person or property,
37 resulting from a wrongful act, neglect or default, occurs

1 simultaneously with or after the death of a person who would have been
2 liable therefor if his death had not occurred simultaneously with such
3 death or injury or had not intervened between the wrongful act, neglect
4 or default and the resulting death or injury, an action to recover
5 damages for such death or injury may be maintained against the personal
6 representative of such person.

7 **Sec. 3.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read
8 as follows:

9 (1) No action for a personal injury to any person occasioning death
10 shall abate, nor shall such right of action ((determine)) terminate, by
11 reason of ((such)) the death((~~7~~)) if ((such)) the person has a
12 surviving ((spouse, state registered domestic partner, or child living,
13 including stepchildren, or leaving no surviving spouse, state
14 registered domestic partner, or such children, if there is dependent
15 upon the deceased for support and resident within the United States at
16 the time of decedent's death, parents, sisters, or brothers, but such
17 action may be prosecuted, or commenced and prosecuted, by the executor
18 or administrator)) beneficiary in whose favor the action may be brought
19 under subsection (2) of this section.

20 (2) An action under this section shall be brought by the personal
21 representative of the deceased((~~7~~)) in favor of ((such)) the surviving
22 spouse or state registered domestic partner, ((or in favor of the
23 surviving spouse or state registered domestic partner)) and ((such))
24 children((~~7~~ or if)). If there is no surviving spouse ((or)) state
25 registered domestic partner, ((in favor of such child)) or children,
26 ((or if no surviving spouse, state registered domestic partner, or such
27 child or children, then)) the action shall be brought in favor of the
28 decedent's: (a) Parents((~~7~~)) if the parents are financially dependent
29 upon the decedent for support or if the parents have had significant
30 involvement in the decedent's life; or (b) sole beneficiary under a
31 life insurance policy, if the beneficiary is an individual who had a
32 significant involvement in the decedent's life. If there is no
33 surviving spouse, state registered domestic partner, child, parent, or
34 such life insurance beneficiary, the action shall be brought in favor
35 of the decedent's sisters((~~7~~)) or brothers who ((may be)) are
36 financially dependent upon ((such person)) the decedent for support((~~7~~
37 and resident in the United States at the time of decedent's death)).

1 (3) In addition to recovering economic losses, the persons
2 identified in subsection (2) of this section are entitled to recover
3 any noneconomic damages personal to and suffered by the decedent
4 including, but not limited to, damages for the decedent's pain and
5 suffering, anxiety, emotional distress, or humiliation, in such amounts
6 as determined by a jury to be just under all the circumstances of the
7 case.

8 (4) For the purposes of this section, "financial dependence"
9 includes dependence based on the receipt of services that have an
10 economic or monetary value, or dependence based on actual monetary
11 payments or contributions.

12 **Sec. 4.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
13 as follows:

14 (1) A ((mother or father, or both,)) parent who has regularly
15 contributed to the support of his or her minor child, ((and the mother
16 or father, or both, of a child on whom either, or both, are)) or a
17 parent who is financially dependent on a child for support or who has
18 had significant involvement in a child's life, may maintain or join
19 ((as a party)) an action as plaintiff for the injury or death of the
20 child.

21 (2) Each parent, separately from the other parent, is entitled to
22 recover for his or her own loss regardless of marital status, even
23 though this section creates only one cause of action((, but if the
24 parents of the child are not married, are separated, or not married to
25 each other damages may be awarded to each plaintiff separately, as the
26 trier of fact finds just and equitable)).

27 (3) If one parent brings an action under this section and the other
28 parent is not named as a plaintiff, notice of the institution of the
29 suit, together with a copy of the complaint, shall be served upon the
30 other parent: PROVIDED, That notice shall be required only if
31 parentage has been duly established.

32 Such notice shall be in compliance with the statutory requirements
33 for a summons. Such notice shall state that the other parent must join
34 as a party to the suit within twenty days or the right to recover
35 damages under this section shall be barred. Failure of the other
36 parent to timely appear shall bar such parent's action to recover any
37 part of an award made to the party instituting the suit.

1 (4) In (~~such~~) an action under this section, in addition to
2 damages for medical, hospital, medication expenses, and loss of
3 services and support, damages may be recovered for the loss of love and
4 companionship of the child and for injury to or destruction of the
5 parent-child relationship in such amount as, under all the
6 circumstances of the case, may be just.

7 (5) For the purposes of this section, "financial dependence"
8 includes dependence based on the receipt of services that have an
9 economic or monetary value, or dependence based on actual monetary
10 payments or contributions.

11 NEW SECTION. **Sec. 5.** This act applies to all deaths occurring
12 before, on, or after the effective date of this act only if the cause
13 of action occurred within the limitation period set forth in RCW
14 4.16.080; no claims outside that period shall be revived or created as
15 a result of this act.

16 NEW SECTION. **Sec. 6.** (1) On December 1, 2009, and every December
17 1st thereafter, the risk management division within the office of
18 financial management shall report to the house appropriations
19 committee, the house state government and tribal affairs committee, the
20 senate ways and means committee, and the senate government operations
21 and elections committee, or successor committees, on the incidents
22 covered by this act that involve state agencies.

23 (2) On December 1, 2009, and every December 1st thereafter, each
24 local government risk pool or local government risk management
25 division, or the equivalent in local governments, shall report to the
26 legislative body of the local government on the incidents covered by
27 this act that involve the local government.

28 (3) This section expires December 2, 2014.

--- END ---