



## ALERTS

### Illinois Wrongful Death Plaintiffs Can Now Recover Punitive Damages

August 23, 2023

#### Highlights

In Illinois, punitive damages previously were available in injury cases, but not in wrongful death cases

The amended law will increase the verdict and settlement values in wrongful death cases, including cases that become wrongful death cases after the plaintiff dies while the case is pending

Punitive damages are not available in Illinois in medical malpractice actions, legal malpractice cases, and lawsuits against state or local government entities and employees

Effective Aug. 11, 2023, Illinois amended its Wrongful Death Act to permit punitive damages in actions for wrongful death.

Previously, Illinois was in the minority of states that did not permit the estate of an injured party to recover punitive damages in wrongful death cases. The Illinois rule had long been established by case law stating, in general, that the right to seek punitive damages does not survive the death of the injured party.

In overturning that precedent, the new statute carves out exceptions so

## RELATED PEOPLE



### Kenneth M. Gorenberg

Partner  
Chicago

P 312-214-5609  
F 312-759-5646  
[kenneth.gorenberg@btlaw.com](mailto:kenneth.gorenberg@btlaw.com)



### Alexandra D. Dumezich

Associate  
Chicago

P 312-338-5909  
F 312-759-5646  
[alexandra.dumezich@btlaw.com](mailto:alexandra.dumezich@btlaw.com)

## RELATED PRACTICE AREAS

Litigation  
Trial and Global Disputes

that punitive damages still will not be available in medical or legal malpractice actions or cases against state or local government entities and employees acting in their official capacities.

Importantly, the new law did not change the Illinois Code of Civil Procedure, which prohibits a plaintiff from requesting punitive damages in a complaint at the outset of a lawsuit. Therefore, a plaintiff seeking punitive damages must file a motion no later than 30 days after the close of discovery, demonstrating to the court that the plaintiff has a “reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages.”

Companies that face injury or toxic exposure cases should recognize that the possibility of punitive damages clearly raises the stakes in any wrongful death case in Illinois. That impact extends to cases filed when a plaintiff is alive but is not expected to survive through trial. For example, when a plaintiff is suing for a terminal cancer or another likely fatal condition, the total damages that may be recovered will be the same regardless of whether the plaintiff is living or deceased at the time of trial. This means that the strategy of some defendants to try to delay a case until the plaintiff dies will no longer reduce the potential damages.

For more information, contact the Barnes & Thornburg attorney with whom you work or Ken Gorenberg at 312-214-5609 or [kenneth.gorenberg@btlaw.com](mailto:kenneth.gorenberg@btlaw.com) or Allie Dumezich at 312-338-5909 or [alexandra.dumezich@btlaw.com](mailto:alexandra.dumezich@btlaw.com).

© 2023 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

*This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.*