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WITNESSES AS CLAIMANTS

Hypothetical:

You have been involved in an accident which caused the death or serious injury of another individual. A bystander, Billy, witnesses this event and becomes emotionally distraught. Can Billy make a claim against you to recover for his mental anguish?

Yes, but Texas limits recovery to a very specific set of circumstances.

THE TEXAS BYSTANDER CLAIM

Since 1890, Texas Courts have recognized the right of an individual, who has witnessed the traumatic injury or death on a third party, to recover damages for the witness' mental anguish. The witnessing party need not suffer any physical injury from the accident in order to recover for their mental anguish.

Although the "mental anguish" is difficult to define and highly subjective, in order to recover for mental anguish, the witness must:

offer direct evidence of the nature, duration, and severity of the mental anguish and show how it disrupted the witness' daily routine, or

offer other evidence of a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.

The bystander claim does not require the witness' presence in the "impact zone," but limits recovery in other ways. A bystander can recover damages for mental anguish for another's death or serious injury under these conditions:

The bystander owed a duty to the injured.

Generally, this requires that the witness and the injured have a close familial relationship. Closely related means the two were relatives in the same household, parents, siblings, children, and/or grandparents of the victim. However, the Courts have determined that an uncle living with his nephew in the same house can recover mental anguish damages.

The mental anguish damages were foreseeable.

This foreseeability requirement means that the witness be (1) located near the scene or (2) the shock resulted from the direct emotional impact from a sensory and contemporaneous observance of the death or serious injury.

The witness was near the injury scene.

A witness does not have to physically observe the negligence which caused the serious injury or death. Instead, “near the injury scene” requires proximity of geography and time to the accident. The overriding theme for proximity is whether the witness was “brought so close to the reality of the accident as to render them an integral part of it.”

A father who did not see his child hit by a car but who turned around and saw the result of the impact would likely recover his mental anguish damages. Furthermore, a spouse who unwittingly comes to the scene of an accident involving her husband, without first being told of the accident, will also be allowed to recover for the mental anguish she suffered.

Defenses

Although the witness may not be involved in the accident, and may not be a contributing factor for the accident, the defense of contributory negligence is available to rebut the witness’ claim.

For example, if the injured party was partially responsible for causing the accident, the witness’ recovery will be reduced by the portion that the jury finds the injured party to have caused.

WHAT DOES THIS MEAN FOR YOU?

Generally, negligent infliction of emotional distress is not a viable claim in Texas. However, the bystander claim is one limited exception that allows recovery for those near an accident scene who suffer mental anguish from the direct, emotional impact from a sensory or contemporaneous observance of the death or serious injury of a close relative.

So if you’re handling a claim where someone witnesses a death or serious injury, there are several questions you should be asking: Your liability greatly depends on the answers to these questions.

1. How are the witness and injured person related? What duty did the witness owe to the injured, or vice versa?
2. Where was the witness at the time of the accident?
3. Was she alerted about the accident and given time to prepare for what she encountered at the accident scene?
4. Was the injured party partially responsible for the accident?
5. What injuries is the witness claiming? It must be more than mere worry, anxiety, vexation, embarrassment, or anger.

The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **ROBERT L. MCGEE, JR.**
- **JAMIE J. MCKEY**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**



Information regarding *The Bassett Bulletin*TM is available from **Angie Stevenson** (astevenson@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

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