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# Traub Lieberman Partner Jessica Burtnett Wins Appeal on Applicability of Statute of Limitations in Wrongful Death Matter, Setting New Precedent in Wisconsin

Related Attorneys: Jessica Burtnett

In a case brought before the State of Wisconsin Court of Appeals, District III, Traub Lieberman Partner Jessica Burtnett, along with co-counsel for other Defendants, successfully appealed the Circuit Court's ruling on the applicability of a specific statute of limitations pertaining to Plaintiff's wrongful death claim.

In the underlying action, the Plaintiff filed a wrongful death claim against the Defendants more than two years after her husband died when he fell into a gravity-operated hopper trailer attached to a semi-tractor and was subsequently smothered by the trailer's cargo of corn gluten. The Defendants moved for summary judgment, arguing that the complaint was untimely under the amended Wisconsin statute of limitation pertaining to death arising from an accident involving a motor vehicle. WIS. STAT. § 893.54(2m). The Circuit Court denied the motion for summary judgment, concluding that tractor-trailer was a "motor vehicle," but that the accident did not "involve" a motor vehicle. The Circuit Court reasoned that "an accident involving a motor vehicle requires that the motor vehicle be in motion, illegally parked, parked without lights on, something like that."

In review of Circuit Court's decision, the Court of Appeals disagreed with the lower court, ruling in favor of the Defendants and instructing the Circuit Court to grant summary judgment in favor of Defendants. The Court of Appeals held the tractor-trailer was a "motor vehicle" even though the tractor was not running at the time of the incident. It further held that the accident "involved" a motor vehicle because the tractor-trailer was engaged as a participant in the accident, was a necessary accompaniment to the accident, and was included in the accident. Lastly, the Court of Appeals held that Plaintiff's decedent's death "arose out of" the accident because there was a causal connection between his death and the accident. Accordingly, § 893.54(2m) applied, making Plaintiff's complaint untimely.

This matter was an issue of first impression in Wisconsin and the decision sets a new legal standard going forward.