

NY State May Soon Increase Recoverable Wrongful Death Damages



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Two bills currently wending their way through the New York State Assembly and Senate, if enacted, would significantly increase the nature and amount of damages that could be awarded to plaintiffs in wrongful death actions filed in New York.

Wrongful death damages in New York are awarded to the decedent's distributees. Long-standing statutory and case law, however, limits damages in New York's wrongful death actions to the distributees' "pecuniary" loss only and only when a jury finds a "reasonable expectation" that the financial loss had occurred. Nonfinancial wrongful death damages such as emotional loss, grief and mental anguish experienced by the distributees, in addition to the loss of the decedent's society and companionship, are not allowed since they are not pecuniary in nature.

Under Assembly Bill A5612 and Senate Bill S4006, however, section 5-4.3 of the state's Estates, Powers and Trusts Law would be amended to allow the following damages in wrongful death actions:

- Grief or anguish caused by the decedent's death and any disorder caused by the grief or anguish
- Loss of love, society, protection, comfort, companionship and consortium resulting from the decedent's death

- Loss of nurture, guidance, counsel, advice, training and education resulting from the decedent's death.

Sponsors of the bills note that New York's wrongful death statute is nearly 150 years old and claim that it is "out of step" with the 41 states that allow family members to be compensated for alleged emotional loss.

It is unclear as of this writing whether the bills have a chance of being passed and signed by the governor. Certainly, the contemplated changes have been tried in previous legislative sessions, but never enacted. Unlike in prior years, however, New York's Legislature is now under the complete control of one party. If the bills become law, they would mark a sea change in the types of damages that could be awarded in New York's wrongful death cases and greatly increase the exposure of product manufacturers and their insurers.

As the legislative session draws to a close, we will be sure to follow the progress of these bills and report the end result to our readers.

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