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SIGNIFICANT AMENDMENTS TO NEW YORK'S WRONGFUL DEATH STATUTE IMMINENT

6.15.22

Senate Bill S74A, also known as the "Grieving Families Act" ("GFA") is set to vastly expand compensable damages in wrongful death actions. Currently, compensable damages in these types of actions are limited to pecuniary loss only, such as pre-death medical expenses, funeral expenses and loss of financial support.

Under the proposed bill, the definition of who constitutes a family member will expand to include "close family members", including but not limited to, spouses, domestic partners, children, parents, grandparents, stepparents and siblings.

The Senate Finance Committee is currently reviewing the GFA. If the GFA passes committee review, it will proceed to the Senate and Assembly floors. If passed by the Senate and Assembly, the governor has the authority to veto the bill or sign it into law.

THE GRIEVING FAMILIES ACT

The Grieving Families Act modernizes the current wrongful death statute in New York, which has been in place since 1847. The bill acknowledges that the damages caused by losing a loved one are not confined to the financial support received from their paycheck, but also involves the losses that take an emotional and psychological toll on those left behind.

The Grieving Families Act seeks to amend Paragraph (a) of Section 5-4.3 of the Estates, Powers and Trusts Law. It would provide accordingly:

- Permits recovery of damages for emotional loss when a tortfeasor is found liable for causing a death
- Permits recovery by close family members including, but not limited to, spouse or domestic partner, children, parents, grandparents, stepparents and siblings. "The finder of fact shall determine which are close family members based upon specific circumstances relating to the person's relationship with the decedent"

PROFESSIONALS

Tracy J. Abatemarco

Cole Munson

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- Replaces distributees with persons for whose benefit the action is brought
- The Act shall take effect immediately upon signing by the Governor. The bill will also retroactively apply to pending cases

SIX CATEGORIES A PLAINTIFF MAY CLAIM COMPENSATION FOR:

- Funeral expenses
- Reasonable medical expenses
- Grief or anguish caused by the death and for any disorder caused by grief or anguish
- Loss of love, society, protection, comfort, companionship and consortium resulting from the death
- Pecuniary injuries including loss of services, support, assistance and diminishment of inheritance; and
- Loss of nurture, guidance, counsel, advice, training and education

THE EVOLUTION OF WRONGFUL DEATH RECOVERY IN NEW YORK COURTS

In the discussion of recovery from the wrongful death statute in New York, three main cases have built upon one another and illustrate the court's attempt over the years to properly define and apply recovery under the current statute.

1. *Bovsun v. Sanperi*, 61 N.Y.2d 219 (1984) held that immediate family members who were in the zone of danger and witnessed the injury of the victim could recover emotional damages. This case involved a mother and daughter who while sitting in a parked car and witnessed their husband/father struck by the defendant's vehicle.
2. *Trombetta v. Conkling*, 82 N.Y.2d 549 (1993) limited the right of a bystander to recover who was not a member of the immediate family as defined by the current statute. In that case, an aunt who witnessed her niece being hit by a truck was not entitled to recovery.
3. *Greene v. Esplanade Venture Partnership et. al.*, (2021 WL 623832 on February 18, 2021) held that a grandparent should be included in the definition of the term "immediate family member" for purpose of the wrongful death statute. The court used the zone of danger doctrine to find that the grandmother could recover for the emotional trauma she endured when she witnessed her grandchild being struck and killed by debris falling for the façade of a building. The zone of danger rule states that, "a person threatened with bodily harm as a result of the defendant's negligence may recover damages for emotional distress upon viewing the death and serious injury of her immediate family." *Greene* at 228, quoting *Bovsun*.

Regardless of the side taken on the proposed amendment to the statute it is clear that the court has consistently searched for and attempted to carve out more specificity and modern application of the law.

PROPOSERS OF THE LAW

The current law was passed and developed through the lens of a society where men were the primary breadwinners and a traditional, nuclear family was the norm. Advocates of this law point out that in its current state, the law does not allow children, grandparents, domestic partners and others to recover even though their lives have been directly impacted by the loss of a loved one.

Sponsors of the bill pointed out that current law only allows for compensation for pecuniary loss and disregards the potential damages suffered by children, seniors and others who have no income or less income. They argue that the law disregards family members who should be compensated for emotional loss, but are left out because their relevance is measured solely by

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their income levels and/or ability to be a wage earner.

Proponents also say the law must change because it fails to recognize the dynamics and many forms of the modern family.

OPPONENTS OF THE LAW

Opponents of the law cite skyrocketing costs of insurance premiums and an opening of the floodgates for potential plaintiffs as the downside of this legislation. The New York Insurance Association released the following statement, “A family currently has means to recover beyond economic damages in New York. There is a survivorship cause of action for the decedent’s pain and suffering, which provides a legal remedy to obtain non-economic compensation for the loss of a loved one.”

Those against the bill argue that an expansion of the right to damages under the wrongful death statute is an overstep and unnecessary accommodation for potential litigants. Plaintiffs will potentially enjoy inflated and unnecessary damage awards. They point out that this change would impact and increase the costs of litigation and increase potential exposure for insurance companies. These added costs will in turn be passed on to consumers, businesses and ultimately the taxpayers of New York.

KEY TAKEAWAYS

- The Grieved Families Act provides a statutory cause of action for emotional damages that did not exist before
- The Act expands the definition of a family member to reflect current societal norms
- Proponents advocate that this will allow a greater and deserving category of individuals to recover for the wrongful deaths of their loved ones
- Opponents are concerned that this law will drive up the cost of insurance premiums and negatively impact consumers, businesses and ultimately taxpayers as well as encouraging inflated damage awards to a new class of plaintiffs

The attorneys at Wood, Smith, Henning & Berman are available to answer any questions or concerns you may have regarding this new legislation. Please do not hesitate to reach out to a member of our team.