

New York Legislature Declines to Expand Wrongful Death Damages

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Under the title “[New York May Soon Increase Recoverable Wrongful Death Damages](#),” we wrote recently about efforts within the New York State Legislature to significantly add to the types of damages that could be awarded in wrongful death litigation.

Virtually identical bills in the Assembly (A5612) and Senate (S4006), if enacted, would have changed long-standing statutes and case law to allow a decedent’s distributees to recover for nonfinancial damages such as grief or mental anguish caused by the decedent’s death; the loss of the decedent’s love, society, protection and consortium; and the loss of the decedent’s nurture, guidance and counsel.

Fortunately, the legislative effort failed, as both bills remained in committee and were never brought to floor votes despite the flurry of activity that marked the end of this year’s legislative session in late June. For now, product manufacturers dodged a major bullet, as the bills would have significantly increased their exposure in New York in wrongful death cases.

Amending section 5-4.3 of New York’s Estates, Powers and Trusts Law to provide for enhanced damages has been tried before. Supporters of the change note that New York’s wrongful death statute has not been amended significantly in nearly 150 years and that the contemplated changes merely would put New York in line with many other states that allow family members to be compensated for alleged emotional loss and other nonfinancial damages. Opponents, of course, argue that that the proposed changes only would add to New York’s ever-increasing costs of doing business in the state.

A sigh of relief is definitely in order, but we have little doubt that New York’s legislators, backed by the state’s trial lawyers, will take another crack at adding to recoverable wrongful death damages in future legislative sessions. We’ll continue to track the issue and report as events warrant.

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