

## NEW YORK HAS THE WORST WRONGFUL DEATH LAW IN THE NATION

### Legislation must restore New Yorkers' rights, and remedy a national embarrassment

**Bereaved New Yorkers, whose rights were advanced 172 years ago with a then-groundbreaking wrongful death law, now face serious disadvantages compared to the rest of the country.**

- New York's 1847 wrongful death law was the very first in the nation; it was groundbreaking because until then, the law allowed only *injured* individuals to be compensated, leading to great hardship for relatives when a loved one was wrongfully *killed*.
- Every state in the nation followed New York's lead by enacting a wrongful death law. These laws "vary widely in detail ... with the result that the rights of recovery, the persons who can recover and the elements of damages vary among jurisdictions."<sup>1</sup>
- An early characteristic of most of these laws was that only "pecuniary injuries" could be compensated (*i.e.*, someone's death had to be "translated into an economic loss"<sup>2</sup>); no compensation was allowed for intangible losses such as grief, mental anguish, bereavement, "lost companionship, society, love, advice, and guidance [often summed up as 'consortium']"<sup>3</sup>. This was particularly unfair for relatives not financially dependent on a deceased person's income (*e.g.*, parents of children, adult children).

**To remedy the harshness of early "wrongful death" laws, virtually every state expanded compensation to allow recovery for intangible losses "at least to some beneficiaries ... either expressly by statute, or by judicial decision."<sup>4</sup> In contrast, New York has done nothing.<sup>5</sup>**

- Many states expressly changed their laws through legislative action. In other cases, courts remedied the injustice.<sup>6</sup>
  - Early on, jurors tried to ease the hardship on a case by case basis.<sup>7</sup>
  - Eventually, judges "attempted to address this problem in several ways ... either by broaden[ing] the definition of 'pecuniary loss' (*i.e.*, assigning pecuniary value to [intangible losses] or by discard[ing] the limitation altogether."<sup>8</sup>

- Explains Speiser and Rooks in their three-volume treatise, *Recovery For Wrongful Death*, “Only a few jurisdictions [including New York] continue to deny consortium or society damages to all beneficiaries.” Yet even in the handful other states listed by the authors, courts seem to have affirmed at least some exceptions.
- New York lawmakers and courts have refused to do what other states have done,<sup>9</sup> leaving the state “completely isolated” in terms of the harshness of its wrongful death law.<sup>10</sup>

**There is no option but for New York lawmakers to act.**

## NOTES

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<sup>1</sup> Stuart M. Speiser and James E. Rooks, Jr., *Recovery For Wrongful Death* §6:2 (4th Ed. 2005)

<sup>2</sup> Catherine M. Sharkey, “Unintended Consequences of Medical Malpractice Damages Caps,” 80 *NYU L. Rev.* 391 (May 2005).

<sup>3</sup> *Ibid.*

<sup>4</sup> Stuart M. Speiser, James E. Rooks, Jr., *Recovery For Wrongful Death* §6:2 (4th Ed. 2005)

<sup>5</sup> See Richard F. Hans Jr. “New York Reaffirms Exclusion of Loss of Consortium from Recoverable Damages in Wrongful Death Action,” 66 *St. John’s L. Rev.* 225 (1992).

<sup>6</sup> See Stuart M. Speiser and James E. Rooks, Jr., *Recovery For Wrongful Death* §6:37 (4th Ed. 2005)

<sup>7</sup> Catherine M. Sharkey, “Unintended Consequences of Medical Malpractice Damages Caps,” 80 *NYU L. Rev.* 391 (May 2005).

<sup>8</sup> *Ibid.*

<sup>9</sup> See Stuart M. Speiser and James E. Rooks, Jr., *Recovery For Wrongful Death* §6:37 (4th Ed. 2005), citing New York law and cases: N.Y. Est. Powers & Trust Law §5-4.3. *Liff v. Schildkrout*, 49 N.Y.2d 622, 427 N.Y.S.2d 746, 404 N.E.2d 1288 (1980); *Long v. City of New York*, 81 A.D.2d 880, 439 N.Y.S.2d 58 (2d Dep’t 1981); *Kenavan v. City of New York*, 120 A.D.2d 24, 507 N.Y.S.2d 193 (2d Dep’t 1986), order aff’d, 70 N.Y.2d 558, 523 N.Y.S.2d 60, 517 N.E.2d 872 (1987); *Gonzalez v. New York City Housing Authority*, 77 N.Y.2d 663, 569 N.Y.S.2d 915, 572 N.E.2d 598 (1991); *Ruiz v. New York City Health and Hospitals Corp.*, 165 A.D.2d 75, 566 N.Y.S.2d 217 (1st Dep’t 1991) (loss of consortium is not encompassed within wrongful death action); *Kaplan v. Sparks*, 192 A.D.2d 1119, 596 N.Y.S.2d 279 (4th Dep’t 1993) (no recovery for loss of consortium in wrongful death action).

<sup>10</sup> Richard F. Hans Jr., “New York Reaffirms Exclusion of Loss of Consortium from Recoverable Damages in Wrongful Death Action,” 66 *St. John’s Law Review* 225 (1992).