

STATE OF NEW YORK

9232

IN ASSEMBLY

February 21, 2024

Introduced by M. of A. WEINSTEIN, PEOPLES-STOKES, LAVINE, DINOWITZ, GLICK, AUBRY, BICHOTTE HERMELYN, BRAUNSTEIN, BURDICK, BURGOS, BURKE, CARROLL, CLARK, COLTON, COOK, CRUZ, DICKENS, DILAN, EPSTEIN, FALL, GIBBS, HEVESI, HUNTER, HYNDMAN, JACOBSON, JEAN-PIERRE, KIM, LUNSFORD, MAGNARELLI, McMAHON, MEEKS, MITAYNES, NORRIS, PAULIN, REYES, L. ROSENTHAL, SANTABARBARA, SEAWRIGHT, SHRESTHA, SIMON, SOLAGES, STECK, STERN, STIRPE, TAYLOR, WEPRIN, ZEBROWSKI -- Multi-Sponsored by -- M. of A. LUPARDO, RIVERA -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to the payment and distribution of damages in wrongful death actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 1 of section 5-4.1 of the estates, powers and trusts law, as amended by chapter 114 of the laws of 2003, is amended to read as follows:

1. The personal representative, duly appointed in this state or any other jurisdiction, of a decedent [~~who is survived by distributees~~] may maintain an action to recover damages for a wrongful act, neglect or default which caused the decedent's death against a person who would have been liable to the decedent by reason of such wrongful conduct if death had not ensued. Such an action must be commenced within [~~two~~ three] years after the decedent's death[~~, provided, however, that an action on behalf of a decedent whose death was caused by the terrorist attacks on September eleventh, two thousand one, other than a decedent identified by the attorney general of the United States as a participant or conspirator in such attacks, must be commenced within two years and six months after the decedent's death~~]. When the [~~distributees~~] persons for whose benefit an action pursuant to this part may be brought do not participate in the administration of the decedent's estate under a will appointing an executor who refuses to bring such action, the [~~distributees~~] persons for whose benefit an action pursuant to this part may be brought are entitled to have an administrator appointed to prosecute the action for their benefit.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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§ 2. Paragraph (a) of section 5-4.3 of the estates, powers and trusts law, as amended by chapter 100 of the laws of 1982, is amended to read as follows:

(a) The damages awarded to the plaintiff may be such sum as the jury or, where issues of fact are tried without a jury, the court or referee deems to be fair and just compensation for the ~~[pecuniary]~~ injuries resulting from the decedent's death to the persons for whose benefit the action is brought. In every such action, in addition to any other lawful element of recoverable damages, ~~[the reasonable expenses of medical aid, nursing and attention incident to the injury causing death and the reasonable funeral expenses of the decedent paid by the distributees, or for the payment of which any distributee is responsible, shall also be proper elements of damage]~~ compensation for the following damages may be recovered: (i) reasonable funeral expenses of the decedent paid by the persons for whose benefit the action is brought, or for the payment of which any persons for whose benefit the action is brought is responsible; (ii) reasonable expenses for medical care incident to the injury causing death, including but not limited to doctors, nursing, attendant care, treatment, hospitalization of the decedent, and medicines; (iii) grief or anguish caused by the decedent's death; (iv) loss of love, society, protection, comfort, companionship, and consortium resulting from the decedent's death; (v) pecuniary injuries, including loss of services, support, assistance, and loss or diminishment of inheritance, resulting from the decedent's death; and (vi) loss of nurture, guidance, counsel, advice, training, and education resulting from the decedent's death. Interest upon the principal sum recovered by the plaintiff from the date of the decedent's death shall be added to and be a part of the total sum awarded.

§ 3. Section 5-4.4 of the estates, powers and trusts law, paragraph (a) as amended by chapter 357 of the laws of 1975, and the opening paragraph of paragraph (a) as amended by chapter 595 of the laws of 1992, is amended to read as follows:

§ 5-4.4 Distribution of damages recovered

(a) The damages, as prescribed by 5-4.3, whether recovered in an action or by settlement without an action, are exclusively for the benefit of the decedent's ~~[distributees and, when collected, shall be distributed to the persons entitled thereto under 4-1.1 and 5-4.5, except that where the decedent is survived by a parent or parents and a spouse and no issue, the parent or parents will be deemed to be distributees for purposes of this section]~~ surviving close family members, which shall be limited to decedent's spouse or domestic partner, issue, foster-children, step-children, and step-grandchildren, parents, grandparents, step-parents, step-grandparents, siblings or any person standing in loco parentis to the decedent. The finder of fact shall determine which persons are entitled to damages as close family members of the decedent under this section based upon the specific circumstances relating to the person's relationship with the decedent. The damages shall be distributed subject to the following:

(1) Such damages shall be distributed by the personal representative to the persons entitled thereto in proportion to the ~~[pecuniary]~~ injuries suffered by them, such proportions to be determined after a hearing, on application of the personal representative or any ~~[distributee]~~ persons for whose benefit the action is brought, at such time and on notice to all interested persons in such manner as the court may direct. If no action is brought, such determination shall be made by the surrogate of the county in which letters were issued to the plaintiff; if an

1 action is brought, by the court having jurisdiction of the action or by
2 the surrogate of the county in which letters were issued.

3 (2) The court which determines the proportions of the [~~pecuniary~~]
4 injuries suffered by the [~~distributees~~] persons for whose benefit the
5 action is brought, as provided in subparagraph (1) of this paragraph,
6 shall also decide any question concerning the disqualification of a
7 parent, under 4-1.4 of this chapter, or a surviving spouse, under 5-1.2
8 of this article, to share in the damages recovered.

9 (b) The reasonable expenses of the action or settlement and, if
10 included in the damages recovered, the reasonable expenses of medical
11 aid, nursing and attention incident to the injury causing death and the
12 reasonable funeral expenses of the decedent may be fixed by the court
13 which determines the proportions of the [~~pecuniary~~] injuries suffered by
14 the [~~distributees~~] persons for whose benefit the action is brought, as
15 provided in subparagraph (1) of this paragraph, upon notice given in
16 such manner and to such persons as the court may direct, and such
17 expenses may be deducted from the damages recovered. The commissions of
18 the personal representative upon the residue may be fixed by the surro-
19 gate, upon notice given in such manner and to such persons as the surro-
20 gate may direct or upon the judicial settlement of the account of the
21 personal representative, and such commissions may be deducted from the
22 damages recovered.

23 (c) In the event that an action is brought, as authorized in this
24 part, and there is no recovery or settlement, the reasonable expenses of
25 such unsuccessful action, excluding counsel fees, shall be payable out
26 of the assets of the decedent's estate.

27 (d) For the purposes of this section, the term "domestic partner"
28 shall have the same meaning as defined pursuant to section two thousand
29 nine hundred sixty-one of the public health law.

30 § 4. Paragraphs (a) and (b) of section 5-4.6 of the estates, powers
31 and trusts law, paragraph (a) as amended and paragraph (b) as added by
32 chapter 719 of the laws of 2005, are amended to read as follows:

33 (a) Within sixty days of the application of an administrator appointed
34 under section 5-4.1 of this part or a personal representative to the
35 court in which an action for wrongful act, neglect or default causing
36 the death of a decedent is pending, the court shall, after inquiry into
37 the merits of the action and the amount of damages proposed as a compro-
38 mise either disapprove the application or approve in writing a compro-
39 mise for such amount as it shall determine to be adequate including
40 approval of attorneys fees and other payable expenses as set forth
41 below, and shall order the defendant to pay all sums payable under the
42 order of compromise, within the time frames set forth in section five
43 thousand three-a of the civil practice law and rules, to the attorney
44 for the administrator or personal representative for placement in an
45 interest bearing escrow account for the benefit of the [~~distributees~~]
46 persons for whose benefit the action is brought. The order shall also
47 provide for the following:

48 (1) Upon collection of the settlement funds and creation of an inter-
49 est bearing escrow account, the attorney for the administrator or
50 personal representative shall pay from the account all due and payable
51 expenses, excluding attorneys fees, approved by the court, such as
52 medical bills, funeral costs and other liens on the estate.

53 (2) All attorneys fees approved by the court for the prosecution of
54 the action for wrongful act, neglect or default, inclusive of all
55 disbursements, shall be immediately payable from the escrow account upon
56 submission to the trial court proof of filing of a petition for allo-

1 cation and distribution in the surrogate's court on behalf of the
2 decedent's estate.

3 (3) The attorney for the administrator or personal representative in
4 the action for wrongful act, neglect or default who receives payment
5 under this section shall continue to serve as attorney for the estate
6 until the entry of a final decree in the surrogate's court.

7 (b) If any of the [~~distributees~~ persons for whose benefit the action
8 is brought] is an infant, incompetent, person who is incarcerated or
9 person under disability, the court shall determine whether a guardian ad
10 litem is required before any payments are made, in which case the court
11 will seek an immediate appointment of a guardian ad litem by the surro-
12 gate's court or, if the surrogate's court defers, the court shall make
13 such appointment. Any guardian appointed for this purpose shall continue
14 to serve as the guardian ad litem for the person requiring same for all
15 other purposes.

16 § 5. This act shall take effect immediately and shall apply to all
17 causes of action that accrue on or after July 1, 2018, regardless of
18 when filed.