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Opening Statement

On Friday March 13, 2020, I appeared at the New York County Supreme Court for a scheduled court appearance. I was turned away as courts were closed due to the Covid-19 outbreak. Initially, the courts went dark. Our physical office closed too and we worked from home. Slowly, protocols were put in place to allow court employees to work from home as well. For the first time, depositions and pre-action hearings were conducted on a regular basis via Zoom. The courts started conducting conferences via Microsoft Teams and telephone conference calls. On May 24, 2021, court personnel were ordered to return to the courthouses to work. It would not be until Monday November 15, 2021 that I returned to a courthouse for an in-person appearance.

Trials were put on hold for well over one year. When trials resumed, it was a trickle compared to before, as the courts tried to avoid crowds in the courthouse to allow for social distancing.

Today, most court appearances remain virtual, and Zoom depositions are still the norm. The backlog of cases waiting for trial has grown tremendously long, as has the wait for a trial date. Cases that took the longest to resolve

before the start of the pandemic, either because multiple parties were involved, and/or a municipal government or authority were defendants, have only become more difficult to resolve. The last two years have seen a great delay in the administration of justice, and as the saying goes, justice delayed, is justice denied.

Still, as 2021 comes to a close and society adapts to a new normal, there is hope that the courts will be able to return to full operation. This means returning to in-person appearances; a full trial schedule; and maximizing the technical advancements of eCourts, eFiling, and virtual appearances.

In this newsletter I discuss New York's Wrongful Death Law, what recoveries are allowed, how it is unfair, and proposals to bring the law into this century. It is an important topic.

I hope you and your loved ones are in good health, and that the coming year brings cheer and good tidings to all. If you have any legal questions or issues, do not hesitate to contact us.

-Marc Miner, Esq.

**Our newest
associate,
Roman**



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The unfairness of New York's wrongful death laws

New York does not allow recovery for grief, sorrow, mental anguish, injury to feelings, or loss of companionship for a loved one.

As a result of the above, New York places a much greater value on the loss of certain classes of people. Consider two people who are killed instantaneously when a piece of debris falls off a building. If there was no pain and suffering or pre-impact fear, the only award for their wrongful death is the monetary loss suffered by their distributees, due to the decedents' deaths.

Decedent #1 is a twenty-five-year-old married man, with a one-year-old child, earning \$100,000 per year. His distributees are his wife who can claim for the loss of fifty+ years of support, and the child who can claim the loss of twenty years of support. That support would include millions of dollars of lifetime earnings. Decedent #2 is a twenty-five-year-old unmarried man, earning \$25,000 per year. He is survived by his brother who is his roommate, and his parents. The distributees of Decedent #2 are his parents, and his brother has no right to recovery. Since Decedent #2 is not supporting anyone, and his economic contributions to his distributees are nominal, the law puts little to no value on his life.

The law, in essence, says that the attributes of our family members we value the most—emotional support, love, companionship, advice and guidance—count for nothing.



Recovery in Wrongful death cases

When someone dies due to the negligence of another person, relief can be sought for the damages suffered. There are several categories of compensation that may be available in New York. Some categories of compensation are for losses suffered by the decedent. Other categories are for the losses suffered by the survivors (the distributees) due to the loss of decedent.

Compensation for the Decedent's Suffering

Compensation is awarded for the decedent's suffering from the moment of injury to the moment of death. Any award for suffering belongs to the Estate of the decedent and is distributed pursuant to the decedent's will, or in the absence of a will according to NY's Estates Powers and Trust Law.

Conscious Pain and Suffering

Compensation can be awarded for the pain and suffering of the decedent from the time of the incident up until the time of death. As the name implies, there must be proof that the decedent was conscious of the pain and suffering. For example, a person in a coma may or may not be experiencing pain or suffering. Evidence of consciousness of pain or suffering by someone in a coma may be shown by reactions to stimuli.

Pre-Impact Fear and Fear of Dying

Recovery can be made for a decedent who experienced pre-impact fear. For example, a pedestrian who sees an oncoming car bearing down, before being struck and killed, will likely experience pre-impact fear and/or a fear of dying.

Compensation for the Distributees

Distributees are close family members of the decedent, such as spouses, parents, children, and siblings. Distributees who suffer monetary (pecuniary/economic) losses as a result of the decedent's death may recover. Who is a distributee that may recover, is defined by the Estates Powers and Trust Laws, and depends on the structure of the decedent's family. For example, assume a fifty-year-old woman died. If she was married with children, her spouse and children would be the distributees. If she was not married and had no children, her parents would be the distributees. If her parents were deceased, her siblings would be the distributees. In order for a distributee to recover, a pecuniary loss must have been incurred.

In deciding the amount of monetary losses, one must consider: the character, habits, and ability of the decedent; the circumstances and conditions of the distributee(s); the services that the decedent had performed for the distributee(s); the portion of the decedent's earnings that the decedent would have spent in the future for the care and support of the distributee(s); the age and life expectancy of the decedent; and the value of the intellectual, moral, physical training, guidance, and assistance that the decedent would have provided had she lived.

Who is responsible for that fallen tree in your yard?

Picture this: During a severe storm, your neighbor's large tree comes crashing down in your yard, destroying your property and making an unsightly mess. But who's responsible for the cleanup? Your neighbor or you?

It can be tricky to know who is responsible for funding cleanup efforts and damages caused by a fallen tree. The situation can become even more complicated if the tree fell because of natural circumstances, such as a powerful storm. In order to protect yourself and your property, it's important to understand your local laws and even contact an attorney for answers.

Who is Responsible for a Fallen Tree?

While laws vary from state to state, in most states a person is not responsible for a fallen tree or the damage it caused if they were unaware of any rot or other hazards.

If you have noticed a sickly or rotting tree in your neighbor's lawn, and you have repeatedly spoken and documented your concerns with the issue to your neighbor,

they could be held financially responsible if the tree falls. If your neighbor is found responsible for personal injury or property damages related to a downed tree, their homeowner's insurance may end up covering the costs.

If your neighbor is not found negligent, you can rely on your own homeowner's insurance to cover any damages after a deductible. If your car was struck, check with your auto insurance provider to see if they will pay for any damage.

What You Should Do if a Tree Falls on Your Property

If your neighbor's tree came toppling down on your lawn, you should try to prevent any further damage from occurring. Take photos of any damages, as well as of the fallen tree. Afterward, call your insurance provider right away. An agent will help you navigate the claims process. If the tree fell due to negligence, it's in your best interest to contact an attorney to receive compensation to repair the damage.



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What can be done to make the wrongful death law fairer?

At least forty-one other states compensate family members for emotional loss.

New York State Senate Bill number S74A and Assembly Version A6770 seek to modernize the law, by permitting recovery of damages for emotional loss by close family members when a tortfeasor is found liable for causing a death.

The official justification in the write up of the bills states in part that: "The current law, which awards compensation for pecuniary loss only, impacts most harshly on children, seniors, women and people of color, who often have no income or significantly less income, and are traditionally undervalued in our society. For many years, the courts have struggled to overcome the current law's narrow and inhumane language, which measures the worth of loved family members solely by their value as wage earners."

These bills have widespread bipartisan support (the senate bill is co-sponsored by forty-nine of the sixty-three State Senators!), and a version of the bill has been introduced every year since at least 2009. Yet, the bill has never reached the Governor's desk. If politicians truly support these bills, they must do more to enact them into law.

Please contact your State Senator and ask them to support Bill number S74A!

Please contact your State Assembly Person and ask them to support Bill number A6770!





What our clients are saying:

Marc Miner and his team are great!! Marc came highly recommended to me. Marc took his time with me, he got to know my history, and took the time to walk me through everything. Every question I had, Marc and his team, had the answers. Marc always kept me apprised of what was going on with my case. I never had to ask how's my case doing or what did I needed to do next because Marc and his team were always on top of it. Marc is extremely knowledgeable, honest, and experienced. Thank you Marc and team for all you did for my case!!

– Angel

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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please call the appropriate legal professional.

5 Safe Winter Driving Habits

When harsh, winter weather strikes, it can create numerous challenges for drivers across the country. Slippery road conditions, blinding sun glare from the snow, and less visibility from snowstorms can all put your safety in jeopardy.

In order to stay safe, it's imperative to practice good winter driving habits. Here are five tips to stay safe behind the wheel this winter.

- 1. Leave Lots of Room** You should never tailgate the car in front of you. This is especially important during wet road conditions. If you don't have a sufficient amount of space between you and the car ahead, you'll boost your risks of a fender-bender.
- 2. Go Slow and Steady** Speeding is never a good idea. You could get a hefty fine or even lose control of your vehicle. During winter, when roadways are slick with snow and ice, maintain a slow and steady speed at or below the speed limit. Always leave your house early for work so you don't feel the need to rush.
- 3. Keep Your View Clear** Snow, ice, and sleet can drastically impair your visibility. Even if your wipers are working overtime, they'll have a tough time clearing ice off your windshield. Before you get behind the wheel, clear all of the snow off of your car's roof, windshield, and hood. Use an ice scraper to get caked-on ice off your windshield. Having a clear view of the highway ahead will keep you safe and secure.
- 4. Avoid Using Your High Beams** Don't use your high beams while driving on a congested road. Those blinding lights will obstruct other drivers' views. Additionally, it will also impact your vision. Use your low beams or fog lights instead.
- 5. Avoid Driving Altogether** If the weather outside is truly frightful, don't attempt to drive. Hunker down at home and wait for the snow to stop.