

METRO-NORTH TRAIN DERAILMENT DEATHS: THEIR SURVIVORS' GRIEF WILL GO UNCOMPENSATED UNDER NEW YORK LAW

MANHATTAN, NY, USA, December 9, 2013 /EINPresswire.com/ -- The fatal train derailment that claimed the lives of four New Yorkers has caused untold grief and mental anguish to their family members and will continue to do so for years to come. Yet, under current New York law, only the economic losses caused by their deaths can be recovered in a wrongful death lawsuit. No damages are recoverable for grief, mental anguish or a spouse's loss of companionship. The injustice of this rule has long been criticized by legal scholars and consumer advocates, but to date, nothing has been done about it in New York. Perhaps now is the time for the legislature to change the law and permit juries to award fair and reasonable compensation to surviving family members for their grief, mental anguish and loss of society in addition to their economic losses.

The right to sue for wrongful death in New York is governed by Section 5-4.1 et. seq. which provides that the personal representative (an administrator or executor) of a person killed due to the negligence or wrongful act of another, may bring a wrongful death lawsuit on behalf of the family members who are "distributees" of the decedent. "Distributees" are those family members who would inherit from the dead person as set forth in the law of descent and distribution. The damages recoverable in that action are limited to the "pecuniary loss" i.e. the economic loss suffered by those persons who were dependent upon the decedent for support, and in the case of a child, for loss of parental nurture, care and guidance. Thus, the damages issues in wrongful death trials typically concern the gross income of the decedent, his or her prospects for advancement and the likely contributions he or she would have made to support a spouse, children, or in some cases, other family members such as parents, siblings and grandchildren if they were dependent upon the decedent. Accordingly, the families of high earners may recover much more in damages than those of more modest earners. As stated above, this heartless, "dollars and cents" approach leaves the most egregious emotional losses totally uncompensated. This is in contrast to those who were injured, but survived the accident, who will be entitled to recover for their injuries, pain, suffering, mental anguish and loss of enjoyment of life, as well as economic damages for loss of earnings and diminution of future earning capacity. Husbands or wives of the injured passengers will also be able to recover for loss of services and society of their injured spouses- an element of damages not available in a wrongful death case in New York.

Information disclosed by the NTSB taken from the event recorders on the ill-fated Metro-North

commuter train indicates that the train approached the dangerous curve at 82 miles per hour. Under the circumstances, this is an open-and-shut case of liability, and all of the victims, both the injured and the families of the dead, will be entitled to recover damages. The victims and their families should be aware of their legal rights and consult with an attorney as soon as reasonably practical under circumstances.

Source: <http://www.jcreiterlaw.com>

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