



January 13, 2023

VIA EMAIL

Hon. Elizabeth Fine
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224

RE: A. 6770 S. 74-A **AN ACT** to amend
the estates, powers, and trusts law, in
relation to the payment and distribution of
damages in wrongful death actions.

Dear Counsel to Governor Hochul,

With over 14,000 members, DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation. The Center for Law and Public Policy (The Center) is DRI's think tank and advocacy voice. The Center's Legislation and Rules Committee undertakes in-depth studies of a range of topics, assembles data, and produces articles and white papers for DRI publications. These efforts serve not only as practical tools to assist DRI members, but also serve to offer advice to policymakers on issues affecting the interests of DRI members and provide information useful to a wider audience about the development and impact of legislation and rules on the civil justice system.

The Center agrees with and adopts the well-stated objections submitted to Governor Hochul by the Defense Association of New York, Inc., opposing allowing A. 6770 S. 74-A to become the law of New York.

In particular, The Center believes it is unwise to create uncertainty about who may participate in the damages awarded in a wrongful death action. No other state allows participation by someone merely considered a "close family member." Such a vague term will expand the factual issues involved in resolving wrongful death claims, burdening the fact finder—and later appellate courts—with the issue of whether the evidence supports allowing someone other than "[a] spouse or domestic partner, issue, parents, grandparents, step-parents and siblings" to participate in the wrongful death settlement or verdict. The bill provides no

guidance to the fact finder on how to decide this issue. It is unwise to create an economic incentive that can generate conflict between the defined group of beneficiaries who traditionally participate in wrongful death actions and intestate estates and those who may now claim a right to participate as a “close family member.” For these reasons, The Center believes the ambiguity created by this language and the risk of creating conflict among those who have rights under the intestacy statutes and those who don’t have such rights warrants the Governor’s veto of the bill.

The Center also believes that the lengthening the statute of limitations harms the interests of both the plaintiffs and defense, because during that additional 18 months, vital evidence—in terms of witnesses and their memories, as well as physical objects—may be lost or destroyed. At the same time, the legal issues generated by the possible reviving of settled claims creates additional issues that will have a serious impact on the courts and the defendants subjected to this change. The Center believes this provision also warrants the Governor’s veto of bill.

The Center stands with the Defense Association of New York in strong opposition to this bill and urges Governor Hochul to veto this legislation.

Very truly yours,

James L. McCrystal, Jr.

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Chair, DRI Center for Law and Public Policy Legislation and Rules Committee