



# NEW YORK WRONGFUL DEATH GUIDE

*Holding Negligent  
Parties Accountable*

BRIAN J. ELBAUM



There are no words to describe the heartbreaking loss of a loved one. It's always hard when someone passes away, but it becomes even more difficult when you've lost someone due to the negligent or criminal acts of another. It truly can be a devastating experience to go through. Your family may be feeling like there is a large

part of their lives now taken away. While no monetary reward can ever heal the emotional pain of losing someone who you care deeply about, it can bring justice as well as provide financial relief for your family while you try to sort out how you are going to carry on.

Our New York wrongful death attorney Brian Elbaum has handled numerous cases like yours and is dedicated to making sure families are not left to hang out to dry after the life of a loved one has been wrongfully taken away. If you want legal guidance through this particularly difficult time, please call our office and we would be glad to give you a free consultation to discuss your legal options. We are here to take your call.

## COMMON CAUSES OF WRONGFUL DEATH

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Wrongful death is a category of personal injury in that it has its own definition and claims structure. For an incident to qualify for wrongful death, there has to be provable negligence or malice involved with the loss of your loved one. This would be an instance where someone acted in a way that directly or indirectly resulted in the injury and subsequent death of your loved one.

Some of the events that wrongful death includes are:

- » Motor vehicle accidents, or drunk driving
- » Construction accidents
- » Dog attacks
- » Nursing home abuse

» Manslaughter, or murder

There certainly are wrongful death cases where criminal activity is involved, and that encompasses murder in all degrees of the crime. In that same vein, someone may be charged with involuntary manslaughter if their actions indirectly caused someone to commit suicide. That may include stalking, harassment, or bullying (this may extend to include cyberbullying as well). For criminal cases such as these, a wrongful death case may be pursued if the defendant is not found guilty in a court of law. If the family seeks justice outside of a jail sentence, that is when it would be appropriate to file for wrongful death. Families often choose to take this path because, with wrongful death cases, the burden of proof is not as difficult to attain.

## CHALLENGES WITH FILING FOR WRONGFUL DEATH

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Before you let the idea of this being a challenging process discourage you, understand that an experienced New York wrongful death attorney knows exactly what to do to make this as successful a case as possible. You are most likely understandably overwhelmed and that's okay. The job of your attorney is to take the pressure off of you. This is already a hard enough time for you. Our New York wrongful death attorney will not let insurance companies take advantage of you while you are vulnerable. Brian Elbaum will guide you through this step by step.

The first thing that needs to be determined is who will be responsible for bringing the claim. The statutes are a little more complicated in New York than they are in other states. In order to bring a claim, you must have been financially depended on the decedent (your loved one who has passed away).

You may bring a wrongful death claim if you are:

» The decedent's child



- » The decedent's spouse
- » The decedent's parent
- » The decedent's personal representative

There may be additional family members or loved ones that are named as a personal representative of the estate. To be sure of who can bring a claim, it is very important that you sit down with an experienced New York wrongful death attorney to identify who that person will be.



## TWO TYPES OF ACTIONS FOR RECOVERING DAMAGES

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When a loved one is killed and the family pursues a wrongful death claim, there are two avenues of relief for them. The first is a survivorship action and the second is a wrongful death action. Because of this, it is entirely possible that there will be two different people that will be responsible for each action separately. That is something you will need to work out with your attorney before you can proceed.

### *Survivorship Action*

A survivorship action is an incredibly difficult reason to be awarded damages. What it essentially means is that you are seeking damages because your loved one suffered a great deal before they died of their injuries. It is a form of personal injury in that there was pain and suffering before your loved one died. The damages will be determined in that scope. The burden of proof is going to be to show that the decedent was aware of what was going on before they died. This could have been sounds they were making that indicated pain, or even things they may have said. It is a horrifying thought, and gathering evidence on your own may seem unbearable, which is why having an attorney by your side is so valuable.

## *Wrongful Death Action*

If you are responsible for recovering wrongful death damages, you will be looking to get compensation for all financial losses. This can include but is not limited to lost wages, loss of companionship, loss of household duties, as well as the cost of hiring someone to perform tasks that this loved one used to do. For example, if they were the person you mainly relied on to care for your children, you may be entitled to damages that will pay for childcare expenses. To get these damages, you have to prove that you were dependent on this person for support in some regards. This can be further discussed in your initial consultation with your attorney.

## FREQUENTLY ASKED QUESTIONS | NEW YORK WRONGFUL DEATH GUIDE

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### *What Is Wrongful Death?*

I got a call the other day from a new client. A woman had called; her husband was killed in a very bad accident. She wanted to know what claims she had. I said, “Your husband has what’s called a claim for conscious pain and suffering. There is also what’s called a wrongful death claim.” The wrongful death claim is filed on behalf of the estate and it’s for the benefit of those that her husband supported. There are very complicated issues involved in pursuing wrongful death claims. If you have a wrongful death claim, or you believe you do, my recommendation is that you contact this office and I’ll be happy to answer any questions you might have.

### *How Do I Choose the Right Attorney for My Case?*

You want an attorney that you feel comfortable with. You want to sit down with the attorney and ask the attorney questions. You want to find out if that attorney has handled the type of case that you have.

You also want to look at the size of the firm. Is it a big firm? Is it a mid-sized firm? You want to make sure that you'll have access to the attorney. A lot of times, a firm will assign a paralegal or a legal assistant to a particular client and when the client calls, the client doesn't speak with the attorney, but the client speaks with a paralegal. You want to make sure that the firm that you retain is a firm that's going to give you access to the attorney handling your case.

## *What Steps Should I Take?*

One of the common steps is to have someone appointed to represent the estate. If there's a will, you have to have an executor appointed. If there is no will, an administrator or administratrix would need to be appointed. Once you have someone appointed, you can then pursue a claim on behalf of the estate for both wrongful death and personal injury. I recommend that you contact our office if you believe that you have a wrongful death claim, and we can answer any questions that you may have.

## *Who Can File a Wrongful Death Lawsuit?*

You need an attorney who is competent in this area to submit paperwork to the Surrogate's Court to have someone appointed as either an executor to the estate, if there's a will, or an administrator, if there's no will. It's that individual who will have the standing to bring the claim for wrongful death against the parties that caused the accident.

## *How Much Will This Cost?*

The good news is that the attorney's office that you retain, is going to pay the expenses to prosecute the case and will only get paid if the attorney is able to get a recovery on behalf of the estate.

## *How Much is My Case Worth?*

There's no simple answer to that; it's complicated. Generally, there are two specific types of claims; you have the wrongful death claim and then you have the claim for conscious pain and suffering. In order to evaluate what they're worth, you must look at different things.

For conscious pain and suffering, you must look at how long the deceased was alive from the time of the accident up until their death. For wrongful death, you need to look at economic components. You need to look at who that individual supported. How much was that individual earning? It's complicated. My suggestion is that you contact our office and I will be happy to answer any questions that you might have regarding this issue.

## *Should I Talk to the Insurance Companies?*

What you want to do is seek competent council. You don't want to talk to the insurance company without competent council. The insurance company will ask you questions that could get in the way of the prosecution of the claim down the road. My recommendation is that you seek competent council to answer any questions that you may have before getting on the phone with the insurance carrier.

## *How Long Do I Have to File?*

You should file as soon as possible. You want to hire competent council to guide you through the process as early as possible because there are certain things that need to be done before you actually file a lawsuit for wrongful death. You need to have someone appointed as an executor to the estate, if there's a will, or you want to have someone appointed as an administrator to the estate, if there's no will, and that can be a lengthy process. As far as deadlines are, you have two years to pursue a wrongful death claim.

# CONTACT OUR NEW YORK WRONGFUL DEATH ATTORNEY TODAY

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If you need to sit down with an experienced attorney to determine how you are going to file a wrongful death claim, please call our office today for a free consultation. Brian Elbaum is here to help you through this utmost difficult time.



## ABOUT THE AUTHOR

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Brian J. Elbaum was only a few years out of law school when he decided to go out on his own in 1996.

Twenty years later, he still holds fast to the same two winning principles:

- » Making sure clients are comfortable throughout the litigation process.
- » Achieving great results by being aggressive and making the responsible party constantly uncomfortable.

### 1996

Brian graduated from Rutgers University in 1991 and earned his law degree from Brooklyn Law School in 1994. While he had a great job at a good firm after graduating he quickly realized that he could serve clients better on his own, unburdened by the constraints of the law firm model and approach.

Brian felt so strongly in what he was doing that for his first year he was willing to work out of his apartment – a sixth floor walkup on East 37th Street & 3rd Avenue. Getting dressed every day in a full suit and tie to work from the desk in the corner of a modest one-bedroom, Brian took the cases no other attorney wanted. He quickly developed a reputation for making “lemons into lemonade,” helping those personal injury clients who other attorneys couldn’t.

### 2016

The Law Offices of Brian J. Elbaum have come a long way in 20 years. We’ve represented over 800 personal injury clients in Queens, Brooklyn, the Bronx, New York, Staten Island, Long Island, Upstate New York and New Jersey in cases involving construction accidents, auto accidents, slip & falls, medical/dental malpractice, bar and nightclub assaults, product liability, and much, much more.



We've stayed small by design, continuing to believe as we did 20 years ago that, more lawyers means more internal politics and reduced focus on the client. At our office, you know that every case will be handled personally by Brian. And we've stayed true to our philosophy, demonstrating in case after case that being tough with the adversary and compassionate with our clients is a winning combination.

Brian is licensed to practice law in New York and New Jersey as well as the federal courts. He is active in New York's legal community as a Certified Member of the New York Trial Lawyers Association, Brooklyn Bar Association, and New York County Bar Association.

## *Our Office*

The story of our office mirrors the story of New York's past twenty years. We were located in 150 Broadway on 9/11, and moved to 708 3rd Avenue until downtown was ready for business again. As soon as it was, we moved to 111 John Street – until Superstorm Sandy hit and relocated us to our current location.

Today, our office is inside the historic 11 Broadway building, just outside Bowling Green. Built 120 years ago in 1896, the Western Union branch office inside our building became a focus in the investigation into the Titanic disaster in 1912 as Senator Alden Smith sought to determine whether a message from the doomed ship had been transmitted to New York's White Star Line office next door.

Mr. Elbaum has broad experience in the areas of law practiced by the Firm and manages a team dedicated to meeting client needs. Prior to establishing the Firm, Mr. Elbaum worked for several New York law firms representing clients in cases ranging from workers' compensation to commercial litigation. He also served as a judicial intern to a New York Supreme Court Justice, investigated exchange violations as an intern at the New York Stock Exchange, and worked at an entertainment firm representing musicians. His extensive legal and business background has instilled in Mr. Elbaum a solid understanding of how to get things done in a variety of environments.

Mr. Elbaum once held the position of Vice President at an insurance company, for which he provided advisory services. This position has enabled him to gain

an insider's view of the insurance industry. He translates that insight into solid advice for his clients on insurance-related matters.

In establishing the Firm, Mr. Elbaum received guidance and inspiration from his father, the late David Elbaum, Esq. David Elbaum served as Of Counsel to the Firm in its early years and provided key insights into several cases.

