

**State of Michigan**

**In the Court of Appeals**

NAWAL DAHER and MOHAMAD  
JOMAA, as co-personal representatives  
of the Estate of JAWAD JUMAA a/k/a  
JAWAD JOMAA, deceased,

Plaintiff-Appellee,

Court of Appeals No. 358209

Wayne County Circuit Court  
Case No. 20-004169-NH  
Hon. Martha M. Snow

-v-

PRIME HEALTHCARE SERVICES -  
GARDEN CITY, LLC d/b/a GARDEN  
CITY HOSPITAL, a foreign limited  
liability company, KELLY W. WELSH,  
D.O., and MEGAN SHADY, D.O.,  
jointly and severally,

Defendants-Appellants.

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**Brief of *Amicus Curiae*  
Michigan Defense Trial Counsel**

**Filed under AO 2019-6**

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<i>Attachment</i>	<i>Title</i>
1	1971 HB 4504

## Statement Regarding Jurisdiction

*Amicus curiae* Michigan Defense Trial Counsel, Inc. (MDTC) agrees with the parties' statements of the basis for jurisdiction.

## Statement of Interest

MDTC is a statewide association of attorneys whose primary focus is the representation of defendants in civil proceedings. MDTC was established in 1979 to enhance and promote the civil-defense bar. It accomplishes that goal by facilitating dialogue among and advancing the knowledge and skills of civil-defense lawyers. MDTC appears before this Court as a representative for Michigan's civil-defense lawyers and their clients, a significant portion of which could be affected by the issues involved in this case.<sup>1</sup>

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<sup>1</sup> None of the parties or their counsel contributed monetarily or to the authorship of this brief. MDTC made the only monetary contribution to preparing this brief.



### Statement of Question Presented

In *Baker v Slack* (1948), the Supreme Court prohibited future earning-capacity damages in wrongful-death actions. In *Denney v Kent Co Rd Com'n* (2016), this Court (without addressing *Baker*) held that an estate could recover future earning-capacity damages in a wrongful-death action. Lower courts must follow Supreme Court precedent unless it has been clearly overruled or superseded. The Supreme Court hasn't overruled *Baker*. And none of the post-*Baker* statutory amendments expressly permit earning-capacity damages. Are future earning-capacity damages recoverable in wrongful-death actions?

The trial court answered, "yes."

Plaintiff-appellee answers, "yes."

Defendant-appellant answers, "no."

*Amicus Curiae* MDTC answers, "no."

## Introduction

In *Baker v Slack* (1948), the Supreme Court held that the wrongful-death act didn't allow damages for future (after death) earning capacity. In *Denney v Kent Co Rd Comm'n* (2016), this Court held that the wrongful-death act allows future earning-capacity damages. There were two substantive statutory amendments between those decisions – in 1971 and 1985. The issue here is legislative intent. Did the Legislature intend for those amendments to repudiate *Baker*? Stated differently, does the current act reflect legislative intent to allow future earning-capacity damages?

As an amicus, MDTC's aim is to help this Court answer those questions. Defendants traced the history of Michigan's wrongful-death act. MDTC won't repeat that history. Beaumont Health System foreshadowed that its amicus brief will explain that *Denney* conflicts with more than *Baker*. So MDTC won't till that ground.

To help the Court, MDTC will highlight three key points that may otherwise get lost in the mix:

- (1) The Legislature didn't write or amend the wrongful-death act in a vacuum. Through various schemes in and outside Michigan, wrongful-death plaintiffs have always recovered either earning-capacity damages or lost-support damages. The addition of "loss of financial support" to Michigan's statute was a loud expression of the Legislature's intent.
- (2) The Legislature specifically rejected language that would have removed limitations (like *Baker*) on wrongful-death damages.
- (3) The Estate avoids several questions that this Court should ask, primarily questions involving the statutory text.

## Discussion

### **A. The Legislature’s inclusion of “loss of financial support” is the most direct expression of legislative intent possible for the issue in this case.**

There’s no common-law wrongful-death action for anyone – not the decedent, estate, or dependents. See *Hawkins v Reg’l Med Labs, PC*, 415 Mich 420, 428-429; 329 NW2d 729 (1982); *Hyatt v Adams*, 16 Mich 180, 185 (1867); 1 CJS Abatement and Revival § 158. Whatever remedies exist for a wrongful death are entirely statutory and contrary to the common law.

There are four types of wrongful-death statutes – survival, death, combined, and punitive. See Restatement Torts, 2d, § 925, cmt b. The differences between those approaches show the specific choices that Michigan’s Legislature made.

Survival statutes permit estates to recover losses to the decedents; the estates stand in their shoes. Restatement Torts, 2d, § 925, cmt b; Matheson, Rosenbaum, & Schap, *Wrongful Death: Who Recovers What, Where, and How?* 22 J Legal Econ 25, 27 (2016). Damages typically include medical bills, funeral expenses, estate administration expenses, pain and suffering before death, and (most relevant here) future earning capacity minus personal consumption. Restatement Torts, 2d, § 925, cmt b. Matheson, 22 J Legal Econ at 28-29; Schap, *The Reduction for Decedent Self-Consumption: Jurisdictional Mandates for Personal Consumption or Personal Maintenance*, 22 J Legal Econ 107, 107 (2016).

Death statutes allow the decedent’s dependents to recover their losses from the death. Restatement Torts, 2d, § 925, cmt b; Matheson, 22 J Legal Econ at 26. Damages typically include lost household services, society and companionship, and (most relevant) financial support. Restatement Torts, 2d, § 925, cmt b; Ireland, *Damage Standards for Wrongful Death/survival Actions: Loss to Survivors, Loss to the Estate, Loss of*

*Accumulations to an Estate, and Investment Accumulations*, 22 J Legal Econ 5, 7 (2016).

Combined or hybrid statutes meld elements of survival statutes and death statutes together. Restatement Torts, 2d, § 925, cmt b. Typically, the survival portion concerns the decedent's losses from injury to death, and the death portion concerns the dependent's losses after death. Matheson, 22 J Legal Econ at 29.

Last, punitive statutes measure damages by the defendant's degree of fault. Only Alabama does this. Restatement Torts, 2d, § 925, cmt b; Matheson, 22 J Legal Econ at 29; see *Cain v Mortgage Realty Co*, 723 So2d 631, 633 (Ala, 1998).

States can have separate survival and death statutes, have one or the other, or combine them. Michigan used to have separate statutes. It enacted a survival act in 1846 and a death act in 1848. See *Hardy v Maxheimer*, 429 Mich 422, 436 n.11; 416 NW2d 299 (1987) (providing the text of the survival act, 1846 Rev Stats, ch 101, § 5); *Lincoln v Detroit & M Ry Co*, 179 Mich 189, 199; 146 NW 405 (1914) (providing the text of the death act, 1848 PA 38). Under the survival act, an estate could recover the decedent's future earning capacity. See *Kyes v Valley Tel Co*, 132 Mich 281, 284; 93 NW 623 (1903). Under the death act, the estate could recover the dependents' lost financial support, but not the decedent's earning capacity. *Lincoln*, 179 Mich 195-196; *Van Brunt v Cincinnati, J & M R Co*, 78 Mich 530, 538-539; 44 NW 321 (1889). A claim was under one act or the other, never both. The applicable act depended on whether the death was instantaneous. *Hawkins*, 415 Mich at 430.

Since 1939, Michigan has had a combined or hybrid statute. 1939 PA 297. It still has a survival statute. MCL 600.2921. But the survival statute says to go to the next section (the wrongful-death act) for "[a]ctions on claims for injuries which result in death." *Id.*

Michigan's combined approach puts it in the majority. "[M]ost states have paired wrongful death and survival actions, in which case the **survival action is focused** on the losses occurring to the decedent and/or

decedent's estate in **the period from injury to death**, and the **wrongful death action is focused** on loss to the decedent's estate or, more commonly, the loss to specifically designated beneficiaries, **postmortem**." Matheson, 22 J Legal Econ at 29 (emphasis added). Michigan's statute is consistent with those pre-death, post-death divisions.

The wrongful-death act, MCL 600.2922, references medical expenses and the decedent's pain and suffering "during the period intervening between the time of the injury and death." MCL 600.2922(6). Those are survival-statute damages; the decedent incurred them before death. The act also references "loss of financial support and the loss of the society and companionship of the deceased." *Id.* Those are death-statute damages; the dependents incur them after death.

Two things should stand out. First, a key difference between survival statutes and death statutes is earning-capacity damages (survival) versus financial-support damages (death). Wrongful-death claims have always permitted one or the other, never both. That's reflected in Michigan's history. See, e.g., *Kyes*, 132 Mich at 284; *Van Brunt*, 78 Mich 530. It's reflected in the fundamental differences between survival statutes and death statutes. And it's common sense – since lost-financial-support damages are a subset of future earning-capacity damages, allowing both would be an impermissible double recovery. See *Chicilo v Marshall*, 185 Mich App 68, 70; 460 NW2d 231 (1990), citing *Great Northern Packaging, Inc v General Tire & Rubber Co*, 154 Mich App 777, 781; 399 NW2d 408 (1986). Second, when legislatures enact combined statutes like Michigan's, they have a choice – earning capacity or financial support – and usually they choose lost support. Matheson, 22 J Legal Econ at 29.<sup>2</sup>

Most states only allow lost-financial-support damages. See Restatement Torts, 2d, § 925, cmt b ("In the majority of states, ... damages

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<sup>2</sup> Many states that permit future earning-capacity damages (less personal consumption) have statutes that expressly reference "income" or "earnings." See, e.g., Fla Stat Ann 768.21; NH Rev Stat Ann 556:12; NC Gen Stat Ann 28A-18-2; 10 RI Gen Laws Ann 10-7-1.1; W Va Code 55-7-6(c)(1)(B)(i). Others permit future earning-capacity damages when the statute doesn't use any decisive term, like support, income, or earnings. See,

are determined by the present worth of the contributions and aid that the deceased probably would have made to the survivors had he lived.”); Schap, *The Reduction for Decedent Self-Consumption: Jurisdictional Mandates for Personal Consumption or Personal Maintenance*, 22 J Legal Econ 107, 107 (2016) (“In nearly all states (there are but four exceptions), the amount of compensation awarded rests in the net loss to the estate or net lost support to statutorily designated beneficiaries.”). So while the Estate and (regrettably) a federal court suggested that only allowing financial-support damages would be “absurd,” *White v FCA US, LLC*, 350 F Supp 3d 640, 646-647 (ED Mich, 2018), it’s not.<sup>3</sup> The law in the majority of states is not absurd.

Wrongful-death damages involve complicated policy choices. And Michigan’s act demonstrates a carefully struck balance between those choices. Dependents can’t recover lost financial support when the tort plaintiff lives, even if he or she is permanently debilitated. They can in wrongful-death cases. MCL 600.2922(6). Parents, grandparents, siblings, stepchildren, and devisees can’t recover for loss of the society and companionship of a living plaintiff. See *Sizemore v Smock*, 430 Mich 283; 422 NW2d 666 (1988). They can in wrongful-death cases. MCL 600.2922(3), (6). It isn’t absurd for a legislature to choose lost support over earning capacity, particularly when it also chooses to allow additional elements of damages.

Again, the issue for this Court is legislative intent (not policy). The wrongful-death act doesn’t mention earning capacity or wages. The Legislature amend it in 1985 to specifically reference “loss of financial support.” 1985 PA 93. So in the battle between earning capacity and

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e.g., Conn Gen Stat Ann 52-555; GA Code 51-4-1; Me Rev Stat tit 18-C, § 2-807; Miss Code Ann 11-7-13; Minn Stat Ann 573.02; Tenn Code Ann 20-5-113. MDTC is not aware of any court (except *Denney*) interpreting a statute that only references “support” to also permit future earning-capacity damages.

<sup>3</sup> The Estate’s suggestion of absurdity is also an inapposite policy argument. *Oakland Co Bd of Co Rd Comm’rs v Mich Prop & Cas Guar Ass’n*, 456 Mich 590, 613; 575 NW2d 751 (1998) (“[A]rguments that a statute is unwise or results in bad policy should be addressed to the Legislature.”) (quotation omitted).

financial support, the Legislature picked a winner. It would be difficult for the Legislature to have been more express or direct on that subject.

The Estate emphasizes the 1971 amendment. 1971 PA 65. Defendants already addressed the many reasons that the 1971 amendment did not abrogate *Baker* (one more is discussed below). But, even if this Court were to assume that the 1971 amendment affected *Baker*'s holding, the 1985 amendment restored it. See *LeRoux v Sec'y of State*, 465 Mich 594, 615; 640 NW2d 849 (2002) (“[A] later Legislature is free to amend or repeal existing statutory provisions.”).

The Legislature didn't write and amend Michigan's wrongful-death act in a vacuum. The choice between earning-capacity damages and financial-support damages is a policy matter. And it isn't a new one. State legislatures have debated and made that policy choice for over a century. The Michigan Legislature was among those. Its addition of “loss of financial support” was as direct and specific as it could be in choosing between the two options. In short, in wrongful-death actions, Michigan allows lost-financial-support damages, not future earning-capacity damages.

**B. The Legislature specifically rejected language that would have removed limitations (like *Baker*) on wrongful-death damages.**

Defendants' discussion of the history of Michigan's wrongful-death act is very thorough. There's just one additional historical fact to consider.

The 1971 amendment is narrower and more specific than the original proposal, which stated, “The amount of damages recoverable by civil action for death caused by the wrongful act, neglect or fault of another **shall not be limited and such damages** may also include recovery for the loss of the society and companionship of the deceased.”<sup>4</sup> The Legislature rejected the bolded language. The enacted provision stated, “The amount of damages recoverable by civil action for death caused by the wrongful act, neglect, or fault of another may also include

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<sup>4</sup> **Attachment 1**, 1971 HB 4504 (emphasis added).

recovery for the loss of the society and companionship of the deceased.” MCL 600.2922, as amended by 1971 PA 65.<sup>5</sup>

Not all legislative history is created equal. *In re Certified Question (Kenneth Henes v Continental Biomass Ind, Inc)*, 468 Mich 109, 115 n. 5; 659 NW2d 597 (2003). The enacted language is the best indicator of legislative intent. See *Badeen v PAR, Inc*, 496 Mich 75, 81; 853 NW2d 303 (2014). But rejecting proposed language is legislative action too. “[B]y comparing alternative legislative drafts, a court may be able to discern the intended meaning for the language actually enacted.” *In re Certified Question*, 468 Mich at 115 n. 5.

In 1971, the Legislature rejected language that wrongful-death damages “shall not be limited.” That shows intent to retain existing limits, like *Baker*. It also shows an intent to limit the amendment to allowing lost-society-and-companionship damages, which required removing reference to “pecuniary injury” and was the subject of an entire new sentence. See *Wood v Detroit Edison Co*, 409 Mich 279, 286; 294 NW 571 (1980) (agreeing with an argument that the 1971 amendments were “directed solely to address this Court’s ruling in [*Breckon v Franklin Fuel Co*, 383 Mich 251; 174 NW2d 836 (1970)]”); accord *id.*, 294-295 (Moody, J., concurring) (“The complete focus of 1971 PA 65 was this court’s *Breckon* decision. ... When the Legislature acts with such specificity to alter one decision of this Court, it would be highly unlikely that the Legislature would intend to alter another decision of this Court without the same specificity.”).

**C. This Court should ask several questions that the Estate doesn’t answer.**

The 1971 amendment removed reference to “pecuniary injury.” 1971 PA 65. The Estate implies that the 1971 amendment clearly superseded *Baker*. But earning-capacity damages are pecuniary injuries. How could removing “pecuniary injury” change the type of pecuniary

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<sup>5</sup> Quoted in *O’Dowd v Gen Motors Corp*, 419 Mich 597, 600; 358 NW2d 553 (1984).



losses that are recoverable? Neither the Estate nor *Denney* answer that question.

The 1971 amendment added an entire sentence to supersede *Breckon v Franklin Fuel Co*, 383 Mich 251; 174 NW2d 836 (1970). Why wouldn't the Legislature address *Baker* in similar fashion if it intended to supersede it? Neither the Estate nor *Denney* answer that question.

If it intended to supersede *Baker*, why would the Legislature reject language that wrongful-death damages "shall not be limited"? Neither the Estate nor *Denney* answer that question.

Move to the 1985 amendment. The Legislature added detail on who recovers and what they recover – damages for medical and funeral expenses pay those expenses, the people designated in subsection 3 receive the damages they suffered, and only pain-and-suffering damages are distributed to the estate. 1985 PA 93; MCL 600.2922(6). How could the Legislature intend to allow a potentially multi-million-dollar category like earning-capacity damages but not provide for its distribution? Neither the Estate nor *Denney* say.

With no provision on how to distribute earning-capacity damages, what is a trial court supposed to do when distributing those damages? Neither the Estate nor *Denney* say.

And, not to belabor the point, but why would the Legislature add "loss of financial support" (a subset of earning capacity) if the decedent's future earning capacity was already recoverable? The Estate's brief has a section on this. (Estate Brief, pp. 13-14). It says that earning capacity and financial support are alternate theories. (*Id.*). True! See above, they're mutually exclusive alternatives. And "[t]he express mention of one thing in a statute implies the exclusion of the other similar things." *In re MCI Telecom*, 460 Mich 396, 415; 596 NW2d 164 (1999). Permitting estates to recover the entirety of a decedent's earning capacity would make "loss of financial support" surplusage, which can't be. *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012) ("[C]ourts 'must ... avoid an interpretation that would render any part of the statute surplusage or nugatory.'"),

quoting *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

### Conclusion

The issue is legislative intent. Michigan has a combined statute. So did the Legislature choose the survival statute (earnings) or death statute (support) model for its combined scheme? The Legislature's express inclusion of "loss of financial support" provides a definitive answer.

*Denney* and the Estate's argument make sense if you only consider 15 words in the wrongful-death act – "damages as the court or jury shall consider fair and equitable, under all the circumstances." MCL 600.2922(6). The act doesn't end there though. And courts must read and interpret statutes as a whole. *S Dearborn Env'tl Improvement Ass'n, Inc v Dep't of Env'tl Quality*, 502 Mich 349, 368; 917 NW2d 603 (2018). The Estate's argument and *Denney's* analysis fall apart when you consider the express inclusion of "loss of financial support" and the omission of any reference to earnings, including in the distribution scheme.

The Estate emphasizes two points (1) estates stand in the decedents' shoes, and (2) the damages listed in the wrongful-death act aren't exclusive. Both are true. Neither leads to future earning-capacity damages.

The Estate certainly stands in the decedent's shoes. It can recover medical expenses that the decedent incurred. MCL 600.2922(6). It can recover for the decedent's pain and suffering before death. *Id.* Those are the survival-statute components. So it's true that estates stand in the decedents' shoes and the listed damages aren't exclusive.

But, again, Michigan has a combined statute. Estates also recover damages for dependents, like lost financial support, too. That's the death-statute component. Future earning-capacity damages don't fit among the listed types of damages, particularly when the list includes its death-statute counterpart ("loss of financial support"). See *Hugett v Dept of Nat Res*, 464 Mich 711, 718-719; 629 NW2d 915 (2001) (recoverable damages must be "of the same kind, class, character, or nature as those specifically

enumerated”). Plus, damages under the wrongful-death act aren’t unbounded. See *Fellows v Superior Prod Co*, 201 Mich App 155, 157; 506 NW2d 534 (1993) (holding that the act ““does not provide for punitive or exemplary damages”), quoting *In re Disaster at Detroit Metro Airport*, 750 F Supp 793, 805 (ED Mich 1989); *Tobin v Providence Hosp*, 244 Mich App 626, 638-639; 624 NW2d 548 (2001). The Estate implicitly admits that much. Notice that it isn’t seeking future medical expenses or future pain and suffering as if the decedent had lived.

One last thing—be careful when a party cites a pre-1939 case and says something like, “Michigan law has long allowed an Estate to stand in the shoes of his or her decedent when claiming damages.” (Estate Brief, p. 4, citing *Jorgenson v Grand Rapids & I Ry Co*, 189 Mich 537, 541; 155 NW 535 (1915)).<sup>6</sup> Before 1939, Michigan had a survival act and a death act. So someone could just as easily say that Michigan has long limited estates to recovering lost financial support and cite death act cases. The truth is that, before 1939, financial support was the measure for instantaneous deaths and earning capacity was the measure for non-instantaneous death. From 1939 to 2016, only financial support was recoverable in wrongful-death cases. *Denney* made a bit of a mess of it after that.

Based on the complete statutory text of Michigan’s wrongful-death act, its history, and the legal background for wrongful-death statutes in general, this Court should hold that loss-of-financial-support damages are recoverable in wrongful-death cases and future earning-capacity damages are not.

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<sup>6</sup> *Jorgenson* was actually an action under a federal statute and held that earning-capacity damages weren’t recoverable. 189 Mich at 540 (“But the trial court was in error in allowing the loss of future earnings to be included in the damages under the federal act.”).

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Dated: February 17, 2022

**Certificate of Compliance**

I certify that the Brief of Amicus Curiae Michigan Defense Trial Counsel, Inc. complies with the type-volume limitation set forth in MCR 7.212(B). I am relying on the word count of the word-processing system used to produce this brief. This brief uses a 12-point proportional font (Book Antiqua), and the word count for this brief is 3,196.

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Dated: February 17, 2022

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# ATTACHMENT 1

# HOUSE BILL No. 4504

March 16, 1971, Introduced by Reps. O'Neill, Suski,  
Kildee and Del Rio and referred to the Committee  
on Judiciary.

A bill to amend section 2922 of Act No. 236 of the  
Public Acts of 1961, entitled  
"Revised judicature act of 1961,"  
as amended by Act No. 146 of the Public Acts of 1965,  
being section 600.2922 of the Compiled Laws of 1948.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Section 2922 of Act No. 236 of the  
Public Acts of 1961, as amended by Act No. 146 of the  
Public Acts of 1965, being section 600.2922 of the  
Compiled Laws of 1948, is amended to read as follows:

1           Sec. 2922. (1) Whenever the death of a person or  
2 injuries resulting in death shall be caused by wrongful  
3 act, neglect or default, and the act, neglect or default  
4 is such as would, if death had not ensued, have entitled  
5 the party injured to maintain an action and recover damage  
6 in respect thereof, then and in every such case, the person  
7 who, or the corporation which would have been liable, if  
8 death had not ensued, shall be liable to an action for  
9 damages, notwithstanding the death of the person injured,  
10 and although the death shall have been caused under such  
11 circumstances as amount in law to felony. All actions  
12 for such death, or injuries resulting in death, shall  
13 be brought only under this section.

14           (2) Every such action shall be brought by, and in  
15 the names of, the personal representatives of such  
16 deceased person, and IN every such action the court or  
17 jury may give such damages, as, the court or jury,  
18 shall deem fair and just, ~~with reference to the~~  
19 ~~pecuniary injury resulting from such death,~~ UNDER ALL  
20 OF THE CIRCUMSTANCES to those persons who may be  
21 entitled to such damages when recovered ~~and also~~ INCLUD-  
22 ING damages for the reasonable medical, hospital, funeral  
23 and burial expenses for which the estate is liable and  
24 reasonable compensation for the pain and suffering, while

1 conscious, undergone by such deceased person during the  
2 period intervening between the time of the inflicting of  
3 such injuries and his death. THE AMOUNT OF DAMAGES  
4 RECOVERABLE BY CIVIL ACTION FOR DEATH CAUSED BY THE  
5 WRONGFUL ACT, NEGLIGENCE OR FAULT OF ANOTHER SHALL NOT BE  
6 LIMITED AND SUCH DAMAGES MAY ALSO INCLUDE RECOVERY FOR  
7 THE LOSS OF THE SOCIETY AND COMPANIONSHIP OF THE DECEASED.

8 Such person or persons entitled to such damages shall be  
9 of that class who, by law, would be entitled to inherit  
10 the personal property of the deceased had he died intestate.

11 The amount recovered in every such action ~~for pecuniary~~  
12 ~~injury resulting from such death~~ shall be distributed to  
13 the surviving spouse and next of kin who suffered ~~such~~  
14 ~~pecuniary~~ injury and in proportion thereto. Within  
15 30 days after the entry of such judgment, the judge  
16 before whom such case was tried or his successor  
17 shall certify to the probate court having jurisdiction  
18 of the estate of such deceased person the amount and  
19 date of entry thereof, and shall advise the probate  
20 court by written opinion as to the amount thereof  
21 representing the ~~total pecuniary~~ loss suffered by  
22 the surviving spouse and all of the next of kin, and  
23 the proportion of such total ~~pecuniary~~ loss suffered  
24 by the surviving spouse and each of the next of kin



1 of such deceased person, as shown by the evidence ~~introduce~~  
2 ~~upon the trial of such case.~~ After providing for the pay-  
3 ment of the reasonable medical, hospital, funeral and  
4 burial expenses for which the estate is liable, the probate  
5 court shall determine as provided by law the manner in which  
6 the amount representing the total ~~pecuniary~~ loss suffered  
7 by the surviving spouse and next of kin shall be distributed  
8 and the proportionate share thereof to be distributed to  
9 the surviving spouse and the next of kin. The remainder of  
10 the proceeds of such judgment shall be ~~assets of the estate~~  
11 ~~of the deceased~~ DISTRIBUTED ACCORDING TO THE INTESTATE LAWS

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