

The Survey of New York Practice Table of Contents

Editorial Board

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

In this first issue of Volume 66, *The Survey* examines several significant developments in New York law. In *Gonzalez v. New York City Housing Authority*, the New York Court of Appeals reaffirmed its position that damages are unavailable for the loss of consortium in wrongful death actions, despite the increasing number of courts outside of New York that have held otherwise. The

* *The Survey* uses the following abbreviations:

New York Civil Practice Law and Rules (McKinney) CPLR
New York Civil Practice Act CPA
New York Criminal Procedure Law (McKinney) CPL
New York Code of Criminal Procedure CCP
Real Property Actions and Proceedings Law (McKinney) RPAPL
Domestic Relations Law (McKinney) DRL
Estates, Powers and Trusts Law (McKinney) EPTL
General Business Law (McKinney) GBL
General Municipal Law (McKinney) GML
General Obligations Law (McKinney) GOL
D. Siegel, *New York Practice* (1991) SEGEL
Weinstein, Korn & Miller, *New York Civil Practice* (1989) WK&M
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court stated that any revision to New York's wrongful death statute must be relegated to the Legislature. In response to the court's decision, a bill that would allow recovery for the loss of a decedent's consortium has in fact been introduced in the New York State Senate.

A lack of judicial activism was also evident in the New York County Supreme Court's decision in *Bassile v. Covenant House*. In that case, the supreme court refused to give an adult who was sexually abused as a child the benefit of the discovery rule to the statute of limitations, despite the existence of judicial support for granting such protection to childhood sexual abuse victims in several jurisdictions outside of New York. However, a bill that would amend the CPLR to provide a discovery rule for such victims has been introduced in the New York State Senate.

In addition to its lack of judicial activism on the substantive issues of consortium and childhood sexual abuse, the New York judiciary has taken a conservative position on the threshold issue of standing. In *Society of the Plastics Industry, Inc. v. County of Suffolk*, the New York Court of Appeals held that a claimant under the New York State Environmental Quality Review Act is required to show "special injury" in order to have standing to challenge a local agency's environmental assessment. Although the court emphasized that the complainant in this case was a pressure group seeking to delay government action in order to further its own economic interests, the special injury requirement, if applied uniformly, may also deny standing to legitimate environmental groups.

The final case reviewed in *The Survey*, however, may provide hope to those persons who believe that the New York judiciary should avoid the injustice that results from the blind application of rules and precedent. In *Fitzpatrick v. American Honda Motor Co.*, the New York Court of Appeals declined to apply the "four-corners-of-the-complaint" rule in determining whether an insurer who had knowledge of facts that would give rise to coverage under the policy had a duty to defend.

The members of Volume 66 hope that *The Survey's* treatment of these developments in New York law will be of interest and assistance to the New York bench and bar.