



Mark E. Seitelman featured in the *New York Post*

Mr. Seitelman and his clients were interviewed by The New York Post regarding two sets of stories.

In one article (September 18, 2022), Mr. Seitelman discussed a couple of cases involving a funeral home's and the airline's failure to deliver the body in time to a foreign country. In one case the deceased's body was to be flown from Brooklyn to Kazakhstan, and the family flew ahead to make the arrangements for burial. The family arrived on schedule, but the body was delayed for days. The family had gathered one hundred people for the burial, but there was no body. The body had been lost in Istanbul which was a transfer point. The family was unable to bury the body within seven days of death as per the Muslim burial custom. Eventually, the body was found and sent to the correct place. The airline never apologized.

In another case featured in the same article, the mother of two died from complications from pneumonia in Brooklyn. The body was to be flown from Brooklyn to Puerto Rico. The family gathered in Puerto Rico, but again, no body. The body was delayed for 11 days. It also started to decompose. The family had to wait for the body's arrival in Puerto Rico.

Mr. Seitelman commented to The Post that "the law puts a special value on human remains, and you can't treat a deceased person like a piece of luggage or a piece of cargo." The body "has to be treated with respect, it has to be delivered on time to the mourners who are waiting to receive it." The law provides that the surviving family has the right to



recovery for either damage to the body or withholding the body.

Mr. Seitelman is well acquainted with the obligations of funeral homes in that he is the president of a non-profit funeral home performing charitable burials.

In another case reported in The Post (April 8, 2023), a six-year-old boy was bitten by a dog in front of the prestigious girls' school, The Chapin School. The dog belonged to a parent picking up

By KATHIANNE BONELLO

Two New York families endured the same ghoulish nightmare when the bodies of their deceased loved ones were lost, according to lawsuits.

One Bronx family has accused Turkish Airlines of losing the remains of their patriarch on the way to his funeral in Kazakhstan, while a Brooklyn clan charges that their dead mother's body was 11 days late to services in Puerto Rico.

"I cannot talk about this without tears in my eyes," said Nagima Alzhan, 63, whose late husband, Serik Berlinbayev, died in a Bronx hospital in December 2019 from liver problems.

Nagima had immigrated to the United States in 2002 after winning a lottery for a green card, learning English and working her way up to become a registered nurse. Berlinbayev, who was a government official in their native Kazakhstan, joined her here in 2015, she said.

"I was working two jobs. He was taking care of us," Nagima said of her husband of 35 years.

When he died, she paid \$15,000 to a local funeral director to embalm the remains and arrange transport to their homeland so Berlinbayev could have a funeral and be buried within seven days of his death, per Muslim custom.

"We were just crying," Berlinbayev's body was put on a flight out of Kennedy airport on Dec. 19, 2019, and had been expected to arrive in Kazakhstan on Dec. 21, when about 100 people were due to attend the funeral.

But the remains didn't show up. "No one was picking up the phone," she recalled. "At that moment, we were just crying. It was terrible. It's not a piece of, I don't know, something — it's human. It's unbelievable what we went through."

Berlinbayev's body, which had been lost in Istanbul, was finally located but not until the family was forced to break the seven-



TRAGEDIES: The family of Ana Rivera (above) says her body was lost for days en route to Puerto Rico, echoing the case of widow Nagima Alzhan (left) husband, Serik (right).

day custom. Turkish Airlines didn't apologize, Nagima added. She is seeking unspecified damages in her Bronx Supreme Court lawsuit against the airline.

The family of Ana Rivera was also traumatized, according to a Brooklyn Supreme Court suit.

Rivera, a married mother of two, died at Kingsbrook Jewish Medical Center on March 31, 2020, from complications of pneumonia. The family hired Paccione Funeral Directors on Staten Island to help transport Rivera's body via American Airlines to Puerto Rico, where it was due to arrive on April 6, 2020, according to the legal filing.

"The body didn't show up until April 19 — and was decomposing, the family charged in the litigation filed against Paccione, American Airlines and others.

"The law puts a special value on human remains and you can't treat deceased person like a piece of luggage or a piece of cargo," said lawyer Mark Seitelman, who represents both families. "It has to be treated with respect, it has to be delivered on time to the mourners who are waiting to receive it."

Turkish Airlines didn't respond to a message seeking comment. American Airlines said it would review the allegations. bonello@nypost.com

MARK E. SEITELMAN LAW OFFICES, P.C.
111 Broadway, Suite 901
New York, NY 10006-1954
RETURN SERVICE REQUESTED

PRESORTED
STANDARD
U.S. POSTAGE PAID
LANCASTER, PA
PERMIT NO. 242



THE SEITELMAN NEWSLETTER

Attorneys for People Injured in Accidents

Fall 2023

Mark E. Seitelman
Law Offices, P.C.

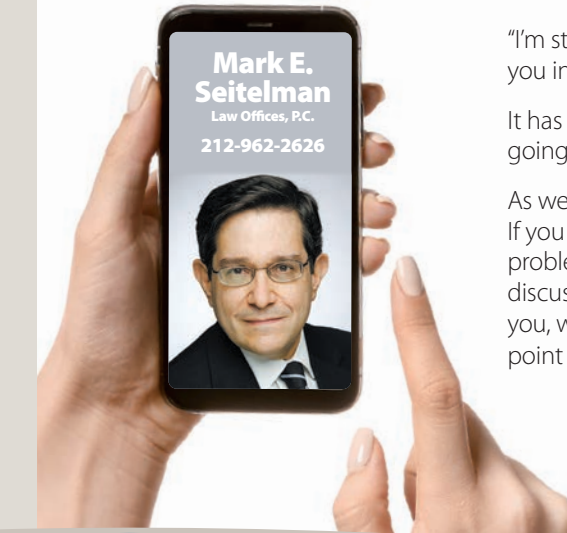
Trinity Building
111 Broadway, Suite 901
New York, NY 10006-1954

212-962-2626
Fax: 212-962-5050

letters@seitelman.com

seitelman.com

I'm Still Here.



Good times and bum times, I've seen them all
And, my dear, I'm still here.
Plush velvet sometimes,
Sometimes just pretzels and beer, but I'm here.

-Stephen Sondheim, "I'm Still Here" from "Follies"

"I'm still here" is our watchword. We have been here for you in both good times and bad.

It has been 33 years since we opened. And we are still going full speed.

As we come upon the Fall season, please remember that if you ever have an accident, insurance, or other legal problem, please feel free to contact me. I will be happy to discuss your problem with no obligation. If we cannot help you, we shall either refer you to other attorneys or at least point you in the right direction.

Best wishes, always.

Mark E. Seitelman

If we have helped you, we would be honored to help your family & friends.
We appreciate your referrals!

Look inside for our magnet.

Please share your experience on Google



If you have been happy with our services, could you favor us with a positive review in Google and Avvo? Sharing your experience would be most helpful to potential clients.

If you have not rated us and if you have been pleased with our services, we would be honored with a positive rating. We can send you a link with the instructions. Just email your request to mark@seitelman.com, and I shall send personally the the links for you to place your reviews.

As a small "thank you", if you leave a positive rating, we shall send some promotional items and either an Amazon gift card or a gift package of Tate's Cookies.

From our case files \$900,000 for Knee Injuries

Our client sustained knee injuries and back injuries as a result of a motor vehicle collision involving a Port Authority vehicle.

Our client was a field engineer for an engineering company reconstructing a highway entrance into the Washington Bridge. Our vehicle was rear-ended by a Port Authority vehicle. There was a real issue as to whether workers' compensation barred the client's recovery on the basis that the client's company worked exclusively for the Port Authority on this project and that she was deemed a special employee of the Port Authority.

At the accident scene get a police report & take photos

We have written for many years that it is essential to get a police report at the scene of the accident. A police report not only identifies the parties but the fact that an accident occurred. It is also essential for an uninsured motorist's claim.

Due to manpower shortages and shifting priorities, the New York City Police do not always come to the scene of an accident and make a report unless one of the parties needs to be removed by ambulance. There are also times when the police do not appear even where requested by one of the parties. Therefore, you have to act as the historian at the accident. **Nonetheless, where possible, we still urge that you call the police to come to the scene and to make a report.**

Where the police do not report to an accident, use your cell phone to record the following:

- The license plate
- The cars and the damage
- The other driver's operator's license card
- The other driver's registration and insurance cards

One can also use the phone to take notes of the witness names, addresses, and phone number.



A new hazard: e-bikes, lithium-ion batteries, & fires

Fires caused by electrical bikes (e-bike) batteries have been in the news. On June 21, 2023, a fire at a bike shop in Chinatown claimed four lives. The fire was caused by e-bike lithium-ion batteries.

E-bikes, e-scooters, and hoverboards use powerful lithium-ion batteries that store more power and are more likely to catch fire as compared to typical batteries. In this year there were 13 deaths from battery fires in New York alone.

E-bikes and their batteries must be stored and charged with care. In the Lower East Side fire, a bike shop was charging multiple batteries at once off extension cords. Household extension cords do not have the capacity for these batteries. Household extension cords can easily overheat.

E-bike batteries are often from the grey market and without Underwriters' Laboratory testing and approval. They can be a hazard while being charged. They can spontaneously ignite. As a result, various residential properties, such as the New York City Housing Authority, prohibit e-bikes within apartments. There is discussion about New York City Housing Authority providing a separate storage area outside the residential buildings, such as part of the park around a complex.

Aside from the New York City Housing Authority, private landlords and co-ops prohibit e-bikes in the building. For example, my apartment building prohibits e-bikes in both the apartments and the bicycle storage room.



Here are some safety tips to help prevent fires:

- Buy your e-bike and battery from a trusted retailer and manufacturer.
- Make sure that your e-bike and battery carry the "UL" mark of the Underwriters' Laboratory.
- Maintain your battery by carefully checking it from time to time. If you notice any strange smells or changes in shape or color (such as bulging), stop using the battery immediately, and contact your local fire station or call 911.
- Store your battery in a safe place.
- Charge your battery using only the cord and power adapter provided by the manufacturer; and
- Dispose of your battery at a battery recycling location. Do not reuse or refurbish used batteries or their parts. Also note that improper discarding of batteries in the trash or recycling is not only illegal but a fire hazard for the sanitation trucks and recycling stations.

e-bike fires: getting a recovery from injuries

In the event of a fire caused by an e-bike battery, there are various liability and recoverability issues to be considered. This requires a case-by-case investigation.

By and large, most e-bikes are owned by deliverymen making food deliveries. Generally, deliverymen do not maintain insurance. This could leave the injured person without a means of recovery. However, there may still be sources of recovery.

For example,

- Was the e-bike owned by the deliveryman or the employer? If the bike were owned by his employer (for example a restaurant), then the employer may be liable for its condition.
- Would the landlord be liable for allowing tenants to keep e-bikes in the building? The answer may be "yes". As compared

to deliverymen, who are poor and have no insurance, almost all landlords have insurance. The landlord may have had knowledge that e-bikes were being stored and charged within the building.

- Would the bike shop be liable for selling a dangerous product? If the product is defective, the bike shop as the retailer could be liable as part of the distribution chain of the dangerous product.

In view of the recent spate of fires and deaths, we foresee New York City enacting rules for the safe storage and use of e-bikes and their batteries.

If you have been injured in an e-bike fire or any other injury involving an e-bike or a regular bike, please feel free to contact us.



Underwriters' Laboratories

When you buy an electric appliance or device, be sure that it carries the "UL" mark.

The Underwriters' Laboratories were established by the insurance industry to test electrical devices for the purpose of preventing fires. Electrical appliances which pass inspection receive the "UL" mark.

Many of the batteries being used for e-bikes are not UL approved. When you buy an e-bike or scooter, make sure that it is UL tested and approved.

New York may change its wrongful death law in the The Grieving Families Act

New York is on the verge of amending its wrongful death law to allow recoveries for the emotional loss of the death of a family member. This will be a big change in the wrongful death law which was enacted about 175 years ago.

At press time, the New York Legislature has passed The Grieving Families Act. The bill will go to the Governor.

There is one overriding caveat to this story. The bill must be signed into law by the Governor. A fairly identical bill failed to get the Governor's approval in 2022. The Governor vetoed it based on certain objections. The bill was redrafted and negotiated along the lines of the Governor's objections, and this amended law has passed the 2023 Legislature. Therefore, the bill is now on Governor Hochul's desk and may either be passed as is or be renegotiated or be vetoed again.



The history of wrongful death and its limits

A wrongful death claim is a claim that defendant wrongfully caused a death. It is typically brought by close relatives. An example of a wrongful death is an auto accident where defendant was negligent and killed a pedestrian. The surviving family, through the administrator of the dead person's estate would bring a lawsuit against the motorist. For example, the surviving spouse would bring the case on behalf of himself and their children.

Wrongful death is a creature of statute. As such, its limits are strictly prescribed by statute. English common law did not recognize a cause of action for wrongful death; therefore, American common law did not recognize it. This was corrected in England by Lord Campbell's Act in 1846, and New York followed shortly with its own death statute. We have had the same statute in effect for about 175 years.

The wrongful death case consists of two separate claims:

1. The personal injury sustained by the decedent. This is a claim for medical expenses, lost income and most important, conscious pain and suffering. These are the damages that the deceased could have sought in court if he were alive. In the area of conscious pain and suffering, there are issues as to how long the deceased survived after the accident and whether the deceased was conscious of his pain and impending death. The damages for 30 days of conscious pain and suffering would be greater than for an instantaneous death.

2. The wrongful death claim is strictly a loss of financial support to the surviving family. This means that wrongful death is limited to the loss of future income. It does not include the emotional loss sustained by the surviving family members.

The idea behind wrongful death at the time of enactment, 175 years ago, is that a widow and minor children should be given some means of support. Often, the male breadwinner was the sole source of support. The death of the breadwinner could throw a family into poverty. The wrongful death part of the case has been limited, by statute, to the survivor's loss of financial support from the decedent. Wrongful death has been solely an economic claim. The surviving family members could not recover for the emotional loss of losing a father or a husband.

As a consequence of limiting wrongful death damages to future financial support, damages were very limited for older people who do not support their adult children. Similarly, there would be limited damages for the death of a child who has not yet entered the workforce. The low wrongful death value of such cases caused lawyers to refuse such cases.

While New York law remained unchanged for 175 years, other states have amended their statutes to allow recovery for emotional loss.

Continued on page 4.

212-962-2626 | seitelman.com

Continued from page 3.

The Grieving Families Act

There had been an effort for years to amend the statute. With Democrats controlling the Legislature and the Governorship, the atmosphere had become more "plaintiff friendly", and The Grieving Families Act was passed in June 2022. Despite the Governor's veto in 2022, the Legislature found enough support to make some tweaks to the bill and to pass a revised version in the 2023 Legislative Session which just concluded. The new bill awaits the Governor's signature.

The Act permits family members to recover for the emotional loss of losing a loved one. There is an open question as to whether non-traditional "family" can also recover, such as domestic partners, stepchildren and foster-children. There also appears to be an enlargement of the statute of limitations from 2 years to 3 years for bringing the death claim.

The Act does not revive cases that were either settled or disposed of in the courts. The new law may apply retroactively to claims which have not been disposed of going back to 2018.

The insurance industry and business and government oppose this change and warn that insurance premiums

would skyrocket. They claim that this would add to New York's negative perception of being unfriendly to business.

Conclusion

We are waiting to see if the Governor signs the Bill. If the Bill gets signs, this will be reported on our website.

If the bill is signed into law, this will be a monumental change in wrongful death cases. Generally, our courts are conservative, and the judges have been reluctant to allow emotional and psychological loss. It is unclear what will be the measure of damages for family grief and whether attenuated family members will have a right to collect damages. For example, will there be a recovery for civil partners? Will grandchildren be entitled to collect? There will have to be verdicts and appeals so that the plaintiffs' bar and the insurance industry can get an idea of the measure of damages for emotional loss.

If you have sustained an unfortunate death in the family due to another party's negligence, please feel free to call us.

New York now allows coverage for lawsuits between spouses

Effective August 1st, New York amended its laws to provide that supplemental spousal liability insurance be an "opt-out" rather than "opt-in" coverage in auto accidents.

This means that in motor vehicle accidents, the policy will provide automatic coverage for a claim of one spouse against another. It will fall upon the insured to affirmatively "opt-out" of the coverage. Unless the motorist "opts-out", the coverage will be automatic on the policy.

This will provide coverage where one spouse is either killed or injured by the other spouse in a motor vehicle accident.

For example:

- The husband is operating the vehicle, and he ignores a stop sign causing a collision. The wife is in the passenger seat and gets injured. Without the supplemental spousal coverage, the insurance would not cover a claim and lawsuit brought by the wife against her husband.
- The wife is in the backyard tending to the barbecue. The husband is backing the car into the garage, but he negligently backs into his wife who is pushed into the barbecue and is burned. Again, without supplemental spousal coverage, the wife could not sue her husband. This is an actual case which we could not accept 20 years ago.



It should be noted that under the prior system where the insured had to "opt-in" and order the insurance, very few people carried this insurance. Many spouses were left with no recourse where they sustained injuries as a result of the other spouses' negligence.

We strongly urge that when you obtain auto insurance or renew your insurance, DO NOT OPT-OUT of this coverage.