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December 22, 2023

The Honorable Katheen C. Hochul
Governor of the State of New York
Executive Chamber
New York State Capitol Building
Albany, New York 12224

Re: A 6698 / S 6636 (M. of A. Weinstein) (Senator Hoylman)

AN ACT to amend the Estates, Powers and Trust Law in relation to payment and distribution of damages in wrongful death actions

Dear Governor:

The bill referenced above will shortly be before you for executive action. A substantially similar version of this legislation was vetoed by you last year. Due to the failure of the legislature to address a litany of concerns raised regarding the earlier iteration of the bill, the New York State Society of Professional Engineers renews its request for **disapproval** of the legislation. This submittal is predicated in large measure upon the fact that the Society sees the need to tie the instant legislation to the broader issue of civil justice reform and, most importantly, inclusion of a true statute of repose for design liability claims in New York.

The Society is a professional association representing the interests of all professional engineers (totaling more than 30,000 licensees in New York State) practicing in all disciplines (civil, structural, mechanical, electrical, geological, environmental, etc.) and practicing in all practice settings (private sector consulting, industry, government, and education.)

Expansion of damages in wrongful death cases to include emotional loss of family members on a standalone basis would constitute a misstep of significant proportions taking into consideration the current imbalance reflected in New York's law governing tort liability.

It is critical in our judgment for New York's lawmakers to fully consider the implications of civil justice reform measures through a broader prism. The sponsors of this legislation assert that over 40 sister states compensate family members for emotional loss in the case of wrongful death. However, the same sponsors fail to mention that many of those states have in place countervailing civil justice measures which ensure that such claims are not subject to windfall recoveries. For example, many states have in place statutory limitations on the amount recoverable for non-economic losses. Moreover, such caps have broadly withstood constitutional challenges. Further, it is critical to consider that, in general, throughout the country in states with strong economic growth, the scales of justice are more favorably balanced

with regard to the threshold of liability needed to establish a claim. Similarly, other states, with more robust economies, afford a broader array of defenses and have more favorable rules governing joint and several liability.

With regard to design liability claims specifically, 48 states have true statutes of repose which provide a complete defense to a design professional liability claim once a measurable period of time has passed after a design professional has completed work on a project and the improvement has withstood the test of time. Legislation is currently pending in New York, which, if enacted, would have New York join the 48 other states with a properly balanced civil justice system as it pertains to design liability cases. [See A 4549 Assemblyman Pretlow - An Act establishing a 10-year Statute of Repose]. Further, as you are well aware, New York is the only state with a strict liability standard for elevation related injuries or deaths leading to a major cost differential for projects built in New York State versus projects located in any other state in the nation, including all bordering states.

In short, NYSSPE believes it is critical for the state to view the big picture before adopting a major expansion of our laws governing tort liability and to assure that any changes to the civil justice system are fair and balanced. Accordingly, the Society urges disapproval of this measure, coupled with the establishment of a commission to study New York's tort system. The commission, including representatives from the business community, the design professions and health care professionals, along with representative from labor, as well as civil justice organizations, should be charged with the responsibility for providing recommendations regarding the treatment of wrongful death claims, as well as other civil justice reform measures. A balanced approach is simply the best way to address civil justice reform.

Respectfully submitted,

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Counsel
New York State Society of Professional Engineers

cc: Elizabeth Fine, Esq.,
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