Claims of wrongful life and wrongful birth - NY  
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**Background**
The New York courts have long struggled with determining what injuries are properly compensable when a child is born impaired, and the parents are able to establish that a health care provider was negligent in failing to detect the impairment prenatally or to advise the parents of the likelihood of the impairment. Typically, in such cases, parents will argue that had they been advised of the impairment before the child was born, they would have chosen to terminate the pregnancy. In wrestling with the thorny damages issues presented by such cases, the New York courts have made a distinction between damages stemming from “wrongful life” and those stemming from “wrongful birth.”

**Issues**
What is the difference between a claim for wrongful life and one for wrongful birth, and can recovery be had under such theories?

**Comments**
Wrongful life claims are typically initiated on behalf of an impaired infant, seeking to recover damages for the very fact that he or she was born at all. The New York courts have rejected such claims, signaling an unwillingness to hold that life, even if marred by disability or disease, is a compensable injury.

In *Alquijay v. St. Luke's-Roosevelt Hospital*, 63 N.Y.2d 978, 473 N.E.2d 244 (1984), a mother claimed that had she known that her baby would be born with Down’s syndrome, she would have terminated the pregnancy. The Court of Appeals held that there is no cause of action for wrongful life, and life, even when the baby is born in an impaired state, does not constitute an injury. More recent cases have reiterated the prohibition on recovery for wrongful life. See, e.g., *Sheppard-Mobley v. King*, 4 N.Y.3d 627, 830 N.E.2d 301 (2005); *Spano v. Bertocci*, 299 A.D.2d 335, 749 N.Y.S.2d 275 (2d Dep’t 2002); *Sample v. Levada*, 8 A.D.3d 465, 779 N.Y.S.2d 96 (2d Dep’t 2004).

A claim for wrongful birth, on the other hand, is typically brought on behalf of an impaired infant’s parents and seeks to recover economic damages for the care of the child on the theory that had they known their child would have been born disabled, the parents would have terminated the pregnancy and thus not incurred the cost of caring for the child. Recovery of economic damages under such a theory is allowed in New York.

In 1978, in *Becker v. Schwartz*, 46 N.Y.2d 401, 386 N.E.2d 807 (1978), the Court of Appeals rejected the parent’s claim for wrongful life, but allowed recovery based on wrongful birth. In *Becker*, the plaintiff claimed that her doctor was negligent in not recommending an amniocentesis. The child was born with Down’s syndrome. The court rejected the wrongful life claim and was unwilling to find that non-existence was preferable to a life with disability. The court, however, allowed the mother to recover for expenses related to the care of the disabled child. More recently, in *Mickens v. Lasala*, 8 A.D.3d 453, 779 N.Y.S.2d 115 (2d Dep’t 2004), the parents sought recovery of child care costs because their doctor failed to prenatally diagnose Down’s syndrome. Although the parents were unable to provide evidence of the costs incurred, the court reiterated that recovery based on wrongful birth is permissible where parents can provide evidence of their expenses related to child care.

In sum, wrongful life is not a recognized theory of recovery because the courts have refused to find that the very fact of being alive is a compensable injury. Damages may be awarded under a theory of wrongful birth, however, as the cost of caring for that life is an injury.