

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF

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In the Matter of the Application of
, as Administrat of the
Goods, Chattels and Credits which
were of

PETITION
File No.

,
deceased,

For leave to compromise a certain cause
of action for wrongful death of the
decedent and to render and have
judicially settled an account of the
proceedings as such Administrator

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TO THE SURROGATE'S COURT:

EPTL 5-4.1
EPTL 5-4.6
SCPA 2204
Uniform Rules
Sec. 207.38

It is respectfully alleged:

1. Petitioner is
the of the above-named decedent and
presently resides at ,

2. The decedent died a resident of
, County of , New York on
; and had resided there with

3. On , Letters of Guardianship
of the person and property of , infant
son/daughter of the decedent (copy attached), were
issued to your petitioner by the Surrogate's Court,
County.

SCPA
Article 17

4. On , Limited Letters of
Administration of the Goods, Chattels and Credits which

were of _____, deceased, were issued to petitioner by the Surrogate's Court of _____ County, which letters were of limited authority and restrained your petitioner from compromising or collecting upon said claim for wrongful death until further order of this court. To date, said letters have not been revoked and are presently in full force and effect. No bond was required of your administrator to cover any probable amount to be realized from said action.

5. The decedent at the time of death was employed as a _____ by _____ at _____, earning approximately \$ _____ per week.

6. The decedent at the time of death was _____ years of age, having been born on _____.

7. The injuries that resulted in the decedent's death were sustained on [give date, time] _____ at [location]

[Describe fatal incident]

8. The decedent was taken to _____ Hospital where he/she died on _____ at or about _____ a.m./p.m. of that day without having regained consciousness. [Describe circumstances, e.g., length of hospitalization, etc., resulting in death] Decedent did not regain consciousness, and all of the proceeds

of the settlement of the action are to be allocated for wrongful death and not for conscious pain and suffering.

9. A combined action for decedent's wrongful death and conscious pain and suffering was commenced against the defendant . [Include references to court where action commenced, pleadings, etc.] Thereafter, negotiations were entered into with the representative of Insurance Company, and a final offer has been made to settle this claim for the sum of \$ out of maximum insurance coverage of \$

10. An investigation of the personal resources of the defendant, , has been undertaken and it has been discovered that [provide details as to assets]

11. Petitioner believes that it is in the best interests of the distributees and the estate of the decedent and those interested therein to accept the settlement so offered and that this is the largest amount that can be obtained without further litigation.

12. The grounds of petitioner's belief are [indicate reasons why acceptance of the settlement is advisable]

13. The decedent at the time of death was married and left the following survivors:

See SCPA
Art. 17
Art. 4

D.R.L. Sec.
32

Name Relationship Date of Birth Present Age

14. On _____, petitioner retained _____, Esq. of _____, as his/her attorney (a copy of the retainer agreement and affidavit of legal services are attached). In view of the results achieved, petitioner would request the court to approve a fee as follows: That the attorney's disbursements in the sum of \$ _____ first be deducted from the gross settlement of _____; that of the balance of \$ _____ a fee of _____% or \$ _____ be allowed, which together with disbursements of \$ _____ would amount to total compensation of \$ _____.

15. Petitioner has been advised that the proceeds of an action for wrongful death are allocated according to the pecuniary loss sustained by the widow/widower and infants. Petitioner has further been advised that the share of the petitioner

EPTL 5-4.4;
Matter of
Kaiser,
198 Misc. 582

and the children are computed in accordance with the years of dependency each of the survivors could look forward to but for the decedent's death. At the time of death, decedent was _____ years of age, having been born on _____ and having died on _____ and had a life expectancy of _____ years, based on the table of vital statistics, United States Health

Department - copy attached. As petitioner as husband/wife and widower/widow was born on _____ and had a life expectancy of _____ years, the life expectancy of the decedent must be used. Therefore, the years of dependency are as follows:

<u>Name</u>	<u>Age on Date of Death</u>	<u>Anticipated Years of Dependency</u>	<u>Percentage of Net Amount of Settlement</u>
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See
D.R.L. Sec.
32

NOTE: WHERE RECOVERY OR PART THEREOF IS ALLOCATED TO CONSCIOUS PAIN AND SUFFERING, THE PROCEEDS PASS THROUGH THE DECEDENT'S ESTATE EITHER IN ACCORDANCE WITH THE PROVISIONS OF HIS/HER WILL, OR IN THE EVENT OF INTESACY, IN ACCORDANCE WITH EPTL 4-1.1.

16. All of the above persons are of sound mind and full age (except for the infant _____) and are citizens of the United States.

17. Petitioner as administrator hereby waives any claim for statutory commissions and waives the filing of a surety bond.

18. Decedent's funeral bill in the sum of \$ _____ has been paid by _____. Annexed hereto is the paid bill. No reimbursement is sought. There are no medical bills or hospital bills outstanding, and there are no assignments, compensation claims or liens filed with petitioner as administrator except for the following:

a) The Commissioner of Social Services has submitted a claim of \$ _____ for public assistance rendered to decedent and his/her family for the years _____

. This claim is rejected since the Department would have a lien only against a recovery for conscious pain and suffering, which would be an estate asset, and here there is to be no recovery for conscious pain and suffering.

b) _____ has submitted a claim for _____ based on an _____. This claim is also rejected for the same reasons as the rejection of the claim of the Department of Social Services.

[List other creditors, if any]

c) Decedent's father/mother, _____, seeks a share of the recovery by claiming the suffering of a pecuniary loss by virtue of decedent's death. This claim is rejected on the grounds that in spite of any possible demonstrated pecuniary injury, decedent's father/mother is nevertheless a nondistributee and thus ineligible to share in the recovery.

19. [If applicable] During the years _____ through _____, the decedent was the recipient of public assistance in the form of Aid to Dependent Children.

20. No previous application has been made for the relief sought herein.

21. Petitioner desires leave of this court to compromise and settle with Insurance Company the claim against for the wrongful death of the decedent, to discontinue the action for conscious pain and suffering and to fix reasonable attorney's fees and to pay the distributees their share of the settlement pursuant to the provisions of law (and to settle the account of the Administrator).

22. The only persons interested in this proceeding entitled to notice thereof are the following:

<u>Name</u>	<u>Relationship</u>	<u>Address</u>
	Husband-Administrator	
	Wife-Administrator	
	Daughter	
	Son	
	Father	
	Mother	
	Alleged Creditor	

<u>Name</u>	<u>Relationship</u>	<u>Address</u>
New York City Department of Social Services	Possible Creditor	
New York State Tax Commission	Possible Creditor Defendant	
Insurance Company	Defendant's Insurance Company	

None of the above are under a disability
except , an infant under the age of fourteen
years.

23. Petitioner has not become interested in
the within matter at the instance of the defendant or
anyone acting on defendant's behalf, directly or
indirectly.

WHEREFORE your petitioner prays that a
Citation herein be directed to the following:

<u>Name</u>	<u>Address</u>
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[List names of distributees and, if applicable, New
York City Department of Social Services, New York State
Tax Commission, Defendant, and Defendant's Insurance
Company.]

requiring them to show cause as follows: [include as
applicable]

WHY the administrator should not be autho-
rized and empowered to compromise and settle a certain

claim for the wrongful death of the decedent,
against

for the sum of \$ to
discontinue the action for conscious pain and
suffering, and

WHY the entire recovery of \$ should
not be allocated to the cause of action for decedent's
wrongful death, and

WHY the provisions in the Letters of Admin-
istration heretofore issued to your petitioner on
restraining the administrator from
compromising or collecting upon the aforesaid claim
should not be modified to permit said compromise, and

WHY the filing of a bond should not be
dispensed with, and

WHY the account of , as Administrator
in this proceeding, should not be judicially settled,
and

WHY defendant, or defendant's
insurance company should not pay to the firm of
, Esqs., out of the proceeds of the
settlement for the claim of wrongful death, the sum of
\$ as and for attorneys' fees, together with
disbursements of \$, and

WHY, the balance of the settlement, to wit the sum of \$ _____, should not be distributed to those distributees having sustained a pecuniary loss as follows: _____ % of the balance to _____, widow/widower of the decedent; _____ % of the balance to _____ child of decedent; _____ % of the balance to _____, child of the decedent, and

WHY the claim of the Department of Social Services in the amount of \$ _____ should not be rejected, and

WHY the claim of _____ should not be rejected as a nondistributee, and

WHY the claim of _____ in the amount of \$ _____ should not be rejected, and

WHY upon payments as hereinbefore mentioned by the said defendant, _____, or defendant's insurance company, the _____ Insurance Company, the petitioner, as administrator of the goods, chattels and credits that were of _____, deceased, should not execute and deliver to the said

defendant, _____, or defendant's Insurance Company a full, final and complete release in the claim against them arising out of the aforesaid cause of action together with any other papers necessary to effectuate said compromise.

Dated:

Petitioner

STATE OF NEW YORK
COUNTY OF

being duly sworn, deposes and says, that he/she is the petitioner in the within action, that he/she has read the foregoing petition and knows the contents thereof that the same is true of his/her own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he/she believes them to be true.

Sworn to before me this
day of _____, 19

Notary Public

SIGNATURE OF ATTORNEY: _____

PRINT NAME: _____

FIRM NAME: _____

ADDRESS OF ATTORNEY: _____

TELEPHONE NUMBER: _____