

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

_____, Deceased,

PETITION
File No. _____

(as of 4/98)

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

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TO THE SURROGATE'S COURT:

It is respectfully alleged:

1. Petitioner _____ is the _____ of the above-named decendent
and presently resides at _____.

2. The decendent 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 decendent (copy attached), were issued to your
petitioner by the Surrogate's Court, _____ County.

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letters have not been revoked and are presently in full force and effect.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
administrat____ 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.

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 INTESTACY, 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 administrat_____ 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 administrat_____ 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-Administratrix	_____
_____	Daughter	_____
_____	Son	_____
_____	Father	_____
_____	Mother	_____
_____	Alleged Creditor	_____
NYS Tax Comm.	Possible Creditor	_____
Dept. Social Services	Possible Creditor	_____

_____ Defendant _____
 Insurance Co. Defendant's Ins. Co. _____

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>
_____	_____
_____	_____
_____	_____
_____	_____

[List names of distributees and, if applicable, 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 administrat____ should not be authorized 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 Administration heretofore issued to your petitioner on _____ restraining the administrat____ 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 Administrat _____ 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 attorney's 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 decedent, and

WHY the claim of the Department of Social Services should not be rejected as a nondistributee, 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 administrat _____ 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

