

SAMPLE ORDER FOR WRONGFUL DEATH COMPROMISE

At a Settlement Conference Part of the Supreme Court of the State of New York, held in and for the County of Westchester located at the Honorable Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Boulevard, Courtroom 1600, White Plains, New York 10601 on the ___ day of _____, 20__.

P R E S E N T :

HON. JOAN B. LEFKOWITZ, J.S.C.

_____X

Jane/John Doe as administrator/administratrix of the estate of Jane/John Roe, deceased,

Plaintiff,

- against -

XYZ,

_____X
Defendant.

WRONGFUL DEATH
COMPROMISE ORDER

Index No. 12345/2014

Upon the reading and filing of the petition of _____, as administrator/administratrix (executor), of the estate of Jane/John Roe, deceased, duly sworn to on the ___ day of _____, 20__; the affidavit/affirmation of _____ of the firm of _____, attorneys for the plaintiff(s)-fiduciary(ies) herein; the correspondence from the Westchester County Department of Law (and/or the appropriate Department of Social Service) dated _____, 20__ indicating that the Department of Social Services of Westchester County (and/or the appropriate Department of Social Services) has/have no objection to the settlement of the within action; the letter of the Centers for Medicare & Medicaid Services dated _____, 20__ identifying a Medicare lien and indicating no objection to the settlement of the within action upon satisfaction of the payment of the lien; the funeral bill marked "paid" and attached here to as Exhibit __ and upon all the pleadings and proceedings heretofore had herein;

And it appearing that the plaintiff-administrator/administratrix seeks approval of this Court to accept the proposed settlement of all claims for the wrongful death and personal injury for the sum of _____ and XX/100 dollars (\$ _____);

And to approve and fix the attorney's fees together with costs and disbursements;

And it appearing to this Court that there is good cause to permit the fiduciary(ies) of the estate of _____,

deceased to compromise the claim asserted herein and that such compromise is in the best interests of plaintiff(s)-fiduciary(ies);

And it appearing that _____, as fiduciary(ies) is/are empowered and authorized to settle all causes of action asserted on behalf of decedent for his/her wrongful death;

And it appearing that the application to approve the compromise of this action having come on regularly to be heard;

And it appearing further that the Department of Social Services for the County of Westchester (and/or the appropriate Social Services Department) and the Centers for Medicare & Medicaid Services will not object to the settlement of this action subject to the terms and conditions herein;

NOW, on motion of _____, Esq. of the firm of _____, attorney for the plaintiff-fiduciary(ies) herein, it is

ORDERED that, the restrictions contained in the letters of administration issued by the Surrogate's Court of _____ County (_____, S.) dated the ___ day of _____, 20___, to the fiduciary(ies) of the estate of _____, deceased, are modified only to the extent required to allow the compromise and settlement of the within matter against defendant(s) in the sum of _____ and XX/100 dollars (\$ _____); and it is further

ORDERED that, _____, as plaintiff(s)-fiduciary(ies) of the estate of _____, deceased, is/are authorized, empowered and permitted to execute and deliver general releases and any and all other documents necessary to effectuate the settlement herein; and it is further

ORDERED that, defendant(s) and his/her/their insurer shall pay to _____, as attorney for the plaintiff(s)-fiduciary(ies) herein, the sum of _____ and XX/100 dollars (\$ _____) within the time limits set forth in CPLR 5003-a after receipt of the fully executed general release, hold harmless agreement, a copy of the signed order herein and a stipulation of discontinuance with prejudice and without costs, said sum to be held in an interest-bearing escrow account pending compliance with further provisions of this order; and it is further

ORDERED that, from the settlement proceeds held in the escrow account, the Westchester County Department of Social Services (and/or appropriate Department of Social Services)/ New York State Department of Health/ Centers for Medicare& Medicaid Services ("CMS") shall be paid the sum of _____ and XX/100 dollars (\$ _____) [if applicable add: which it has agreed to accept pursuant to the voluntary offer of the plaintiff-fiduciary(ies) herein to remit such partial payment to the Westchester County Department of Social Services (and/or appropriate Department

of Social Services)/New York State Department of Health/ CMS; and it is further

ORDERED that, the attorney's fees for legal services rendered in this proceeding by the firm of _____ are fixed in the sum of _____ and XX/100 dollars (\$ _____), and costs and disbursements in this proceeding are fixed in the sum of _____ and XX/100 dollars (\$ _____); and it is further

ORDERED that, upon the filing of the petition for allocation and distribution of the settlement proceeds in the Surrogate's Court of _____ County and the filing of proof thereof with this Court via NYSCEF, _____ (counsel) may withdraw the sum of _____ and XX/100 dollars (\$ _____) as and for their costs and disbursements together with accrued interest, if any, and the sum of _____ and XX/100 dollars (\$ _____) as and for their legal fees from the settlement proceeds held in the above-referenced interest-bearing escrow account; and it is further

ORDERED that, the firm of _____ shall continue to represent _____, plaintiff(s)-fiduciary(ies) of the estate of _____, deceased, until the signing and entry of the decree in the proceeding for the allocation and distribution of the net settlement proceeds in this action by the Surrogate of _____ County, State of New York without charge to decedent's estate for additional legal fees; and it is further

ORDERED that, this matter is referred to the Surrogate's Court of _____ County, State of New York for allocation and distribution of the net settlement proceeds of _____, deceased; and it is further

ORDERED that, counsel for plaintiff(s)-fiduciary(ies) shall file a copy of the decree of the Surrogate's Court with respect to the allocation and distribution of the net settlement proceeds with this Court via NYSCEF within 10 days of entry of said decree; and it is further

ORDERED that, the filing of a bond is dispensed with.

HON. JOAN B. LEFKOWITZ, J.S.C.