

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

-----X  
In the Matter of the Application of JANE SMITH

as ADMINISTRATOR of the Goods, Chattels  
and Credits which were of

PETITION  
File No. 2020-5

JOHN SMITH, Deceased,

For leave to compromise a certain cause  
of action for wrongful death AND CONSCIOUS PAIN  
AND SUFFERING of the decedent and to render and have  
Judicially settled an account of the proceedings as  
such ADMINISTRATOR

-----X  
TO THE SURROGATE'S COURT:

It is respectfully alleged:

1. Petitioner JANE SMITH is the ADMINISTRATOR of the above-named decedent and presently resides at 123 MAIN STREET, WHITE PLAINS, NY 10601.
2. The decedent died a resident of SCARSDALE, County of WESTCHESTER, New York on JANUARY 1, 2010, and had resided there with HIS SPOUSE AND THREE CHILDREN.
3. On FEBRUARY 2, 2010, Letters of ADMINISTRATION of the Goods, Chattels and Credits which were of JOHN SMITH, deceased, were issued to petitioner by the Surrogate's Court of WESTCHESTER 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 To date, said letters have not been revoked and are presently in full force and effect.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.
4. The decedent at the time of death was RETIRED.
5. The decedent at the time of death was 75 years of age, having been born on JANUARY 1, 1935.
6. The injuries that resulted in the decedent's death were sustained on JANUARY 1, 2010 at THE

INTERSECTION OF 456 MAIN STREET, WHITE PLAINS, NY 10601 AT APPROXIMATELY 11am. A VEHICLE DRIVEN BY THE DEFENDANTS, WALTER WILLIAMS AND ROGER LEWIS, MADE A LEFT TURN AND HIT THE DECEDENT WHO WAS CROSSING THE STREET. HE WAS CONSCIOUS AND COMPLAINED TO BEING IN IMMENSE PAIN BRIEFLY BEFORE THE AMBULANCE ARRIVED AND TRANSPORTED TO HIM LENNOX HOSPITAL WHERE HE DIED.

7. The decedent died on JANUARY 1, 2010 at or about 3p.m. of that day. ALTHOUGH DECEDENT WAS CONSCIOUS BRIEFLY, HIS INJURIES WERE EXTENSIVE. HE SUSTAINED A BROKEN JAW, COLLARBONE, FRACTURED PELVIS, AND MULTIPLE BLUNT FORCE TRAUMA. BECAUSE OF THESE INJURIES, HE SUFFERED IMMENSELY BEFORE PASSING AWAY. IT IS REQUESTED THAT THE PROCEEDS OF THE SETTLEMENT BE ALLOCATED TO 50% PAIN AND SUFFERING, 50% WRONGFUL DEATH.

8. A combined action for decedent's wrongful death and conscious pain and suffering was commenced against the defendants WALTER WILLIAMS AND ROGER LEWIS in WESTCHESTER SUPREME COURT (INDEX NO. 2010-12345). Thereafter, negotiations were entered with the DEFENDANTS AND representative of GEICO Insurance Company, and a final offer has been made to settle this claim for the sum of \$ 500,000.000 out of maximum insurance coverage of \$1,000,000.00. (SEE EXHIBIT A - FOR SUMMONS AND COMPLAINT)

9. 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.

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

<u>Name</u>	<u>Relationship</u>	<u>Date of Birth</u>	<u>Present Age</u>
JANE SMITH	SPOUSE	JANUARY 2, 1940	80
SALLY SMITH	DAUGHTER	MARCH 1, 1971	50
JOHN SMITH Jr.	SON	APRIL 1, 1972	49
MARY SMITH	DAUGHTER	MAY 1, 1973	48

11. On APRIL 1, 2010, Petitioner retained LIAM SMART Esq. of SMART LLP

as 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 \$10,000.00 first be deducted from the gross settlement of \$500,000.00; that of the balance of \$490,000.00 a fee of \$163,333.00 or 33% be allowed, which together would amount to total compensation of \$173,333.00. (SEE EXHIBIT B – FOR COPY OF THE RETAINER)

12. Petitioner has been advised that the proceeds ALLOCATED TO WRONGFUL DEATH IS DISTRIBUTED TO DISTRIBUTEES WHO ALLEGED TO HAVE SUFFERED PECUNIARY LOSS. THE PETITIONER IS THE ONLY ONE TO HAVE ALLEGED TO HAVE SUFFERED PECUNIARY LOSS, THEREFORE THE PETITIONER REQUEST THE PORTION OF THE SETTLEMENT ALLOCATED TO WRONGFUL DEATH BE DISTRIBUTED TO HER ONLY.

13. THE PETITIONER HAS BEEN ADVISED THAT THE PROCEEDS ALLOCATED FOR PAIN AND SUFFERING IS AN ASSET OF THE ESTATE. THE PETITIONER REQUEST THAT THE PORTION OF THE SETTLEMENT ALLOCATED TO PAIN AND SUFFERING BE PAID TO THE ADMINISTRATOR TO BE DISTRIBUTED INTESACY (EPTL 4-1.1)

13. All of the above persons are of sound mind and full age and are citizens of the United States.

14. Petitioner as ADMINISTRATOR hereby WAIVES THE CLAIM FOR STATUTORY COMMISSIONS.

15. PETITIONER waives the filing of a surety bond.

16. Decedent's funeral bill in the sum of \$5,000.00 has been paid by PETITIONER. (SEE EXHIBIT C – COPY OF PAID FUNERAL BILL). REIMBURSEMENT is sought. THE DECEDENT HAS NEVER RECEIVED PUBLIC ASSISTANCE, MEDICARE, OR MEDICAID. (SEE EXHIBIT D – SEE COPY OF NO LIEN LETTER FROM MEDICAID/ MEDICARE). There are no medical bills or hospital bills outstanding, and there are no assignments, compensation claims, or liens filed with petitioner as ADMINISTRATOR EXCEPT A LIEN FROM THE DECEDENT'S DISCOVERY CREDIT CARD IN THE AMOUNT OF \$1,000.00 WHICH IS BEING ALLOWED AND PAID. (SEE EXHIBIT E – COPY OF THE DISCOVERY

CARD CLAIM AGAINST THE ESTATE).

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

18. Petitioner desires leave of this court to compromise and settle with GEICO Insurance Company the claim against WALTER WILLIAMS AND ROGER LEWIS for the wrongful death of the decedent AND conscious pain and suffering, 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).

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

<u>Name</u>	<u>Relationship</u>	<u>Address</u>
JANE SMITH	Wife-ADMINISTRATOR	123 Main Street, White Plains, NY 10601
SALLY SMITH	Daughter	123 Main Street, White Plains, NY 10601
JOHN SMITH JR.	Son	123 Main Street, White Plains, NY 10601
MARY SMITH	Daughter	123 Main Street, White Plains, NY 10601
NYS Tax Comm.	Possible Creditor	999 Court Street, Albany, NY 12222
WALTER WILLIAMS	Defendant	245 Main Street, North Wild, NY 15064
ROGER LEWIS	Defendant	245 Main Street, North Wild, NY 15064
GEICO Insurance Co.	Defendant's Ins. Co.	123 Spokane Road, Wilton, CT 06743
DISCOVERY CARD	CREDITOR	245 Park Avenue, NY, NY 10067

None of the above are under a disability.

20. 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 FOR A DECREE AS FOLLOWS:

**THAT** the ADMINISTRATOR should be authorized and empowered to compromise and settle a certain claim for the wrongful death and CONSCIOUS PAIN AND SUFFERING of the decedent, against WALTER WILLIAMS AND ROGER LEWIS for the sum of \$500,000.00 and

**THAT** the SETTLEMENT BE ALLOCATED AS FOLLOWS 50% to WRONGFUL DEATH AND

50% TO CONSCIOUS PAIN AND SUFFERING, and

**THAT** the provisions in the Letters of ADMINISTRATION heretofore issued to your petitioner on FEBRUARY 2, 2010 restraining the ADMINISTRATOR from compromising or collecting upon the aforesaid claim should be modified to permit said compromise, and

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

**THAT** the account of JANE SMITH as ADMINISTRATOR in this proceeding, should be judicially settled, and

**THAT** DEFENDANTS WALTER WILLIAMS AND ROGER LEWIS or defendant's insurance company, GEICO, should not pay to the firm of LIAM SMART Esq. out of the proceeds of the settlement for the claim of wrongful death, the sum of \$ 163,333.00 as and for attorney's fees, together with disbursements of \$10,000.00, and

**THAT**, THE CLAIM OF \$1,000 BY DISCOVERY CREDIT CARD BE ALLOWED AND PAID, and

**THAT** THE CLAIM FOR FUNERAL REIMBURSEMENT IN THE AMOUNT OF \$5,000.00 BE ALLOWED AND BE REIMBURSED TO JANE SMITH, and

**THAT**, the NET balance of the settlement, to wit the sum of \$320,667.00 BE DISTRIBUTED AS FOLLOWS:

- 50% OR \$160,333.50, REPRESENTING THE AMOUNT ALLOCATED TO PAIN AND SUFFERING, BE PAID TO JANE SMITH, AS ADMINISTRATRIX, TO DISTRIBUTE IN ACCORDANCE TO EPTL 4-1.1 (INTESTACY).
- 50% OR \$160,333.50, REPRESENTING THE AMOUNT ALLOCATED TO WRONGFUL DEATH, BE PAID TO THE FOLLOWING DISTRIBUTEES WHO SUFFERED PECUNIARY LOSS PURSUANT TO EPTL 5-4.4.:

100% to JANE SMITH, Spouse, \$160,333.50

**THAT** upon payments as hereinbefore mentioned by the said defendants WALTER WILLIAMS AND ROGER LEWIS or defendant's insurance company, the GEICO Insurance Company, the petitioner, as ADMINISTRATOR of the goods, chattels and credits that were of JOHN SMITH, deceased, should execute and deliver to the said defendants, WALTER WILLIAMS AND ROGER LEWIS or defendant's Insurance Company, GEICO 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 )  
  ) ss.:  
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 \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
(affix stamp or seal)

Signature of Attorney: \_\_\_\_\_

Print Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_ Tel. No.: \_\_\_\_\_

Address of Attorney: \_\_\_\_\_

SAMPLE

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

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

JOHN SMITH

Deceased.

**ACCOUNT**

File # 2020-5

For leave to compromise a certain cause of action for  
wrongful death AND CONSCIOUS PAIN AND  
SUFFERING 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:**

1. I JANE SMITH do render the following account of my proceedings as ADMINISTRATOR of the goods, chattels and credits which were of JOHN SMITH, deceased, consisting of a claim against WALTER WILLIAMS AND ROGER LEWIS, who is insured by GEICO Insurance Company, for wrongful death AND CONSCIOUS PAIN AND SUFFERING arising on or about JANUARY 1, 2010, as the result of an automobile accident involving the decedent and WALTER WILLIAMS AND ROGER LEWIS.

2. Letters OF ADMINISTRATION of the goods, chattels and credits of the decedent were issued to me on FEBRUARY 2, 2010, said letters being limited to the prosecution only, and not for the collection of any proceeds of, any action or claim for wrongful death. Simultaneously herewith, leave is being asked to compromise the claim for wrongful death of the decedent for the sum of \$500,000.00.

3. There is submitted with this account my petition as ADMINISTRATOR and affidavit by LIAM SMART, Esq., attorney for the petitioner herein; a copy of the paid funeral bill; and waivers of the necessary parties.

4. In view of the facts and circumstances, it is my opinion that a satisfactory result has been achieved through the efforts of my attorneys, and they are requesting disbursements in the sum of \$10,000.00 and that they receive thereafter a fee of 33% of the net proceeds.

5. The funeral bill in the sum of \$5,000.00 has been paid BY THE PETITIONER AND PETITIONER IS SEEKING REIMBURSEMENT.

6. There are no outstanding hospital bills or doctors' bills.

7. The only property coming into my hands is by reason of the compromise of the claim against GEICO Insurance Company in the sum of \$500,000.00



8. The decedent left surviving no other next of kin except PETITIONER, his widow, and SALLY SMITH, JOHN SMITH, JR., AND MARY SMITH his children. All of the above persons are entitled to share in the proceeds of the compromise.

9. There are no other claims or creditors of the estate that have been presented to or have come into my hands or knowledge EXCEPT A CLAIM BY DISCOVERY CREDIT CARD IN THE AMOUNT OF \$1,000.00 WHICH IS BEING ALLOWED AND PAID.

10. The following are the only persons interested in this proceeding:

<u>NAME</u>	<u>[List names of distributees, etc.] RELATIONSHIP</u>	<u>DATE OF BIRTH</u>
JANE SMITH	SPOUSE	JANUARY 2, 1940
SALLY SMITH	DAUGHTER	MARCH 1, 1971
JOHN SMITH Jr.	SON	APRIL 1, 1972
MARY SMITH	DAUGHTER	MAY 1, 1973
New York State Tax Commission	<u>Possible Creditor</u>	
WALTER WILLIAMS	<u>Defendant</u>	
ROGER LEWIS	<u>Defendant</u>	
DISCOVERY CARD	CREDITOR	
<u>GEICO</u>	<u>Defendant's Insurance Company</u>	

11. I charge myself as follows with the amount to be received on compromise of the claim for wrongful death AND CONSCIOUS PAIN AND SUFFERING against GEICO Insurance Company:

\$500,000.00

12. I credit myself as follows:

- a) With the amount to be paid to LIAM SMART, Esqs., attorneys, including disbursements: \$173,333.00
- b) WITH THE AMOUNT TO BE PAID TO JANE SMITH, AS REIMBURSEMENT OF FUNERAL EXPENSES \$5,000.00
- c) With the amount to be paid to DISCOVERY CREDIT CARD, AS FOR THEIR LIEN AGAINST THE ESTATE \$1,000.00
- d) With the amount to be paid to JANE SMITH, AS ADMINISTRATOR OF THE ESTATE TO DISTRIBUTE PURSUANT TO EPTL 4-1.1 (INTESTACY) \$160,333.50
- e) With the amount to be paid to JANE SMITH, WIDOW and distributee PURSUANT TO EPTL 5-4.4: \$160,333.50

Leaving no balance.

Dated: \_\_\_\_\_

**STATE OF NEW YORK**  
**COUNTY OF \_\_\_\_\_ ss.:**

\_\_\_\_\_

\_\_\_\_\_ being duly sworn, deposes and says:

That I am the ADMINISTRATOR accountant in the above estate, having been duly appointed by a decree of this Court.

The foregoing account of proceedings contains to the best of my knowledge and belief a true and complete statement of my receipts and disbursements in the estate of \_\_\_\_\_ of all monies and other property belonging to the estate or fund which have come into my hands or which have been received by any person or persons by my order or authority for use since my appointment, and a full and true statement of account of the manner in which I have disposed of same and all property remaining in my hands at the present time, and a full and true account of the nature of each and every transaction may by me since my appointment.

I do not know of any error or omission in said account to the prejudice of any person interested in said estate or fund.

\_\_\_\_\_  
\_\_\_\_\_

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of  
JANE SMITH as  
ADMINISTRATOR of the Goods, Chattels and  
Credits which were of  
JOHN SMITH

ATTORNEY’S AFFIDAVIT

Deceased.

File No. 2020-5

For leave to compromise a certain cause of action  
for wrongful death AND CONSCIOUS PAIN AND  
SUFFERING of the decedent and to render and have  
judicially settled an account of the proceedings as such  
ADMINISTRATOR.

-----X

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF WESTCHESTER)

LIAM SMART, being duly sworn, deposes and says:

1. I am a member of the firm of LIAM SMART, Esq., with offices at 888 POST ROAD, WHITE PLAINS, NY 10601.

2. We were retained on APRIL 1, 2010 and filed a statement of retainer with the Office of Court Administration under Code Number 181818.

3. After being retained by JANE SMITH, widow of decedent, an extensive investigation was conducted into the occurrence that resulted in the death of decedent, including obtaining police reports, hospital records, motor vehicle bureau records, etc.

4. It was ascertained that on JANUARY 1, 2010 at approximately 11a.m. of that day A VEHICLE DRIVEN BY THE DEFENDANTS, WALTER WILLIAMS AND ROGER LEWIS, MADE A LEFT TURN AND HIT THE DECEDENT WHO WAS CROSSING THE STREET AT 456 MAIN STREET, WHITE PLAINS, NY. THE DECEASED WAS TAKEN TO LENNOX HOSPITAL WHERE HE DIED. HE WAS CONSCIOUS AT THE TIME, FOR APPROXIMATELY 4 HOURS BEFORE HE DIED.

The decedent sustained multiple injuries and was taken to LENNOX Hospital, where he died at 3p.m. on JANUARY 1, 2010.

5. Thereafter a claim was made against the GEICO Insurance Company, which insured the vehicle of WALTER WILLIAMS AND ROGER LEWIS.

6. The funeral and hospital bills were paid BY JANE SMITH AND SHE IS SEEKING REIMBURSEMENT FOR THE FUNERAL BILL.

7. After intensive negotiations with GEICO Insurance Company, it finally has made an offer in the sum of \$ 500,00.000 for the wrongful death AND CONSCIOUS PAIN AND SUFFERING of decedent.

8. All of the proceeds of the settlement of the claim are to be allocated 50% to the cause of action for wrongful death and 50% to the cause of action for conscious pain and suffering.

9. I BELIEVE the settlement is fair and reasonable and should be accepted for the best interests of the estate.

10 Your deponent will prepare all papers necessary to accomplish said settlement and obtain approval of the Surrogate's Court and do whatever is necessary on behalf of the estate and the next of kin.

11. The following expenses have been incurred *[list all expenses]:*

Police reports	\$ 500.00
Hospital records	\$ 1000.00
Surrogate's Court fees	\$ 1250.00
Motor Vehicle Bureau	\$ 500.00
EXPERT TESTIMONY	\$ 5,000.00
TRANSCRIPTS	\$1,750.00
TOTAL	<u>\$10,000.00</u>

12. Your deponent has not become concerned in this action at the request of the defendants or their attorneys or representatives, and no compensation has been or will be received by deponent from defendants or their attorneys or representatives. Any compensation to be received by way of fees herein is to be paid out of the proceeds of the proposed settlement and not otherwise. Your deponent has a written retainer with the ADMINISTRATOR herein providing for a fee of 33% of the net recovery, which your deponent submits is fair and reasonable in light of all of the facts and circumstances.

13. On AUGUST 1, 2021, your deponent caused a check of the records of this court to be made for liens, assignments and encumbrances and found none, and your deponent has been advised by petitioner that petitioner does not know of any filed or recorded, and your deponent has inquired of the petitioner and is satisfied that the only claims that have been filed with the ADMINISTRATOR are those shown in the petition. Your deponent waives notice and the requirement that any security be filed and consents to the entry of a decree without any further notice.

14. No previous application for the relief requested herein has been made to any court or judge.

15. Your deponent requests that a fair and reasonable sum for services rendered and to be rendered be allowed in the sum of \$ 163,333.00, together with disbursements in the sum of \$10,000.00.

WHEREFORE, deponent respectfully prays that the relief requested herein be granted.

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Sworn to before me this  
day of \_\_\_\_\_, 20\_\_\_\_.

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Notary Public

**C I T A T I O N**  
**THE PEOPLE OF THE STATE OF NEW YORK**  
**BY THE GRACE OF GOD, FREE AND INDEPENDENT,**

TO:

being persons interested as creditors, legatees, devisees, beneficiaries, distributees or otherwise of the estate of JOHN SMITH, deceased, who at the time of death resided at 123 MAIN STREET, WHITE PLAINS, NY 10601.

A petition having been duly filed by JANE SMITH, who is domiciled at 123 MAIN STREET, WHITE PLAINS, NY 10601

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, WESTCHESTER County at 111 DR. MARTIN LUTHER KING JR. BLVD, 18<sup>th</sup> FLOORS, New York on \_\_\_\_\_, at \_\_\_\_\_ a.m.

WHY the account of the proceedings of JANE SMITH as ADMINISTRATOR of the estate of JOHN SMITH, deceased, a copy of which is attached, should not be judicially settled, and

WHY the ADMINISTRATOR should not be empowered to compromise and settle a certain claim for wrongful death AND CONSCIOUS PAIN AND SUFFERING against WALTER WILLIAMS AND ROGER LEWIS for the sum of \$500,000.00, and

WHY the provisions in the limited Letters of ADMINISTRATION issued to the petitioner on FEBRUARY 2. 2010 , restraining the compromise or collecting upon the aforesaid claim and cause of action, should not be modified to permit said compromise, and

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

WHY the defendant, WALTER WILLIAMS AND ROGER LEWIS , or defendant's insurance company, should not pay to LIAM SMART, Esqs., out of the proceeds of the settlement for the claim for wrongful death AND CONSCIOUS PAIN AND SUFFERING, the sum of \$163,333.00 as and for attorneys' fees, together with disbursements in the sum of \$10,000.00, and

WHY the entire recovery of \$500,000.00 should not be allocated to 50% to the cause of action for decedent's wrongful death, and 50% to the CAUSE OF ACTION FOR CONSCIOUS PAIN AND SUFFERING, and

WHY, THE CLAIM OF \$1,000 BY DISCOVERY CREDIT CARD SHOULD NOT BE ALLOWED AND PAID, and

WHY THE CLAIM FOR FUNERAL REIMBURSEMENT IN THE AMOUNT OF \$5,000.00 SHOULD NOT BE ALLOWED AND BE REIMBURSED TO JANE SMITH, and

WHY the NET balance of the settlement, to wit the sum of \$320,667.00 BE DISTRIBUTED AS

FOLLOWS:

- 50% OR \$160,333.50, REPRESENTING THE AMOUNT ALLOCATED TO PAIN AND SUFFERING, BE PAID TO JANE SMITH, AS ADMINISTRATRIX, TO DISTRIBUTE IN ACCORDANCE TO EPTL 4-1.1 (INTESTACY).
- 50% OR \$160,333.50, REPRESENTING THE AMOUNT ALLOCATED TO WRONGFUL DEATH, BE PAID TO THE FOLLOWING DISTRIBUTEES WHO SUFFERED PECUNIARY LOSS PURSUANT TO EPTL 5-4.4.:

100% to JANE SMITH, Spouse, \$160,333.50

WHY upon payments as hereinbefore mentioned the said ADMINISTRATOR should not be permitted to execute and deliver general releases and all other necessary papers to the defendant, WALTER WILLIAMS AND ROGER LEWIS, or defendant's insurance company, releasing them from all claims against them arising out of the aforesaid action for wrongful death, together with any other papers necessary to effectuate the said compromise.

DATED, ATTESTED AND SEALED

(L.S.)

HON. \_\_\_\_\_  
County Surrogate

\_\_\_\_\_  
\_\_\_\_\_, Chief Clerk

A T T O R N E Y

Name of Attorney: \_\_\_\_\_

Address of Attorney: \_\_\_\_\_

Telephone Number of Attorney: \_\_\_\_\_

NOTE: This citation is served upon you as required by law. You are not obliged to appear in person. You have a right to have an attorney appear for you. If you fail to appear it will be assumed that you do not object to the relief requested.

Form WD-5 (Waiver and Consent for Insurance Company)

NOTE: If the action was settled with the assistance of the Supreme Court, or if the amount of the settlement has been otherwise approved, this form will not be required.

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

-----X

In the Matter of the Application of  
JANET SMITH as  
ADMINISTRATOR of the Goods,  
COMPANY Chattels and Credits which were of  
JOHN SMITH, deceased,  
for leave to compromise a certain cause of action  
for wrongful death AND CONSCIOUS PAIN AND  
SUFFERING of the decedent and to render and  
have judicially settled an account of the proceedings  
as such ADMINISTRATOR

WAIVER AND CONSENT  
FOR INSURANCE

FILE # 2020-5

-----X

TO THE SURROGATE'S COURT:

The GEICO Insurance Company, with offices at  
111 MAIN STREET, NEW YORK, NY 10013 as the insurer of WALTER WILLIAMS AND  
ROGER LEWIS and pursuant to its obligations to its insured under said liability insurance  
policy, does hereby appear and waive issuance and service of a citation in the above entitled  
proceeding. It further consents to pay the sum of \$500,000.00 in full settlement of the claim for  
wrongful death AND CONSCIOUS PAIN AND SUFFERING of JOHN SMITH, deceased. It  
further consents that the filing of a bond or other security be dispensed with and waive any  
further notice.

DATED: \_\_\_\_\_

GEICO Insurance Company

BY: \_\_\_\_\_

STATE OF NEW YORK     )  
COUNTY OF \_\_\_\_\_ )ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally  
came and appeared \_\_\_\_\_, known to me to be a Corporate  
Officer of the \_\_\_\_\_ Insurance Company, to wit, \_\_\_\_\_,  
who had the authority and who did execute the foregoing Waiver and Consent on behalf of the  
\_\_\_\_\_ Insurance Company and acknowledged that  
executed the same.

\_\_\_\_\_  
Notary Public  
Commission Expires:  
(Affix Stamp)



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

In the Matter of the Application of  
JANE SMITH as  
ADMINISTRATOR of the Goods,  
Chattels and Credits which were of

**WAIVER AND CONSENT**

JOHN SMITH, deceased,  
for leave to compromise a certain cause of action  
for wrongful death AND CONSCIOUS PAIN AND  
SUFFERING of the decedent and to render and  
have judicially settled an account of the proceedings  
as such ADMINISTRATOR.

FILE # 2020-5

(as of 9/87)

**TO THE SURROGATE'S COURT:**

The undersigned, MARY SMITH being over the age of 21 years, having been born on MAY 1, 1973 and residing at 123 MAIN STREET, WHITE PLAINS, NY 10601, being a person interested as DAUGHTER of decedent, hereby appears and waives the issuance and service of a citation in the above proceeding and consents to the following relief:

*(The adult distributee, or other adult interested party, must specifically consent to each and every item of relief requested by the petitioner) NOTE: If the adult distributee is entitled to share in the proceeds of the settlement, but is voluntarily relinquishing that right, this must be clearly stated as well.*

THAT the account of the proceedings of JANE SMITH, as ADMINISTRATOR of the estate of , deceased, a copy of which is attached, should be judicially settled, and

THAT the ADMINISTRATOR should be empowered to compromise and settle a certain claim for the wrongful death AND CONSCIOUS PAIN AND SUFFERING against WALTER WILLIAMS AND ROGER LEWIS for the sum of \$ 500,000.00, and

THAT the provisions of the limited Letters of ADMINISTRATION issued to the petitioner on February 1, 2010 restraining the compromise or collecting upon the aforesaid claim and cause of action should be modified to permit said compromise, and

THAT the filing of a bond should be dispensed with, and

THAT the defendant, WALTER WILLIAMS AND ROGER LEWIS, or defendant's insurance company should pay to LIAM SMART, Esqs., out of the proceeds of the settlement for the claim for wrongful death AND CONSCIOUS PAIN AND SUFFERING, the sum of \$163,333.00 As and for attorneys' fees together with disbursements in the sum of \$10,000.00, and

THAT the entire recovery of \$500,000.00 should be allocated to 50% the cause of action for wrongful death and 50% to the cause of action for conscious pain and suffering, and

**THAT, THE CLAIM OF \$1,000 BY DISCOVERY CREDIT CARD BE ALLOWED AND PAID, and**

**THAT THE CLAIM FOR FUNERAL REIMBURSEMENT IN THE AMOUNT OF \$5,000.00 BE ALLOWED AND BE REIMBURSED TO JANE SMITH, and**

**THAT, the NET balance of the settlement, to wit the sum of \$320,667.00 BE DISTRIBUTED AS FOLLOWS:**

- 50% OR \$160,333.50, REPRESENTING THE AMOUNT ALLOCATED TO PAIN AND SUFFERING, BE PAID TO JANE SMITH, AS ADMINISTRATRIX, TO DISTRIBUTE IN ACCORDANCE TO EPTL 4-1.1 (INTESTACY).
- 50% OR \$160,333.50, REPRESENTING THE AMOUNT ALLOCATED TO WRONGFUL DEATH, BE PAID TO THE FOLLOWING DISTRIBUTEES WHO SUFFERED PECUNIARY LOSS PURSUANT TO EPTL 5-4.4.:

100% to JANE SMITH, Spouse, \$160,333.50

THAT upon payments as hereinbefore mentioned, the said ADMINISTRATOR should be permitted to execute and deliver general releases and all other necessary papers to the defendant or defendant's insurance company, releasing them from all claims against them arising out of the aforesaid action for wrongful death, together with any other papers necessary to effectuate the said compromise, and

DATED: \_\_\_\_\_

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_)ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_ known to me to be the person who is described in the foregoing Waiver and Consent, and acknowledged to me that he/she executed same.

Notary Public  
Commission Expires:  
(Affix Stamp)