

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

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In the Matter of the Application of JANE SMITH

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

PETITION
File No. 2020-5

JOHN SMITH, Deceased,

For leave to ALLOCATE AND DISTRIBUTE THE
PROCEEDS OF A WRONGFUL DEATH CAUSE OF ACTION
OF the decedent and to render and have
judicially settled an account of the proceedings as
such EXECUTOR

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TO THE SURROGATE'S COURT:

It is respectfully alleged:

1. Petitioner JANE SMITH is the EXECUTOR 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 TESTAMENTARY 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 To date, said letters have not been revoked and are presently in full force and effect.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 EXECUTOR 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.

[Describe fatal incident]

A VEHICLE DRIVEN BY THE DEFENDANTS, WALTER WILLIAMS AND ROGER LEWIS, MADE A LEFT TURN AND HIT THE DECEDENT WHO WAS CROSSING THE STREET. THE DECEASED WAS TAKEN TO LENNOX HOSPITAL WHERE HE DIED. HE WAS UNCONSCIOUS AT THE TIME, FOR APPROXIMATELY 4 HOURS BEFORE HE DIED.

7. The decedent was taken to LENNOX Hospital where he died on JANUARY 1, 2010 at or about 3p.m. of that day without having regained consciousness. Because the decedent did not regain consciousness, and there is no indication he suffered in pain, all the proceeds of the settlement of the action are to be allocated for wrongful death and not for conscious pain and suffering.

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). ON JUNE 5, 2011 THE HONORABLE HARRY JONES, JSC (WESTCHESTER SUPREME COURT) SIGNED AN ORDER APPROVING THE SETTLEMENT OF THE WRONGFUL DEATH ACTION AGAINST THE DEFENDANTS WALTER WILLIAMS AND ROGER LEWIS IN THE AMOUNT OF \$500,000.00, APPROVING AND ALLOWING OF THE ATTORNEY'S FEES OF LIAM SMART, ESQ. IN THE AMOUNT \$163,333.00 AND DISBURSEMENTS IN THE AMOUNT OF \$10,000.00, WAIVING THE FILING OF A BOND; MODIFYING THE LIMITATIONS ON THE LETTERS TESTAMENTARY TO ALLOW THE COMPROMISE AND SETTLEMENT, AND ORDERED THE NET SETTLEMENT IN THE AMOUNT OF \$326,667.00 BE PLACED IN AN INTEREST BEARING ESCROW ACCOUNT PENDING THE ORDER OF THE WESTCHESTER SURROGATE'S COURT FOR ALLOCATION AND DISTRIBUTION. (SEE EXHIBIT A – COPY OF THE SUPREME COURT ORDER)

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. Petitioner has been advised that the proceeds of an action for wrongful death are allocated according to the pecuniary loss sustained by DECEDENT'S DISTRIBUTIBLES. THE PETITIONER AND DECEDENT'S DAUGHTER, SALLY SMITH, ARE THE ONLY DISTRIBUTIBLES WHO SUFFERING PECUNIARY LOSS THEREFORE REQUEST THE PROCEEDS BE DIVIDED AS FOLLOWS: 90% TO THE PETITIONER AS SPOUSE AND 10% TO SALLY SMITH.

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

13. Petitioner as EXECUTOR hereby CLAIMS statutory commissions IN THE AMOUNT OF \$13,800.01.

14. PETITIONER waives the filing of a surety bond.

15. Decedent's funeral bill in the sum of \$5,000.00 has been paid by PETITIONER. (SEE EXHIBIT B – COPY OF PAID FUNERAL 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 EXECUTOR. THE DECEDENT HAS NEVER RECEIVED PUBLIC ASSISTANCE, MEDICARE, OR MEDICAID. (SEE EXHIBIT C- NO LIEN LETTER FROM MEDICARE/ MEDICAID).

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

17. Petitioner desires leave of this court to ALLOCATE AND DISTIRBUTE the settlement, pursuant THE WESCHESTER SUPREME COURT ORDER DATED JUNE 5, 2011, to the provisions of law (and to settle the account of the EXECUTOR).

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-EXECUTOR	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

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 entire recovery be allocated 100% to the cause of action for decedent's wrongful death, and

THAT the account of JANE SMITH as EXECUTOR in this proceeding, should be judicially settled,

and

THAT JANE SMITH, AS EXECUTOR, BE ALLOWED AND PAID \$13,800.01 FOR HER STATUTORY COMMISSION PURSUANT TO SCPA 2307, and

THAT, the NET balance of the settlement, to wit the sum of \$312,866.99, WHICH IS BEING HELD IN THE ESCROW ACCOUNT OF LIAM SMART, ESQ PURSUANT TO THE BRONX SUPREME COURT ORDER DATED JUNE 5, 2011, be distributed to those distributees having sustained a pecuniary loss PURSUANT TO EPTL 5-4.4 as follows:

90% to JANE SMITH, Spouse, \$281,580.29

10% to SALLY SMITH, daughter, \$31,286.70

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

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

JOHN SMITH
Deceased.

ACCOUNT

File # 2020-5

For leave TO ALLOCATE AND DISTRIBUTE
PROCEEDS from certain cause of action for
wrongful death of the decedent and to render and have
judicially settled an account of the proceedings as such
EXECUTOR.

TO THE SURROGATE'S COURT:

1. I JANE SMITH do render the following account of my proceedings as EXECUTOR 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 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 TESTAMENTARY 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. ON JUNE 5, 2011 THE HONORABLE HARRY JONES, JSC (WESTCHESTER SUPREME COURT) SIGNED AN ORDER APPROVING THE SETTLEMENT OF THE WRONGFUL DEATH ACTION AGAINST THE DEFENDANTS WALTER WILLIAMS AND ROGER LEWIS IN THE AMOUNT OF \$500,000.00, APPROVING AND ALLOWING OF THE ATTORNEY'S FEES OF LIAM SMART, ESQ. IN THE AMOUNT \$163,333.00 AND DISBURSEMENTS IN THE AMOUNT OF \$10,000.00, WAIVING THE FILING OF A BOND; MODIFYING THE LIMITATIONS ON THE LETTERS TESTAMENTARY TO ALLOW THE COMPROMISE AND SETTLEMENT, AND ORDERED THE NET SETTLEMENT IN THE AMOUNT OF \$326,667.00 BE PLACED IN AN INTEREST BEARING ESCROW ACCOUNT PENDING THE ORDER OF THE WESTCHESTER SURROGATE'S COURT FOR ALLOCATION AND DISTRIBUTION.

3. There is submitted with this account my petition as EXECUTOR 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 the disbursements in the sum of \$10,000.00 and thereafter a fee of 33% of the net proceeds HAVING BEEN APPROVED AND PAID PURSUANT TO THE SUPREME COURT ORDER DATED JUNE 5, 2011.

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

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>	

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

\$500,000.00

12. I credit myself as follows:

- a) With the amount PAID to LIAM SMART,
Esqs., attorneys, including disbursements PURSUANT
TO THE SUPREME COURT ORDER DATED JUNE 5, 2011: \$173,333.00
- b) WITH THE AMOUNT TO BE PAID TO JANE SMITH,
AS EXECUTOR, FOR STATUTORY COMMISSIONS \$13,800.01
- c) With the amount to be paid to JANE SMITH,
widow and distributee PURSUANT TO EPTL 5-4.4: \$281,580.29
- d) With the amount to be paid to SALLY SMITH,
DAUGHTER and distributee PURSUANT TO EPTL 5-4.4: \$31,286.70

Leaving no balance.

Dated: _____

STATE OF NEW YORK
COUNTY OF _____ ss.:

_____ being duly sworn, deposes and says:

That I am the EXECUTOR 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

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In the Matter of the Application of
JANE SMITH as
EXECUTOR 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 of the decedent and to render and have
judicially settled an account of the proceedings as such
EXECUTOR.

-----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 UNCONSCIOUS 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 without having regained consciousness.

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 none are left outstanding.

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 of decedent AND THE WRONGFUL DEATH COMPROMISE WAS SETTLED IN THE BRONX SUPREME COURT BY AN ORDER DATED JUNE 5, 2011.

8. All of the proceeds of the settlement of the claim are to be allocated to the action for wrongful death, the decedent never having regained consciousness following the occurrence complained of.

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. Your deponent has a written retainer with the EXECUTOR 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 EXECUTOR 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. WHICH WAS APPROVED AND PAID FOR BY THE SUPREME COURT ORDER DATED JUNE 5, 2011.

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

Sworn to before me this
day of _____, 20____.

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, 18th FLOORS, New York on _____, at _____ a.m.

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

WHY the entire recovery SHOULD NOT be allocated 100% to the cause of action for decedent's wrongful death, and

THAT JANE SMITH, AS EXECUTOR, SHOULD NOT BE ALLOWED AND PAID \$13,800.01 FOR HER STATUTORY COMMISSION PURSUANT TO SCPA 2307, and

THAT, the NET balance of the settlement, to wit the sum of \$312,866.99, WHICH IS BEING HELD IN THE ESCROW ACCOUNT OF LIAM SMART, ESQ PURSUANT TO THE BRONX SUPREME COURT ORDER DATED JUNE 5, 2011, SHOULD NOT BE distributed to those distributees having sustained a pecuniary loss PURSUANT TO EPTL 5-4.4 as follows:

90% to JANE SMITH, Spouse, \$281,580.29

10% to SALLY SMITH, daughter, \$31,286.70

DATED, ATTESTED AND SEALED

HON. _____
County Surrogate

(L.S.)

_____, 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.

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

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

WAIVER AND CONSENT

JOHN SMITH, deceased,
for leave to ALLOCATE AND DISTRIBUTE
THE PROCEEDS OF A WRONGFUL DEATH
CAUSE OF ACTION OF the decedent and to render and
have judicially settled an account of the proceedings
as such EXECUTOR.

File No. 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 EXECUTOR of the estate of
, deceased, a copy of which is attached, should be judicially settled, and

THAT the entire recovery be allocated 100% to the cause of action for decedent's wrongful death, and

THAT JANE SMITH, AS EXECUTOR, BE ALLOWED AND PAID \$13,800.01 FOR HER
STATUTORY COMMISSION PURSUANT TO SCPA 2307, and

THAT, the NET balance of the settlement, to wit the sum of \$312,866.99, WHICH IS BEING HELD IN
THE ESCROW ACCOUNT OF LIAM SMART, ESQ PURSUANT TO THE BRONX SUPREME COURT
ORDER DATED JUNE 5, 2011, be distributed to those distributees having sustained a pecuniary loss
PURSUANT TO EPTL 5-4.4 as follows:

90% to JANE SMITH, Spouse, \$281,580.29

10% to SALLY SMITH, daughter, \$31,286.70

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)