

(Wrongful Death  
Petition)

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

-----X

In the Matter of the Application of

\_\_\_\_\_

as Administrat\_\_\_\_ of the Goods, Chattels

and Credits which were of

PETITION

File

No. \_\_\_\_\_

(as of 4/98)

\_\_\_\_\_, Deceased,

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\_\_\_\_

-----X

TO THE SURROGATE'S COURT:

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.

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 To date, said letters have not been revoked and are presently in full force and effect.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.

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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 \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

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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.

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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:

<u>Name</u>	<u>Relationship</u>	<u>Date of Birth</u>	<u>Present Age</u>

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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 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 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:

Name

Anticipated

Percentage

Age  
on Date

Years of

Net  
Amount

of  
Death

Dependency

of  
Settlement

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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)\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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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 Administrat\_\_\_\_\_).

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	_____

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_____	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

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:\_\_\_\_\_