

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

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 \_\_\_\_\_

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letters have not been revoked and are presently in full force and effect.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

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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.





*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



