

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

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In the Matter of the Application of DAVID J. GUGERTY,  
Public Administrator of Nassau County, as Limited Administrator  
of the Estate of

File No. 336551

JOSE ANGEL ACOSTA MEJIA,  
Deceased,

Dec. No. 684

for leave to compromise a cause of action for wrongful death  
and pain and suffering and to render and have judicially  
settled an account of his proceedings as Limited Administrator.  
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In this proceeding for leave to compromise an action for wrongful death and conscious pain and suffering, the decedent, Jose Angel Acosta Mejia, was, at the time of his death, a 30-year old married father of one child. The decedent was employed as a car wash attendant. Limited letters of administration were issued to the Public Administrator of Nassau County on March 23, 2005. The decedent died on February 12, 2005 as a result of injuries he sustained after being struck by an automobile owned and operated by Dennis Bhola. The accident occurred on February 12, 2005 at 6:25 p.m. when a vehicle owned by Joseph Oxman and operated by Susan Oxman-Natale collided with a vehicle owned and operated by Dennis Bhola at the intersection of Franklin Avenue and Fenworth Boulevard. The Bhola vehicle truck two pedestrians, one of whom was the decedent. The decedent sustained multiple injuries and died approximately one-half (1/2) hour later.

The adequacy of the \$500,000 gross settlement was approved by a so-ordered stipulation of the Supreme Court, Queens County (Ritholtz, J) dated October 26, 2006. The petitioner proposes to allocate the entire sum of the settlement proceeds to the cause of action for wrongful

death inasmuch as the decedent never regained consciousness following the accident (*Cummins v County of Onondaga*, 84 NY2d 322 [1994]). The funeral bill has been paid and Jose Amilcar Soriano Bonilla is entitled to reimbursement in the amount of \$4,964.00. Attorneys' fees in the sum of \$165,310.18 are approved. Pursuant to agreements, Roth & Roth, LLP; Marie F. McCormack, Esq. and Brosnan & Hegler, LLP shall receive varying percentages for the work performed herein. Each of the attorneys involved has submitted an affirmation of services setting forth their services rendered. The services included but were not limited to as follows: Marie McCormack, Esq. conducted the initial investigation of the case, procured limited letters of administration, commenced the action, prepared and responded to discovery demands, conducted the deposition of defendant and settlement negotiations; Roth & Roth LLP reviewed the complete file, drafted a summary judgment motion, established a claim for future loss of earnings, participated in discovery conferences, conducted settlement negotiations and obtained a favorable settlement; Brosnan & Hegler LLP prepared petition for limited letters, reviewed medical release forms, reviewed documentation regarding the terms of the settlement, prepared the petition to compromise the claim, reviewed the guardian ad litem's report and prepared the final account. Based upon the foregoing and the applicable case law (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], aff'd 213 App Div 59 [1925], aff'd 241 NY 593 [1925], aff'd 241 NY 593 [1925]; *Matter of Freeman*, 34 NY2d 1 [1974]), the fees are approved. The court finds the services were necessary and the fees bear a reasonable relationship to the services provided. Allowable disbursements in the sum of \$4,068.94 are approved.

In addition, the petitioner received a death benefit from MVAIC in the amount of \$2,000.00. The petitioner is allowed statutory commissions in the sum of \$9,829.71 (SCPA

2307). The petitioner is also allowed the sum of \$3,276.57 for administration of the estate (SCPA 1207 [4]). The court approves a fee for the guardian ad litem in the sum of \$2,400.00, leaving a net of \$312,150.60 for distribution.

The balance of the wrongful death proceeds, \$312,150.60, shall be paid to the decedent's distributees pursuant to the formula set forth in *Matter of Kaiser* (198 Misc 582 [Kings County 1950]). The court will adopt the life expectancy tables utilized by the guardian ad litem. The balance of the wrongful death recovery shall be distributed as follows:

-68%, or \$212,262.40, for decedent's spouse, Onelia Vallecilli Mejia

-32%, or \$99,888.20, for decedent's son, Jose Angel Acosta Vallecillo

The share of the infant child shall be paid to a guardian of his property who has been or will be appointed by this court or another court of competent jurisdiction.

The foregoing guardian ad litem fee shall be paid within 30 days of the date of the decree to be settled herein.

Settle decree.

Dated: November 9, 2007

JOHN B. RIORDAN  
Judge of the  
Surrogate's Court