

04-339-CD
SANDRA WILLIAMS, et al. vs. WILLIAM CLARK

Sandra Williams et al vs. William Clark
2004-339-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SANDRA WILLIAMS, Executrix *
of the ESTATE OF HAROLD BRUCE *
WISOR a/k/a HAROLD B. WISOR, *
Plaintiff *
*
-vs- * No. 04-339 CD
*
WILLIAM CLARK, *
Defendant *
*

Type of Pleading:
Petition for Approval of
Settlement of Wrongful
Death and Survival Actions
and Order of Distribution
on behalf of Plaintiff

Counsel of Record for this
Party:

Richard H. Milgrub, Esquire
Supreme Court I.D. 19865

211 North Second Street
Clearfield, PA 16830
(814) 765-1717

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CLEARFIELD, PA 16830

109 NORTH BRADY STREET
DUBOIS, PA 15801

FILED

MAR 11 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SANDRA WILLIAMS, Executrix	*
of the ESTATE OF HAROLD BRUCE	*
WISOR a/k/a HAROLD B. WISOR,	*
Plaintiff	*
	*
-vs-	* No.
	*
WILLIAM CLARK,	*
Defendant	*

PETITION FOR APPROVAL OF SETTLEMENT OF
WRONGFUL DEATH AND SURVIVAL ACTIONS AND
FOR ORDER OF DISTRIBUTION ON BEHALF OF PLAINTIFF

AND NOW, comes the Plaintiff, by and through her attorney, Richard H. Milgrub, Esquire, and petitions the Court for an Order approving settlement of wrongful death and survival actions against the Defendant and for an Order of Distribution, and in support thereof avers:

1. On December 4, 2003, Your Petitioner, Sandra Williams, was granted Letters Testamentary on the Estate of Harold Bruce Wisor a/k/a Harold B. Wisor. Mr. Wisor was a resident of Clearfield County, Pennsylvania, at the time of his death, and is survived by a wife, Grace Wisor.

2. A cause of action arose on November 20, 2003 when a vehicle being operated by the Defendant, William Clark, struck and killed Harold Bruce Wisor as he was retrieving his mail at his mailbox outside of his home.

3. Sandra Williams, Executrix of the Estate of Harold Bruce Wisor a/k/a Harold B. Wisor, filed wrongful death and survival actions against the Defendant in this Court.

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4. Following informal discovery and negotiations, the Defendant has offered One hundred thousand dollars (\$100,000.00), the full policy limits. The Petitioner believes the amount being offered by Defendant is fair and reasonable under the circumstances of this case. Furthermore, there is additional underinsurance involved.

5. Petitioner is of the opinion that the proposed settlement is reasonable due to the fact that the Defendant has offered the full policy limits and is without other sufficient assets.

6. Counsel has incurred various expenses which are set forth below:

(a) Clearfield County Prothonotary	\$ 85.00
(b) Miscellaneous Expenses	\$ 100.00
TOTAL EXPENSES:	
	\$ 185.00

7. Counsel requests counsel fees in the amount of Twenty-five thousand dollars (\$25,000.00) which is twenty-five percent (25%) of the proceeds of the settlement. Attached hereto and marked Exhibit "A" is a copy of said applicable contingent fee agreement.

8. Petitioner requests allocations of the proceeds of the settlement after deduction of costs and attorney fees as follows:

Survivorship Action	\$ 7,481.50
Wrongful Death Action	\$67,333.50

9. The reason for the requested allocation is as follows:

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- a. the decedent died at the accident site;
- b. other than attending medical technicians at the accident site, there were no other related medical expenses;
- c. decedent was retired and collecting Social Security at the time of his death; and
- d. the beneficiary, wife, suffered a pecuniary loss because of the possibility that the decedent could have contributed to her care and support in the coming years.

10. Pursuant to 42 Pa.Con.Stat.Ann. Section 8302, the beneficiary of the Survival Claim and the proportion of her interest is as follows:

<u>Name</u>	<u>Date of Birth</u>	<u>Social Security Number</u>	<u>Amount</u>
Grace Wisor	July 23, 1931	208-24-2477	\$7,481.50

11. The beneficiary is the wife.

12. Pursuant to the Wrongful Death Statute 42 Pa.Cons.Stat.Ann. Section 8301, the beneficiary of the wrongful death claim and the proportion of her interest is as follows:

<u>Name</u>	<u>Date of Birth</u>	<u>Social Security Number</u>	<u>Amount</u>
Grace Wisor	July 23, 1931	208-24-2477	\$67,333.50

13. The beneficiary is the wife.

14. The pecuniary loss suffered by the beneficiary is loss of earnings.

WHEREFORE, Your Petitioner requests that she be

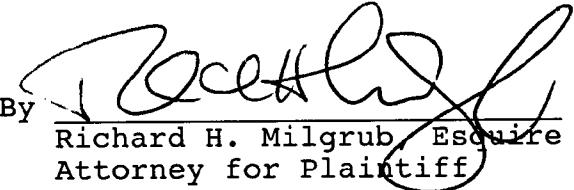
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permitted to enter into settlement as stated above and that the Court enter an Order of Distribution as follows:

1. Richard H. Milgrub, Esq. (Counsel fees of 25%)	\$ 25,000.00
2. Richard H. Milgrub, Esquire (Reimbursement for costs)	185.00
3. Balance of settlement apportioned as follows:	
Survivorship Action	7,481.50
Wrongful Death Action	67,333.50
TOTAL SETTLEMENT: \$100,000.00	

WHEREFORE, Your Petitioner respectfully requests that the Petition be granted.

By 
Richard H. Milgrub, Esquire
Attorney for Plaintiff

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STATEMENT OF COUNSEL

As attorney on behalf of the above-named Plaintiff, I, Richard H. Milgrub, recommend that the Court approve the proposed settlement in the amount of \$100,000.00 as follows:1.

1. Richard H. Milgrub, Esquire:
\$ 185.00 for reimbursement of costs
\$ 25,000.00 for counsel fees

2. The remaining balance of \$74,815.00 is apportioned as follows:

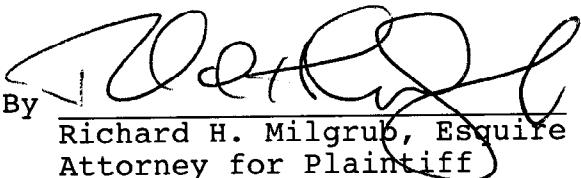
Wrongful Death Claim	\$67,333.50
Survival Claim	\$ 7,481.50

3. The Wrongful Death Claim of \$67,333.50 shall be paid as follows:

Grace Wisor	\$67,333.50
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4. The Survival Claim of \$7,481.50 shall be paid as follows:

Grace Wisor	\$7,481.50
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By 
Richard H. Milgrub, Esquire
Attorney for Plaintiff

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CERTIFICATION

I, Sandra Williams, hereby certify that I am the Executrix of the Estate of Harold Bruce Wisor a/k/a Harold B. Wisor and I join in this Petition and pray that this Court approve the proposed settlement and apportionment.



Sandra Williams, Executrix

Power of Attorney
and
Contingent Fee Agreement

I, Sandra Lee Williams, do hereby retain Richard H. Milgrub of Clearfield, Pennsylvania, as my attorneys to negotiate for me a settlement or to institute for me in my name any legal proceedings or actions that in their judgment are necessary in connection with my claim for damages sustained on the 20th day of Nov, 03 against William Clark and any other person, firm, corporation or entity who may be responsible for my claim, and/or to obtain an amicable settlement.

I hereby give to my attorneys a Power of Attorney to execute all documents connected with the claim for the prosecution of which the attorney is retained, including pleadings, contracts, commercial papers, settlement agreements, compromises and releases, verifications, dismissals, orders, settlement checks and all other documents that I could properly execute in connection with this lawsuit.

I agree not to settle or adjust the above claim or any proceedings arising from said claim nor to discuss said claim with any other persons.

I agree to fully cooperate with my said attorneys in the prosecution of the claim that comprises the subject matter of this Agreement. This includes, but is not limited to, making myself available for legal proceedings and consultations with my said attorneys; keeping my said attorneys informed as to my current mailing address, phone number and the current status of my medical condition.

I warrant that the information which I have supplied and will supply during the course of these legal proceedings is true and accurate, and has not been and will not be obtained through fraud or illegal activities.

I agree to pay attorneys' fees from the total amount recovered from any source, except first-party benefits (i.e., work loss and medical benefits), on account of my bodily injury claim, including my claim for uninsured or underinsured motorist benefits, on the following basis:

Settlement of third-party tort total claim prior to filing of legal action.

25 % of total sum recovered.

Settlement of third-party tort claim on or after filing of legal action.

33 1/3 % of total sum recovered.

Settlement of uninsured or underinsured motorist claims prior to selection of my arbitrator.

 % of total sum recovered.

Settlement of uninsured or underinsured motorists claims after selection of my arbitrator.

 % of total sum recovered.

Costs: Costs are to be paid from my (the client's) share of the total amount recovered and include, but are not limited to: photocopies; fax charges; postage; notaries; long distance telephone charges; mileage for attorneys

and staff; investigation charges; photographs; court costs; computer-based research charges; medical records costs; fee for police report; deposition costs; expert witness fees; stenographer costs; and, video deposition fees.

In the event that no recovery is obtained on this claim, the attorneys will make no charges for their time or services. However, any costs or expenses that the attorneys may have advanced on behalf of the claim must be paid by me upon request by said attorneys.

As one possible settlement option, I authorize the said attorneys to explore the possibility of a structured settlement through the use of deferred periodic payments. I agree that if my claim is settled through such structure, the attorneys' fees may be paid directly to said attorneys from the insurance company, either in one lump sum payment at settlement, or, at the sole option of said attorneys and/or insurance company, deferred into future payments. However, in any event, said attorneys' fees shall be calculated in the percentage as set forth above based upon the cost of the structured settlement or present value thereof in accordance with applicable law.

All medical bills for which I am legally responsible and incurred as a result of my injuries shall be chargeable to my share exclusively, unless otherwise paid by insurance.

This Contingent Fee Agreement applies to all proceedings up to and including verdict or decision at trial or arbitration, except proceedings which are or may be required to collect first-party benefits. If, in the discretion of the attorneys, post-trial proceedings, including appeals, are warranted, they will not be covered by this Contingent Fee Agreement and a new fee agreement will be required by said attorneys.

This Contingent Fee Agreement and Power of Attorney shall not apply to any right, claim or cause of action that we may have for collection of first-party benefits. (i.e., work loss benefits and medical bills).

In Witness Whereof, I have hereunto set my hand(s) and seal(s) this 4th day of December 2003

(Seal)

Sandra Williams (Seal)

(Seal)

And Now, this _____ day of _____, the above Contingent Fee Agreement and Power of Attorney has been read, approved, and understood by me and the receipt of a copy thereof acknowledged. The terms set forth are agreeable.

(Seal)

(Seal)

Sandra Williams hereby states that she is the Plaintiff in this action and verifies that the statements made in the foregoing Petition are true and correct to the best of her knowledge, information and belief. She undersigned understands that the statement therein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 3-10-04

Sandra Williams

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

SANDRA WILLIAMS, Executrix *
of the ESTATE OF HAROLD BRUCE *
WISOR a/k/a HAROLD B. WISOR, *
Plaintiff *
*
-vs- * No. 04-339-01
*
WILLIAM CLARK, *
Defendant *
*

ORDER

AND NOW, this 15th day of March, 2004,
upon consideration of the Plaintiff's Petition for Approval of
Settlement of Wrongful Death and Survival Actions and Order of
Distribution on behalf of Plaintiff, it is hereby ORDERED and
DECREED that hearing on said matter be scheduled for the 1 day
of April, 2004 at 2:30 P.m. in Courtroom 1
of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

Judie J. Zimmerman
Judge

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FILED

MAR 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

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*
*
*
*
WILLIAM CLARK, *
Defendant *
*
*

APR 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 1 day of April, 2004, upon
consideration of the Petition to Settle Wrongful Death and
Survival Action, it is hereby ORDERED and DECREED that Petitioner
is authorized to enter into a settlement with Defendants in the
gross amount of \$100,000.00.

IT IS FURTHER ORDERED and DECREED that the settlement
proceeds be distributed as follows:

1. Richard H. Milgrub, Esquire:
\$ 185.00 for reimbursement of costs
\$ 25,000.00 for counsel fees

2. The remaining balance of \$74,815.00 is apportioned
as follows:

Wrongful Death Claim	\$ 67,333.50
Survival Claim	\$ 7,481.50

3. The Wrongful Death Claim of \$67,333.50 shall be
paid as follows:

Grace Wisor	\$ 67,333.50
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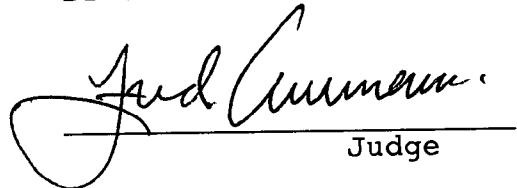
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4. The Survival Claim of \$7,481.50 shall be paid as follows:

Grace Wisor

\$ 7,481.50

BY THE COURT:



Judge

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