

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to

**LARRY M. HIMELEIN,**

a Judge of the County Court, Family Court  
and Surrogate's Court, Cattaraugus County.

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**AGREED  
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

**IT IS HEREBY STIPULATED AND AGREED** by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Honorable Larry M. Himelein ("respondent"), who is represented by Terrence Connors, Esq., that further proceedings are waived and that the Commission shall make its determination upon the following facts.

**Procedural History**

1. Respondent was served with a Formal Written Complaint dated March 3, 2009, alleging *inter alia* that, in connection with pending litigation and other efforts by judges and justices of the Unified Court System to secure enactment by the Legislature of a pay raise for the judiciary, he (A) disqualified himself from cases in which parties were represented by law firms that include members of the Legislature, not because he could not be impartial but as a tactic intended to force the Legislature to pass a judicial pay raise, (B) encouraged other judges to recuse themselves from cases

involving legislators or their law firms, without regard to their ability to be impartial, as a “weapon” in the effort to secure a pay raise, and in doing so denigrated those judges who refused, (C) made public comments concerning the pay raise litigation and (D) made denigrating comments about legislators and, in particular, the Speaker of the Assembly, Sheldon Silver.

2. Respondent filed an Answer dated April 23, 2009, in which he denied the material allegations of the Complaint and that his conduct constituted violations of the Rules, but admitting that he sent a series of emails to judges of the Unified Court System and that he talked with two reporters working on stories about the pay raise litigation.

3. On May 20, 2009, the Commission designated the Honorable Richard D. Simons, a retired Judge of the Court of Appeals, as Referee to hear and report findings of fact and conclusions of law. Judge Simons held the hearing on June 22, 2009, at which respondent and one other witness (a newspaper reporter) testified, and various exhibits and a Stipulation of Facts were admitted. Upon completion of the hearing transcript, Judge Simons set a schedule for the submission of briefs and replies.

4. This Agreed Statement of Facts is entered into prior to the issuance of Judge Simons’ report.

#### **Respondent’s Professional Background**

5. Respondent was admitted to the practice of law in 1976. He served as the District Attorney of Cattaraugus County from January 1, 1982, through December 31, 1992.

6. Respondent has been a Judge of the County Court, Family Court, and Surrogate's Court, Cattaraugus County, since 1993. He served as an Acting Justice of the Supreme Court intermittently between 1997 and 2004, and continuously from 2004 to the present.

7. Respondent's co-Judge of the County, Family and Surrogate's Court, Cattaraugus County, is Michael L. Nenno.

**Respondent's General Practice as to Recusals**

8. Over the years, respondent has recused himself in several cases where he was familiar with a party or otherwise felt his impartiality might reasonably be questioned.

9. For example, in 1993, respondent presided over a criminal case in which two defendants were charged with stealing from Bush Industries, a company located in Western New York. Respondent disclosed that he owned 100 shares of Bush Industries stock. The defense asked respondent to recuse for that reason. Respondent believed that Judiciary Law Section 14 required his recusal and granted the request.

10. In June 2009, respondent recused himself from a criminal case because the defendant is the son of a court clerk with whom respondent works.

**As to Charge I**

11. In April 2005, the New York State Legislature considered but failed to enact legislation that would increase the salaries of the so-called "state-paid judges."<sup>1</sup>

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<sup>1</sup> "State-paid judges" refers to all judges of the state unified court system except town and village court justices.

12. On January 2, 2007, certain members of the New York State judiciary commenced *Maron v. Silver*, an Article 78 proceeding to compel the New York State Comptroller to disburse funds for a judicial pay raise. Respondent was not a party to this litigation. The matter is still pending.

13. In March 2007, the Legislature and then-Governor Eliot Spitzer considered but failed to reach agreement on proposed legislation to increase the salaries of the state-paid judges.

14. By June 2007, respondent had developed strong personal feelings about the Legislature's failure to enact judicial pay raise legislation and began considering whether to recuse himself from cases involving lawyer/legislators or members of their law firms.

15. On June 22, 2007, respondent sent a letter to two law firms – Hiscock & Barclay and Harris Beach – referring to the pay raise litigation, advising of his intention to contribute to the litigation, and announcing his decision to disqualify himself from litigation involving the two firms because of their affiliation with legislators. The letter read as follows:

“As I am sure you are aware, several judges and judicial organizations have commenced lawsuits against the governor, the state senate and the state assembly contesting what many believe is the unlawful reduction of judicial salaries during a term of office. I intend to make a contribution to that litigation and thus, I have an economic interest in its success. It is my belief that because I have a financial interest in litigation against the New York State Legislature, the ethical rules mandate my disqualification in any case in which a legislator is a member of one of the firms.

Accordingly, because you have a legislator affiliated with your firm, I write to inform you that I am disqualifying myself from any litigation in which your firm is involved.”

A copy of respondent’s letter is annexed hereto as Exhibit 1.

16. At the time respondent sent the June 22, 2007 letter, he was familiar with Opinion 89-93 of the Advisory Committee on Judicial Ethics (“Advisory Committee”), holding that a judge need not recuse where a legislator or a member of a legislator’s firm appears because of the legislator’s role in setting the judge’s salary.<sup>2</sup> Respondent was also aware of Opinion 07-25, in which the Advisory Committee stated that it would not be consistent with the Rules Governing Judicial Conduct for a judge to recuse in cases involving legislators or their law firms because of the longstanding dispute over judicial salary increases.

17. Prior to sending his letter of June 22, 2007, no legislator had ever appeared before him representing a party. Consequently, respondent had never disqualified himself from a case involving a legislator or a legislator’s firm.

18. On July 10, 2007, respondent sent a so-called “blast” e-mail<sup>3</sup> to numerous judges throughout New York State, by hitting “reply all” to a prior e-mail. Respondent’s e-mail stated in part: “Does anyone really think that banding together or lobbying together or doing anything together will have any effect on those people in Albany?? I remain convinced that the only weapon in our arsenal is recusal on all cases

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<sup>2</sup> All Advisory Opinions referenced in this Agreed Statement of Facts are annexed hereto collectively as Exhibit 31.

<sup>3</sup> A “blast” e-mail is an electronic mailing sent simultaneously to a large mailing list. Blast lists of judges are available on the court system’s e-mail server system.

where a firm has a legislator or a relative of a legislator in a firm ... Some of us may not want to poke our fingers in the eyes of politicians (some of us, however, might like to do exactly that) but I firmly believe that [recusal] is the only weapon we have that has any likelihood of making some of those clowns suffer for their actions..." A copy of respondent's e-mail is annexed hereto as Exhibit 2.

19. On July 11, 2007, respondent sent a blast e-mail to numerous judges throughout New York State in which he explained that he was disqualifying himself from cases involving lawyer/legislators' law firms, stating, "My feeling is that I would not be recusing because I could not be impartial. I would be recusing because it is mandatory. I view it this way: I made a contribution to a lawsuit where the legislature is a named defendant. I have a direct interest in the plaintiffs' success in the lawsuit, a direct financial interest." He further stated, "Once the lawsuit is over, the reason for recusal are also over. It has nothing to do with whether I could be impartial. I really believe that this is the only weapon we have ... there are enough lawyers in the senate who would be very unhappy if their cases could not be heard and their firms started letting them go...." A copy of respondent's e-mail is annexed hereto as Exhibit 3.

20. On September 12, 2007, several judges, including respondent's co-Judge Michael Nenno, commenced *Larabee v. Spitzer*, an action seeking a judgment declaring that the Legislature's failure to provide judicial pay raises violated the state constitution. Respondent was not a party to this litigation. The matter is still pending.

21. On September 21, 2007, respondent sent a blast e-mail to numerous judges throughout New York State, stating, "I am sending my check this weekend to

support the litigation and will send a letter to all firms in our area that have a legislator affiliated with the firm recusing myself from their cases as long as the litigation is pending. I continue to view this as an automatic recusal. Not until these firms start letting their legislators go will we have any standing at all with those clowns....” A copy of respondent’s e-mail is annexed hereto as Exhibit 4.

22. On September 24, 2007, respondent sent a check for \$100 to Steven Cohn, P.C., the attorney for the petitioners in *Maron v. Silver*, to support the cost of litigation. A copy of respondent’s check is annexed hereto as Exhibit 5.

23. Respondent’s \$100 contribution did not make him a party in *Maron*, did not underwrite the action and did not affect the continuation of the action.

24. On September 25, 2007, respondent sent a letter to the law firms of Harris Beach and Hiscock & Barclay. In his letter, respondent stated that he had contributed to a lawsuit against the Legislature, that he stood to benefit financially from a successful outcome, and that he believed the Code of Judicial Conduct required his recusal from any litigation involving their firms because they were affiliated with a member of the Legislature. A copy of respondent’s letter is annexed hereto as Exhibit 6.

25. Michael Nozzolio, Esq., has served in the New York State Senate since 1993 and is a member of the law firm Harris Beach. Neil Breslin, Esq., has served in the New York State Senate since 1997; William Barclay, Esq., has served in the New York State Assembly since 2003; both Mr. Breslin and Mr. Barclay are members of the law firm Hiscock & Barclay.

26. From September 25, 2007, to July 16, 2008, respondent recused himself from 11 cases involving legislators or members of a legislator's law firm.

27. Before recusing himself from these cases, respondent was aware of Advisory Opinion 89-93, Advisory Opinion 07-25, and Advisory Joint Opinion 07-84 and 07-140, which hold that a judge is not required to exercise recusal when a legislator, or a member of the legislator's firm, appears before the judge, notwithstanding that the New York State Legislature sets judicial salaries or that a judge or judge's association has filed a lawsuit against the Legislature seeking a judicial pay raise. He was also aware of other opinions relevant to this issue, Joint Opinion 88-17(B), 88-34 and Opinion 88-41.

28. On September 25, 2007, respondent recused himself from *H. John Wild v. Betty Clarke, et al (Passenger Bus Corp.)*, a civil action for damages commenced on October 30, 2006, in Supreme Court, Cattaraugus County, in which Hiscock & Barclay represented the defendant. Copies of the court records are annexed hereto as Exhibit 7.

29. On September 25, 2007, respondent recused himself from *Niagara Mohawk Power Corporation, d/b/a National Grid v. Town of Machias Assessor, et al.*, a real property tax certiorari commenced on July 17, 2007, in Supreme Court, Cattaraugus County, in which Hiscock & Barclay represented the petitioner. Copies of the court records are annexed hereto as Exhibit 8.

30. On September 25, 2007, respondent recused himself from *Niagara Mohawk Power Corporation, d/b/a National Grid v. Town of New Albion Assessor, et al.*, a real property tax certiorari commenced on or about July 17, 2007, in Supreme Court,

Cattaraugus County, in which Hiscock & Barclay represented the petitioner. Copies of the court records are annexed hereto as Exhibit 9.

31. Sheldon Silver has served in the New York State Assembly since 1977. Mr. Silver has been Speaker of the Assembly since 1994. He is an attorney and a member of the law firm Weitz & Luxenberg.

32. On October 15, 2007, respondent recused himself from *Estate of Raymond J. Dombek*, a probate proceeding in the Cattaraugus County Surrogate's Court, commenced on October 15, 2007, in which Weitz & Luxenberg represented the petitioner. Copies of the court records are annexed hereto as Exhibit 10.

33. On October 15, 2007, respondent sent a letter to Weitz & Luxenberg, stating that he had contributed to a lawsuit against the Legislature, that he stood to benefit financially from a successful outcome, and that he believed that the Code of Judicial Conduct required his recusal from any litigation involving the firm because of its affiliation with a member of the Legislature. Respondent further stated, "Because your firm is counsel to a party in the [*Dombek*] case, the case will have to be re-assigned to a judge able to hear your case". A copy of respondent's letter is annexed hereto as Exhibit 11.

34. On December 3, 2007, respondent sent a blast e-mail to numerous judges throughout New York State, stating in reference to the *Maron* case, "Given that decision, and assuming that we will get boned by the legislature again, is there anyone who still believes we shouldn't recuse"? A copy of respondent's e-mail is annexed hereto as Exhibit 12.

35. On January 3, 2008, respondent recused himself from the *Estate of Joseph E. Zynczak*, a probate proceeding commenced on June 25, 2004, in Surrogate's Court, Cattaraugus County, in which Harris Beach represented the estate. Copies of the court records are annexed hereto as Exhibit 13.

36. On January 3, 2008, respondent wrote to the attorneys in the *Zynczack* matter stating that he believed that he was "mandatorily recused" from any case involving Harris Beach because he had contributed to litigation against the Legislature and Harris Beach employed a legislator. Respondent further stated, "I believe Judge Nenno, the only other judge in our county, has also recused so you will probably have to contact the administrative judge to find a non-self respecting judge to hear your case". A copy of respondent's letter is included in Exhibit 14.

37. Judge Michael Nenno had recused himself from cases involving state legislators or their law firms because he was a party to *Larabee v. Spitzer*. Prior to his own recusal from such cases, respondent was the only Cattaraugus County judge hearing cases involving legislators and their law firms. After respondent's recusal, all cases involving legislators and their law firms had to be transferred to judges in adjoining counties.

38. On January 18, 2008, respondent recused himself from *Jason R. Clemons v. Olean General Hospital, et al.*, a medical malpractice action commenced on or about January 26, 2007, in Supreme Court, Cattaraugus County, in which Hiscock & Barclay represented the defendant. Copies of the court records are annexed hereto as Exhibit 15.

39. On February 28, 2008, respondent recused himself from the *Estate of Robert J. Wagner*, a probate proceeding commenced on or about February 27, 2008, in Surrogate's Court, Cattaraugus County, in which Weitz & Luxenberg represented the petitioner. Copies of the court records are annexed hereto as Exhibit 16.

40. On April 10, 2008, then-Chief Judge Judith Kaye commenced a lawsuit, *Kaye v. Silver*, seeking *inter alia* an order retroactively adjusting the salaries of State-paid judges.

41. On April 24, 2008, the Advisory Committee issued Joint Opinion 08-76, 08-84, 08-88 and 08-89, holding *inter alia* that State-paid judges are not parties to the Chief Judge's lawsuit and are not required to recuse when a legislator or a member of the legislator's firm appears. Respondent was aware of Joint Opinion 08-76, 08-84, 08-88 and 08-89.

42. On May 6, 2008, respondent recused himself from the *Estate of Eloise J. Fall*, a probate proceeding commenced on May 5, 2008, in Surrogate's Court, Cattaraugus County, in which Harris Beach represented the petitioner. Copies of the court records are annexed hereto as Exhibit 17.

43. On July 1, 2008, respondent recused himself from the *Estate of Henry G. Ruth*, a probate proceeding commenced on June 4, 2008, in Surrogate's Court, Cattaraugus County, in which Weitz & Luxenberg appeared for the petitioner. Copies of the court records are annexed hereto as Exhibit 18.

44. On July 16, 2008, respondent recused himself from the *Estate of Donald C. Bliven*, a probate proceeding commenced on March 7, 2005, in Surrogate's

Court, Cattaraugus County, in which Weitz & Luxenberg represented the petitioner.

Copies of the court records are annexed hereto as Exhibit 19.

45. On July 16, 2008, respondent recused himself from the *Estate of Claude F. Glenn*, a probate proceeding commenced on or about August 16, 2007, in the Surrogate's Court, Cattaraugus County, in which Weitz & Luxenberg represented the petitioner. Copies of the court records are annexed hereto as Exhibit 20.

46. Respondent's decision to recuse himself from cases involving the law firms of Hiscock & Barclay, Harris Beach and Weitz & Luxenberg was unrelated to his ability to be impartial with respect to the litigants represented by those firms or the individual lawyers who appeared on their behalf.

47. Respondent did not attempt to obtain a remittal of disqualification in any of the eleven cases in which he exercised recusal due to the involvement of a legislator's law firm.

48. Respondent disqualified himself from cases involving the law firms of Hiscock & Barclay, Harris Beach and Weitz & Luxenberg because of his own interpretation of the Rules, while also expressing his opinion that recusal was proper as a tactic in furtherance of the judiciary's interest in having the Legislature approve pay raises for the judiciary.

49. Between July 10, 2007, and April 23, 2008, respondent sent 11 blast e-mails to numerous judges throughout New York State, concerning the failure of the Legislature and the Governor to enact pay raise legislation. In each instance, respondent

hit "reply all" to respond to a prior e-mail, without knowing who, or how many people, would receive his e-mail.

50. On November 9, 2007, respondent sent a blast e-mail to numerous judges throughout New York State, stating, "Both of us Cattaraugus County have recused ourselves (I even got a case from the speaker's firm from which I could gleefully recuse myself). Why doesn't every judge in the state immediately recuse? Grow some stones people. It will always be the only weapon we have. Use it or lose it!" A copy of respondent's e-mail is annexed hereto as Exhibit 21.

51. On December 19, 2007, respondent sent a blast e-mail to numerous judges throughout New York State, stating *inter alia*, "How can any self respecting judge even consider sitting on a case with a legislator in a firm? When Shelley's firm can't get a divorce heard or will probated or a trial date, see if that doesn't spur some action. And maybe some of his contributors could ask for their money back...". A copy of respondent's e-mail is annexed hereto as Exhibit 22.

52. On December 20, 2007, respondent sent a blast e-mail to numerous judges throughout New York State, stating that "[t]he problem is that most of the NYC judges are too gutless to recuse themselves from that firm's cases ... [R]ecusal is the best weapon we have but it requires every judge in the state in order to be successful. I would hope that Judge Kaye would simply mandate it." A copy of respondent's e-mail is annexed hereto as Exhibit 23. In another blast e-mail to numerous judges on the same date, respondent listed the counties in which Speaker Silver's law firm, Weitz &

Luxenberg, had cases pending, and asked "How about everyone recuses by 5:00 today?"

A copy of respondent's e-mail is annexed hereto as Exhibit 24.

53. On January 4, 2008, respondent sent a blast e-mail to numerous judges throughout New York State, in reply to an e-mail from then-Chief Judge Kaye and Chief Administrative Judge Ann Pfau, stating, "The ONLY way anything will happen is if you exercise some leadership and commence a lawsuit and MANDATE that all judges in the state recuse themselves from any civil cases where a law firm has any connection to a legislator ... If you don't mandate it, the wimp judges in the city won't recuse." A copy of respondent's e-mail is annexed hereto as Exhibit 25.

54. On April 1, 2008, respondent sent a blast e-mail to numerous judges throughout New York State, stating that recusal should not be personal, [i]t should be mandated in all cases. If its personal, its useless." A copy of respondent's e-mail is annexed hereto as Exhibit 26.

55. On April 3, 2008, respondent sent a blast e-mail to numerous judges throughout New York State, stating, "[W]e need to get the chief judge to mandate recusal. If left to the individual judges, too many wouldn't do it. Some would only recuse for one house or the other and the lackies in the city would be afraid to offend the powers that be." A copy of respondent's e-mail is annexed hereto as Exhibit 27.

56. On April 23, 2008, respondent sent a blast e-mail to numerous judges throughout New York State, stating, "[M]ost of the judges in the city are absolute wusses ... I now know why so many upstaters would like nyc to become a separate state.

The upstaters would get a raise and the ones in the city would stay being toadies for the politicians.” A copy of respondent’s e-mail is annexed hereto as Exhibit 28.

57. Respondent’s e-mails were an attempt to encourage other judges to recuse in lawyer/legislators’ law firm cases, not because they could not be impartial but as a litigation tactic in the judiciary’s ongoing battle for a pay raise.

58. Respondent intended to use recusal as a “weapon” to create a hardship for lawyer/legislators by causing their clients to discharge them, forcing them to find alternative venues for their litigation, creating difficulties for them within their law firms, and otherwise causing the lawyer/legislators to suffer financially and perhaps lose their law firm jobs.

59. Respondent intended that these financial hardships would bring “pressure to bear upon” the lawyer/legislators to enact a judicial pay raise.

60. Respondent stood to gain thousands of dollars per year were pay-raise legislation to be enacted.

61. In 2007 respondent sent a blast e-mail to numerous judges throughout New York State in which he referred to Mr. Silver as a “slug”. Respondent defines the term slug as a distasteful creature that is large, slimy and worm-like.

62. In April 2008, Bruce Golding, a reporter for the New York Post, called respondent at his chambers, identified himself as a reporter, and asked respondent whether he planned to recuse himself from cases involving Weitz & Luxenberg. Respondent acknowledged that he was recusing himself from Weitz & Luxenberg’s cases. Respondent confirmed to Mr. Golding that he had written an e-mail to fellow

judges. In that e-mail he referred to Speaker Silver as a “slug”. Respondent made no effort to retract, temper or otherwise persuade Mr. Golding not to report his reference to Speaker Silver as a “slug.”

63. On April 27, 2008, in both its print and website editions, the New York Post published Mr. Golding’s article on his conversation with respondent. A copy of the article is annexed hereto as Exhibit 29. The article included a picture of respondent, which respondent had provided on Mr. Golding’s request.

64. On April 29, 2008, Erin Billups, a reporter for News 10 Now, called respondent. Ms. Billups identified herself as a reporter and asked respondent about judicial recusal from cases involving law firms associated with members of the New York State Legislature.

65. Respondent told Ms. Billups that he believed that when then-Chief Judge Kaye filed her lawsuit, she should have made recusal mandatory for all judges when a legislator or a legislator’s firm appears on behalf of a party. He also told Ms. Billups that there were a number of judges, especially upstate, who will continue to recuse themselves until they get a pay raise.

66. On April 29, 2008, an article written by Ms. Billups was published on www.capitalnews9.com, and her report ran on television Channel 10 in Albany. A copy of the article is annexed hereto as Exhibit 30.

67. Ms. Billups’ article quoted respondent as saying, “I think it’s unfair, I think it’s a conflict of interest. I think it’s always been a conflict of interest and the legislature has no one but themselves to blame for having brought it up now.”

68. The article quoted respondent as saying, "The judges in NYC, who by in large are appointed by the politicians don't have the guts to do it, and that's where most of the lawyer legislature is from ... What we're saying is you'll have to get a different lawyer. That doesn't do anything to the merits of the person's case."

69. Respondent made the statements attributed to him in Ms. Billups' article.

70. Respondent had prior experience as a judge dealing with reporters, and he was aware that the Rules Governing Judicial Conduct prohibited judges from making public comments on pending cases.

71. Respondent knew that the *Maron* case, the *Larabee* case and the Chief Judge's case were pending when he spoke to Mr. Golding and Ms. Billups.

72. Respondent knew that he could have ended the conversations with Mr. Golding and Ms. Billups at any point.

73. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and lent the prestige of judicial office to

advance his own private interest and the private interest of others, in violation of Section 100.2(C) of the Rules; failed to perform judicial duties without bias or prejudice against lawyers affiliated with legislators, in violation of Section 100.3(B)(4) of the Rules, failed to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules, and made public comments about a party in pending litigation, in violation of Section 100.3(B)(8) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he cast reasonable doubt on his capacity to act impartially as a judge, in violation of Section 100.4(A)(1) of the Rules, detracted from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules, and engaged in conduct that interfered with the proper performance of judicial duties, in violation of Section 100.4(A)(3) of the Rules.

#### **Factors in Mitigation**

74. On reflection and after the hearing before the Referee in this matter, respondent recognizes that it was wrong for him to use recusal as tactic in furtherance of his interest in achieving legislative approval of a judicial pay raise, that it was wrong for him to encourage other judges to use recusal for the same purpose, and that it was wrong for him to disparage those judges who did not recuse themselves from cases as he did for that purpose, and that it was wrong for him to refer to a party to the judicial compensation litigation, Assembly Speaker Sheldon Silver, as a "slug" in a widely circulated e-mail.

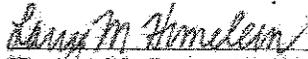
75. As to the cases at issue involving clients of Hiscock & Barclay, Harris Beach and Weitz & Luxenberg, although other judges had to preside over such cases after respondent recused himself, there was no discernible detriment to the litigants or lawyers, whose cases were heard by other judges in Cattaraugus County.

**IT IS FURTHER STIPULATED AND AGREED** that respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

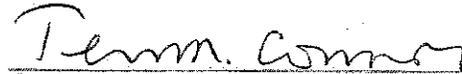
**IT IS FURTHER STIPULATED AND AGREED** that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

**IT IS FURTHER STIPULATED AND AGREED** that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall be returned to the Referee and the statements made herein shall not be used by the Commission, respondent or the Administrator and Counsel to the Commission.

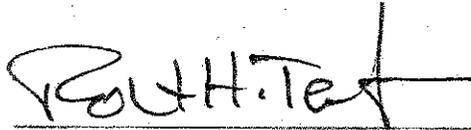
Dated: 12/4/09

  
\_\_\_\_\_  
Honorable Larry M. Himelein  
Respondent

Dated: 12/4/09

  
\_\_\_\_\_  
Terrence M. Connors, Esq.  
Connors & Vilardo, LLP  
Attorney for Respondent

Dated: 12/4/09

  
\_\_\_\_\_  
Robert H. Tembeckjian, Esq.  
Administrator & Counsel to the Commission  
(John J. Postel), Of Counsel

June 22, 2007 recusal letter

June 22, 2007.

Hiscock & Barkley, LLP  
Attention: Managing Partner  
1100 M&T Center  
3 Fountain Plaza  
Buffalo, New York 14203

Dear Sir or Madam:

As I am sure you are aware, several judges and judicial organizations have commenced lawsuits against the governor, the state senate and the state assembly contesting what many believe is the unlawful reduction of judicial salaries during a term of office. I intend to make a contribution to that litigation and thus, I have an economic interest in its success. It is my belief that because I have a financial interest in litigation against the New York State Legislature, the ethical rules mandate my disqualification in any case in which a legislator is a member of one of the firms.

Accordingly, because you have a legislator affiliated with your firm, I write to inform you that I am disqualifying myself from any litigation in which your firm is involved.

Very truly yours,

Larry M. Himelein

LMH:kje

cc: Hon. Sharon Townsend  
Hon. Michael Nenno

Hon. Sharon Townsend  
District Administrative Judge  
Eighth Judicial District  
92 Franklin Street  
Buffalo, New York 14202

Hon. Michael L. Nenno  
One Leo Moss Drive  
Olean, New York 14760

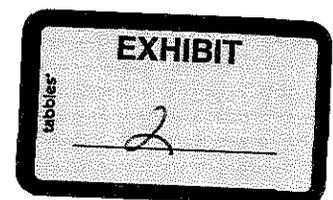
Harris Beach PLLC  
Attention: Managing Partner  
726 Exchange Street  
Suite 1000  
Buffalo, New York 14210



**From:** Larry Himelein  
**To:** [REDACTED]  
**Date:** 7/10/2007 10:35 AM  
**Subject:** Re: Fwd: Message from the Chief Judge

Does anyone really think that banding together or lobbying together or doing anything together will have any effect on those people in Albany?? I remain convinced that the only weapon in our arsenal is recusal on all cases where a firm has a legislator or a relative of a legislator in a firm. However, that will take some stones on our part. Some of us may not want to poke our fingers in the eyes of the politicians (some of us, however, might like to do exactly that) but I firmly believe that is the only weapon we have that has any likelihood of making some of those clowns suffer for their actions. Does everyone realize that we have not even kept pace with inflation since the state took us over? Is there another state employee in NY in that boat?

Larry Himelein  
Cattaraugus County Court

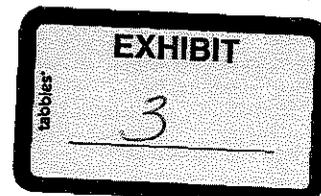


From: Larry Himelein  
To: [REDACTED]  
Date: 7/11/2007 9:06 AM  
Subject: Re: Recusals

My feeling is that I would not be recusing because I could not be impartial. I would be recusing because it is mandatory. I view it this way: I made a contribution to a lawsuit where the legislature is a named defendant. I have a direct interest in the plaintiffs' success in the lawsuit, a direct financial interest. How could I not be recused from a lawsuit where a member of the same legislature is a member of one of the firms involved in my lawsuit? Back before they changed the rules I was asked (and agreed) to recuse myself in a criminal case where the defendant was accused of stealing from a company of which I owned a whopping 100 shares of stock. How can the legislature situation not be a mandatory recusal? Once the lawsuit is over, the reasons for the recusal are also over. It has nothing to do with whether I could be impartial.

I really believe this is the only weapon we have. We can form all the associations, etc we want but what makes anyone think the three men in a room will act any differently? If anyone really believes that, I want what they're smoking. As to Bruno not being a lawyer, there are enough lawyers in the senate who would be very unhappy if their cases could not be heard and their firms started letting them go. We either take serious action or we will forever be in the same position we are in today.

Larry Himelein



From: Larry Himelein  
To: [REDACTED]  
Date: 9/21/2007 10:33 AM  
Subject: Re: 16 TONS AND WHATYA GET

Amen. I am sending my check this weekend to support the litigation and will send a letter to all firms in our area that have a legislator affiliated with the firm recusing myself from their cases as long as the litigation is pending. I continue to view this as an automatic recusal. Not until these firms start letting their legislators go will we have any standing at all with those clowns. Its time we stood up for ourselves - no one else is going to.

>>> [REDACTED] 9/21/2007 10:28 AM >>>

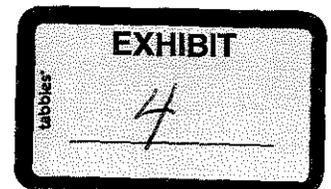
Unless you are prepared to do something other than whine about this stuff than you deserve exactly what you are receiving. Chief Judge Kaye has been absolutely useless throughout this entire debacle. I still think she should resign or at the very least keep her mouth shut about the lawsuit. Her legacy will clearly be the destruction of the judiciary in the state and its relegation to subservient status in our constitutional scheme. She has been more concerned about sucking up to the governor and the legislature to protect all of her politically correct and psycho-babbling programs and has been a total disgrace as a leader - she should go and take her OCA hind end kissing toadies with her.

The governor has lied to us and the legislature has lied to us. They are represented by the Attorney General's office- I am not handling any cases where the AG's office is involved because I could not be fair and impartial. WE are CONSTITUTIONAL officers and our power comes from the Constitution, not OCA or the other two branches and inherent in that should be the right of self-preservation. These people are stealing from us and demeaning the integrity of our judicial positions and we do nothing! Thank God for the lawsuits although I am sure OCA will do what the Chief Judge has been doing -that is trying to undermine it every chance they get.

By the way whatever happened to her request, as absurd as it was, for opinions from the Comptroller and the AG? This was way back in April.

Lastly, our administrative judge refused to have a spring meeting last year and to date no fall meeting has been scheduled. Since this is my 22d year as a judge and the first time ever we have not had both a spring and a fall meeting I am just wondering if that order came from on high- you know those people so concerned with representing us properly.

How long are we going to take this crap from these people?????????



# HSBC PREMIER

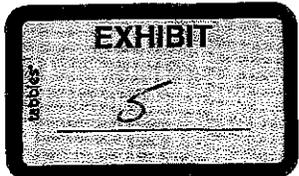
LARRY HIMELEIN  
JULIE A HIMELEIN

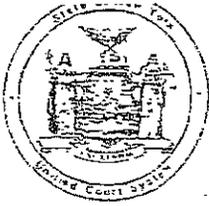
HSBC Premier  
Statement of Account  
Account Number 866-21385-6

September 28, 2007 - October 25, 2007  
Page 3 of 4

LARRY HIMELEIN 1011 A BROADWAY NEW YORK NEW YORK, NY 10007	September 28, 2007	5359
PAY TO THE ORDER OF	ONE HUNDRED AND 00/100	\$ 100.00
HSBC		
Larry M. Himelein		
CU 670000 670000 670000 670000 670000 670000 670000 670000 670000 670000	5359	670000 670000

Paid: 10/17 Amt: \$100.00 Check #: 5359





STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY COURT



□ Cattaraugus County Building  
1701 Lincoln Avenue, Suite 1140  
Olean, New York 14760-1151  
(716) 573-8035

*recusal letter*

□ Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-9111

MICHAEL L. NENNO  
*Judge*

September 25, 2007

SANDRA A. WOGICK  
*Chief Clerk*

LARRY M. HIMELEIN  
*Judge*

Harris Beach PLLC  
Attention: Managing Partner  
726 Exchange Street  
Suite 1000  
Buffalo, New York 14210

Hiscock & Barkley, LLP  
Attention: Managing Partner  
1100 M&T Center  
3 Fountain Plaza  
Buffalo, New York 14203

Dear Sir or Madam:

I write because I am informed that you have a member of the New York State Legislature affiliated with your firm. If I am incorrect, please advise.

Yesterday, I made a financial contribution to a lawsuit in which the New York State Legislature is a named defendant. Because I have contributed financially to the litigation, and will benefit financially from a successful outcome, I believe that Cannon 3 of the Code of Judicial Conduct requires me to recuse myself from any litigation in which your firm is involved.

Therefore, I have directed the clerk of the court to remove from my docket any cases in which your firm appears. Thank you.

Very truly yours,

*Larry M. Himelein*

Larry M. Himelein

LMH:kje

cc: Hon. Sharon Townsend  
Hon. Michael L. Nenno, Supervising Judge  
For Cattaraugus County  
Ms. Sandra Wogick, Chief Clerk  
Cattaraugus County Supreme Court



**DELIVER THESE PAPERS TO YOUR AUTOMOBILE  
LIABILITY INSURANCE CARRIER IMMEDIATELY. YOUR  
FAILURE TO DO SO MAY RESULT IN THE LOSS OF COVERAGE.**

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF CATTARAUGUS  
\*\*\*\*\*

11/10

H. JOHN WILD As Co-Administator of  
THE ESTATE OF HOLLY JOCELYN WILD, Deceased  
94 Jefferson Street  
Cattaraugus, NY 14719

HOLLY M. GODDARD, As Co-Administrator of  
THE ESTATE OF HOLLY JOCELYN WILD, Deceased  
11410 Lakeshore Boulevard  
Bratenahl, OH 44108-1022

**SUMMONS SERVED  
WITH COMPLAINT**

Index No.: **71757**

Plaintiffs,

v.

BETTY L. CLARKE  
8984 Round Top Road  
Forestville, NY 14062

JAMES D. CLARKE  
8984 Round Top Road  
Forestville, NY 14062

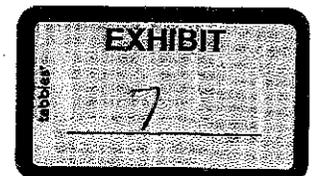
PASSENGER BUS CORPORATION  
411 Washington Avenue  
Kingston, NY 12401

JOHN H. BROCK  
248 Lowell Road  
Kenmore, NY 14217

FILED  
OCT 30 10 48 AM '06  
CATTARAUGUS COUNTY  
CLERK

\*\*\*\*\*

TO THE ABOVE NAMED DEFENDANT(S):



**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiffs' attorneys an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

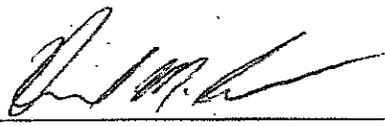
The basis of the venue designated is the residence of the plaintiffs, which is:

County of Cattaraugus and State of New York.

DATED: Buffalo, New York  
October 24, 2006

Yours, etc.,

**THE BARNES FIRM, P.C.**

By:   
\_\_\_\_\_  
David M. Goodman, Esq.  
Attorneys for Plaintiffs  
17 Court Street, 7th Floor  
Buffalo, NY 14202-3290  
(716) 854-2020

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF CATTARAUGUS  
\*\*\*\*\*

CIV

H. JOHN WILD As Co-Administrator of  
THE ESTATE OF HOLLY JOCELYN WILD, Deceased  
and HOLLY M. GODDARD, As Co-Administrator of  
THE ESTATE OF HOLLY JOCELYN WILD, Deceased,

Plaintiffs,

COMPLAINT

v.

BETTY L. CLARKE, JAMES D. CLARKE,  
PASSENGER BUS CORPORATION and  
JOHN H. BROCK,

Defendants.

71757  
OCT 30 10 48 AM '06  
CATTARAUGUS COUNTY  
CLERK

FILED

\*\*\*\*\*

Plaintiffs, above-named, by their attorneys, The Barnes Firm, P.C., for their complaint against defendants, above-named, allege upon information and belief:

1. At the time of her death, plaintiffs' decedent, Holly Jocelyn Wild was a resident of the County of Cattaraugus and State of New York.
2. At all times herein relevant, plaintiff, H. John Wild, has been a resident of the County of Cattaraugus and State of New York.
3. At all times herein relevant, plaintiff, Holly M. Goddard, has been a resident of the County of Cuyahoga and State of Ohio.
4. Pursuant to a decree of the Surrogate's Court of State of New York, County of Cattaraugus, dated July 12, 2006, awarding Limited Letters of Administration, plaintiffs, H. John Wild and Holly M. Goddard, were appointed the Co-Administrators of The Estate of Holly Jocelyn Wild.

5. On or about April 24, 2006 at approximately 9:45 a.m., plaintiff, H. John Wild and plaintiff's decedent, Holly Jocelyn Wild, deceased, were the co-titled owners of a certain 2003 Subaru bearing New York State License Plate Number CGZ1283.

6. At all times herein relevant, defendants, James D. Clarke and Betty L. Clarke, have been residents of the County of Chautauqua and State of New York.

7. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James D. Clarke, was the owner of a certain 1999 Subaru bearing New York State License Plate Number AYM4315.

8. On or about April 24, 2006 at approximately 9:45 a.m., defendant, Betty L. Clarke, operated the vehicle described in Paragraph 7 above with the full consent of the owner, defendant, James D. Clarke.

9. On or about April 24, 2006 at approximately 9:45 a.m., defendant, Betty L. Clarke, operated the vehicle described in Paragraph 7 above with the full knowledge of the owner, defendant, James D. Clarke.

10. On or about April 24, 2006 at approximately 9:45 a.m., defendant, Betty L. Clarke, operated the vehicle described in Paragraph 7 above with the full permission of the owner, defendant, James D. Clarke.

11. That all times herein relevant, defendant, Passenger Bus Corporation, was, and is, a New York State domestic business corporation, active and in good standing, and organized and existing pursuant to the laws of the State of New York.

12. At all times herein relevant, defendant, Passenger Bus Corporation, has conducted business in the State of New York, and Passenger Bus Corporation has maintained a place of business in the State of New York.

13. At all times herein relevant, defendant, Passenger Bus Corporation, has transacted business in the State of New York, Passenger Bus Corporation has entered into contracts to supply goods or Passenger Bus Corporation has regularly done and solicited business in the State of New York; and Passenger Bus Corporation has engaged in other persistent courses of conduct within the State of New York; and Passenger Bus Corporation has derived substantial revenue from goods sold and/or services rendered within the State of New York.

14. At all times herein relevant, defendant, Passenger Bus Corporation, has owned, used or possessed real property situated within the State of New York.

15. This Court has personal jurisdiction over Passenger Bus Corporation pursuant to CPLR 302(a).

16. At all times herein relevant, upon information and belief, defendant, John H. Brock, has been a resident of the County of Erie and State of New York.

17. On or about April 24, 2006 at approximately 9:45 a.m., defendant, Passenger Bus Corporation, was the owner of a certain coach bus bearing New York State License Plate Number 15603PA.

18. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, operated the vehicle mentioned in Paragraph 17 above with the full knowledge of the owner, defendant, Passenger Bus Corporation.

19. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, operated the vehicle mentioned in Paragraph 17 above with the full permission of the owner, defendant, Passenger Bus Corporation.

20. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, operated the vehicle mentioned in Paragraph 17 above with the full consent of the owner, defendant, Passenger Bus Corporation.

21. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, was acting within the scope of his employment for Passenger Bus Corporation.

22. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, was a servant of defendant, Passenger Bus Corporation.

23. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, was an agent of defendant, Passenger Bus Corporation.

24. On or about April 24, 2006 at approximately 9:45 a.m., defendant, James H. Brock, was an employee of defendant, Passenger Bus Corporation.

25. On or about April 24, 2006 at approximately 9:45 a.m., plaintiffs' decedent, Holly Jocelyn Wild, operated the vehicle described in Paragraph 5 above in the northbound lane of Route 60 at Eagle Road in the Town of Pomfret, County of Chautauqua and State of New York.

26. On or about April 24, 2006 at approximately 9:45 a.m., defendant, Betty L. Clarke, operated the vehicle described in Paragraph 7 above in the northbound lane of Route 60 at Eagle Road in the Town of Pomfret, County of Chautauqua and State of New York.

27. On or about April 24, 2006 at approximately 9:45 a.m., defendant, John H. Brock, operated the vehicle described in Paragraph 17 in the southbound lane of Route 60 at Eagle Road in the Town of Pomfret, County of Chautauqua and State of New York.

28. On or about April 24, 2006 at approximately 9:45 a.m., the vehicle being operated by defendant, Betty L. Clarke, came into contact with the rear-end of the vehicle operated by plaintiffs' decedent, Holly Jocelyn Wild, deceased, causing the vehicle to spin into the southbound lane on Route 60 at Eagle Road in the Town of Pomfret, County of Chautauqua and State of New York.

29. On or about April 24, 2006 at approximately 9:45 a.m., the bus being operated by defendant, John H. Brock, came into contact with the vehicle operated by plaintiffs' decedent, Holly Jocelyn Wild, deceased, on the southbound lane of Route 60 at Eagle Road in the Town of Pomfret, County of Chautauqua and State of New York.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST  
DEFENDANTS JAMES D. CLARKE AND BETTY L. CLARKE**

30. Plaintiffs repeat and re-allege Paragraphs 1 through 29 above as if set forth in their entirety herein.

31. The incident described in Paragraph 28 above occurred as a result of defendants, James D. Clarke and Betty L. Clarke's negligence and/or recklessness without any negligence attributable in any measure to plaintiffs' decedent, Holly Jocelyn Wild, deceased.

32. Plaintiffs' decedent, Holly Jocelyn Wild, died as a result of defendants, James D. Clarke and Betty L. Clarke's negligence and recklessness.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS  
PASSENGER BUS CORPORATION AND JOHN H. BROCK**

40. Plaintiffs repeat and re-allege Paragraphs 1 through 39 above as if set forth in their entirety herein.

41. The incident described in Paragraph 29 above occurred as a result of defendants, Passenger Bus Corporation and John H. Brock's negligence and/or recklessness without any negligence attributable in any measure to plaintiffs' decedent, Holly Jocelyn Wild, deceased.

42. Plaintiffs' decedent, Holly Jocelyn Wild died as a result of defendants, Passenger Bus Corporation and John H. Brock's negligence and recklessness.

43. The limitations of liability set forth in CPLR Article 16 do not apply and one of the exemptions set forth in §1602 of the CPLR applies.

44. As a result of the negligence and/or recklessness of defendants, Passenger Bus Corporation and John H. Brock, plaintiffs have suffered damages in an amount which exceeds the monetary jurisdictional limits of all lower Courts.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS  
PASSENGER BUS CORPORATION AND JOHN H. BROCK**

45. Plaintiffs repeat and re-allege Paragraphs 1 through 44 above as if set forth in their entirety herein.

46. Plaintiffs' decedent, Holly Jocelyn Wild suffered conscious pain, suffering and resulting damages prior to her death and said conscious pain, suffering and damages were caused by defendants, Passenger Bus Corporation and John H. Brock's negligence and/or recklessness.

47. As a result of plaintiffs' decedent, Holly Jocelyn Wild's conscious pain and suffering, the plaintiffs demand from defendants, Passenger Bus Corporation and John H. Brock, an amount which exceeds the monetary jurisdictional limits of all lower Courts

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS  
PASSENGER BUS CORPORATION AND JOHN H. BROCK**

48. Plaintiffs repeat and re-allege Paragraphs 1 through 47 above as if set forth in their entirety herein.

49. As a result of the wrongful death of plaintiffs' decedent, Holly Jocelyn Wild, the plaintiffs demand from defendants, Passenger Bus Corporation and John H. Brock, an amount which exceeds the monetary jurisdictional limits of all lower courts.

**AS AND FOR A SEVENTH CAUSE OF ACTION AS AGAINST DEFENDANT  
PASSENGER BUS CORPORATION**

50. Plaintiffs repeat and re-allege Paragraphs 1 through 49 above as if set forth in their entirety herein.

51. That at the date and time of the occurrence alleged herein, defendant, John H. Brock, was an employee of defendant, Passenger Bus Corporation.

52. That at the date and time of the occurrence alleged herein, defendant, John H. Brock, was acting within the scope of his employment with defendant, Passenger Bus Corporation.

53. That defendant, Passenger Bus Corporation, was negligent in their hiring of defendant, John H. Brock.

54. That defendant, Passenger Bus Corporation, was negligent in their training of defendant, John H. Brock.

55. That defendant, Passenger Bus Corporation, was negligent in their retention of defendant, John H. Brock.

56. That such negligence was a proximate cause in the happening of the occurrence described in Paragraph 29, infra.

57. Therefore, plaintiffs demand judgment against defendant, Passenger Bus Corporation, in an amount that exceeds the jurisdictional limits of all lower Courts.

**WHEREFORE**, plaintiffs demand judgment against defendants, jointly and severally, as follows:

- (a) In the First Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts
- (b) In the Second Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts
- (c) In the Third Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts
- (d) In the Fourth Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts
- (e) In the Fifth Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts
- (f) In the Sixth Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts

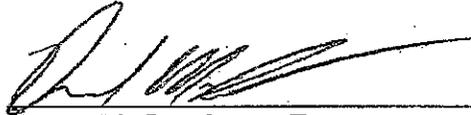
(g) In the Seventh Cause of Action in an amount which exceeds the monetary jurisdictional limits of all lower Courts

Plaintiffs demand such other, further and different relief as the Court may deem just and proper, together with the costs and disbursements of this action.

DATED: Buffalo, New York  
October 16, 2006

Yours, etc.,

**THE BARNES FIRM, P.C.**

By: 

David M. Goodman, Esq.  
Attorneys for Plaintiffs  
17 Court Street, 7th Floor  
Buffalo, NY 14202-3290  
(716) 854-2020

Stephen E. Barnes  
Richard B. Amico  
Richard J. Barnes  
Denis J. Bastible  
Paul B. Becker  
Dylan J. Brennan  
Charles F. Burkwit  
Stephen C. Ciocca  
Elizabeth C. Clarke  
Olney H. Clowe  
Michael J. Cooper  
Christopher D. D'Amato  
Sandy A. Fazili  
Brian A. Goldstein, M.D., J.D.  
David M. Goodman  
Gregory J. Huether

# THE BARNES FIRM

A T T O R N E Y S   A T   L A W

Stephen J. Lacher  
John W. Looney  
Michael J. Lovacchio  
Brett L. Manske  
James E. Maslyn  
John C. Murrett, Jr.  
Stephen J. Paluch  
Scott K. Rohring  
Robert A. Scalfione  
Gerald W. Schaffer, Jr.  
Robert J. Schrack  
Jeffrey C. Sendziak  
John A. Sheehan  
David O. Teach  
Michael J. Williams  
K. John Wright

Daryl P. Clambella  
Chief Operating Officer

January 10, 2007

Cattaraugus County Clerk's Office  
303 Court Street  
Little Valley, NY 14755

**RE: Estate of Wild v. Clarke, et al.**  
**Index No.: 71757**

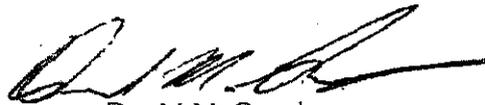
Dear Sir or Madam:

Enclosed please find an original and four copies of a Request for Judicial Intervention along with our firm draft in the amount of \$95.00. Please file the original and return a file stamped copy to the undersigned in the envelope provided for your convenience.

1/12/07 mg

Thank you for your cooperation in this matter.

Very truly yours,



David M. Goodman  
(716) 566-2260

DMG:djm  
Enc.

A Professional Corporation

Offices in Buffalo and Rochester, New York

17 Court Street, Seventh Floor • Buffalo, New York 14202-3290 • Tel: (716) 854-2020 • Fax: (716) 854-6291

**REQUEST FOR JUDICIAL INTERVENTION**

SUPREME COURT, COUNTY OF CATTARAUGUS INDEX NO. 71757 DATE PURCHASED: 1-11-07

H. JOHN WILD As Co-Administrator of THE ESTATE OF  
 HOLLY JOCELYN WILD, Deceased and HOLLY M. GODDARD, As  
 Co-Administrator of THE ESTATE OF HOLLY JOCELYN WILD, Deceased,  
 Plaintiffs,

vs.

BETTY L. CLARKE, JAMES D. CLARKE,  
 PASSENGER BUS CORPORATION and JOHN H. BROCK,

Defendants.

\*\*\*\*\*

Date issue joined: 11-29-06 Bill of Particulars served (Y/N):  Yes  No

**NATURE OF JUDICIAL INTERVENTION** (check ONE box only AND enter information)

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Request for preliminary conference                                  | <input type="checkbox"/> Notice of petition (return date: _____)<br>Relief sought _____     |
| <input type="checkbox"/> Note of issue and/or certificate of readiness                                  | <input type="checkbox"/> Notice of medical or dental malpractice<br>action (specify: _____) |
| <input type="checkbox"/> Notice of motion (return date: _____)<br>Relief sought _____                   | <input type="checkbox"/> Statement of net worth   |
| <input type="checkbox"/> Order to show cause<br>(clerk enter return date: _____)<br>Relief sought _____ | <input type="checkbox"/> Writ of habeas corpus<br>other (specify: _____)                    |
| <input type="checkbox"/> Other <i>ex parte</i> application (specify: _____)                             |   |

**NATURE OF ACTION OR PROCEEDING** Check ONE box only)

**MATRIMONIAL**

- Contested -CM  
 Uncontested -UM

**COMMERCIAL**

- Contract -CONT  
 Corporate -CORP  
 Insurance (where insurer is a party,  
 except arbitration) -INS  
 UCC (including sales, negotiable  
 instruments) -UCC  
 \*Other Commercial

**REAL PROPERTY**

- Tax *certiorari* -TAX  
 Foreclosure -FOR  
 Condemnation -COND  
 Landlord/Tenant -LT  
 \*Other Real Property -ORP

**OTHER MATTERS**

- \* \_\_\_\_\_ -OTH

**MALPRACTICE**

- Medical/Podiatric -MM  
 Dental -DM  
 \*Other Professional -OPM
- 
- Motor Vehicle -MV  
 \*Products Liability -PL
- 
- Environmental -EN  
 Asbestos -ASB  
 Breast Implant -BI  
 \*Other Negligence -OTN
- 
- \*Other Tort (including intentional) -OT

**SPECIAL PROCEEDINGS**

- Art. 75 (Arbitration) -ART75  
 Art. 77 (Trusts) -ART77  
 Art. 78 -ART78  
 Election Law -ELEC  
 Guardianship (MHL Art. 81) -GUARD81
- 
- \*Other Mental Hygiene -MHYG  
 \*Other Special Proceeding -OSP

For Clerk Only

**PAID**

IAS entry date 1/12/07

Judge Assigned \_\_\_\_\_

RJI Date \_\_\_\_\_

JAN 12 11 05 AM '07

CATTARAUGUS COUNTY CLERK

**TORTS**

Check "YES" or "NO" for each of the following questions:

Is this action/proceeding against a

YES NO

Municipality:  
(Specify \_\_\_\_\_)

YES NO

Public Authority:  
(Specify \_\_\_\_\_)

YES NO

Does this action/proceeding seek equitable relief?  
  Does this action/proceeding seek recovery for personal injury?  
  Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

Expedited: 0-8 months  Standard: 9-12 months  Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served? No Yes  
Was a Notice of No Necessity filed? No Yes

ATTORNEY (S) FOR PLAINTIFF (S):

Self Rep.*	Name	Address	Phone #
	David M. Goodman, Esq. THE BARNES FIRM, P.C.	17 Court Street, 7 <sup>th</sup> Floor Buffalo, New York 14202-3290	(716) 854-2020

ATTORNEY (S) FOR DEFENDANT (S):

Self Rep.*	Name	Address	Phone #
	Hilary C. Banker, Esq. Burgio Kita & Curvin	2150 Main Place Tower, 350 Main St. Buffalo, NY 14202	(716) 854-1744
	Robert Gallagher, Esq. Hiscock & Barclay LLP	1100 M&T Center, 3 Fountain Plaza Buffalo, NY 14203	(716) 856-5400

Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone #F in the space provided above for attorneys.

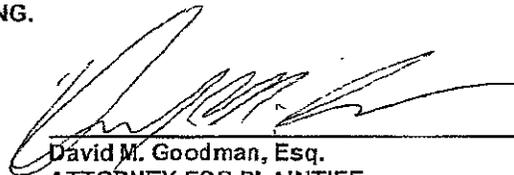
**INSURANCE CARRIERS:** New York Central Mutual Fire Insurance Company and Lancer Insurance Company

RELATED CASES: (IF NONE, write "NONE" below

Title	Index #	Court	Nature of Relationship
NONE			

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: January 10, 2007

  
David M. Goodman, Esq.  
ATTORNEY FOR PLAINTIFF

ATTACH RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME & COUNTY COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-2378  
FAX: (716) 938-6413

HON. MICHAEL L. NENNO  
HON. LARRY M. HIMELREIN  
SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

September 25, 2007

David Goodman, Esq.  
17 Court Street, 7<sup>th</sup> Floor  
Buffalo, New York 14202

Hillary C. Banker, Esq.  
2150 Main Place Tower  
350 Main Street  
Buffalo, New York 14202

Robert Emmett Gallagher, Jr., Esq.  
1100 M&T Center  
3 Fountain Plaza  
Buffalo, New York 14203

**Re: Wild v Clarke**  
**Index # 71757**

Dear Counselors:

Please be advised that the above matter has been re-assigned to the Hon. Michael L. Nenno. The telephone conference previously scheduled has been **changed to January 16, 2008 at 9:30 a.m.**

The Court will initiate the call.

Very truly yours,

Jane St. John  
Senior Court Office Assistant

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF CATTARAUGUS

No Fee  
7/17/07  
(10)

In the Matter of the Application of  
**NIAGARA MOHAWK POWER CORPORATION, d/b/a  
NATIONAL GRID,**

*Petitioner,*

*-against-*

**TOWN OF MACHIAS ASSESSOR,  
TOWN OF MACHIAS BOARD OF ASSESSMENT  
REVIEW and the TOWN OF MACHIAS,  
CATTARAUGUS COUNTY, NEW YORK,**

*Respondent.*

**NOTICE OF PETITION**

Index No. 72843

Date Filed: \_\_\_\_\_

To Review Real Property Assessments  
Pursuant to Article 7 of the Real  
Property Tax Law (2007-2008).

HISCOCK & BARCLAY, LLP

**PLEASE TAKE NOTICE** that upon the annexed duly verified petition of Niagara Mohawk Power Corporation, d/b/a National Grid, application will be made at an All Purpose Term of the Supreme Court of the State of New York, to be held in the Cattaraugus County Courthouse, 303 Court Street, Little Valley, New York, on the 6th day of September 2007, at 9:30 a.m., or as soon thereafter as counsel can be heard, for review and reduction, pursuant to Article 7 of the Real Property Tax Law of the State of New York, of the assessment(s) on real property appearing upon the assessment roll of the Town of Machias for the year 2007, as set forth in the annexed verified petition; and for such other relief as the Court deems appropriate, together with the costs and disbursements of this proceeding.

CATTARAUGUS COUNTY  
CLERK  
JUL 17 3 07 PM '07

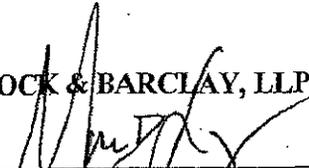
ALLIB01\184808\1



PLEASE TAKE FURTHER NOTICE that Respondents are required to serve a verified answer upon Petitioner's attorneys at least five days prior to the return date of this matter.

DATED: July 2, 2007

HISCOCK & BARCLAY, LLP

By: 

Mark D. Lansing

Mark R. McNamara

*Attorneys for Petitioner*

Niagara Mohawk Power Corporation,

d/b/a National Grid

1100 M&T Plaza

Buffalo, New York 14203-1414

Telephone (716) 856-5400

FAX SERVICE NOT ACCEPTED

TO: Clerk of the Town of Machias  
9721 McKinstry  
Machias, New York 14101

Superintendent  
Yorkshire-Pioneer Central School District  
P. O. Box 579  
Yorkshire, New York 14173

Superintendent  
West Valley Central School District  
5359 School Street  
West Valley, New York 14171

Superintendent  
Franklinville Central School District  
31 North Main Street  
Franklinville, New York 14737

Cattaraugus County Treasurer  
303 Court Street  
Little Valley, New York 14755

HISCOCK & BARCLAY, LLP

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF CATTARAUGUS

CIV

In the Matter of the Application of  
**NIAGARA MOHAWK POWER CORPORATION, d/b/a  
NATIONAL GRID,**

*Petitioner,*

*-against-*

**TOWN OF MACHIAS ASSESSOR,  
TOWN OF MACHIAS BOARD OF ASSESSMENT  
REVIEW and the TOWN OF MACHIAS,  
CATTARAUGUS COUNTY, NEW YORK,**

*Respondent.*

**PETITION**

Index No. **72843**

Date Filed: \_\_\_\_\_

To Review Real Property Assessments  
Pursuant to Article 7 of the Real  
Property Tax Law (2007-2008).

HISCOCK & BARCLAY, LLP

Petitioner Niagara Mohawk Power Corporation, d/b/a National Grid, by its attorneys, Hiscock & Barclay, LLP, for its petition alleges upon information and belief as follows:

**PURPOSE OF PETITION**

1. The purpose of this petition is to seek judicial review and reduction of the assessment(s) on Petitioner's real property for the year 2007 in the Town of Machias on the grounds that Petitioner's real property was illegally or unequally assessed, and/or overvalued for assessment purposes. In addition, Petitioner's State and Federal Constitutional rights have been violated.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to Article 7 of the RPTL and venue is proper pursuant to RPTL §702, and CPLR §§504 and 506.

ALLIB01M84808V1

FILED  
JUL 17 3 07 PM '07  
CATTARAUGUS COUNTY

**PARTIES**

3. Petitioner is a domestic corporation which maintains its principal offices at 300 Erie Boulevard West, Syracuse, New York.

4. Respondent Town of Machias ("Town") was and is a municipal corporation located in the County of Cattaraugus, and an assessing unit in the State of New York.

5. Respondent Assessor was and is charged by law with the function and duty of assessing all real property situated in the Town and with preparing the Town's assessment roll.

6. Respondent Board of Assessment Review was and is charged with the duty of reviewing complaints on real property assessments in the Town.

**COMMON ALLEGATIONS AND FACTS**

7. Petitioner is a property owner and taxpayer in the Town, within the meaning of Article 7 of the RPTL, which real property is described on the assessment roll of the Town as follows:

<b>Tax ID#</b>
30.2-3-9
658.000-9905-132.350/803
658.000-9907-132.350/151
658.000-9907-132.350/37
658.000-9907-132.350/802
658.000-9907-132.350/807
658.000-9914-132.350/151
658.000-9914-132.350/301
658.000-9914-132.350/37
658.000-9914-132.350/803
658.000-9914-132.350/807

HISCOCK & BARCLAY, LLP

8. Upon the 2007 tentative assessment roll of the Town, the land and real property described above were proposed and certified to be assessed as follows:

Tax ID#	TENTATIVE ASSESSED VALUE
30.2-3-9	3,250,057
658.000-9905-132.350/803	15,068
658.000-9907-132.350/151	31,226
658.000-9907-132.350/37	240,265
658.000-9907-132.350/802	2,479
658.000-9907-132.350/807	37,774
658.000-9914-132.350/151	218,583
658.000-9914-132.350/301	49,724
658.000-9914-132.350/37	1,681,852
658.000-9914-132.350/803	156,745
658.000-9914-132.350/807	37,774

9. On or before May 22, 2007, Petitioner timely filed with Respondents, a written and verified statement of complaint, incorporated herein by reference, in which it objected to and applied for the correction and reduction of said assessment(s) upon the same grounds as those hereinafter stated.

10. Respondent Board of Assessment Review refused to reduce said assessment(s) and made the final assessment(s) on Petitioner's real property for 2007 as follows:

Tax ID#	FINAL ASSESSED VALUE
30.2-3-9	3,250,057
658.000-9905-132.350/803	15,068
658.000-9907-132.350/151	31,226
658.000-9907-132.350/37	240,265
658.000-9907-132.350/802	2,479

658.000-9907-132.350/807	37,774
658.000-9914-132.350/151	218,583
658.000-9914-132.350/301	49,724
658.000-9914-132.350/37	1,681,852
658.000-9914-132.350/803	156,745
658.000-9914-132.350/807	37,774

11. Petitioner's claimed assessment(s) are as follows:

Tax ID#	CLAIMED ASSESSED VALUE
30.2-3-9	1,465,888
658.000-9905-132.350/803	7,016
658.000-9907-132.350/151	13,944
658.000-9907-132.350/37	94,058
658.000-9907-132.350/802	1,154
658.000-9907-132.350/807	17,195
658.000-9914-132.350/151	97,609
658.000-9914-132.350/301	22,182
658.000-9914-132.350/37	658,409
658.000-9914-132.350/803	72,985
658.000-9914-132.350/807	17,170

12. The Town's assessment roll was, upon information and belief, finally completed and filed on or about July 1, 2007, and 30 days have not elapsed since final completion, filing, and notice of such roll for the year 2007.

**AS AND FOR A FIRST CAUSE OF ACTION**

13. The valuation(s) and assessment(s) as they appear on the assessment roll are unequal, as the assessment(s) have been made at a higher percentage of value than the assessed value of other real property on the same assessment roll made by the same officers.

14. The full market value of Petitioner's real property is \$2,903,071 and the general ratio of assessed value of real property to full value of real property in the Town for 2006-2007 is 85.00%.

15. The general ratio of assessed value of real property to full value in the Town for the 2007-2008 fiscal year is less than the ratio determined for the 2006-2007 fiscal year.

16. The assessment(s) upon Petitioner's property, for which it will be required to pay taxes, are at a percentage substantially in excess of 85.00% or the new rate to be made for the fiscal year 2007-2008 assessment roll.

17. The property is overvalued by at least the total amount of \$3,253,937.

18. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting erroneous, unequal, unconstitutional and illegal assessment(s) placed on its real property situated in the Town. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, illegal and erroneous determination(s) of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal and erroneous assessment(s), and will thereby be required to pay unjust and excess taxes.

**AS AND FOR A SECOND CAUSE OF ACTION**

19. The assessment(s) for the property in paragraph 10 above are illegal as said property is assessed differently than similarly situated properties.

20. In addition, all property in the Town for the fiscal year 2007-2008 has not been assessed at a uniform percentage of value.

21. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting erroneous, unequal, unconstitutional and illegal assessment(s) placed on its real property situated in the Town. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, illegal and erroneous determination(s) of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal and erroneous assessment(s), and will thereby be required to pay unjust and excess taxes.

AS AND FOR A THIRD CAUSE OF ACTION

22. The assessment(s) constitute an unlawful burden on interstate commerce in violation of the Commerce Clause of Article I, Section 8, Clause 3 of the Constitution of the United States.

23. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting erroneous, unequal, unconstitutional and illegal assessment(s) placed on its real property situated in the Town. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, illegal and erroneous determination(s) of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal and erroneous assessment(s), and will thereby be required to pay unjust and excess taxes.

24. No other application has been made to this or any other Court for the relief requested herein.

**WHEREFORE**, Petitioner respectfully requests the following relief:

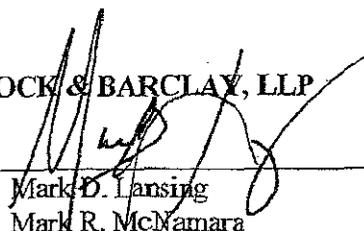
1. That the Court determine Respondents' actions were illegal and unconstitutional, and thereby, that the assessment(s) of Petitioner's real property was erroneous, overvalued, unequal and illegal;
2. That the assessment roll of the Town of Machias, New York, for 2007 be corrected, and that the assessment(s) thereon against the real property of Petitioner described above be reduced by \$3,253,937, to a proper amount not exceeding the total sum of \$2,467,610, and that Petitioner be awarded all appropriate refunds;
3. That a declaratory judgment be entered declaring Respondents' actions, and the assessment(s) on Petitioner's real property resulting therefrom, violate the Constitution of the United States and the State of New York, and are, therefore, null and void; and

HISCOCK & BARCLAY, LLP

4. That Petitioner have such other and further relief as the Court deems appropriate, including the costs and disbursements of this proceeding.

**DATED:** July 2, 2007

**HISCOCK & BARCLAY, LLP**

By: 

Mark D. Lansing

Mark R. McNamara

*Attorneys for Petitioner*

Niagara Mohawk Power Corporation,

d/b/a National Grid

1100 M&T Plaza

Buffalo, New York 14203-1414

Telephone (716) 856-5400

**FAX SERVICE NOT ACCEPTED**

HISCOCK & BARCLAY, LLP

VERIFICATION

STATE OF NEW YORK

SS:

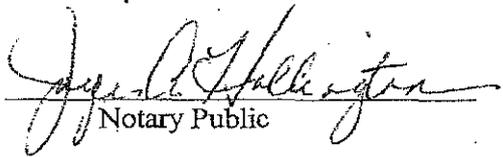
COUNTY OF ONONDAGA

MELANIE W. LITTLEJOHN, being duly sworn, deposes and says:

1. That I am an officer, to wit., Vice President – Business Services Central, of Niagara Mohawk Power Corporation, d/b/a National Grid., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and the Petitioner in the foregoing proceeding;
2. That I have read the foregoing petition and know the contents thereof; and
3. That the same are true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and to those matters I believe them to be true.

  
 \_\_\_\_\_  
 MELANIE W. LITTLEJOHN  
 Vice President  
 Business Services Central

Subscribed and sworn to before  
 me this 27<sup>th</sup> day of June, 2007.

  
 \_\_\_\_\_  
 Notary Public

Joyce A. Hollington  
 Notary Public State of New York  
 Madison County # 01H06056763  
 Commission Exp. 03/26/20 11

HISCOCK & BARCLAY, LLP

UCS-840 (REV 1/2000)

REQUEST FOR JUDICIAL INTERVENTION

**P A I D**

95-7/17/07

Supreme COURT CATTARAUGUS COUNTY INDEX NO. 72843 DATE PURCHASED

For Clerk Only
IAS entry date LMH
Judge Assigned
RJI Date

PETITIONER(S): NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL GRID

RESPONDENT(S): TOWN OF MACHIAS ASSESSOR, TOWN OF MACHIAS BOARD OF ASSESSMENT REVIEW and the TOWN OF MACHIAS, CATTARAUGUS COUNTY, NEW YORK.

Dated issue joined: 9/6/07 Bill of particulars served (Y/N): [ ] Yes [X] No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- Request for preliminary conference
- Notice of petition (return date 9/6/07)
- Note of issue and/or certificate of readiness
- Relief sought statutory
- Notice of motion (return date \_\_\_\_\_)
- Notice of medical or dental malpractice action (specify which \_\_\_\_\_)
- Relief sought \_\_\_\_\_
- Order to show cause (Clerk enter return date \_\_\_\_\_)
- Statement of net worth
- Relief sought \_\_\_\_\_
- Writ of habeas corpus
- Other ex parte application (specify \_\_\_\_\_)
- Other (specify \_\_\_\_\_)

CATTARAUGUS COUNTY JUL 17 3 07 PM '07

NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MATRIMONIAL

- Contested - CM
- Uncontested - UM

Malpractice

- Medical/Podiatrist - MM
- Dental - DM
- \*Other Professional - OPM

COMMERCIAL

- Contract - CONT
- Corporate - CORP
- Insurance (where insurer is a party, except arbitration) - INS
- UCC (including sales, negotiable instruments) - UCC
- \*Other Commercial - OC

- Motor Vehicle - MV
- \*Products Liability - PL

REAL PROPERTY

- Tax certiorari - TAX
- Foreclosure - FOR
- Condemnation - COND
- Landlord/Tenant - LT
- \*Other Real Property - ORP

- Environmental - EN
- Asbestos - ASB
- Breast Implant - BI
- \*Other Negligence - OTN
- Other Tort (including intentional) - OT

SPECIAL PROCEEDINGS

- Art. 75 (Arbitration) - ART 75
- Art. 77 (Trusts) - ART 77
- Art. 78 - ART 78
- Election Law - ELEC
- Guardianship (MHL Art. 81) - GUARD81
- Other Mental Hygiene - MHYG
- Other Special Proceeding - OSP

Check "YES" or "NO" for each of the following questions.

Is this action/proceeding against a

YES	NO		YES	NO	
[X]	[ ]	Municipality:	[ ]	[X]	Public Authority:
(specify)		<u>Town of Machias</u>	(specify)		

YES	NO	
[ ]	[X]	Does this action/proceeding seek equitable relief?
[ ]	[X]	Does this action/proceeding seek recovery for personal injury?
[ ]	[X]	Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frame:  
(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

Expedited: 0-8 Months       Standard: 9-12 Months       Complex: 13-15 Months

Contested Matrimonial Cases Only (Check and give date)

Has summons been served:      [ ] No      [ ] Yes, Date \_\_\_\_\_  
 Was a Notice of No Necessity filed?      [ ] No      [ ] Yes, Date \_\_\_\_\_

ATTORNEY(S) FOR PLAINTIFF(S):

Self Rep.*	Name	Address	Phone #
<input type="checkbox"/>	Mark R. McNamara, Esq. Hiscock & Barclay, LLP	1100 M&T Center, 3 Fountain Plaza, Buffalo, NY 14203-1414	(716) 856-5400

ATTORNEY(S) FOR DEFENDANT(S):

Self Rep.*	Name	Address	Phone #
<input type="checkbox"/>			

\*Self Represented. parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

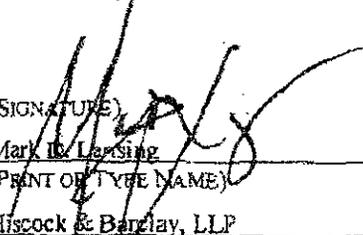
INSURANCE CARRIERS:

RELATED CASES: (IF NONE, write "NONE" below)

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
--------------	----------------	--------------	-------------------------------

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: July 2, 2007

(SIGNATURE)  
  
 Mark R. McNamara  
 (PRINT OR TYPE NAME)  
 Hiscock & Barclay, LLP  
 ATTORNEY FOR PETITIONER

ATTACH RIDER SHEETS IF NECESSARY TO PROVIDE REQUIRED INFORMATION.

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-9111  
FAX: (716) 938-6413

HON. MICHAEL L. NENNO, ACTING JUSTICE  
HON. LARRY M. HIMELEIN, ACTING JUSTICE

SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

September 6, 2007

Mark R. McNamara, Esq.  
Hiscock & Barclay, LLP  
1100 M & T Plaza  
Buffalo, New York 14203-1414

David C. Braufigam, Esq.  
9888 County Road 23  
Houghton, New York 14744

**RE: NIAGARA MOHAWK V. TOWN OF MACHIAS  
INDEX #72843**

Dear Counsel:

This will confirm that a telephone conference is scheduled in the above matter on March 13, 2008 at 9:15 a.m. The Court will initiate the call.

Very truly yours,

Kimberly Reed  
Deputy Chief Clerk

kr

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME & COUNTY COURT  
Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-2378  
FAX: (716) 938-6413

HON. MICHAEL L. NENNO  
HON. LARRY M. HIMELEIN  
SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

September 25, 2007

Mark R. McNamara, Esq.  
Hiscock & Barclay, LLP  
1100 M&T Plaza  
Buffalo, New York 14203-1414

David C. Brautigam, Esq.  
9888 County Road 23  
Houghton, New York 14744

**Re: Niagara Mohawk v Town of Machais  
Index # 72843**

Dear Counselors:

Please be advised that the above matter has been re-assigned to the Hon. Michael L. Nenno. The telephone conference previously scheduled has been **changed to March 12, 2008 at 10:00 a.m.**

The Court will initiate the call.

Very truly yours,

Jane St. John  
Senior Court Office Assistant

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF CATTARAUGUS

No Fee!  
7/17/07  
B

In the Matter of the Application of  
**NIAGARA MOHAWK POWER CORPORATION, d/b/a  
NATIONAL GRID,**

*Petitioner,*

*-against-*

**TOWN OF NEW ALBION ASSESSOR,  
TOWN OF NEW ALBION BOARD OF ASSESSMENT  
REVIEW and the TOWN OF NEW ALBION,  
CATTARAUGUS COUNTY, NEW YORK,**

**NOTICE OF PETITION**

Index No. 72844

Date Filed: \_\_\_\_\_

*Respondent.*

To Review Real Property Assessments  
Pursuant to Article 7 of the Real  
Property Tax Law (2007-2008).

HISCOCK & BARCLAY, LLP

**PLEASE TAKE NOTICE** that upon the annexed duly verified petition of Niagara Mohawk Power Corporation, d/b/a National Grid, application will be made at an All Purpose Term of the Supreme Court of the State of New York, to be held in the Cattaraugus County Courthouse, 303 Court Street, Little Valley, New York, on the 6th day of September 2007, at 9:30 a.m., or as soon thereafter as counsel can be heard, for review and reduction, pursuant to Article 7 of the Real Property Tax Law of the State of New York, of the assessment(s) on real property appearing upon the assessment roll of the Town of New Albion for the year 2007, as set forth in the annexed verified petition; and for such other relief as the Court deems appropriate, together with the costs and disbursements of this proceeding.

ALLIB01M184900\1



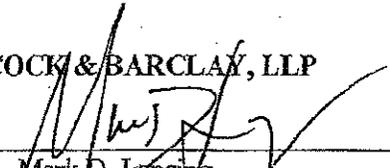
CATTARAUGUS COUNTY  
CLERK  
JUL 17 3 11 PM '07

FILED

PLEASE TAKE FURTHER NOTICE that Respondents are required to serve a verified answer upon Petitioner's attorneys at least five days prior to the return date of this matter.

DATED: July 2, 2007

HISCOCK & BARCLAY, LLP

By: 

Mark D. Lansing

Mark R. McNamara

*Attorneys for Petitioner*

Niagara Mohawk Power Corporation,

d/b/a National Grid

1100 M&T Plaza

Buffalo, New York 14203-1414

Telephone (716) 856-5400

**FAX SERVICE NOT ACCEPTED**

TO: Clerk of the Town of New Albion  
14 Main Street  
Cattaraugus, New York 14719

Superintendent  
Cattaraugus-Little Valley Central School District  
207 Rock City Street  
Little Valley, New York 14755

Cattaraugus County Treasurer  
303 Court Street  
Little Valley, New York 14755

Village of Cattaraugus  
14 Main Street  
Cattaraugus, New York 14719-1023

HISCOCK & BARCLAY, LLP

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF CATTARAUGUS

In the Matter of the Application of  
**NIAGARA MOHAWK POWER CORPORATION, d/b/a  
NATIONAL GRID,**

*Petitioner,*

*-against-*

**TOWN OF NEW ALBION ASSESSOR,  
TOWN OF NEW ALBION BOARD OF ASSESSMENT  
REVIEW and the TOWN OF NEW ALBION,  
CATTARAUGUS COUNTY, NEW YORK,**

**PETITION**

Index No. 72844

Date Filed: \_\_\_\_\_

*Respondent.*

To Review Real Property Assessments  
Pursuant to Article 7 of the Real  
Property Tax Law (2007-2008).

HISCOCK & BARCLAY, LLP

Petitioner Niagara Mohawk Power Corporation, d/b/a National Grid, by its attorneys, Hiscock & Barclay, LLP, for its petition alleges upon information and belief as follows:

**PURPOSE OF PETITION**

1. The purpose of this petition is to seek judicial review and reduction of the assessment(s) on Petitioner's real property for the year 2007 in the Town of New Albion on the grounds that Petitioner's real property was illegally or unequally assessed, and/or overvalued for assessment purposes. In addition, Petitioner's State and Federal Constitutional rights have been violated.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to Article 7 of the RPTL and venue is proper pursuant to RPTL §702, and CPLR §§504 and 506.

FILED  
JUL 17 3 11 PM '07  
CATTARAUGUS COUNTY  
CLERK

**PARTIES**

3. Petitioner is a domestic corporation which maintains its principal offices at 300 Erie Boulevard West, Syracuse, New York.

4. Respondent Town of New Albion ("Town") was and is a municipal corporation located in the County of Cattaraugus, and an assessing unit in the State of New York.

5. Respondent Assessor was and is charged by law with the function and duty of assessing all real property situated in the Town and with preparing the Town's assessment roll.

6. Respondent Board of Assessment Review was and is charged with the duty of reviewing complaints on real property assessments in the Town.

**COMMON ALLEGATIONS AND FACTS**

7. Petitioner is a property owner and taxpayer in the Town, within the meaning of Article 7 of the RPTL, which real property is described on the assessment roll of the Town as follows:

<b>Tax ID#</b>
44.002-3-25
664.089-9910-132.350/100
664.089-9910-132.350/188
664.001-9910-132.350/100

8. Upon the 2007 tentative assessment roll of the Town, the land and real property described above were proposed and certified to be assessed as follows:

<b>Tax ID#</b>	<b>TENTATIVE ASSESSED VALUE</b>
44.002-3-25	120,021
664.089-9910-132.350/100	373,400
664.089-9910-132.350/188	51,587
664.001-9910-132.350/100	3,279

9. On or before May 22, 2007, Petitioner timely filed with Respondents, a written and verified statement of complaint, incorporated herein by reference, in which it objected to and applied for the correction and reduction of said assessment(s) upon the same grounds as those hereinafter stated.

10. Respondent Board of Assessment Review refused to reduce said assessment(s) and made the final assessment(s) on Petitioner's real property for 2007 as follows:

Tax ID#	FINAL ASSESSED VALUE
44.002-3-25	120,021
664.089-9910-132.350/100	373,400
664.089-9910-132.350/188	51,587
664.001-9910-132.350/100	3,279

11. Petitioner's claimed assessment(s) are as follows:

Tax ID#	CLAIMED ASSESSED VALUE
44.002-3-25	41,486
664.089-9910-132.350/100	149,740
664.089-9910-132.350/188	21,119
664.001-9910-132.350/100	1,084

12. The Town's assessment roll was, upon information and belief, finally completed and filed on or about July 1, 2007, and 30 days have not elapsed since final completion, filing, and notice of such roll for the year 2007.

**AS AND FOR A FIRST CAUSE OF ACTION**

13. The valuation(s) and assessment(s) as they appear on the assessment roll are unequal, as the assessment(s) have been made at a higher percentage of value than the assessed value of other real property on the same assessment roll made by the same officers.

14. The full market value of Petitioner's real property is \$251,983 and the general ratio of assessed value of real property to full value of real property in the Town for 2006-2007 is 84.70%.

15. The general ratio of assessed value of real property to full value in the Town for the 2007-2008 fiscal year is less than the ratio determined for the 2006-2007 fiscal year.

16. The assessment(s) upon Petitioner's property, for which it will be required to pay taxes, are at a percentage substantially in excess of 84.70% or the new rate to be made for the fiscal year 2007-2008 assessment roll.

17. The property is overvalued by at least the total amount of \$334,857.

18. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting erroneous, unequal, unconstitutional and illegal assessment(s) placed on its real property situated in the Town. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, illegal and erroneous determination(s) of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal and erroneous assessment(s), and will thereby be required to pay unjust and excess taxes.

**AS AND FOR A SECOND CAUSE OF ACTION**

19. The assessment(s) for the property in paragraph 10 above are illegal as said property is assessed differently than similarly situated properties.

20. In addition, all property in the Town for the fiscal year 2007-2008 has not been assessed at a uniform percentage of value.

21. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting erroneous, unequal, unconstitutional and illegal assessment(s) placed on its real property situated in the Town. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, illegal and erroneous determination(s) of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal and erroneous assessment(s), and will thereby be required to pay unjust and excess taxes.

AS AND FOR A THIRD CAUSE OF ACTION

22. The assessment(s) constitute an unlawful burden on interstate commerce in violation of the Commerce Clause of Article I, Section 8, Clause 3 of the Constitution of the United States.

23. Petitioner is, and has been, and/or will be injured by Respondents' actions and the resulting erroneous, unequal, unconstitutional and illegal assessment(s) placed on its real property situated in the Town. Petitioner is aggrieved and injured by said unjust, unequal, excessive, unconstitutional, illegal and erroneous determination(s) of Respondents and the corresponding unjust, unequal, excessive, unconstitutional, illegal and erroneous assessment(s), and will thereby be required to pay unjust and excess taxes.

24. No other application has been made to this or any other Court for the relief requested herein.

**WHEREFORE**, Petitioner respectfully requests the following relief:

1. That the Court determine Respondents' actions were illegal and unconstitutional, and thereby, that the assessment(s) of Petitioner's real property was erroneous, overvalued, unequal and illegal;
2. That the assessment roll of the Town of New Albion, New York, for 2007 be corrected, and that the assessment(s) thereon against the real property of Petitioner described above be reduced by \$334,857, to a proper amount not exceeding the total sum of \$213,430, and that Petitioner be awarded all appropriate refunds;
3. That a declaratory judgment be entered declaring Respondents' actions, and the assessment(s) on Petitioner's real property resulting therefrom, violate the Constitution of the United States and the State of New York, and are, therefore, null and void; and

VERIFICATION

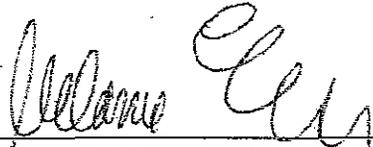
STATE OF NEW YORK

SS:

COUNTY OF ONONDAGA

MELANIE W. LITTLEJOHN, being duly sworn, deposes and says:

1. That I am an officer, to wit., Vice President – Business Services Central, of Niagara Mohawk Power Corporation, d/b/a National Grid,, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and the Petitioner in the foregoing proceeding;
2. That I have read the foregoing petition and know the contents thereof; and
3. That the same are true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and to those matters I believe them to be true.



MELANIE W. LITTLEJOHN  
Vice President  
Business Services Central

Subscribed and sworn to before

me this 27<sup>th</sup> day of June, 2007.



Notary Public

Joyce A. Hollington  
Notary Public State of New York  
Madison County # 01H06056788  
Commission Exp. 03/26/20 11

HISCOCK & BARCLAY, LLP

REQUEST FOR JUDICIAL INTERVENTION

**SOLD**

95-7/17/17

Supreme COURT CATTARAUGUS COUNTY INDEX NO. 72844 DATE PURCHASED

PETITIONER(S): NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL GRID
RESPONDENT(S): TOWN OF NEW ALBION ASSESSOR, TOWN OF NEW ALBION BOARD OF ASSESSMENT REVIEW and the TOWN OF NEW ALBION, CATTARAUGUS COUNTY, NEW YORK.

For Clerk Only
IAS entry date
Judge Assigned
RJI Date

Dated issue joined: September 6, 2007 Bill of particulars served (Y/N): [ ] Yes [X] No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- [ ] Request for preliminary conference
[X] Notice of petition (return date - September 6, 2007)
Relief sought statutory
[ ] Note of issue and/or certificate of readiness
[ ] Notice of medical or dental malpractice action
[ ] Statement of net worth
[ ] Order to show cause
[ ] Writ of habeas corpus
[ ] Other ex parte application

NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MATRIMONIAL

- [ ] Contested -CM
[ ] Uncontested -UM

Malpractice

- [ ] Medical/Podiatrist -MM
[ ] Dental -DM
[ ] \*Other Professional -OPM

COMMERCIAL

- [ ] Contract -CONT
[ ] Corporate -CORP
[ ] Insurance (where insurer is a party, except arbitration) -INS
[ ] UCC (including sales, negotiable instruments) -UCC
[ ] \*Other Commercial -OC

- [ ] Motor Vehicle -MV
[ ] \*Products Liability -PL

REAL PROPERTY

- [X] Tax certiorari -TAX
[ ] Foreclosure -FOR
[ ] Condemnation -COND
[ ] Landlord/Tenant -LT
[ ] \*Other Real Property -ORP

- [ ] Environmental -EN
[ ] Asbestos -ASB
[ ] Breast Implant -BI
[ ] \*Other Negligence -OTN
[ ] Other Tort (including intentional) -OT

SPECIAL PROCEEDINGS

- [ ] Art 75 (Arbitration) -ART 75
[ ] Art 77 (Trusts) -ART 77
[ ] Art 78 -ART 78
[ ] Election Law -ELEC
[ ] Guardianship (MHL Art. 81) -GUARD81
[ ] Other Mental Hygiene -MHYG
[ ] Other Special Proceeding -OSP

CATTARAUGUS COUNTY CLERK JUL 17 3 11 PM '07

Check "YES" or "NO" for each of the following questions.

Is this action/proceeding against a:

YES      NO      YES      NO  
        Municipality:            Public Authority:  
(specify)      Town of New Albion      (specify)      \_\_\_\_\_

YES      NO  
        Does this action/proceeding seek equitable relief?  
        Does this action/proceeding seek recovery for personal injury?  
        Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJI to filing of Note of Issue):

Expedited: 0-8 Months       Standard: 9-12 Months       Complex: 13-15 Months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served:       No       Yes, Date \_\_\_\_\_  
Was a Notice of No Necessity filed?       No       Yes, Date \_\_\_\_\_

ATTORNEY(S) FOR PLAINTIFF(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	Mark R. McNamara, Esq. Hiscock & Barclay, LLP	1100 M&T Center, 3 Fountain Plaza, Buffalo, NY 14203-1414	(716) 856-5400

ATTORNEY(S) FOR DEFENDANT(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>			

\*Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

RELATED CASES: (IF NONE, write "NONE" below)

Title                      Index #                      Court                      Nature of Relationship

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: July 2, 2007

(SIGNATURE)

Mark D. Lansing

(PRINT OR TYPE NAME)

Hiscock & Barclay, LLP

ATTORNEY FOR PETITIONER

ATTACH RIDER SHEETS IF NECESSARY TO PROVIDE REQUIRED INFORMATION.

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME & COUNTY COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-2378  
FAX: (716) 938-6413

HON. MICHAEL L. NENNO  
HON. LARRY M. HIMELEIN  
SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

September 25, 2007

Mark R. McNamara, Esq.  
Hiscock & Barclay, LLP  
1100 M&T Plaza  
Buffalo, New York 14203-1414

Erich Weyand, Esq.  
113 West Main Street  
P.O. Box 26  
Gowanda, New York 14070

**Re: Niagara Mohawk v Town of New Albion  
Index # 72844**

Dear Counselors:

Please be advised that the above matter has been re-assigned to the Hon. Michael L. Nenno. The telephone conference previously scheduled has been changed to **March 12, 2008 at 10:00 a.m.**

The Court will initiate the call.

Very truly yours,

Jane St. John  
Senior Court Office Assistant

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-9111

FAX: (716) 938-6413

HON. MICHAEL L. NENNO, ACTING JUSTICE  
HON. LARRY M. HIMELEIN, ACTING JUSTICE

SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

December 4, 2007

Mark R. McNamara, Esq.  
Hiscock & Barclay  
1100 M & T Plaza  
Buffalo, New York 14203-1414

David Brautigam, Esq.  
9888 County Road 23  
Houghton, New York 14744

Erich Weyand, Esq.  
118 West Main Street - Box 26  
Gowanda, New York 14070

**RE: NIAGARA MOHAWK V. TOWN OF MACHIAS, INDEX #72843  
NIAGARA MOHAWK V. TOWN OF NEW ALBION, INDEX #72844  
INDEX #68710**

Dear Counsel:

Please be advised that the above matters have been re-assigned to Hon. James E. Euken, Acting Supreme Court Justice.

I have forwarded our files to Judge Euken's chambers in Belmont.

Very truly yours,

Kimberly Reed  
Deputy Chief Clerk

kr

W E I T Z  
&  
L U X E N B E R G  
A PROFESSIONAL CORPORATION  
LAW OFFICES

180 MAIDEN LANE • NEW YORK, N.Y. 10038-4925  
TEL. 212-558-5500 FAX 212-344-5461  
WWW.WEITZLUX.COM

OCT 15 2007

PERRY WEITZ  
ARTHUR M. LUXENBERG  
ROBERT J. GORDON ††  
EDWARD S. BOSEK  
EDWARD BRANIFF ††  
JOHN M. BROADBENT \*  
DANIEL C. BURKE  
PATI BURSHTYN ††  
LISA NATHANSON BUSCH  
BRIAN BUTCHER ○  
DAVID A. CHANDLER  
EILEEN CLARKE  
THOMAS COMERFORD ††  
ADAM R. COOPER  
TERESA A. CURTIN ††  
BENJAMIN DARICHE  
CHARLES M. FERGUSON  
STUART R. FRIEDMAN

STEVEN J. GERMAN A  
LAWRENCE GOLDHIRSCH \*\*  
ROBIN L. GREENWALD \*\*\*  
EDWARD J. HAHN \*  
CATHERINE HEACOX ††  
RENEE L. HENDERSON \*\*  
MARIE L. IANNIELLO ††  
ERIK JACOBS  
GARY R. KLEIN ††  
GLENN KRAMER ††  
JERRY KRISTAL \*\*\*  
DEBBI LANDAU  
ROBERTO LARACUENTE \*  
HANNAH LIM +  
JAMES C. LONG, JR. \*\*

VICTORIA MANIATIS ††  
CURT D. MARSHALL †  
HADLEY L. MATARAZZO ††  
RICHARD S. MCGOWAN \* †† †  
WILLIAM J. NUGENT  
ANGELA T. PACHECO ○  
MICHAEL E. PEDERSON  
PAUL J. PENNOCK †  
STUART S. PERRY \*  
ELLEN REUIGN \*A  
STEPHEN J. RIEGEL ††  
MICHAEL P. ROBERTS  
CHRIS ROMANELLI ††  
JILLIAN ROSEN  
DAVID ROSENBAUM

JIM R. ROSS ○  
SHELDON SILVER \*  
FRANKLIN P. SOLOMON ††  
LEMUEL M. SROLOVIC  
JAMES S. THOMPSON ††  
JOSH VITOW  
DOUGLAS D. VON CISTE †  
WILLIAM A. WALSH ††  
JOSEPH P. WILLIAMS  
NICHOLAS WISE  
ALLAN ZELIKOVIC  
GLENN ZUCKERMAN

○ Of Counsel  
\* Also admitted in CT  
† Also admitted in FL  
†† Also admitted in MA  
††† Also admitted in NJ  
‡ Also admitted in DC  
‡ Also admitted in NJ and CT  
▲ Also admitted in NJ and PA  
▲▲ Also admitted in NJ and DC  
\*\* Also admitted in NJ and ME  
\*\* Also admitted in DC and TX  
# Also admitted in DC, VA  
# Also admitted in NJ and PA  
+ Admitted only in NJ  
+ Admitted only in DC, MD, PA and VA  
# Admitted only in CO  
\*\* Admitted only in IL  
○ Admitted only in TX

October 10, 2007  
**VIA FEDERAL EXPRESS**  
Surrogate's Court  
County of Cattaraugus  
303 Court Street  
Littleton Valley, NY 14755

RE: THE ESTATE OF RAYMOND J. DOMBEK

To Whom It May Concern:

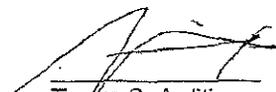
Enclosed please find the following documents for your review regarding the above named decedent;

- Attorney's Certification for Probate Proceeding
- Petition for Probate
- Affidavit of Delay
- (5) Waivers of Process; Consent to Probate
- Certified Copy of the Death Certificate
- Original Copy of the Last Will and Testament
- Copy of the Last Will and Testament with Affidavit of Comparison
- Funeral Bill Marked "Paid in Full"
- Decree Granting Probate
- \$45 Check for the Filing Fee
- \$12 Check for (2) Certificates of Appointment
- \$36 Check for (2) Certified copies of the Last Will & Testament
- Return Envelope

At this point it is also respectfully requested that you issue Two (2) Certified copies of the Last Will and Testament in order for our office to obtain Affidavits of Attesting Witnesses.

If you have any questions, please feel free to contact me at (800) 438-9786 ext. 5562. Thank you in advance for your attention to this matter.

Respectfully,

  
Tanya S. Arditi  
Estate Paralegal



215 South Monarch Street, Suite 202  
Aspen, CO 81611  
(970) 923-6101

210 Lake Drive East, Suite 101  
Cherry Hill, NJ 08002  
(856) 755-1115

76 South Orange Avenue, Suite 201  
South Orange, NJ 07079  
(973) 761-8995

100 E. 15th Street, Suite 400  
Fort Worth, Texas 76102  
(817) 885-7815



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

PROBATE PROCEEDING, WILL OF  
RAYMOND J. DOMBEK  
a/k/a

OCT 15 2007  
RECEIVED

Deceased.

Filing Fee Paid \$ 45.00  
Certificates Paid \$ \_\_\_\_\_  
Trustee Certs. Paid \$ \_\_\_\_\_  
Prelim. Certs. Paid \$ \_\_\_\_\_  
Bond, Fee: \$ \_\_\_\_\_  
Receipt No.: \_\_\_\_\_ No.: \_\_\_\_\_

PETITION FOR PROBATE AND:

- Letters Testamentary
- Letters of Trusteeship
- Letters of Administration c.t.a

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

TO THE SURROGATE'S COURT, COUNTY OF CATTARAUGUS

It is respectfully alleged:

1. (a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

**Petitioner Information:**

Name <b>Angeline Rose Dombek</b>	Citizenship <b>United States</b>
-------------------------------------	-------------------------------------

Domicile Address: Street and Number <b>133 North 11th St.</b>			
--	--	--	--

City, Village or Town <b>Olean</b>	State <b>New York</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
---------------------------------------	--------------------------	--------------------------	---------------------------------

Mailing Address: Street and Number (if different from domicile)

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Interest: (Check One)  Executor named in decedent's Will  Other

Name	Citizenship
------	-------------

Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Mailing Address: Street and Number (if different from domicile)

City, Village or Town	State	ZIP Code	Country
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Interest: (Check One)  Executor named in decedent's Will  Other

1. (b) The proposed Executor  is  is not an attorney.

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>Raymond J. Dombek</b>	Citizenship <b>United States</b>
----------------------------------	-------------------------------------

Domicile Address: Street and Number <b>133 North 11th St.</b>			
--	--	--	--

City, Village or Town <b>Olean</b>	State <b>New York</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
---------------------------------------	--------------------------	--------------------------	---------------------------------

County <b>Cattaraugus</b>	Date of Death <b>April 25, 2006</b>	Place of Death <b>Olean General Hospital, Olean NY</b>
------------------------------	--	---

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

January 28, 1997

Judith Moses and Daniel Palumbo

Date of Will

Name of All Witnesses to Will

Date of Codicil

Name of All Witnesses to Codicil

Date of Codicil

Name of All Witnesses to Codicil

Date of Codicil

Name of All Witnesses to Codicil

Date of Codicil

Name of All Witnesses to Codicil

4. No other will or codicil of the decedent is on file in this Surrogate's Court, and upon information and belief, after a diligent search and inquiry, including a search of any safe deposit box, there exists no will, codicil or other testamentary instrument of the decedent later in date to any of the instruments mentioned in Paragraph 3 except as follows:  None

5. The decedent was survived by distributees classified as follows:

- a.  1 Spouse (husband/wife).
- b.  5 Child or children and/or issue of predeceased child or children. *[Must include marital, nonmarital, adopted, or adopted-out child under DRL Section 117]*
- c.  Mother/Father.
- d.  Sisters and/or brothers, either of the whole or half blood, and issue of predeceased sisters and/or brothers (nieces/nephews, etc.).
- e.  Grandparents. *[Include maternal and paternal]*
- f.  Aunts and/or uncles, and children of predeceased aunts and/or uncles (first cousins). *[Include maternal and paternal]*
- g.  First cousins once removed (children of predeceased first cousins). *[Include maternal and paternal]*

6. The names, relationships, domicile and addresses of all distributees (under EPTL 4-1.1 and 4-1.2) of each person designated in the Will herewith presented as primary executor, of all persons adversely affected by the purported exercise by such Will of any power of appointment, of all persons adversely affected by any codicil and of all persons having an interest under any other will of the decedent on file in the Surrogate's Court, are hereinafter set forth in subdivisions (a) and (b).

6. (a) All persons and parties so interested who are of full age and sound mind or which are corporations or associations, are as follows:

Name <b>Angeline Rose Dombek</b>			
Domicile Address: Street and Number <b>133 North 11th St.</b>			
City, Village or Town <b>Olean</b>	State <b>New York</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
Mailing Address: Street and Number (if different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Spouse</b>			
Description of Legacy, Devise or Other Interest			
<b>Residuary Legatee</b>			
Nature of Fiduciary Status (if applicable) <b>Executrix</b>			
Name <b>Martin Michael Dombek</b>			
Domicile Address: Street and Number <b>2079 Baxter Mill Rd.</b>			
City, Village or Town <b>Hinsdale</b>	State <b>New York</b>	ZIP Code <b>14743</b>	Country <b>United States</b>
Mailing Address: Street and Number (if different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Child</b>			
Description of Legacy, Devise or Other Interest			
<b>1/5 Contingent Residuary Legatee</b>			
Nature of Fiduciary Status (if applicable) <b>Co-Successor Executor</b>			
Name <b>Andrew Adam Dombek</b>			
Domicile Address: Street and Number <b>2101 Baxter Mill Rd.</b>			
City, Village or Town <b>Hinsdale</b>	State <b>New York</b>	ZIP Code <b>14743</b>	Country <b>United States</b>
Mailing Address: Street and Number (if different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Child</b>			
Description of Legacy, Devise or Other Interest			
<b>1/5 Contingent Residuary Legatee</b>			
Nature of Fiduciary Status (if applicable) <b>Co-Successor Executor</b>			

Continued on next page.

6: (a) Interested Persons/Parties of Full Age and Sound Mind or Corporations/Associations (continued)

Name

✓ **Gerald E. Dombek**

Domicile Address: Street and Number

**2911 East Osborn Rd.**

City, Village or Town

**Phoenix**

State

**Arizona**

ZIP Code

**85016**

Country

**United States**

Mailing Address: Street and Number

**P.O. Box 15666**

City, Village or Town

**Phoenix**

State

**Arizona**

ZIP Code

**85060**

Country

**United States**

Relationship

**Child**

Description of Legacy, Devise or Other Interest

**1/5 Contingent Residuary Legatee**

Nature of Fiduciary Status (if applicable)

**None**

Name

✓ **Daniel J. Dombek**

Domicile Address: Street and Number

**17 Main St.**

City, Village or Town

**Allegany**

State

**New York**

ZIP Code

**14706**

Country

**United States**

Mailing Address: Street and Number

City, Village or Town

State

ZIP Code

Country

Relationship

**Child**

Description of Legacy, Devise or Other Interest

**1/5 Contingent Residuary Legatee**

Nature of Fiduciary Status (if applicable)

**None**

Name

✓ **Christopher P. Dombek**

Domicile Address: Street and Number

**506 Deer Path**

City, Village or Town

**Tolono**

State

**Illinois**

ZIP Code

**61880**

Country

**United States**

Mailing Address: Street and Number

City, Village or Town

State

ZIP Code

Country

Relationship

**Child**

Description of Legacy, Devise or Other Interest

**1/5 Contingent Residuary Legatee**

Nature of Fiduciary Status (if applicable)

**None**

6. (b) All persons so interested who are persons under disability, are as follows:

Name <b>NONE</b>			
Domicile Address: Street and Number			
City, Village or Town		State	ZIP Code
Country			
Residence Address: Street and Number			
City, Village or Town		State	ZIP Code
Country			
Relationship			
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			
Infant	Birthdate	Person with Whom Resides	Father Living? <input type="checkbox"/> Yes <input type="checkbox"/> No Mother Living? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Court-Appointed Guardian? <input type="checkbox"/> Yes <input type="checkbox"/> No	Describe Appointment	
		Guardian Name	
	If yes, Guardian of: <input type="checkbox"/> Person <input type="checkbox"/> Property	Guardian Address	
Incompetent/Incapacitated	Facts Regarding Disability		
	<input type="checkbox"/> Committee <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian	Name	
		Address	
		Name	
		Address	
Committed to Institution? <input type="checkbox"/> Yes <input type="checkbox"/> No	Institution Name		
	Institution Address		
Name of Relative/Friend with Interest in Welfare			
Address			
Prisoner	Place of Incarceration	Person with Interest in Welfare	
	Description (in same language as will be used in the process)		
Unknown			

7: (a) The names and domiciliary addresses of all substitute or successor executors and of all trustees, guardians, legatees, devisees, and other beneficiaries named in the Will and/or trustees and beneficiaries of any inter vivos trust designated in the propounded Will other than those named in Paragraph 6 herewith are as follows:

Name

**NONE**

Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Mailing Address: Street and Number (If different from domicile)

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Description of Legacy, Devise or Other Interest

Nature of Fiduciary Status (if applicable)

Name

Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Mailing Address: Street and Number (If different from domicile)

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Description of Legacy, Devise or Other Interest

Nature of Fiduciary Status (if applicable)

Name

Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Mailing Address: Street and Number (If different from domicile)

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Description of Legacy, Devise or Other Interest

Nature of Fiduciary Status (if applicable)

Name

Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Mailing Address: Street and Number (If different from domicile)

City, Village or Town	State	ZIP Code	Country
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Description of Legacy, Devise or Other Interest

Nature of Fiduciary Status (if applicable)

7: (b) All such legatees, devisees and other beneficiaries who are persons under disability are as follows:

Name <b>None</b>			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Residence Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			

<b>Infant</b>	Birthdate	Person with Whom Resides	Father Living? <input type="checkbox"/> Yes <input type="checkbox"/> No	Mother Living? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Court-Appointed Guardian? <input type="checkbox"/> Yes <input type="checkbox"/> No	Describe Appointment		
	If yes, Guardian of: <input type="checkbox"/> Person <input type="checkbox"/> Property	Guardian Name		
		Guardian Address		

<b>Incompetent/Incapacitated</b>	Facts Regarding Disability			
	<input type="checkbox"/> Committee	Name		
		Address		
	<input type="checkbox"/> Conservator	Name		
		Address		
<input type="checkbox"/> Guardian	Institution Name			
Committed to Institution? <input type="checkbox"/> Yes <input type="checkbox"/> No	Institution Address			

Name of Relative/Friend with Interest in Welfare	
Address	

<b>Prisoner</b>	Place of Incarceration	Person with Interest in Welfare
-----------------	------------------------	---------------------------------

<b>Unknown</b>	Description (in same language as will be used in the process)
----------------	---

8. (a) No beneficiary under the propounded will, listed in Paragraph 6 or 7 above, had a confidential relationship to the decedent, such as attorney, accountant, doctor, or clergy person, except:  None

(b) No persons, corporations or associations are interested in this proceeding other than those mentioned above.

9. (a) To the best of the knowledge of the undersigned, the approximate total value of all property constituting the decedent's gross testamentary estate is:

<b>Greater than</b>	\$	<b>0.00</b>
<b>But less than</b>	\$	<b>10,000.00</b>
Personal Property	\$	0.00
Improved Real Property in New York State	\$	0.00
Unimproved Real Property in New York State	\$	0.00
Estimated Gross Rents for a Period of 18 Months	\$	0.00

(b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows:  None

**A cause of action exists for wrongful death and conscious pain and suffering of the decedent based on exposure to asbestos against [A.P. Green Industries Inc. f/k/a A.P. Green Refractories Company] at [CT Corporation Systems, 1633 Broadway, New York, New York 10019], et. al.**

10. Upon information and belief, no other petition for the probate of any will of the decedent or for letters of administration of the decedent's estate has heretofore been filed in any court.

WHEREFORE your petitioner(s) pray(s) (a) that process be issued to all necessary parties to show cause why the Will and the Codicil(s) set forth in Paragraph 3 and presented herewith should not be admitted to probate; (b) that an order be granted directing the service of process, pursuant to the provisions of Article 3 of the SCPA, upon the persons named in Paragraph (6) hereof whose names or whereabouts are unknown and cannot be ascertained, or who may be persons on whom service by personal delivery cannot be made; and (c) that such Will and Codicil(s) be admitted to probate as a Will of real and personal property and that letters issue thereon as follows:

Letters Testamentary to: ANGELINE ROSE DOMBEK

Letters of Trusteeship to:

\_\_\_\_\_ f/b/o \_\_\_\_\_

\_\_\_\_\_ f/b/o \_\_\_\_\_

\_\_\_\_\_ f/b/o \_\_\_\_\_

\_\_\_\_\_ f/b/o \_\_\_\_\_

Letters of Administration c.t.a. to: \_\_\_\_\_

and that petitioner(s) have such other relief as may be proper.

Further relief sought (if any):  
That the filing of a bond be dispensed with.

Dated: 10-2-07

Angeline Rose Dombek  
Signature of Petitioner  
Angeline Rose Dombek  
Print Name

\_\_\_\_\_  
Signature of Petitioner  
Angeline Rose  
Print Name

\_\_\_\_\_  
Name of Corporate Petitioner

\_\_\_\_\_  
Signature of Petitioner  
\_\_\_\_\_  
Print Name

By \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title

COMBINED VERIFICATION, OATH AND DESIGNATION

For use when petitioner is an individual

STATE OF NEW YORK  
COUNTY OF CATTARAUGUS } ss.:

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF  EXECUTOR  ADMINISTRATOR  TRUSTEE as indicated above: I am over eighteen (18) years of age and a citizen of the United States and I will well, faithfully and honestly discharge the duties of Fiduciary of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I hereby designate the Clerk of the Surrogate's Court of Cattaraugus County, and his/her successor in office, as a person on whom service of any process, issuing from such Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: 133 North 11th St., Olean, NY 14760

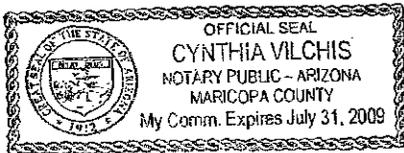
Angeline Rose Dombek  
Signature of Petitioner

Angeline Rose Dombek  
Print Name

On October 14, 07, before me personally came, Angeline Rose Dombek to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Angeline Rose Dombek

Notary Public  
Commission Expires: July 31, 09  
(Affix Notary Stamp or Seal)



Keith M. O'Connor  
Signature of Attorney

Keith M. O'Connor, Esq.  
Print Name of Attorney

Weitz & Luxenberg, P.C.  
Firm

(212) 558-5500  
Telephone

180 Maiden Lane, New York, NY 10038  
Address



# CATTARAUGUS COUNTY SURROGATE'S COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, NY 14755-1096  
(716) 938-9111 Ext. 2327  
Fax: (716) 938-6983

MICHAEL L. NENNO  
Surrogate Judge

October 15, 2007

CHRISTINE M. WRONA  
Chief Clerk

LARRY M. HIMELEIN  
Surrogate Judge

Weitz & Luxenberg, P.C.  
180 Maiden Lane  
New York, New York 10038

RE: In the Matter of the Application of Teresa M. Dolinar, as Administratrix of the  
Estate of Joseph G. Dolinar, Deceased  
Estate of Raymond Dombeck

Dear Sir or Madam:

I write because I am informed that you have a member of the New York State Legislature affiliated with your firm. If I am incorrect, please advise.

I made a financial contribution to a lawsuit in which the New York State Legislature is a named defendant. Because I have contributed financially to the litigation, and will benefit financially from a successful outcome, I believe that Cannon 3 of the Code of Judicial Conduct requires me to recuse myself from any litigation in which your firm is involved.

Therefore, I have directed the clerk of the court to remove from my docket any cases in which your firm appears. Because your firm is counsel to a party in the above-captioned case, the case will have to be re-assigned to a judge able to hear your case.

Very truly yours,  
*Larry M. Himelein*

Larry M. Himelein

LMH:kje

cc: Hon. Sharon Townsend  
Ms. Christine Wrona, Chief Clerk



# CATTARAUGUS COUNTY SURROGATE'S COURT

Cattaraugus County Building  
303 Court Street  
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Fax: (716) 938-6983

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October 15, 2007

CHRISTINE M. WRONA  
Chief Clerk

LARRY M. HIMELEIN  
Surrogate Judge

Weitz & Luxenberg, P.C.  
180 Maiden Lane  
New York, New York 10038

RE: In the Matter of the Application of Teresa M. Dolinar, as Administratrix of the  
Estate of Joseph G. Dolinar, Deceased  
Estate of Raymond Dombeck

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Very truly yours,  
*Larry M. Himelein*

Larry M. Himelein

LMH:kje

cc: Hon. Sharon Townsend  
Ms. Christine Wrona, Chief Clerk



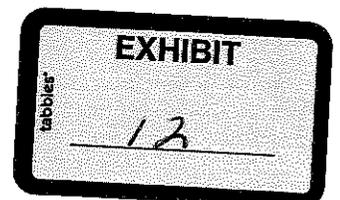
From: Larry Himelein  
To: [REDACTED]  
Date: 12/3/2007 10:02 AM  
Subject: Re: Maron Decision attached

Given that decision, and assuming that we will get boned by the legislature again, is there anyone who still believes we shouldn't recuse?

Larry Himelein

>>> Hon. [REDACTED] 12/3/2007 8:38 AM >>>  
I have been asked by many to forward a copy of the decision.

Hon. [REDACTED]



LAPATIN LEWIS KAPLAN & WEISSMEIER, PLLC  
ATTORNEYS AT LAW  
HERALD SQUARE BUILDING  
977 AVENUE OF THE AMERICAS, SUITE 810  
NEW YORK, NEW YORK 10018  
(212) 244-2929

JOSEPH LAPATIN  
NOEL H. KAPLAN\*  
ALICIA A. WEISSMEIER\*  
BENJAMIN LEWIS (1993)  
DAVID L. KITZES (1983)

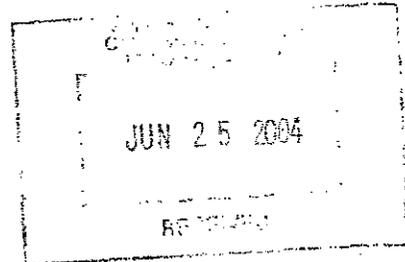
LEONARD HOCHHEISER\*  
OF COUNSEL

\* ADMITTED IN NY & FL  
\* ADMITTED IN NY & NJ

FACSIMILE (212) 967-0954  
E-MAIL:  
JLEsq1@aol.com  
NHKEsq@aol.com  
AAWESq@aol.com

June 24, 2004

VIA FEDERAL EXPRESS  
Cattaraugus County Surrogate's Court  
Attn: Probate Department  
303 Court Street  
Little Valley, NY 14755-1096



Re: Estate of Joseph E. Zynczak

Dear Probate Clerk:

Enclosed you will find the following documentation:

1. Petition for Probate and Letters Testamentary and Letters of Trusteeship;
2. Application for Preliminary Letters Testamentary;
3. Affidavit of Domicile
4. Waiver of Process; Consent to Probate – Joseph Jason Zynczak;
5. Waiver of Process; Consent to Probate – Evelyn Zynczak;
6. Waiver of Process; Consent to Probate – Aaron Arthur Zynczak;
7. Original Last Will and Testament of Joseph E. Zynczak;
8. Original Death Certificate of Joseph E. Zynczak;

Please note that we are enclosing this firm's check in the amount of \$129.00 for the filing fee in relation to the Probate Petition, the fee for 3 Certificates of Preliminary Letters Testamentary, the fee for 3 Certificates of Letters Testamentary and the fee for 3 Certificates of Letters of Trusteeship. We are also enclosing a return Federal Express envelope in relation to the Certificates of Preliminary Letters Testamentary. It is rather important for us to receive the same without any delay as the decedent was a practicing attorney who passed away in his home/office which has accordingly been sealed by the New York City Police Department. Access is required as there are many ongoing legal matters which must be attended to.

*6/25/04 = [unclear] - [unclear] 113*



LAPATIN LEWIS KAPLAN & WEISSMEIER, PLLC

In the event you should require anything further, kindly do not hesitate to contact the undersigned at 212-244-2929. Thank you for your courtesy and cooperation herewith.

Sincerely,



Alicia A. Weissmeier

Enc.

Cc: Alice Fagnan -with enclosures  
Joseph Lapatin -with enclosures

STATE OF NEW YORK  
SURROGATE'S COURT: COUNTY OF CATTARAUGUS

SAFEKEEPING CHECKED 6/25/04  
INDEX CHECKED 6/25/04  
BY OW

PROBATE PROCEEDING, WILL OF

JOSEPH E. ZYNCZAK

a/k/a JOSEPH ZYNCZAK

JUN 25 2004  
pd 75.00 filing fee  
25.00 trustee  
9.00 cert.

DECEASED

PETITION FOR PROBATE AND:

- Letters Testamentary
- Letters of Trusteeship
- Letters of Administration c.t.a.

File No. 31,503

To the Surrogate's Court, County of Cattaraugus

It is respectfully alleged:

1.(a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

Name: JOSEPH LAPATIN

Domicile or Principal office: 210-15 23rd Avenue, Apartment 5D,

Bayside New York 11360  
(City, Village or Town) (State) (Zip Code)

Mailing Address: 977 Avenue of the Americas, Suite 810, NY, NY 10018  
(If different from domicile)

Citizen of: USA

Name: ALICE FAGNAN

Domicile or Principal office: 7467 Fisher Road

Oakfield New York 14125  
(City, Village or Town) (State) (Zip Code)

Mailing Address: \_\_\_\_\_  
(If different from domicile)

Citizen of: \_\_\_\_\_

Interest(s) of Petitioner(s):  
(Check one)  Executor(s) named in decedent's Will  
 Other (Specify)

1.(b) The proposed Executor  is  is not an attorney.  
[NOTE: An Executor-Attorney must comply with SCPA 2307-[a]; also see 207.19G Surrogate's Court Rules]  
The death certificate must be filed with this proceeding. If the decedent's domicile is different from that shown on the death certificate, attach an affidavit explaining the reason for this inconsistency.

2. The name, domicile, date and place of death, and national citizenship of the above named decedent are as follows:

(a) Name: Joseph E. Zynczak

(b) Date of death: June 14, 2004

(c) Place of death: 65 West 55th St. N.Y N.Y

(d) Domicile: Street 5972 Ashford Hollow Road

City, Town, Village: West Valley

County: CATTARAUGUS State: N.Y

(e) Citizen of: USA

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

10/14/86 Joseph Lapatin, Noel H. Kaplan Sophie Grodzinsky  
(Date of Will) (Names of All Witnesses to Will)

\_\_\_\_\_  
(Date of Codicil) (Names of All Witnesses to Will)

\_\_\_\_\_  
(Date of Codicil) (Names of All Witnesses to Will)

At a Surrogate's Court held in and for the County of Cattaraugus at the Surrogate's Office in the Village of Little Valley, New York, on June 25, 2004.

PRESENT: HON. LARRY M. HIMELEIN, SURROGATE  
SURROGATE'S COURT, CATTARAUGUS COUNTY

IN THE MATTER OF THE ESTATE

ORDER GRANTING LETTERS  
OF TESTAMENTARY TRUSTEESHIP

of

JOSEPH E. ZYNCZAK  
ALSO KNOWN AS JOSEPH ZYNCZAK  
Deceased

File #31,503

The Will of JOSEPH E. ZYNCZAK also known as JOSEPH ZYNCZAK, deceased, having been admitted to probate on June 25, 2004 and JOSEPH LAPATIN AND ALICE FAGNAN named Trustee(s) in said Will having duly qualified as Trustee(s) thereunder, to serve without bond, it is

ORDERED that said JOSEPH LAPATIN AND ALICE FAGNAN is/are appointed Trustee(s) of the trust(s) created under Article/Clause

SECOND of the Last Will and Testament of JOSEPH E. ZYNCZAK, ALSO KNOWN AS JOSEPH ZYNCZAK Deceased, for the benefit of Evelyn Zynczak.

*Larry M. Himelein*

SURROGATE

CERTIFICATE OF PROBATE. Form No. 6

---

SURROGATE'S COURT,  
COUNTY OF CATTARAUGUS.

BE IT REMEMBERED, That in pursuance of Section 1422 of the Surrogate's Court Procedure Act, I hereby certify that on June 25, 2004, the last will and testament of JOSEPH E. ZYNCZAK, also known as JOSEPH ZYNCZAK, deceased, being the following written instrument, was upon due proof duly admitted to probate by the Surrogate's Court of the County of Cattaraugus, and by the Surrogate of said County as and for the last will and testament of said deceased, and as a will valid to pass real and personal property, and that said will is recorded in this office.

(L.S.)

IN TESTIMONY WHEREOF, I have hereunto  
subscribed my name and affixed the seal  
of office of the Surrogate of said  
County, on June 25, 2004.



Chief Clerk of the Surrogate's Court

THE PEOPLE OF THE STATE OF NEW YORK

BY THE GRACE OF GOD FREE AND INDEPENDENT

To All To Whom These Presents Shall Come or May Concern, Send Greeting:

KNOW YE, that at a Surrogate's Court held in and for the County of Cattaraugus and State of New York, at the Surrogate's Office in the Village of Little Valley in said County on June 25, 2004 before HON. LARRY M. HIMELEIN, Surrogate, a decree was duly made admitting to probate THE LAST WILL AND TESTAMENT of JOSEPH E. ZYNCZAK also known as JOSEPH ZYNCZAK late of the TOWN OF ASHFORD in said county, deceased.

And JOSEPH LAPATIN AND ALICE FAGNAN nominated and appointed TRUSTEE(S) under said Last Will and Testament thereto having qualified as required by law.

And that on June 25, 2004 an Order was duly made appointing JOSEPH LAPATIN AND ALICE FAGNAN, Trustee(s) of the trust created under Article/Clause SECOND of the said Last Will and Testament established for the benefit of Evelyn Zynczak.

NOW, THEREFORE, we do grant these LETTERS OF TESTAMENTARY TRUSTEESHIP to the said Trustee(s) giving and granting unto JOSEPH LAPATIN AND ALICE FAGNAN, following the death of the decedent which occurred on June 14, 2004 power and authority to execute the trust provisions contained in Article/Clause SECOND of said Last Will and Testament and to administer and dispose of the Trust Estate of said deceased established for the benefit of Evelyn Zynczak as required by law.

IN TESTIMONY WHEREOF, We have caused the seal of our said Surrogate's Court to be hereunto affixed.

(L.S.)

WITNESS, HON. LARRY M. HIMELEIN, Surrogate of said County, at the Village of Little Valley, in said county, on June 25, 2004

Christine M. Wozna  
Chief Clerk of the Surrogate's Court

At a Surrogate's Court held in  
and for the County of Cattaraugus  
At 303 Court St., Little Valley,  
NY 14755, on the 11th day of  
May, 2005

Present: Hon. Larry M. Himelein, Surrogate

-----X  
PETITION OF

JOSEPH LAPATIN TO RESIGN AS  
CO-EXECUTOR OF THE ESTATE OF  
JOSEPH ZYNCZAK

ORDER

File No. 31,503  
-----X

Joseph Lapatin, as Co-Executor of the Last Will and Testament of Joseph Zynczak, deceased, having heretofore filed in this court a petition, duly verified the 24<sup>th</sup> day of March, 2005, praying that said Joseph Lapatin be permitted to resign as Co-Executor under the Last Will and Testament of Joseph Zynczak, deceased, by this court; and this court having duly entertained the said petition for leave to resign, and notice given to all interested parties and no objection having been filed in relation to said resignation; now on motion of Alicia A. Weissmeier, Esq., attorney for petitioner, it is

ORDERED, that, sufficient reason appearing for granting the prayer of the petition, Joseph Lapatin, as Co-Executor under the Last Will and Testament of Joseph Zynczak, be and he hereby is permitted to resign as such Co-Executor; and it is further

ORDERED, that the Letters Testamentary heretofore issued to Joseph Lapatin, under the Last Will and Testament of Joseph Zynczak deceased, be and the same hereby are revoked; and it is further

ORDERED, that Alice Fagnan continue as the sole executor under the Last Will and Testament of Joseph Zynczak; and it is further

ORDERED, that the resigning Executor be and hereby is directed to transfer and assign to the said remaining Co-Executor Alice Fagnan the assets comprising the Estate of Joseph Zynczak together with all records in relation to the same as may be in his possession; and it is further

ORDERED, that the account of Joseph Lapatin as Co-Executor be accepted and settled; and it is further

ORDERED, that the commissions due to Joseph Lapatin as Co-Executor be reserved and paid at such time as a final informal or formal accounting is done in regards to the Estate of Joseph Zynczak

ENTER,

Laura M. Amelara  
Surrogate

**ENTERED**

May 11, 2005  
Christine M. Wrona  
CHIEF CLERK

At a term of the Surrogate's Court of the State of New York, held in and For the County of Cattaraugus, at Little Valley, New York on the 4<sup>th</sup> day of May, 2005.

PRESENT: HONORABLE LARRY M. HIMELEIN  
SURROGATE'S COURT JUSTICE

IN THE MATTER OF THE ESTATE OF

File No. 31,503

JOSEPH E. ZYNCZAK a/k/a  
JOSEPH ZYNCZAK

ORDER

Deceased.

UPON, the Petition for Spousal Election of EVELYN ZYNCZAK, the surviving spouse of JOSEPH E. ZYNCZAK a/k/a JOSEPH ZYNCZAK, it is hereby

ORDERED that the time to make such election be extended to August 1, 2005.

ENTER

**ENTERED**

May 4, 2005

Christina M. Wilson

CHIEF CLERK

Larry M. Himelein

HONORABLE LARRY M. HIMELEIN  
SURROGATE'S COURT JUSTICE

HON. LARRY M. HIMELEIN

SURROGATE'S COURT

May 1, 2006

RE: ESTATE OF JOSEPH E. ZYNCZAK  
NOTICE OF MOTION  
File #31,503

ATTORNEYS: CHRISTOPHER DIPASQUALE, ESQ.

FIDUCIARY: JOSEPH LAPATIN AND ALICE FAGNAN

FILED: NOTICE OF MOTION TO CANCEL RIGHT OF ELECTION  
Affirmation Supporting Notice of Motion to Cancel Right of  
Election  
Affidavit Supporting Notice of Motion to Cancel Right of Election

COURT REPORTER: Kathy Trost

APPEARANCES: Erich S. Weyand, Esq.

SUMMARY: No appearances in opposition to motion. Motion granted.  
Attorney Weyand to prepare decree.

Cattaraugus County Surrogate's Court  
Honorable Larry M Himelein, Surrogate  
CALENDAR

*No. B*

~~06-04-2007~~

09:30 AM

Joseph E Zynczak  
31503/D Judicial Settlement Of Final Account

PURPOSE: Judicial Settlement

Attorneys/Parties

James, Barbara R.H. (Estate Attorney )  
Fagnan, Alice (Executor )

CITED - Aaron A. Zynczak  
Evelyn Zynczak  
Joseph JasON Zynczak  
Howard Comart  
Joseph Lapatin  
Providian  
Bank Of America

HAVE - Petition  
Account  
Affidavit Of Attys Fees

NEED - Affidavit Of Service Of Citation - *filed*



Larry M Himelein  
Surrogate

CATTARAUGUS SURROGATE'S COURT  
303 Court Street  
Little Valley, NY 14755  
(716)938-9111 Fax: (716)938-6983

Christine M Wrona  
Chief Clerk

June 04, 2007

HARRIS BEACH PLLC  
Barbara R.H. James Esq  
99 Garney Road  
Pittsford NY 14534

RE: Estate of Joseph E Zynczak File# 31503/D  
Court appearance

Dear Sir/Madam:

This will confirm the above matter has been adjourned to June 18, 2007, at 9:30 a.m. in Little Valley before Judge Himelein. Please notify your clients accordingly.

Should you have any questions, do not hesitate to contact me.

Very truly yours

*Christine M Wrona*

Christine M Wrona  
Chief Clerk

*cc: Kevin Glue, Esq.  
Erich S. Weyand, Esq.*

11/5/2007

## File Minutes

**File# 31503/D Filename: Joseph E Zynczak**

---

06-04-2007 Court Reporter: Kathy Trost

Appearances: None

Summary: An adjournment was granted before the return date, but the matter was called as creditors were cited and attorney for the petitioner was unable to contact them.

No appearances by creditors or anyone else.

06-18-2007 Court Reporter: Kathy Trost

Appearances: Barbara R.H. James (estate atty)  
Kevin Gluc (Aaron and James Zynczak)  
Erich Weyand (Evelyn Zynczak)  
Evelyn Zynczak

Summary: Attorney James advised the court the parties are close to reaching an agreement to settle the estate. She still needs to file an affidavit regarding her attorneys fees with the court. The other outstanding issues are equipment and personal property. Two of the beneficiaries are seeking a mortgage that would provide the cash necessary to pay debts of the estate. Matter adjourned to August 6, 2007 at 9:30 a.m. in Little Valley before Judge Himelein

11-05-2007 Court Reporter: Kathy Trost

Appearances: Christopher DiPasquale (estate)  
Kevin Gluc (Aaron and James Zynczak)  
Erich Weyand (Evelyn Zynczak)  
Evelyn Zynczak

Summary: Attorney Gluc advised the court there are limited issues remaining regarding the value of the real estate. The court set a deadline of November 19, 2007, for objections to be filed.

Attorney Weyand ask the court for an order that Attorney Gluc's clients not be allowed to transfer the real estate deeded to them from the estate until this matter is resolved. Attorney Gluc advised that it was necessary for his clients to obtain a mortgage to put cash into the estate and that is why they have title to the property. The court ordered that Attorney Gluc's clients not transfer the real property until the issues are resolved.

Matter adjourned to December 3, 2007, at 9:30 a.m. in Little Valley before Judge Himelein.

Cattaraugus County Surrogate's Court  
Honorable Larry M Himelein, Surrogate  
CALENDAR

---

12-17-2007

09:30 AM

---

**Joseph E Zynczak**  
**31503/D Judicial Settlement Of Final Account**

PURPOSE: Judicial Settlement

Attorneys/Parties

Gluc, Kevin K (Attorney Represents: Aaron And Joseph Zynczak )

James, Barbara R.H. (Estate Attorney )

Weyand, Erich S (Attorney Represents: Evelyn Zynczak )

Fagnan, Alice (Executor )

Atty James requested an adjournment to 1/7/2008. a  
decree is being circulated - should be filed w/ the court before  
that date

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME & COUNTY COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-9111 Ext. 2378 or 2387  
FAX: (716) 938-6413

January 3, 2008

HON. MICHAEL L. NENNO  
HON. LARRY M. HIMELEIN  
SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

Kevin Gluk, Esq.  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202

Barbara James, Esq.  
99 Garnley Road  
Pittsford, New York 14534

Erich Weyand, Esq.  
P. O. Box 26  
Gowanda, New York 14070

RE: Estate of Joseph Zynczak

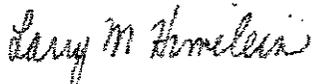
Dear Counsel:

I have reviewed the attorney fee affidavit in this case and have a problem with, among other things, charging for ministerial actions that are generally handled by office staff. I thought those were part of the overhead.

However, my purpose in writing is to inform you that I made a financial contribution to litigation between New York State judges and the governor, the senate and the assembly. I believe the firm of Harris Beach has a member of the legislature in the firm and thus, I believe I am mandatorily recused from any case involving that firm.

I believe Judge Nenko, the only other judge in our county, has also recused so you will probably have to contact the administrative judge to find a non-self respecting judge to hear your case.

Very truly yours,



Larry M. Himelein

LMH:kje

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME & COUNTY COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, New York 14755  
(716) 938-9111 Ext. 2378 or 2387  
FAX: (716) 938-6413

January 3, 2008

HON. MICHAEL L. NENNO  
HON. LARRY M. HIMELEIN  
SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

Kevin Gluk, Esq.  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202

Barbara James, Esq.  
99 Garnley Road  
Pittsford, New York 14534

Erich Weyand, Esq.  
P. O. Box 26  
Gowanda, New York 14070

RE: Estate of Joseph Zynczak

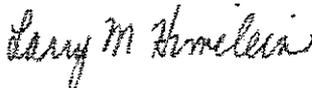
Dear Counsel:

I have reviewed the attorney fee affidavit in this case and have a problem with, among other things, charging for ministerial actions that are generally handled by office staff. I thought those were part of the overhead.

However, my purpose in writing is to inform you that I made a financial contribution to litigation between New York State judges and the governor, the senate and the assembly. I believe the firm of Harris Beach has a member of the legislature in the firm and thus, I believe I am mandatorily recused from any case involving that firm.

I believe Judge Nenno, the only other judge in our county, has also recused so you will probably have to contact the administrative judge to find a non-self respecting judge to hear your case.

Very truly yours,



Larry M. Himelein

LMH:kje



STATE OF NEW YORK

SUPREME COURT : COUNTY OF CATTARAUGUS

JASON R. CLEMONS  
127 South Second Street  
Olean, New York 14760,

SUMMONS

Index No.: **72139**

*113*

Plaintiff,

-vs-

OLEAN GENERAL HOSPITAL  
515 Main Street  
Olean, New York 14760

REBECCA J. SCHEITERLE, M.D.  
2078 Windfall Road  
Olean, New York 14760

KESHA N. STEIGHNER, P.A.-C  
200 West River Drive  
Olean, New York 14760,

EMERGENCY MEDICINE PHYSICIANS, LTD.  
4535 Dressler Road NW  
Canton, Ohio 44718; and

EMERGENCY MEDICINE PHYSICIANS OF  
CATTARAUGUS COUNTY, PLLC  
515 Main Street  
Olean, New York 14760

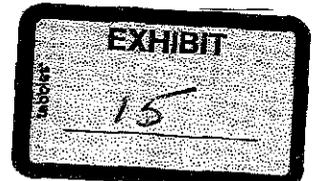
JAN 26 1 19 PM '07  
CATTARAUGUS COUNTY  
CLERK

FILED

Defendants.

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with the Summons, to serve a Notice of Appearance on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the date of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.



Plaintiff designates **Cattaraugus County** as the place of trial.

The basis of the venue is **Plaintiff's residence**.

Plaintiff resides at **127 South Second Street, Olean, New York**.

The nature of the action is recovery for damages sustained as a result of medical malpractice

which occurred on August 9, 2004.

The relief sought is monetary damages.

Dated: January 24, 2007.

BURGETT & ROBBINS

By:



Dalton J. Burgett

*Attorney for Plaintiff JASON R. CLEMONS*

15 East Fifth Street

Post Office Box 3090

Jamestown, New York 14702-3090

Telephone: (716) 488-3090

Facsimile: (716) 483-3765

STATE OF NEW YORK

SUPREME COURT

COUNTY OF CATTARAUGUS

JASON R. CLEMONS  
127 South Second Street  
Olean, New York 14760,

COMPLAINT

Index No.: **72139**

Plaintiff,

-vs-

OLEAN GENERAL HOSPITAL  
515 Main Street  
Olean, New York 14760

REBECCA J. SCHEITERLE, M.D.  
2078 Windfall Road  
Olean, New York 14760

KESHA N. STEIGHNER, P.A.-C  
200 West River Drive  
Olean, New York 14760,

EMERGENCY MEDICINE PHYSICIANS, LTD.  
4535 Dressler Road NW  
Canton, Ohio 44718; and

EMERGENCY MEDICINE PHYSICIANS OF  
CATTARAUGUS COUNTY, PLLC  
515 Main Street  
Olean, New York 14760

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE that the Plaintiff, JASON R. CLEMONS, by and through his attorneys Burgett & Robbins, herein and hereby alleges the following for his Complaint against the above named Defendants:

JAN 25 1 10 PM '07  
CATTARAUGUS COUNTY  
CLERK

FILED

110

**FIRST:**

At all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Plaintiff JASON R. CLEMONS resided at and continues to reside at 127 South Second Street, in the City of Olean, County of Cattaraugus, and State of New York.

**SECOND:**

At all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant OLEAN GENERAL HOSPITAL was and is a not-for-profit domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

**THIRD:**

At all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant OLEAN GENERAL HOSPITAL maintained its principal place of business at 515 Main Street in the City of Olean, County of Cattaraugus, and State of New York.

**FOURTH:**

At all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant OLEAN GENERAL HOSPITAL maintained a hospital and emergency department for the care and treatment of persons with injuries and illnesses at 515 Main Street in the City of Olean, County of Cattaraugus, and State of New York.

**FIFTH:**

Upon information and belief, the Defendant OLEAN GENERAL HOSPITAL did, at all times pertinent to this action, including the 9<sup>th</sup> day of August, 2004, retain the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. to supply emergency medical personnel, physicians and physician-assistants for the emergency room at Olean General Hospital.

**SIXTH:**

Upon information and belief, the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. was and is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Ohio.

**SEVENTH:**

Upon information and belief, the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. maintained its principal place of business at 4335 Dressler Road NW, Canton, Ohio.

**EIGHTH:**

Upon information and belief, and at all times pertinent to this action, the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. regularly engaged in business in the County of Cattaraugus, and State of New York.

**NINTH:**

Upon information and belief, at all times pertinent to this action and on the 9<sup>th</sup> day of August, 2004, the agents, officers, employees and/or servants of the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. undertook to render medical care and treatment to the Plaintiff JASON R. CLEMONS.

**TENTH:**

Upon information and belief, the Defendant OLEAN GENERAL HOSPITAL did, at all times pertinent to this action, including the 9<sup>th</sup> day of August, 2004, retain the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC, to supply emergency medical personnel, physicians and physician-assistants for the emergency room at OLEAN GENERAL HOSPITAL.

**ELEVENTH:**

Upon information and belief, the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC was and is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

**TWELFTH:**

Upon information and belief, the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC maintained its principal place of business at 515 Main Street in the City of Olean, County of Cattaraugus and State of New York.

**THIRTEENTH:**

Upon information and belief, and at all times pertinent to this action, the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC regularly engaged in business in the County of Cattaraugus, and State of New York.

**FOURTEENTH:**

Upon information and belief, at all times pertinent to this action and on the 9<sup>th</sup> day of August, 2004, the agents, officers, employees and/or servants of the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC undertook to render medical care and treatment to the Plaintiff JASON R. CLEMONS.

**FIFTEENTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant REBECCA J. SCHEITERLE, M.D. was and is a resident of Olean, Cattaraugus County, New York.

**SIXTEENTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant REBECCA J. SCHEITERLE, M.D. was a duly licensed medical doctor engaged in the practice of medicine in the State of New York.

**SEVENTEENTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, the Defendant REBECCA J. SCHEITERLE, M.D. was an employee, agent or servant of the Defendant OLEAN GENERAL HOSPITAL.

**EIGHTEENTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the

Defendant REBECCA J. SCHEITERLE, M.D. was an employee, agent or servant of the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD.

**NINETEENTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant REBECCA J. SCHEITERLE, M.D. was an employee, agent or servant of the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC.

**TWENTIETH:**

At all times pertinent to this action, at all times pertinent to her care and treatment of the Plaintiff JASON R. CLEMONS, and particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant REBECCA J. SCHEITERLE, M.D. was acting within the scope of her employment with the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD.

**TWENTY-FIRST:**

At all times pertinent to this action, at all times pertinent to her care and treatment of the Plaintiff JASON R. CLEMONS, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant REBECCA J. SCHEITERLE, M.D. was acting within the scope of her employment with the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC.

**TWENTY-SECOND:**

At all times pertinent to this action, at all times pertinent to her care and treatment of the Plaintiff JASON R. CLEMONS, particularly including the 9<sup>th</sup> day of August, 2004,

between 9:00 p.m. and midnight, the Defendant REBECCA J. SCHEITERLE, M.D. was acting within the scope of her employment with the Defendant OLEAN GENERAL HOSPITAL.

**TWENTY-THIRD:**

At all times pertinent to this action, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. held its employee, agent or servant REBECCA J. SCHEITERLE, M.D. out to the public as being a competent medical doctor authorized and capable of diagnosing and treating trauma patients in general and the Plaintiff JASON R. CLEMONS in particular.

**TWENTY-FOURTH:**

At all times pertinent to this action, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC held its employee, agent or servant REBECCA J. SCHEITERLE, M.D. out to the public as being a competent medical doctor authorized and capable of diagnosing and treating trauma patients in general and the Plaintiff JASON R. CLEMONS in particular.

**TWENTY-FIFTH:**

At all times pertinent to this action, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant OLEAN GENERAL HOSPITAL held its employee, agent or servant REBECCA J. SCHEITERLE, M.D. out to the public as being a competent medical doctor authorized and capable of diagnosing and treating trauma patients in general and the Plaintiff JASON R. CLEMONS in particular.

**TWENTY-SIXTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant KESHA N. STEIGNHER, P.A.-C was and is a resident of Olean, Cattaraugus County, New York.

**TWENTY-SEVENTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant KESHA N. STEIGHNER, P.A.-C was a duly licensed physician's assistant engaged in such practice in the State of New York.

**TWENTY-EIGHTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, the Defendant KESHA N. STEIGHNER, P.A.-C was an employee, agent or servant of the Defendant OLEAN GENERAL HOSPITAL.

**TWENTY-NINTH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant KESHA N. STEIGHNER, P.A.-C was an employee, agent or servant of the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD.

**THIRTIETH:**

Upon information and belief, at all times pertinent to this action, and specifically including the 9<sup>th</sup> day of August, 2004, and continuing until the present time, the Defendant KESHA N. STEIGHNER, P.A.-C was an employee, agent or servant of the

Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY,  
PLLC.

**THIRTY-FIRST:**

At all times pertinent to this action, at all times pertinent to her care and treatment of the Plaintiff JASON R. CLEMONS, and particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant KESHA N. STEIGHNER, P.A.-C was acting within the scope of her employment with the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD.

**THIRTY-SECOND:**

At all times pertinent to this action, at all times pertinent to her care and treatment of the Plaintiff JASON R. CLEMONS, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant KESHA N. STEIGHNER, P.A.-C was acting within the scope of her employment with the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC.

**THIRTY-THIRD:**

At all times pertinent to this action, at all times pertinent to her care and treatment of the Plaintiff JASON R. CLEMONS, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant KESHA N. STEIGHNER, P.A.-C was acting within the scope of her employment with the Defendant OLEAN GENERAL HOSPITAL.

**THIRTY-FOURTH:**

At all times pertinent to this action, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant EMERGENCY MEDICINE

PHYSICIANS, LTD. held its employee, agent or servant KESHA N. STEIGHNER, P.A.-C out to the public as being a competent physician's assistant authorized and capable of diagnosing and treating trauma patients in general and the Plaintiff JASON R. CLEMONS in particular.

**THIRTY-FIFTH:**

At all times pertinent to this action, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC held its employee, agent or servant KESHA N. STEIGHNER, P.A.-C out to the public as being a competent physician's assistant authorized and capable of diagnosing and treating trauma patients in general and the Plaintiff JASON R. CLEMONS in particular.

**THIRTY-SIXTH:**

At all times pertinent to this action, particularly including the 9<sup>th</sup> day of August, 2004, between 9:00 p.m. and midnight, the Defendant OLEAN GENERAL HOSPITAL held its employee, agent or servant KESHA N. STEIGHNER, P.A.-C out to the public as being a competent medical doctor authorized and capable of diagnosing and treating trauma patients in general and the Plaintiff JASON R. CLEMONS in particular.

**THIRTY-SEVENTH:**

At all times pertinent to this action, and specifically on the 9<sup>th</sup> day of August, 2004, the Defendant EMERGENCY MEDICINE PHYSICIANS, LTD. had been selected and retained by Defendant OLEAN GENERAL HOSPITAL to perform emergency and diagnostic services on its premises and on its behalf, and as such, was and is a duly

authorized employee, agent or servant of the Defendant OLEAN GENERAL HOSPITAL.

**THIRTY-EIGHTH:**

At all times pertinent to this action, and specifically on the 9<sup>th</sup> day of August, 2004, the Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC had been selected and retained by Defendant OLEAN GENERAL HOSPITAL to perform emergency and diagnostic services on its premises and on its behalf, and as such, was and is a duly authorized employee, agent or servant of the Defendant OLEAN GENERAL HOSPITAL.

**AS AND FOR A FIRST CAUSE OF ACTION  
ASSERTED ON BEHALF OF THE PLAINTIFF  
FOR MEDICAL NEGLIGENCE AND MALPRACTICE**

**THIRTY-NINTH:**

The Plaintiff repeats and re-alleges all of the allegations set forth in Paragraphs **FIRST** through **THIRTY-EIGHTH** as though set forth fully herein.

**FORTIETH:**

The Defendant OLEAN GENERAL HOSPITAL, by and through its employees, agents and/or servants, including Defendants REBECCA J. SCHEITERLE, M.D. and KESHA N. STEIGHNER, P.A.-C owed a duty to the Plaintiff JASON R. CLEMONS to examine, diagnose, evaluate and treat the Plaintiff JASON R. CLEMONS in accordance with the accepted standards of medical care.

**FORTY-FIRST:**

The Defendant EMERGENCY MEDICINE PHYSICIANS, LTD., by and through its employees, agents or servants REBECCA J. SCHEITERLE, M.D. and KESHA N.

STEIGHNER, P.A.-C owed a duty to the Plaintiff JASON R. CLEMONS to examine, diagnose, evaluate and treat the Plaintiff JASON R. CLEMONS in accordance with the accepted standards of medical care.

**FORTY-SECOND:**

The Defendant EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC, by and through its employees, agents or servants REBECCA J. SCHEITERLE, M.D. and KESHA N. STEIGHNER, P.A.-C owed a duty to the Plaintiff JASON R. CLEMONS to examine, diagnose, evaluate and treat the Plaintiff JASON R. CLEMONS in accordance with the accepted standards of medical care.

**FORTY-THIRD:**

On or about the 9<sup>th</sup> day of August, 2004, at approximately 9:00 p.m., the Plaintiff Jason R. Clemons presented himself to the Defendant OLEAN GENERAL HOSPITAL's emergency room for the evaluation, diagnosis, care and treatment of bilateral wrist injuries he sustained while playing basketball that evening.

**FORTY-FOURTH:**

On or about the 9<sup>th</sup> day of August, 2004, the Defendant OLEAN GENERAL HOSPITAL did, by and through its employees, agents or servants, including Defendants EMERGENCY MEDICINE PHYSICIANS, LTD., EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC, REBECCA J. SCHEITERLE, M.D., and KESHA N. STEIGHNER, P.A.-C, undertake to diagnose the plaintiff's bilateral wrist injuries.

**FIFTIETH:**

As a direct and proximate consequence of the failure of Defendants to adequately and properly diagnose and treat the Plaintiff's left wrist fracture, the Plaintiff JASON R. CLEMONS has and will be caused to suffer irreparable damage to the wrist, additional surgical and medical intervention, permanent pain, limitation, disability and interference with his profession as a hair designer, as is more particularly alleged hereinafter.

**FIFTY-FIRST:**

The care and treatment rendered to the Plaintiff by the Defendants at OLEAN GENERAL HOSPITAL on August 9, 2004, deviated from the accepted standards of medical care by virtue of the following acts and omissions which are listed herein as illustration and not limitation:

- a. Failure to advise the Plaintiff of a scaphoid fracture revealed by x-ray;
- b. Failure to adequately and properly interpret the x-ray of Plaintiff's left wrist;
- c. Failure to examine the x-ray of Plaintiff's left wrist;
- d. Failure to follow up with the Plaintiff during the next few days;
- e. Advising the Plaintiff of an improper diagnosis of his left wrist;
- f. Failure to arrange for adequate and appropriate follow up care;
- g. Failure to arrange for an orthopedic consult while the Plaintiff remained at the emergency department;
- h. Failure to undertake an adequate, appropriate and thorough examination of the Plaintiff's left wrist by qualified medical professionals; and
- i. Defendants were otherwise careless, reckless and negligent.

maintained at 15 East Fifth Street, P. O. Box 3090, Jamestown, New York 14701-3090.

The telephone number is: (716) 488-3090.

2. I am the attorney for Jason R. Clemons in the above entitled matter. As the attorney, I have reviewed the facts of this case and have consulted with at least one board certified physician who is licensed to practice in this state or any other state, and who I reasonably believe is knowledgeable in the relevant issues involved in this particular action.

3. As a result of the aforementioned consultation, I have concluded on the basis of such review and consultation that there is a reasonable basis for commencement of this action.

Dated: January 24, 2007.

Respectfully Submitted,  
Burgett & Robbins LLP

By: 

Dalton J. Burgett

*Attorney for Plaintiff JASON R. CLEMONS*

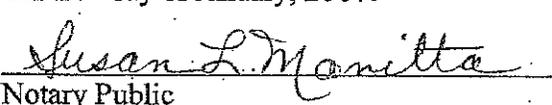
15 East Fifth Street, P. O. Box 3090

Jamestown, New York 14701-3090

Telephone: 716/488-3090

Fax: 716/483-3765

Subscribed and sworn to before me  
this 24<sup>th</sup> day of January, 2007.

  
Notary Public

SUSAN L. MANITTA #MA6111533  
Notary Public, State, of New York  
Qualified in Chautauque County  
My Commission Expires June 14, 2008

Received  
due to law firm

UCS-840 (Rev 1/2000)

# REQUEST FOR JUDICIAL INTERVENTION

INDEX NO. 72139

**P A I D**

SUPREME COURT : CATTARAUGUS COUNTY	DATE PURCHASED:	<del>By Clerk Only</del>
PLAINTIFF(S): JASON A. CLEMONS		IAS Entry Date <i>EUKER</i>
DEFENDANT(S): OLEAN GENERAL HOSPITAL, REBECCA J. SCHEITERLE, M.D., KESHA N. STEIGHNER, P.A.-C, EMERGENCY MEDICINE PHYSICIANS, LTD., and EMERGENCY MEDICINE PHYSICIANS OF CATTARAUGUS COUNTY, PLLC		Judge Assigned —
		RJI Date

Date Issue Joined: March 23, 2007

Bill of Particulars Served (Y/N): ( ) Yes ( x ) No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- ( ) Request for preliminary conference
- ( ) Note of Issue and/or certificate of readiness
- ( x ) Notice of Motion (return date to be determined by Court)  
Relief sought: An Order compelling discovery responses from plaintiff
- ( ) Order to Show Cause  
(clerk enter return date: \_\_\_\_\_)  
Relief sought:
- ( ) Other ex parte application (specify: \_\_\_\_\_)
- ( ) Notice of Petition (return date: \_\_\_\_\_)  
Relief sought:
- ( ) Notice of medical or dental malpractice action (specify \_\_\_\_\_)
- ( ) Statement of Net Worth
- ( ) Writ of Habeas Corpus
- ( ) Other (specify: \_\_\_\_\_)

CATTARAUGUS COUNTY CLERK  
JAN 8 2 31 PM '08

NATURE OF ACTION OR PROCEEDING (check ONE box only)

- |  |       |   |           |
|--|-------|---|-----------|
| <u>MATRIMONIAL</u>   |       | <u>MALPRACTICE</u>                      |           |
| ( ) Contested  | -CM   | ( x ) Medical/Podiatric                 | -MM       |
| ( ) Uncontested  | -UM   | ( ) Dental                              | -DM       |
| <u>COMMERCIAL</u>  |       | ( ) *Other Professional                 | -OPM      |
| ( ) Contract   | -CONT | ( ) Motor Vehicle                       | -MV       |
| ( ) Corporate  | -CORP | ( ) *Products Liability                 | -PL       |
| ( ) Insurance (where insurer is a party, except arbitration) | -INS  | ( ) Environmental                       | -EN       |
| ( ) UCC (including sales, negotiable instrument)             | -UCC  | ( ) Asbestos                            | -ASB      |
| ( ) *Other Commercial  | -OC   | ( ) Breast Implant                      | -BI       |
|  |       | ( ) *Other Negligence                   | -OTN      |
|  |       | ( ) *Other Tort (including intentional) | -OT       |
| <u>REAL PROPERTY</u>   |       | <u>SPECIAL PROCEEDINGS</u>              |           |
| ( ) Tax Certiorari   | -TAX  | ( ) Art. 75 (Arbitration)               | -ART 75   |
| ( ) Foreclosure  | -FOR  | ( ) Art. 77 (Trusts)                    | -ART 77   |
| ( ) Condemnation   | -COND | ( ) Art. 78                             | -ART 78   |
| ( ) Landlord/Tenant  | -LT   | ( ) Election Law                        | -ELEC     |
| ( ) *Other Real Property                                     | -ORP  | ( ) Guardianship (MHL Art. 81)          | -GUARD 81 |
| <u>OTHER MATTERS</u>   |       | ( ) *Other Mental Hygiene               | -MHYG     |
| ( ) *  | -OTH  | ( ) *Other Special Proceeding           | -OSP      |
| <u>TORTS</u>   |       |   |           |

\*If asterisk used, please specify further

Check "YES" or "NO" for each of the following questions to the action/proceeding against a

- YES  NO Municipal (Specify \_\_\_\_\_)  YES  NO Public Authority (Specify \_\_\_\_\_)  
 YES  NO Does this action/proceeding seek equitable relief?  
 YES  NO Does this action/proceeding seek recovery for personal injury?  
 YES  NO Does this action/proceeding seek recovery for property damage?

**PRELIMINARY TIME FRAMES:**

(This applies to all cases except contested matrimonial and tax certiorari cases.)

Estimated time period for case to be ready for trial from filing of PJI to filing of Note of Issue:  
 Expedited: 0-3 months  Standard: 3-12 months  Complex: 12-18 months

**Contested Matrimonial Cases Only:** (check and give date)

has summons been served?  NO  YES Date \_\_\_\_\_  
 Was a Notice of Pendency filed?  NO  YES Date \_\_\_\_\_

**ATTORNEYS FOR PLAINTIFF(S):**

Case Ref. #	NAME	ADDRESS	PHONE #
<input type="checkbox"/>	Mary S. Hajdu, Esq. Burdett Z. Robbins, LLP	15 East Fifth St., PO Box 3680 Jamastown, New York 14702	716-852-3092

**ATTORNEYS FOR DEFENDANT(S):**

Case Ref. #	NAME	ADDRESS	PHONE #
<input type="checkbox"/>	Frank V. Bajon, Esq. Riscook & Barcity, LLP	1100 M&T Center 3 Fountain Plaza Buffalo, New York 14203	716-856-5400
	Marie Flynn Danek, Esq. Phelan, Pichler & Danek, LLP	302 Washington Ave., Extension Albany, New York 12203	518-640-6900

\*Self Represented parties receiving Proceedings without an attorney, check the "Self Rep" box and enter the name, address and phone # of the party in the space provided above or otherwise.  
**INSURANCE CARRIERS:**

**RELATED CASES:** (If NONE write "NONE" below)

Name	Title	Index No.	Court	Nature of Relationship

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

**Clemens v. Olean General Hospital, et al**  
 Index No. 72139  
 Additional Information:

**Attorneys for Defendant(s):**

Frank V. Bajon, Esq.  
 Riscook & Barcity, LLP  
 1100 M&T Center  
 3 Fountain Plaza  
 Buffalo, New York 14203  
 (716) 856-5400  
 Attorney for defendant, Olean General Hospital

Marie Flynn Danek, Esq.  
 Phelan, Pichler & Danek, LLP  
 302 Washington Avenue Extension  
 Albany, New York 12203  
 (518) 640-6900  
 Attorney for defendants  
 Rebecca J. Scheitler, M.D.  
 Emergency Medicine Physicians, LTD., and  
 Emergency Medicine Physicians of Cattaraugus County, PLLC

STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
CATTARAUGUS COUNTY SUPREME COURT

Cattaraugus County Building  
303 Court Street

Little Valley, New York 14755  
(716) 938-8111

FAX: (716) 938-8413

HON. MICHAEL L. NENNO, ACTING JUSTICE  
HON. LARRY M. HIMELEIN, ACTING JUSTICE

SANDRA A. WOGICK, CHIEF CLERK  
KIMBERLY A. REED, DEPUTY CHIEF CLERK

January 18, 2008

Mary S. Hajdu, Esq.  
Burgett & Robbins, LLP  
15 East Fifth Street - P.O. Box 3090  
Jamestown, New York 14702

Marie Plynn Danek, Esq.  
Phelan, Phelan & Danek, LLP  
302 Washington Avenue Extension  
Albany, New York 12203

Frank V. Balon, Esq.  
Hiscock & Barclay  
1100 M & T Center  
3 Fountain Plaza  
Buffalo, New York 14203

**RE: JASON A. CLEMONS V. OLEAN GENERAL HOSPITAL  
INDEX #72139 - CATTARAUGUS COUNTY**

Dear Counsel:

Please be advised that the above matter has been assigned to Hon. James E. Euken, Acting Supreme Court Justice.

I have forwarded Mr. Balon's motion papers to Euken's chambers in Belmont.

Very truly yours,

Kimberly Reed  
Deputy Chief Clerk

kr

xc Hon. James E. Euken  
Leo Murphy, Esq., Law Clerk  
Kathleen Johnson, Chief Clerk

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&  
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DAVID A. CHANDLER  
EILEEN CLARKE  
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ADAM R. COOPER  
TERESA A. CURTIN AA  
BENJAMIN DANCHE

CHARLES M. FERGUSON  
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LAWRENCE GOLDBIRSHCH \*\*  
ROBIN L. GREENWALD \*\*\*  
EDWARD J. HAHN \*  
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DEBBI LANDAU  
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MICHAEL E. PEDERSON  
PAUL J. PENNOCK †  
STUART S. PERRY \*  
ELLEN RELKIN \* A  
STEPHEN J. RIEGEL ††  
MICHAEL P. ROBERTS  
CHRIS ROMANELLI ††  
DAVID ROSENBERG  
JIM R. ROSS \*  
JESSICA B. RUSSELL

SHELDON SILVER \*  
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WILLIAM A. WALSH ††  
JOSEPH P. WILLIAMS  
NICHOLAS WISE  
ALLAN ZELUKOVIC  
GLENN ZUCKERMAN

\* Of Counsel  
† Also admitted in CT  
\* Also admitted in FL  
\* Also admitted in MA  
†† Also admitted in NJ  
§ Also admitted in DC  
† Also admitted in NJ and CT  
\* Also admitted in NJ and PA  
\* Also admitted in NJ and ME  
\* Also admitted in DC and TX  
\* Also admitted in DC, VA  
† Admitted only in NJ and PA  
\* Admitted only in NJ  
\* Admitted only in DC, MD, PA and VA  
\* Admitted only in IL  
\* Admitted only in TX

January 3, 2008

**VIA FEDERAL EXPRESS**

Cattaraugus County Surrogate's Court  
303 Court Street  
Little Valley, NY 14755

**RE: THE ESTATE OF ROBERT J. WAGNER**

To Whom It May Concern:

Weitz & Luxenberg, P.C. represents the estate of Robert J. Wagner in a cause of action for his exposure to asbestos. In this regard, our office will be filing for Letters Testamentary on behalf of the nominated executrix, Gladys Christine Majka with this Honorable Court.

Towards this end, enclosed please find the following:

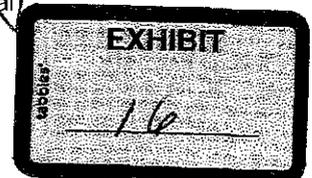
- A copy of the Death Certificate (original on file)
- Check for \$48 for (2) copies of the will
- Return Envelope

Please forward two copies of the decedent's Will to this office so that we may draft the appropriate paperwork and submit a petition to probate.

If you have any questions concerning this estate, please feel free to contact me at (800) 438-9786, ext. 5989. Thank you for your anticipated cooperation concerning this matter.

Very Truly Yours,  
WEITZ & LUXENBERG, PC

  
Steven Trifon  
Estate Paralegal



215 South Monarch Street, Suite 202  
Aspen, CO 81611  
(970) 925-6101

210 Lake Drive East, Suite 101  
Cherry Hill, NJ 08002  
(856) 755-1115

76 South Orange Avenue, Suite 305  
South Orange, NJ 07079  
(973) 761-8995

100 E. 15th Street, Suite 400  
Fort Worth, Texas 76102  
(817) 885-7815

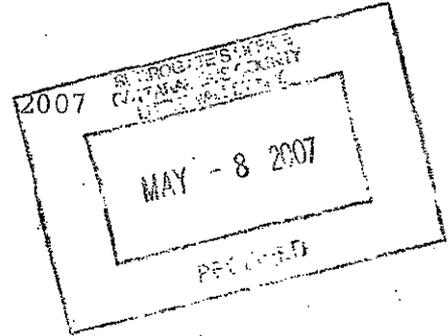
TERRY A. RASZEJA\*  
STEVEN J. LORD  
ATTORNEYS AT LAW  
26 WEST STREET  
ARCADE, NEW YORK 14009  
585-492-2532

\*ALSO ADMITTED TO FLORIDA BAR

BUFFALO LINE/FAX LINE 716-496-5144

FAX NOT FOR SERVICE OF PROCESS

May 7, 2007



Cattaraugus County Surrogate's Office  
303 Court Street  
Little Valley, New York 14755

Re: Estate of Robert J. Wagner  
Date of Death: January 7, 2007

Dear Sir or Madam:

Enclosed, please find an original Last Will & Testament of Robert J. Wagner, who passed away on January 7, 2007, along with a certified Death Certificate.

Please file the Will "For Record Purposes Only".

Thank you for your assistance.

Very truly yours,

  
TERRY A. RASZEJA, ESQ.

TAR:  
Enclosures

**W E I T Z**  
&  
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FEB 27 2008

PERRY WEITZ  
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\* Admitted only in NJ  
\*\* Admitted only in DC, MD, PA and VA  
† Admitted only in CO  
\*\*\* Admitted only in NY

February 27, 2008

**VIA FEDERAL EXPRESS**  
Cattaraugus County Surrogate's Court  
303 Court Street  
Little Valley, NY 14755

**RE: THE ESTATE OF ROBERT J. WAGNER**

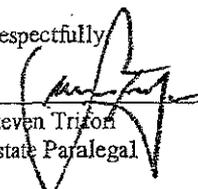
To Whom It May Concern:

Enclosed please find the following documents for your review regarding the above named decedent;

- Attorney's Certification for Probate Proceeding
- Petition for Probate and Letters Testamentary
- Affidavit of Delay
- Affidavit of Sole Distributee with photocopied Death Certificates
- Court Certified Last Will and Testament
- Photocopy of the Last Will and Testament with Affidavit of Comparison
- Notice of Probate with Affidavit of Mailing Notice of Probate
- Death Certificate
- Funeral Bill – Paid in Full
- Decree Granting Probate
- \$45 Check for the Filing Fee
- \$12 Check for (2) Certificates of Appointment
- Return Envelope

If you have any questions, please feel free to contact me at (800) 438-9786 ext. 5989. Thank you in advance for your attention to this matter.

Respectfully

  
Steven Trifon  
Estate Paralegal

215 South Monarch Street, Suite 202  
Aspen, CO 81611  
(970) 925-6101

210 Lake Drive East, Suite 101  
Cherry Hill, NJ 08002  
(856) 755-1115

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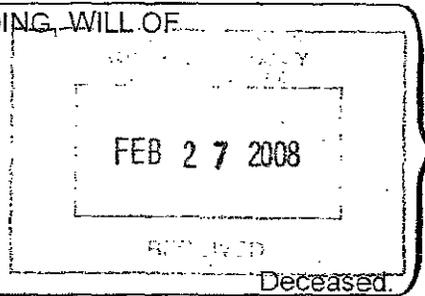
100 E. 15th Street, Suite 400  
Fort Worth, Texas 76102  
(817) 885-7815



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

PROBATE PROCEEDING, WILL OF

**ROBERT J. WAGNER**  
a/k/a



Filing Fee Paid \$ 45.00  
Certificates Paid \$ 12.00  
Trustee Certs. Paid \$ \_\_\_\_\_  
Prelim. Certs. Paid \$ \_\_\_\_\_  
Bond, Fee: \$ \_\_\_\_\_  
Receipt No.: \_\_\_\_\_ No.: \_\_\_\_\_

PETITION FOR PROBATE AND:

- Letters Testamentary
- Letters of Trusteeship
- Letters of Administration c.t.a

File No. 3007-32045/A

TO THE SURROGATE'S COURT, COUNTY OF CATTARAUGUS

It is respectfully alleged:

1. (a) The name, citizenship, domicile (or, in the case of a bank or trust company, its principal office) and interest in this proceeding of the petitioner are as follows:

**Petitioner Information:**

Name <b>Gladys Christine Majka</b>	Citizenship <b>United States</b>
---------------------------------------	-------------------------------------

Domicile Address: Street and Number <b>10212 Miller Road</b>			
---	--	--	--

City, Village or Town <b>Fredonia</b>	State <b>New York</b>	ZIP Code <b>14063</b>	Country <b>United States</b>
--	--------------------------	--------------------------	---------------------------------

Mailing Address: Street and Number (if different from domicile)

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Interest: (Check One)  Executor named in decedent's Will  Other

Name	Citizenship
------	-------------

Domicile Address: Street and Number

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Mailing Address: Street and Number (if different from domicile)

City, Village or Town	State	ZIP Code	Country
-----------------------	-------	----------	---------

Interest: (Check One)  Executor named in decedent's Will  Other

1. (b) The proposed Executor  is  is not an attorney.

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>Robert J. Wagner</b>	Citizenship <b>United States</b>
---------------------------------	-------------------------------------

Domicile Address: Street and Number <b>15 First Avenue</b>			
---	--	--	--

City, Village or Town <b>Delevan</b>	State <b>New York</b>	ZIP Code <b>14042</b>	Country <b>United States</b>
---	--------------------------	--------------------------	---------------------------------

County <b>Cattaraugus</b>	Date of Death <b>January 7, 2007</b>	Place of Death <b>Residence, 15 First Avenue, Delevan, NY</b>
------------------------------	---	--

3. The Last Will, herewith presented, relates to both real and personal property and consists of an instrument or instruments dated as shown below and signed at the end thereof by the decedent and the following attesting witnesses:

April 1, 1992

Terry A. Raszeja and Karen A. Norton

Date of Will

Name of All Witnesses to Will

4. No other will or codicil of the decedent is on file in this Surrogate's Court, and upon information and belief, after a diligent search and inquiry, including a search of any safe deposit box, there exists no will, codicil or other testamentary instrument of the decedent later in date to any of the instruments mentioned in Paragraph 3 except as follows:  None

5. The decedent was survived by distributees classified as follows:

- a.  NO Spouse (husband/wife).
- b.  1 Child or children and/or issue of predeceased child or children. *[Must include marital, nonmarital, adopted, or adopted-out child under DRL Section 117]*
- c.  X Mother/Father.
- d.  X Sisters and/or brothers, either of the whole or half blood, and issue of predeceased sisters and/or brothers (nieces/nephews, etc.).
- e.  X Grandparents. *[Include maternal and paternal]*
- f.  X Aunts and/or uncles, and children of predeceased aunts and/or uncles (first cousins). *[Include maternal and paternal]*
- g.  X First cousins once removed (children of predeceased first cousins). *[Include maternal and paternal]*

6. The names, relationships, domicile and addresses of all distributees (under EPTL 4-1.1 and 4-1.2) of each person designated in the Will herewith presented as primary executor, of all persons adversely affected by the purported exercise by such Will of any power of appointment, of all persons adversely affected by any codicil and of all persons having an interest under any other will of the decedent on file in the Surrogate's Court, are hereinafter set forth in subdivisions (a) and (b).

6. (a) All persons and parties so interested who are of **full age and sound mind** or which are corporations or associations, are as follows:

Name <i>Pot</i> Gladys Christine Majka <sup>(X)</sup>			
Domicile Address: Street and Number 10212 Miller Road			
City, Village or Town Fredonia	State New York	ZIP Code 14063	Country United States
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship Child			
Description of Legacy, Devise or Other Interest			

**Full Residuary Legatee**

Nature of Fiduciary Status (if applicable)

Executrix

6. (a) Persons and parties of full age and sound mind: (continued)

Name			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship			
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			

Name			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship			
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			

Name			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Relationship			
Description of Legacy, Devise or Other Interest			
Nature of Fiduciary Status (if applicable)			

6. (b) All persons so interested who are persons under disability, are as follows:  None

7: (a) The names and domiciliary addresses of all substitute or successor executors and of all trustees, guardians, legatees, devisees, and other beneficiaries named in the Will and/or trustees and beneficiaries of any inter vivos trust designated in the propounded Will other than those named in Paragraph 6 herewith are as follows:

Name <b>Richard Majka</b>			
Domicile Address: Street and Number <b>10212 Miller Road</b>			
City, Village or Town <b>Fredonia</b>	State <b>New York</b>	ZIP Code <b>14063</b>	Country <b>United States</b>

Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country

Description of Legacy, Devise or Other Interest

**None**

Nature of Fiduciary Status (if applicable)  
**Successor Executor**

Name			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country

Description of Legacy, Devise or Other Interest

Nature of Fiduciary Status (if applicable)

7. (b) All such legatees, devisees and other beneficiaries who are persons under disability are as follows:

**None**

8. (a) No beneficiary under the propounded will, listed in Paragraph 6 or 7 above, had a confidential relationship to the decedent, such as attorney, accountant, doctor, or clergyman, except:  **None**

(b) No persons, corporations or associations are interested in this proceeding other than those mentioned above.

9. (a) To the best of the knowledge of the undersigned, the approximate total value of all property constituting the decedent's gross testamentary estate is:

<b>Greater than</b>	\$	<b>0.00</b>
<b>But less than</b>	\$	<b>10,000.00</b>
Personal Property	\$	0.00
Improved Real Property in New York State	\$	0.00
Unimproved Real Property in New York State	\$	0.00
Estimated Gross Rents for a Period of 18 Months	\$	0.00

(b) No other testamentary assets exist in New York State, nor does any cause of action exist on behalf of the estate, except as follows:  None

A cause of action exists for wrongful death and conscious pain and suffering of the decedent based on exposure to asbestos against [A.P. Green Industries Inc. f/k/a A.P. Green Refractories Company] at [CT Corporation Systems, 1633 Broadway, New York, New York 10019], et. al.

10. Upon information and belief, no other petition for the probate of any will of the decedent or for letters of administration of the decedent's estate has heretofore been filed in any court.

WHEREFORE your petitioner(s) pray(s) (a) that process be issued to all necessary parties to show cause why the Will and the Codicil(s) set forth in Paragraph 3 and presented herewith should not be admitted to probate; (b) that an order be granted directing the service of process, pursuant to the provisions of Article 3 of the SCPA, upon the persons named in Paragraph (6) hereof whose names or whereabouts are unknown and cannot be ascertained, or who may be persons on whom service by personal delivery cannot be made; and (c) that such Will and Codicil(s) be admitted to probate as a Will of real and personal property and that letters issue thereon as follows:

Letters Testamentary to: Gladys Christine Majka

Letters of Trusteeship to:

\_\_\_\_\_ f/b/o \_\_\_\_\_  
\_\_\_\_\_ f/b/o \_\_\_\_\_  
\_\_\_\_\_ f/b/o \_\_\_\_\_  
\_\_\_\_\_ f/b/o \_\_\_\_\_  
\_\_\_\_\_ f/b/o \_\_\_\_\_

Letters of Administration c.t.a. to: \_\_\_\_\_

and that petitioner(s) have such other relief as may be proper.

Further relief sought (if any):  
That the filing of a bond be dispensed with.

Dated: Feb 14, 2008

Gladys Christine Majka  
Signature of Petitioner

Gladys Christine Majka  
Print Name

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Print Name

COMBINED VERIFICATION, OATH AND DESIGNATION

For use when petitioner is an individual

STATE OF NEW YORK  
COUNTY OF Chautauqua } ss.:

The undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF  EXECUTOR  ADMINISTRATOR  TRUSTEE as indicated above: I am over eighteen (18) years of age and a citizen of the United States and I will well, faithfully and honestly discharge the duties of Fiduciary of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I hereby designate the Clerk of the Surrogate's Court of Cattaraugus County, and his/her successor in office, as a person on whom service of any process, issuing from such Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: 10212 Miller Road, Fredonia, NY 14063

Gladys Christine Majka  
Signature of Petitioner

Gladys Christine Majka  
Print Name

On FEBRUARY 14<sup>th</sup>, before me personally came, Gladys Christine Majka to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Sworn to before me this  
14 day of FEBRUARY

Marylou Dykas  
Notary Public  
Commission Expires:  
(Affix Notary Stamp or Seal)  
MARYLOU DYKAS  
Notary Public, State of New York  
Qualified in Chautauqua County  
My Commission Expires Sept 3, 2010

Keith M. O'Connor  
Signature of Attorney

Keith M. O'Connor  
Print Name of Attorney

Weitz & Luxenberg, P.C  
Firm

(212) 558-5500  
Telephone

180 Maiden Lane, New York, New York 10038  
Address

**From:** Nora Whalen  
**To:** Christine Wrona  
**Date:** 2/28/2008 4:46 PM  
**Subject:** Re: Estate of Robert J. Wagner

the email will suffice for a request to transfer. I will forward and get back to you with the new assignment.

>>> Christine Wrona 2/28/2008 4:45 PM >>>  
Nora -

Both Judge Himelein and Judge Nenno are recusing themselves from the above estate as they are parties to ongoing litigation where one of the litigants is of counsel to the firm representing the estate. What do you need from me or the Judges to have this matter assigned to another Judge?

Thank you.

Christine M. Wrona, Chief Clerk  
Cattaraugus County Surrogate's Court  
(716) 938-2327  
cwrona@courts.state.ny.us

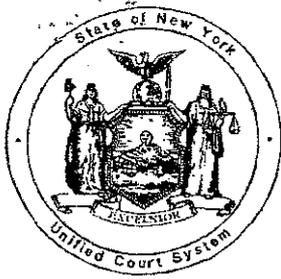
**From:** Christine Wrona  
**To:** Donna Siwek  
**Date:** 3/4/2008 3:15 PM  
**Subject:** Re: Estate of Robert Wagner

Judge Euken is willing to handle this matter. Thank you for your help!

>>> Donna Siwek 3/4/2008 11:22 AM >>>  
Ok..let me know if there are any problems!! Thanks

>>> Christine Wrona 3/4/2008 11:20 AM >>>  
Thank you. I will check with Judge Euken and/or Brown.

>>> Donna Siwek 3/4/2008 11:18 AM >>>  
Hi there...I spoke to Judge Townsend about this and she asked that you randomly re-assign this matter to Judges Euken or Brown (assuming that they don't have their own recusal issue with any of the parties). They previously agreed to take the Nenno and Himelein recusals and that is very much appreciated!! Thanks.



# CATTARAUGUS COUNTY SURROGATE'S COURT

Cattaraugus County Building  
303 Court Street  
Little Valley, NY 14755-1096  
Tel.: (716) 938-2327  
Fax: (716) 938-6983

MICHAEL L. NENNO  
Surrogate Judge

LARRY M. HIMELEIN  
Surrogate Judge

CHRISTINE M. WRONA  
Chief Clerk

March 7, 2008

Hon. James E. Euken, Surrogate  
Allegany County Courthouse  
7 Court Street  
Belmont, NY 14813

RE: Estate of Robert J. Wagner  
File #2007-32645

Dear Judge Euken:

Judge Nenno and Judge Himelein have recused themselves from acting in the above matter as a member of the New York State Legislature is affiliated with the firm representing the estate. As you know, the Judges are parties to or have contributed financially to litigation involving the New York State Legislature. Judge Townsend has asked that I contact you to see if you will handle this estate.

Enclosed is a Decree Granting Probate along with the underlying petition, death certificate and will. There is a cause of action pending for the decedent's wrongful death and conscious pain and suffering. In this county we typically limit or restrict the letters we grant in these situations but here the executor is the sole distributee and sole beneficiary under the will. If you would like limitations added to the letters or unable to accept this file, do not hesitate to contact me.

Very truly yours,

Christine M. Wrona  
Chief Clerk

cmw

Encs.

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

ANDREW Q. CONROY

DIRECT: (585) 419-8711  
FAX: (585) 419-8811  
ACONROY@HARRISBEACH.COM

April 29, 2008

**BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Cattaraugus County Surrogate's Court  
303 Court Street  
Little Valley, NY 14755

MAY 5 2008

Re: Estate of Eloise J. Fall

Ladies and Gentlemen:

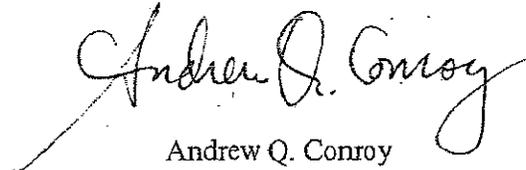
With regard to the above-referenced Estate, I enclose the following:

1. Petition for Letters of Limited Administration, signed by Jennifer R. Jackson on behalf of the Petitioner, United States of America o/b/o Rural Housing Service f/k/a Farmers Home Administration, United States Department of Agriculture;
2. Photocopy of the death certificate;
3. Proposed Citation; and
4. Our check in the amount of \$292.00 to cover the filing fee and the cost of two certificates.

If everything is in order, please have the citation signed and return a copy to me for service.

Thank you for your assistance. Please do not hesitate to contact me, if you should have any questions. My private line in the office is 585-419-8711.

Sincerely,

  
Andrew Q. Conroy

AQC/anl  
Enc.





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

Filing Fee Paid \$ 280.00  
2 Certificates Paid \$ 12.00  
0 Trustee Certs. Paid \$ 0.00  
0 Prelim. Certs. Paid \$ 0.00  
 \$ 0.00 Bond, Fee: \$ 292.00  
 Receipt No.: \_\_\_\_\_ No.: \_\_\_\_\_

ADMINISTRATION PROCEEDING, ESTATE OF  
 ELOSIE J. FALL  
 a/k/a  
 Deceased.  
 MAY 5 2008  
 RECEIVED

PETITION FOR LETTERS OF:  
 Administration  
 Limited Administration  
 Administration with Limitations  
 Temporary Administration

File No. 2008-23434

TO THE SURROGATE'S COURT, COUNTY OF CATTARAUGUS

SAFEKEEPING CHECKED 5-5-08  
 INDEX CHECKED 5-5-08  
 BY CW

It is respectfully alleged:

1. The name, domicile and interest in this proceeding of the petitioner, who is of full age, is as follows:

**Petitioner Information:**

Name <b>See Attachment 1</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>The Galleries of Syracuse, 441 S. Salina Street, Suite 357</b>			
City, Village or Town <b>Syracuse</b>	State <b>New York</b>	ZIP Code <b>13202-2425</b>	Country <b>United States</b>
County <b>Onondaga</b>	Telephone		
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Interest: (Check One) <input type="checkbox"/> Distributtee <input checked="" type="checkbox"/> Other Creditor			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
County	Telephone		
Mailing Address: Street and Number (If different from domicile)			
City, Village or Town	State	ZIP Code	Country
Interest: (Check One) <input type="checkbox"/> Distributtee <input type="checkbox"/> Other			

Is proposed Administrator an attorney?  Yes  No [If yes, submit statement pursuant to 22 NYCRR 207.16(e); see also 207.52 (Accounting of attorney-fiduciary).]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>Elosie J. Fall</b>		Citizenship <b>United States</b>	
Domicile Address: Street and Number <b>10787 Delevan-Elton Road</b>			
City, Village or Town <b>Delevan</b>		State/Province <b>New York</b>	ZIP Code <b>14042</b>
Country <b>United States</b>			
County <b>Cattaraugus</b>	Date of Death <b>August 6, 2007</b>	Place of Death <b>Delevan, New York</b>	

The Death Certificate must be filed with this proceeding. If the decedent's domicile is different from that shown on the death certificate, check box  and attach an affidavit explaining the reason for this inconsistency.

3. The estimated gross value of: *[Do not include any assets that are jointly held in trust for another, or have a named beneficiary.]*

(a) The decedent's personal property passing by intestacy is less than	\$	0.00
(b) The decedent's real property, in this state, which is		
Improved, passing by intestacy, is less than	\$	80,000.00
Description of each parcel: Real property in the Village of Delevan, County of Cattaraugus, State of New York known and described as 10787 Delevan-Elton Road, Delevan, New York 14042		
Unimproved, passing by intestacy, is less than	\$	0.00
Description of each parcel:		
	\$	80,000.00
Total	\$	80,000.00
(c) The estimated gross rent for a period of eighteen (18) months is the sum of	\$	0.00

(d) In addition to the value of the personal property stated in paragraph (3) the following right of action existed on behalf of the decedent and survived his/her death, or is granted to the administrator of the decedent by special provision of law, and it is impractical to give a bond sufficient to cover the probable amount to be recovered therein: *[Briefly state the cause of action and the person against whom it exists, including names and carrier.]*  None

(e) If decedent is survived by a spouse and a parent, or parents but no issue, and there is a claim for wrongful death, check here  and furnish name(s) and address(es) of parent(s) in Paragraph 7. *[See EPTL 5-4.4.]*

4. A diligent search and inquiry, including a search of any safe deposit box, has been made for a will of the decedent and none has been found. Petitioner(s) has/have been unable to obtain any information concerning any will of the decedent and therefore allege(s), upon information and belief, that the decedent died without leaving any last will.

5. A search of the records of this Court shows that no application has ever been made for letters of administration upon the estate of the decedent or for the probate of a will of the decedent, and your petitioner is informed and verily believes that no such application ever has been made to the Surrogate's Court of any other county of this state.

6. The decedent left surviving the following who would inherit his/her estate pursuant to EPTL 4-1.1 and 4-1.2: *[Information is required only as to those classes of surviving relatives who would take the property of decedent pursuant to EPTL 4-1.1. State "number" of survivors in each class. Insert "No" in all prior classes. Insert "X" in all subsequent classes.]*

- a.  NO Spouse (husband/wife).
- b.  1 Child or children or descendants of predeceased child or children. *[Must include marital, nonmarital, and adopted.]*
- c.  NO Any issue of the decedent adopted by persons related to the decedent (DRL Section 117).
- d.  X Mother/Father.
- e.  X Sisters or brothers, either of whole or half blood, and issue of predeceased sisters or brothers.
- f.  X Grandmother/Grandfather.
- g.  X Aunts or uncles, and children of predeceased aunts or uncles (first cousins).
- h.  X First cousins once removed (children of first cousins).

7. The decedent left surviving the following distributees, or other necessary parties, whose names, degrees of relationship, domiciles, post office addresses and citizenship are as follows: *[Show clearly how each person is related to decedent. If relationship is through an ancestor who is deceased, give name, date of death and relationship of the ancestor to the decedent. See Uniform Rules 207.16(b). If person is a nonmarital person, or descended from a nonmarital person, attach a copy of the order of filiation or Schedule A. If person was adopted by any persons related by blood or marriage to decedent or descended from such persons, attach Schedule B.]*

7. (a) The following are of full age and under no disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached

Name <b>Sara J. Fall</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>6460 Olean Road, Apt. 1</b>			
City, Village or Town <b>South Wales</b>	State <b>New York</b>	ZIP Code <b>14139-9701</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Daughter</b>			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

Continued on next page.

7. (b) The following are infants and/or other persons under disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached
- Schedule C — Infants is Attached
- Schedule D — Persons Under Disability Other than Infants is Attached

Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

8. There are no outstanding debts or funeral expenses, except:  None

9. There are no other persons interested in this proceeding other than those hereinbefore mentioned.

WHEREFORE, your petitioner respectfully prays that:

a. Process issue to all necessary parties to show cause why letters should not be issued as requested;

b. An order be granted dispensing with service of process upon those persons named in Paragraph (7) who have a right to letters prior or equal to that of the person nominated, and who are nondomiciliaries or whose names or whereabouts are unknown and cannot be ascertained;

c. A decree award Letters of:

Administration to \_\_\_\_\_

Limited Administration to Joseph G. Keller, Public Administrator

Administration with Limitation to \_\_\_\_\_

Temporary Administration to \_\_\_\_\_

or other such person or persons having prior right as may be entitled thereto, and;

d. That the authority of the representative under the foregoing Letters be limited with respect to the prosecution or enforcement of a cause of action on behalf of the estate, as follows: the administrator(s) may not enforce a judgment or receive any funds without further order of the Surrogate.

e. That the authority of the representative under the foregoing Letters be limited as follows:  
See Attachment 2

f. Further relief sought (if any):

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Petitioner

**See Attachment 3**

\_\_\_\_\_  
Print Name

**See Attachment 4**

\_\_\_\_\_  
Name of Corporate Petitioner

By

\_\_\_\_\_  
Signature

**Jennifer R. Jackson**

\_\_\_\_\_  
Print Name

**Single Family Housing Program Director**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Print Name

COMBINED CORPORATE VERIFICATION, CONSENT AND DESIGNATION

For use when a petitioner to be appointed is a bank or a trust company

STATE OF NEW YORK }
COUNTY OF ONONDAGA } ss.:

The undersigned, a See Attachment 5 of See Attachment 5
Title Name of Bank or Trust Company

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the Clerk of the Surrogate's Court of CATTARUGUS County, and his or her successor in office, as a person on whom service of any process issuing from such Surrogate's Court may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found within the State of New York after due diligence used.

See Name of Bank
Name of Bank or Trust Company

By [Signature]
Signature

Jennifer R. Jackson
Print Name

Single Family Housing Program Director
Title

On 14th April, 2008, before me, the undersigned, personally appeared Jennifer R. Jackson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature of Carla A. Reese]
Notary Public
Commission Expires:
(Affix Notary Stamp or Seal)

CARLA A. REESE
Notary Public for Cayuga Co.
Certificate # 01RE4709816
Commission Expires 3/31/2011

[Signature of Andrew Q. Conroy]
Signature of Attorney

Andrew Q. Conroy
Print Name of Attorney

Harris Beach PLLC
Firm

(585) 419-8711
Telephone

99 Garnsey Road, Pittsford, New York 14534
Address

## Attachment

### Attachment 1

#### Name

United States of America acting on behalf of Rural Housing Service f/k/a Farmers Home Administration, United States Department of Agriculture

### Attachment 2

that the authority of the administrator shall be limited to accepting service of process in a mortgage foreclosure proceeding to be commenced by the petitioner, UNITED STATES OF AMERICA ACTING o/b/o RURAL HOUSING SERVICE f/k/a FARMERS HOME ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE, and that with respect to the defense of any claim or cause of action against the decedent or the decedent's estate, copies of all orders, decrees or judgments against the estate must be filed with the court.

### Attachment 3

#### Signature

United States of America acting on behalf of Rural Housing Service f/k/a Farmers Home Administration, United States Department of Agriculture

### Attachment 4

#### Name of Corporate Petitioner

United States of America acting on behalf of Rural Housing Service f/k/a Farmers Home Administration, United States Department of Agriculture

### Attachment 5

#### Title Single Family Housing Program Director

#### Name of Bank

United States of America acting on behalf of Rural Housing Service f/k/a Farmers Home Administration, United States Department of Agriculture

#### Name of Bank

#### Name of Bank

United States of America acting on behalf of Rural Housing Service f/k/a Farmers Home Administration, United States Department of Agriculture

**From:** Nora Whalen  
**To:** Christine Wrona; Karen Harkenrider  
**Date:** 5/19/2008 2:35 PM  
**Subject:** Catt cy recusal - surrogate matter

Per Judge Townsend , please send to Allegany County. either Judge Euken or Judge Brown will handle. The case is the Estate of Eloise J. Fall and the Attorney is Andrew Q. Conroy of Harris Beach.

>>> Christine Wrona 5/6/2008 10:56 AM >>>

Hello,

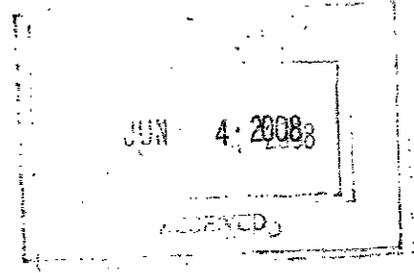
I have rec'd a new administration proceeding from the office of Harris Beach. Both Judge Himelein and Nenno have advised me orally or via e-mail that they must recuse themselves from this estate due to the ongoing litigation they are involved. In this particular proceeding a citation will be required to be issued. Please let me know who this matter should be reassigned to and if you need formal recusal letters and request for reassignment from this office. Thank you.

Chris

Christine M. Wrona, Chief Clerk  
Cattaraugus County Surrogate's Court  
(716) 938-2327  
cwrona@courts.state.ny.us

W E I T Z  
&  
L U X E N B E R G  
A P R O F E S S I O N A L C O R P O R A T I O N  
L A W O F F I C E S

180 MAIDEN LANE • NEW YORK, N.Y. 10038-4925  
TEL. 212-558-5500 FAX 212-344-5461  
WWW.WEITZLUX.COM



PERRY WEITZ  
ARTHUR M. LUXENBERG  
ROBERT J. GORDON ††

EDWARD S. BOSEK  
AMBRE J. BRANDIS  
EDWARD BRANIFF ††  
JOHN M. BROADOUS ‡  
DANIEL C. BURKE  
PATTI BURSHTYN ††  
LISA NATHANSON BUSCH  
DAVID A. CHANDLER  
EILEEN CLARKE  
THOMAS COMBERFORD ††  
ADAM R. COOPER  
TERESA A. CURTIN AA  
BENJAMIN DARCHE

CHARLES M. FERGUSON  
STEVEN J. GERMAN A  
LAWRENCE GOLDHIRSCH \*\*  
ROBIN L. GREENWALD \*\*\*  
EDWARD J. HAHN \*  
MARIE L. IANNIELLO ††  
ERIK JACOBS  
GARY R. KLEIN ††  
GLENN KRAMER ††  
JERRY KRISTAL \*\*§  
DEBBI LANDAU  
JAMES C. LONG, JR. \*\*  
CURT D. MARSHALL ‡

HADLEY L. MATARAZZO ††  
RICHARD S. MCGOWAN \* †† ‡  
KEITH M. O'CONNOR  
MICHAEL E. PEDERSON  
PAUL J. PENNOCK ‡  
STUART S. PERRY \*  
ELLEN REIKIN \*A  
STEPHEN J. RIEGEL ††  
MICHAEL P. ROBERTS  
CHRIS ROMANELLI ††  
DAVID ROSENBERG  
JIM R. ROSS O  
JESSICA B. RUSSELL

SHELDON SILVER \*  
FRANKLIN P. SOLOMON †  
LEMUEL M. SHOLOVIC  
JAMES S. THOMPSON ††  
DOUGLAS D. VON OSTE ‡  
WILLIAM A. WALSH ††  
JOSEPH P. WILLIAMS  
NICHOLAS WISE  
ALLAN ZELKOVIC  
GLENN ZUCKERMAN

\* Of Counsel  
‡ Also admitted in CT  
\* Also admitted in PE  
†† Also admitted in MA  
†† Also admitted in NJ  
‡ Also admitted in DC  
† Also admitted in NJ and CT  
\*\* Also admitted in NJ and PA  
A Also admitted in NJ and DC  
AA Also admitted in NJ and ME  
\*\* Also admitted in DC and TX  
§ Also admitted in DC, VA  
† Admitted only in NJ and PA  
‡ Admitted only in NJ  
\* Admitted only in DC, MD, PA and VA  
\* Admitted only in CO  
\*\* Admitted only in IL  
O Admitted only in TX

June 2, 2008  
**VIA COURIER**  
Surrogate's Court  
County of Cattaraugus  
303 Court Street  
Little Valley, NY 14755

**RE: THE ESTATE OF HENRY G. RUTH a/k/a HENRY GRANT RUTH**

To Whom It May Concern:

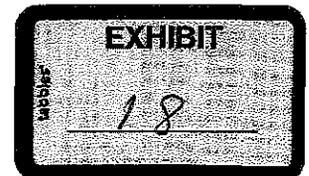
Enclosed please find the following documents for your review regarding the above named decedent;

- Attorney's Certification for Administration Proceeding
- Petition for Letters of Administration
- Decree Appointing Administrator
- Affidavit of Delay
- (2) Waiver of Citation Renunciation and Consent to Appointment of Administrator
- Certified Copy of the Death Certificate
- Funeral Bill
- \$45 Check for the Filing Fee
- \$12 Check for the (2) Certificates of Appointment
- Return Envelope

If you have any questions, please feel free to contact me at (800) 438-9786 ext. 5665. Thank you in advance for your attention to this matter.

Respectfully,

Justin Guttman  
Estate Paralegal



215 South Monarch Street, Suite 202  
Aspen, CO 81611  
(970) 925-6101

210 Lake Drive East, Suite 101  
Cherry Hill, NJ 08002  
(856) 755-1115

76 South Orange Avenue, Suite 305  
South Orange, NJ 07079  
(973) 761-8995

100 E. 15th Street, Suite 400  
Fort Worth, Texas 76102  
(817) 885-7815



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

JUN 4 2008

RECEIVED

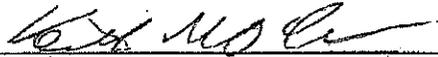
ATTORNEY'S CERTIFICATION  
IN ADMINISTRATION PROCEEDING

ADMINISTRATION PROCEEDING, ESTATE OF  
HENRY G. RUTH  
a/k/a  
HENRY GRANT RUTH

Deceased.

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

The undersigned attorney hereby certifies pursuant to Section 207.4(b) of the Uniform Rules for Surrogate's Court that the foregoing forms and all supporting documents prepared on New York State Bar Association Official OCA Forms are the same as the official forms described in said Section and that the substantive text has not been altered.

  
Signature of Attorney

**Keith M. O'Connor**  
Print Name of Attorney

**Weitz & Luxenberg, P.C.**  
Firm

**(212) 558-5500**  
Tel. No.

**180 Maiden Lane, New York, New York 10038**  
Address



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

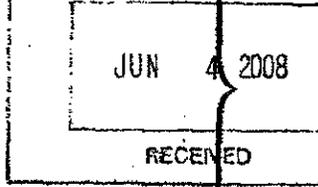
Filing Fee Paid \$ 45.00  
Certificates Paid \$ 12.50  
Trustee Certs. Paid \$ \_\_\_\_\_  
Prelim. Certs. Paid \$ \_\_\_\_\_  
Bond, Fee: \$ \_\_\_\_\_

ADMINISTRATION PROCEEDING, ESTATE OF

SURROGATE'S OFFICE  
CATTARAUGUS COUNTY  
LITTLE VALLEY, N.Y.

Receipt No.: \_\_\_\_\_ No.: \_\_\_\_\_

HENRY G. RUTH  
a/k/a  
HENRY GRANT RUTH



PETITION FOR LETTERS OF:

- Administration
- Limited Administration
- Administration with Limitations
- Temporary Administration

Deceased.

File No. 2008-3356

TO THE SURROGATE'S COURT, COUNTY OF CATTARAUGUS

SAFEKEEPING CHECKED 6/14/08

It is respectfully alleged:

INDEX CHECKED 6/14/08

BY cc

1. The name, domicile and interest in this proceeding of the petitioner, who is of full age, is as follows:

Petitioner Information:

10/110

Name Brian Scott Ruth Citizenship United States

Domicile Address: Street and Number 4147 Whipple Road

City, Village or Town Randolph State New York ZIP Code 14772 Country United States

County Cattaraugus Telephone (716) 358-517

Mailing Address: Street and Number (if different from domicile)

City, Village or Town \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_ Country \_\_\_\_\_

Interest: (Check One)  Distributee  Other

Name \_\_\_\_\_ Citizenship \_\_\_\_\_

Domicile Address: Street and Number \_\_\_\_\_

City, Village or Town \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_ Country \_\_\_\_\_

County \_\_\_\_\_ Telephone \_\_\_\_\_

Mailing Address: Street and Number (if different from domicile) \_\_\_\_\_

City, Village or Town \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_ Country \_\_\_\_\_

Interest: (Check One)  Distributee  Other

Is proposed Administrator an attorney?  Yes  No [If yes, submit statement pursuant to 22 NYCRR 207.16(e); see also 207.52 (Accounting of attorney-fiduciary).]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>Henry G. Ruth</b>		Citizenship <b>United States</b>	
Domicile Address: Street and Number <b>4176 Whipple Road</b>			
City, Village or Town <b>Napoli</b>	State/Province <b>New York</b>	ZIP Code <b>14772</b>	Country <b>United States</b>
County <b>Cattaraugus</b>	Date of Death <b>February 29, 2004</b>	Place of Death <b>WCA Hospital, Jamestown, NY</b>	

The Death Certificate must be filed with this proceeding. If the decedent's domicile is different from that shown on the death certificate, check box  and attach an affidavit explaining the reason for this inconsistency.

3. The estimated gross value of: [Do not include any assets that are jointly held in trust for another, or have a named beneficiary.]

(a) The decedent's personal property passing by intestacy is less than		\$	0.00
(b) The decedent's real property, in this state, which is			
Improved, passing by intestacy, is less than	\$	0.00	
Description of each parcel: NONE			
Unimproved, passing by intestacy, is less than	\$	0.00	
Description of each parcel: NONE			
		\$	0.00
Total		\$	0.00
(c) The estimated gross rent for a period of eighteen (18) months is the sum of		\$	0.00

(d) In addition to the value of the personal property stated in paragraph (3) the following right of action existed on behalf of the decedent and survived his/her death, or is granted to the administrator of the decedent by special provision of law, and it is impractical to give a bond sufficient to cover the probable amount to be recovered therein: *[Briefly state the cause of action and the person against whom it exists, including names and carrier.]*  None

A cause of action exists for wrongful death and conscious pain and suffering of the decedent based on exposure to asbestos against [A.P. Green Industries Inc. f/k/a A.P. Green Refractories Company] at [CT Corporation Systems, 1633 Broadway, New York, New York 10019], et. al.

(e) If decedent is survived by a spouse and a parent, or parents but no issue, and there is a claim for wrongful death, check here  and furnish name(s) and address(es) of parent(s) in Paragraph 7. *[See EPTL 5-4.4.]*

4. A diligent search and inquiry, including a search of any safe deposit box, has been made for a will of the decedent and none has been found. Petitioner(s) has/have been unable to obtain any information concerning any will of the decedent and therefore allege(s), upon information and belief, that the decedent died without leaving any last will.

5. A search of the records of this Court shows that no application has ever been made for letters of administration upon the estate of the decedent or for the probate of a will of the decedent, and your petitioner is informed and verily believes that no such application ever has been made to the Surrogate's Court of any other county of this state.

6. The decedent left surviving the following who would inherit his/her estate pursuant to EPTL 4-1.1 and 4-1.2: *[Information is required only as to those classes of surviving relatives who would take the property of decedent pursuant to EPTL 4-1.1. State "number" of survivors in each class. Insert "No" in all prior classes. Insert "X" in all subsequent classes.]*

- 100
- a.  NO Spouse (husband/wife).
  - b.  3 Child or children or descendants of predeceased child or children. *[Must include marital, nonmarital, and adopted.]*
  - c.  NO Any issue of the decedent adopted by persons related to the decedent (DRL Section 117).
  - d.  X Mother/Father.
  - e.  X Sisters or brothers, either of whole or half blood, and issue of predeceased sisters or brothers.
  - f.  X Grandmother/Grandfather.
  - g.  X Aunts or uncles, and children of predeceased aunts or uncles (first cousins).
  - h.  X First cousins once removed (children of first cousins).

7. The decedent left surviving the following distributees, or other necessary parties, whose names, degrees of relationship, domiciles, post office addresses and citizenship are as follows: [Show clearly how each person is related to decedent. If relationship is through an ancestor who is deceased, give name, date of death and relationship of the ancestor to the decedent. See Uniform Rules 207.16(b). If person is a nonmarital person, or descended from a nonmarital person, attach a copy of the order of filiation or Schedule A. If person was adopted by any persons related by blood or marriage to decedent or descended from such persons, attach Schedule B.]

7. (a) The following are of full age and under no disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached

Name <b>Steven Grant Ruth</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>4176 Whipple Road</b>			
City, Village or Town <b>Napoli</b>	State <b>New York</b>	ZIP Code <b>14772</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name <b>Michael Thomas Ruth</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>P.O. Box 374</b>			
City, Village or Town <b>Randolph</b>	State <b>New York</b>	ZIP Code <b>14772</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name <b>Brian Scott Ruth</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>4147 Whipple Road</b>			
City, Village or Town <b>Napoli</b>	State <b>New York</b>	ZIP Code <b>14772</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name <i>Estate of Margaretha Mae Ruth</i>			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

Continued on next page.

7. (b) The following are infants and/or other persons under disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached
- Schedule C — Infants is Attached
- Schedule D — Persons Under Disability Other than Infants is Attached

Name <b>NONE</b>			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

8. There are no outstanding debts or funeral expenses, except:  None

9. There are no other persons interested in this proceeding other than those hereinbefore mentioned.

WHEREFORE, your petitioner respectfully prays that:

- a. Process issue to all necessary parties to show cause why letters should not be issued as requested;
- b. An order be granted dispensing with service of process upon those persons named in Paragraph (7) who have a right to letters prior or equal to that of the person nominated, and who are nondomiciliaries or whose names or whereabouts are unknown and cannot be ascertained;

c. A decree award Letters of:

- Administration to Brian Scott Ruth
- Limited Administration to \_\_\_\_\_
- Administration with Limitation to \_\_\_\_\_
- Temporary Administration to \_\_\_\_\_

or other such person or persons having prior right as may be entitled thereto, and;

d. That the authority of the representative under the foregoing Letters be limited with respect to the prosecution or enforcement of a cause of action on behalf of the estate, as follows: the administrator(s) may not enforce a judgment or receive any funds without further order of the Surrogate.

e. That the authority of the representative under the foregoing Letters be limited as follows:

f. Further relief sought (if any):  
The filing of a bond be dispensed with.

Dated: 05-19-08

Brian S. Ruth  
Signature of Petitioner  
**Brian Scott Ruth**  
Print Name

\_\_\_\_\_  
Signature of Petitioner  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Name of Corporate Petitioner

By \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title

1. (b) The proposed Executor [ ] is [] is not an attorney.  
[NOTE: a sole Executor-Attorney must comply with 22 NYCRR 207.16(e)]
  
1. (c) The proposed Executor [ ] is [] is not the attorney draftsman, a then affiliated attorney or employee thereof.  
[NOTE: an attorney-draftsman, a then affiliated attorney or employee thereof must comply with SCPA 2307-a]

COMBINED VERIFICATION, OATH AND DESIGNATION  
For use when petitioner is to be appointed administrator

STATE OF NEW YORK  
COUNTY OF Cattaraugus } ss.:

I, the undersigned, the petitioner named in the foregoing petition, being duly sworn, say:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ADMINISTRATOR as indicated above: I am over eighteen (18) years of age and a citizen of the United States; and I will well, faithfully and honestly discharge the duties of Administrator of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the Clerk of the Surrogate's Court of Cattaraugus County, and his/her successor in office, as a person on whom service of any process, issuing from such Surrogate's Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: 4147 Whipple Road, Randolph, New York 14772

Brian S Ruth

Signature of Petitioner

Brian Scott Ruth

Print Name

On May 19 2008, before me personally came Brian Scott Ruth to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Kathleen A Leahy

Notary Public

Commission Expires:

(Affix Notary Stamp or Seal)



Keith M O'Connor

Signature of Attorney

Keith M. O'Connor

Print Name of Attorney

Waltz & Luxenberg, P.C

Firm

(212) 558-5500

Telephone

180 Maiden Lane, New York, New York 10038

Address

**From:** Nora Whalen  
**To:** Christine Wrona  
**Date:** 7/2/2008 4:00 PM  
**Subject:** Re: Fwd: Estate of Henry G. Ruth

Per Judge Townsend please reassign to Judge Stephen Cass. If you have any questions please contact me.

>>> Sharon S. Townsend 7/2/2008 9:00 AM >>>  
J. Stephen Cass.

>>> Nora Whalen 7/2/2008 8:47 AM >>>  
a surrogate matter...

>>> Christine Wrona 7/1/2008 1:37 PM >>>  
Hello, Nora -

The firm of Weitz & Luxenberg represents the above estate. Judges Himelein and Nenko have advised me they must recuse themselves from this matter due to ongoing litigation they are involved in.

Please let me know if you require anything further or more formal to reassign this matter.

Thank you, Chris

Christine M. Wrona, Chief Clerk  
Cattaraugus County Surrogate's Court  
(716) 938-2327  
cwrona@courts.state.ny.us

W E I T Z  
&  
L U X E N B E R G  
A PROFESSIONAL CORPORATION  
LAW OFFICES

180 MAIDEN LANE • NEW YORK, N.Y. 10038-4925  
TEL. 212-558-5500 FAX 212-344-5461  
WWW.WEITZLUX.COM

MAR 7 2005

PERRY WEITZ  
ARTHUR M. LUXENBERG  
ROBERT J. GORDON ††

STANLEY N. ALPERT \*  
MICHAEL BECKER  
BRYAN BELASKY  
EDWARD S. BOSEK  
MARISSA BOSEK  
JOHN M. BROADDUS \*\*  
DANIEL C. BURKE  
PATTI BURSHTYN ††  
LISA NATHANSON BUSCH  
DAVID A. CHANDLER  
VINCENT CHENG  
EILEEN CLARKE  
THOMAS COMERFORD ††  
BENJAMIN DARCHE  
CHARLES M. FERGUSON  
March 4, 2005

STUART F. FRIEDMAN  
STEVEN J. GERMAN A  
LAWRENCE GOLDBIRSHCH \*\*  
EDWARD J. HAHN \*  
CATHERINE HEACOX ††  
RENEE L. HENDERSON \*\*  
MARIE L. IANNIELLO †\*  
ERIK JACOBS  
GARY R. KLEIN ††  
JERRY KRISTAL \*\*§  
RORY L. LANOMAN  
DEBBI LANDAU  
ROBERTO LARAQUENTE \*  
DIANNE LE VERRIER

HANNAH LIM ††  
JAMES C. LONG, JR. \*\*  
VICTORIA MANIATIS ††  
RICHARD S. MCGOWAN \* †† †  
C. SANDERS MCNEW \*  
RICHARD MEADOW \*\*  
WILLIAM J. NUJENT  
MICHAEL E. PEDERSON  
PAUL J. PENNOCK †  
STUART S. PERRY \*  
G. RUSSELL RAGLAND \*\*  
ELLEN RELKIN \*A  
STEPHEN J. RIEGEL ††  
MICHAEL P. ROBERTS

CHRIS ROMANELLI ††  
DAVID ROSENBERG  
SHELDON SILVER \*  
SANFORD SMOKLER §  
FRANKLIN P. SOLOMON ††  
BONNIE M. STENWOLF ††  
JAMES S. THOMPSON ††  
JOSH VITOV  
DOUGLAS D. VON OISTE †  
JOSEPH P. WILLIAMS  
NICHOLAS WISE  
LAUREN WOLPIN \*  
ALLAN ZELKOVIC  
GLENN ZUCKERMAN

\* Of Counsel  
‡ Also admitted in CT  
§ Also admitted in FL  
† Also admitted in MA  
†† Also admitted in NJ  
‡ Also admitted in DC  
† Also admitted in NJ and CT  
\*\* Also admitted in NJ and PA  
A Also admitted in NJ and DC  
§ Admitted only in NJ and PA  
\*\* Also admitted in DC and TX  
\*\* Admitted only in DC, MD, PA and VA  
‡ Also admitted in DC, VA  
\* Admitted only in CO

VIA FEDERAL EXPRESS  
Surrogate's Court  
County of Cattaraugus  
303 Court Street  
Little Valley, NY 14755

RE: THE ESTATE OF DONALD C. BLIVEN

To Whom It May Concern:

Enclosed please find the following documents for your review regarding the above named decedent;

- Petition for Letters of Administration
- Notice of Application for Letters of Administration
- Affidavit of Mailing
- Attorney's Certification for Administration Proceeding
- Certified Copy of the Death Certificate
- Funeral Bill
- Decree Appointing Administrator
- \$45 Check for the Filing Fee
- \$12 Check for (2) Certificates of Appointment
- Return Envelope

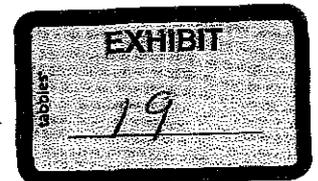
If you have any questions, please feel free to contact me at (800) 438-9786, ext. 745. Thank you in advance for your attention to this matter.

Respectfully,

*Kathleen Gole*

Kathleen Gole  
Estate Paralegal

3/7/05 R Kathleen Gole. either need documents or off of her hand

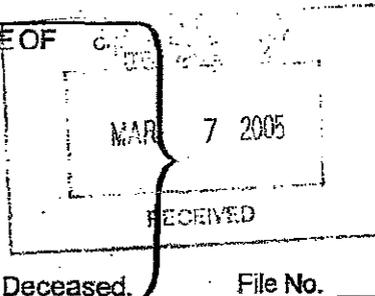




SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF CATTARAUGUS

Filing Fee Paid \$ 45.00  
2 Certs \$ 12.00  
Certs \$ \_\_\_\_\_  
Bond, Fee: \$ \_\_\_\_\_  
Receipt No.: \_\_\_\_\_ No.: \_\_\_\_\_

ADMINISTRATION PROCEEDING, ESTATE OF  
DONALD C. BLIVEN  
*alk/a*



PETITION FOR LETTERS OF:

- Administration
- Limited Administration
- Administration with Limitations
- Temporary Administration

Deceased.

File No. 31,792

TO THE SURROGATE'S COURT, COUNTY OF CATTARAUGUS

It is respectfully alleged:

1. The name, domicile and interest in this proceeding of the petitioner, who is of full age, is as follows:

**Petitioner Information:**

Name <b>Barbara Bliven</b>			Citizen of <b>United States</b>
Domicile Address: Street and Number <b>33 Brooklyn Street</b>			
City, Village or Town <b>Portville</b>	State/Province <b>NY</b>	ZIP Code <b>14770</b>	Country <b>United States</b>
County <b>Cattaraugus</b>	Telephone Number <b>(716) 933-6690</b>		
Mailing Address: Street and Number (if different from domicile)			
City, Village or Town	State/Province	ZIP Code	Country
Interest: (Check One) <input checked="" type="checkbox"/> Distributee Spouse <input type="checkbox"/> Other			
Name			Citizen of
Domicile Address: Street and Number			
City, Village or Town	State/Province	ZIP Code	Country
County	Telephone Number		
Mailing Address: Street and Number (if different from domicile)			
City, Village or Town	State/Province	ZIP Code	Country
Interest: (Check One) <input type="checkbox"/> Distributee <input type="checkbox"/> Other			

Is proposed Administrator an attorney?  Yes  No [If yes, submit statement pursuant to 22 NYCRR 207.16(e); see also 207.52 (Accounting of attorney-fiduciary).]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>Donald C. Bliven</b>		Citizen of <b>United States</b>	
Domicile Address: Street and Number <b>33 Brooklyn Street</b>			
City, Village or Town <b>Portville</b>		State/Province <b>New York</b>	ZIP Code <b>14770</b>
Country <b>United States</b>			
County <b>Cattaraugus</b>	Date of Death <b>November 24, 2004</b>	Place of Death <b>Olean General Hospital</b>	

The Death Certificate must be filed with this proceeding. If the decedent's domicile is different from that shown on the death certificate, check box  and attach an affidavit explaining the reason for this inconsistency.

3. The estimated gross value of: [Do not include any assets that are jointly held in trust for another, or have a named beneficiary.]

(a) The decedent's personal property passing by intestacy is less than		\$	10,000.00
(b) The decedent's real property, in this state, which is			
Improved, passing by intestacy, is less than		\$	0.00
Description of each parcel:			
Unimproved, passing by intestacy, is less than		\$	0.00
Description of each parcel:			
		\$	0.00
(c) The estimated gross rent for a period of eighteen (18) months is the sum of		\$	0.00

(d) In addition to the value of the personal property stated in paragraph (3) the following right of action existed on behalf of the decedent and survived his/her death, or is granted to the administrator of the decedent by special provision of law, and it is impractical to give a bond sufficient to cover the probable amount to be recovered therein: *[Briefly state the cause of action and the person against whom it exists, including names and carrier.]*  None

A cause of action exists for wrongful death and conscious pain and suffering based in exposure to asbestos against [A.P. Green Industries Inc. f/k/a A.P. Green Refractories Company] at [CT Corporations Systems 1633 Broadway New York NY 10019]., et. al.

(e) If decedent is survived by a spouse and a parent, or parents but no issue, and there is a claim for wrongful death, check here  and furnish name(s) and address(es) of parent(s) in Paragraph 7. *[See EPTL 5-4.4.]*

4. A diligent search and inquiry, including a search of any safe deposit box, has been made for a will of the decedent and none has been found. Petitioner(s) has/have been unable to obtain any information concerning any will of the decedent and therefore allege(s), upon information and belief, that the decedent died without leaving any last will.

5. A search of the records of this Court shows that no application has ever been made for letters of administration upon the estate of the decedent or for the probate of a will of the decedent, and your petitioner is informed and verily believes that no such application ever has been made to the Surrogate's Court of any other county of this state.

6. The decedent left surviving the following who would inherit his/her estate pursuant to EPTL 4-1.1 and 4-1.2: *[Information is required only as to those classes of surviving relatives who would take the property of decedent pursuant to EPTL 4-1.1. State "number" of survivors in each class. Insert "No" in all prior classes. Insert "X" in all subsequent classes.]*

- a.  1 Spouse (husband/wife).
- b.  4 Child or children or descendants of predeceased child or children. *[Must include marital, nonmarital, and adopted.]*
- c.  NO Any issue of the decedent adopted by persons related to the decedent (DRL Section 117).
- d.  X Mother/Father.
- e.  X Sisters or brothers, either of whole or half blood, and issue of predeceased sisters or brothers.
- f.  X Grandmother/Grandfather.
- g.  X Aunts or uncles, and children of predeceased aunts or uncles (first cousins).
- h.  X First cousins once removed (children of first cousins).

7. The decedent left surviving the following distributees, or other necessary parties, whose names, degrees of relationship, domiciles, post office addresses and citizenship are as follows: [Show clearly how each person is related to decedent. If relationship is through an ancestor who is deceased, give name, date of death and relationship of the ancestor to the decedent. See Uniform Rules 207.16(b). If person is a nonmarital person, or descended from a nonmarital person, attach a copy of the order of filiation or Schedule A. If person was adopted by any persons related by blood or marriage to decedent or descended from such persons, attach Schedule B.]

7. (a) The following are of full age and under no disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached

Name <b>Barbara Bliven</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>33 Brooklyn Street</b>			
City, Village or Town <b>Portville</b>	State <b>NY</b>	ZIP Code <b>14770</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Spouse</b>			
Name <b>Jesse Bliven</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>1154 SteamValley Road</b>			
City, Village or Town <b>Olean</b>	State <b>NY</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name <b>Vickie Shields</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>2001 Rt 305</b>			
City, Village or Town <b>Cuba</b>	State <b>NY</b>	ZIP Code <b>14727</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Daughter</b>			
Name <b>Douglas Bliven</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>153 Richardson Ave</b>			
City, Village or Town <b>Bolivar</b>	State <b>NY</b>	ZIP Code	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			

Continued on next page

**7. (a) Distributees or Other Necessary Parties (continued)**

Name <b>Ronald Bliven</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>1425 Congress Road</b>			
City, Village or Town <b>Hinsdale</b>	State <b>NY</b>	ZIP Code <b>14743</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

7. (b) The following are infants and/or other persons under disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached
- Schedule C — Infants is Attached
- Schedule D — Persons Under Disability Other than Infants is Attached

Name <b>NONE</b>			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

8. There are no outstanding debts or funeral expenses, except:  None

9. There are no other persons interested in this proceeding other than those hereinbefore mentioned.

WHEREFORE, your petitioner respectfully prays that:

- a. Process issue to all necessary parties to show cause why letters should not be issued as requested;
- b. An order be granted dispensing with service of process upon those persons named in Paragraph (7) who have a right to letters prior or equal to that of the person nominated, and who are nondomiciliaries or whose names or whereabouts are unknown and cannot be ascertained;
- c. A decree award Letters of:
- Administration to \_\_\_\_\_
  - Limited Administration to  
Barbara Bliven
  - Administration with Limitation to \_\_\_\_\_
  - Temporary Administration to \_\_\_\_\_

or other such person or persons having prior right as may be entitled thereto, and;

- d. That the authority of the representative under the foregoing Letters be limited with respect to the prosecution or enforcement of a cause of action on behalf of the estate, as follows: the administrator(s) may not enforce a judgment or receive any funds without further order of the Surrogate.
- e. That the authority of the representative under the foregoing Letters be limited as follows:
- f. Further relief sought (if any):

Dated: 2-11-05

Barbara Bliven

Signature of Petitioner

Barbara Bliven

Print Name

\_\_\_\_\_  
Name of Corporate Petitioner

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Print Name

By

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

COMBINED VERIFICATION, OATH AND DESIGNATION

For use when petitioner is to be appointed administrator

STATE OF NEW YORK }
COUNTY OF CATTARAUGUS } ss.:

I, the undersigned, the petitioner named in the foregoing petition, being duly sworn, say:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ADMINISTRATOR as indicated above: I am over eighteen (18) years of age and a citizen of the United States; and I will well, faithfully and honestly discharge the duties of Administrator of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the Clerk of the Surrogate's Court of Cattaraugus County, and his/her successor in office, as a person on whom service of any process, issuing from such Surrogate's Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: 33 Brooklyn Street, Portville, NY 14770

Barbara Bliven
Signature of Petitioner

Barbara Bliven
Print Name

On Feb 18 2005, before me personally came Barbara Bliven to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Anne Sutter
Notary Public

Commission Expires:
(Affix Notary Stamp or Seal)

ANNE SUTTER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN CATTARAUGUS COUNTY,
MY COMMISSION EXPIRES 12/10/04

Signature of Attorney

William J. Nugent III
Print Name of Attorney

Weitz & Luxenberg, P.C.
Firm

(212) 558-5500
Tel. No.

120 Wall Street, New York, New York 10005
Address



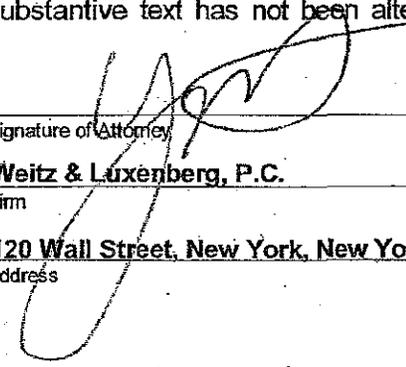
SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF CATTARAUGUS

ADMINISTRATION PROCEEDING, ESTATE OF  
DONALD C. BLIVEN  
a/k/a  
  
Deceased.

**ATTORNEY'S CERTIFICATION  
IN ADMINISTRATION PROCEEDING**

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

The undersigned attorney hereby certifies pursuant to Section 207.4(b) of the Uniform Rules for Surrogate's Court that the foregoing forms and all supporting documents prepared on New York State Bar Association Official OCA Forms are the same as the official forms described in said Section and that the substantive text has not been altered.

  
\_\_\_\_\_  
Signature of Attorney

**William J. Nugent III**  
\_\_\_\_\_  
Print Name of Attorney

**Weitz & Luxenberg, P.C.**  
\_\_\_\_\_  
Firm

**(212) 558-5500**  
\_\_\_\_\_  
Tel. No.

**120 Wall Street, New York, New York 10005**  
\_\_\_\_\_  
Address

At a Surrogate's Court held in and for the County of Cattaraugus at the Surrogate's Office in the Village of Little Valley, New York, on the 12th day of April 2005

PRESENT: HON. LARRY M. HIMELEIN, SURROGATE  
SURROGATE'S COURT, CATTARAUGUS COUNTY

IN THE MATTER OF THE ESTATE

OF

DONALD C. BLIVEN,

Deceased

ORDER GRANTING GENERAL  
LETTERS OF ADMINISTRATION-  
LIMITED ONLY TO CAUSE  
OF ACTION WITHOUT BOND

File #31,792

On reading and filing the petition of BARBARA BLIVEN the SPOUSE of DONALD C. BLIVEN, late of the VILLAGE OF PORTVILLE, County of Cattaraugus, deceased, intestate, praying that Letters of Administration on the estate of the said deceased be granted to him/her/them, and this court being satisfied that the said BARBARA BLIVEN is/are in all respects competent to act as such administrator(s), it is

ORDERED AND DECREED that the prayer of the said petition be granted and that General Letters of Administration issue to the said BARBARA BLIVEN upon his/her/their filing an oath of office and a designation of the Clerk and a bond be and hereby is dispensed with, and it is

ORDERED AND DECREED that as to the cause of action granted to BARBARA BLIVEN set forth in the aforesaid petition, said BARBARA BLIVEN be and he/she/they is/are hereby limited to the prosecution thereof, and the Letters granted herein shall provide that the said BARBARA BLIVEN is/are restrained as to such cause of action from the compromise thereof or the enforcement of any judgment recovered therein until the further order of this Court or Supreme Court or other Trial Court made upon filing satisfactory security, if required.

*Larry M. Himelein*  
SURROGATE

## THE PEOPLE OF THE STATE OF NEW YORK:

TO: BARBARA BLIVEN

Send Greeting:

KNOW YE that at a Surrogate's Court held in and for the County of Cattaraugus, State of New York, at Little Valley, New York on April 12, 2005, a decree was duly made and entered appointing BARBARA BLIVEN administrator/administratrix upon the goods, chattels, and credits of DONALD C. BLIVEN who died intestate on November 24, 2004 and who at the time of his/her death was domiciled in the VILLAGE OF PORTVILLE, County of Cattaraugus, State of New York,

And said BARBARA BLIVEN having appeared and duly qualified as required by said decree, now therefore, we do grant these Letters of Administration unto said BARBARA BLIVEN giving and granting unto said BARBARA BLIVEN full power and authority to administer and dispose of the goods, chattels, and credits of the said decedent as required by law,

But in any action hereafter brought by said BARBARA BLIVEN, as such administrator/administratrix, against any person, party, or corporation whatever, for negligently causing the death of the above-named decedent; the authority of said BARBARA BLIVEN is hereby limited to the prosecution of such action, and said BARBARA BLIVEN is hereby forbidden and restrained from compromising said action or enforcing any judgment which said BARBARA BLIVEN may recover until the further order of the Surrogate's Court or Supreme Court or other Trial Court held in and for the County of Cattaraugus.

IN TESTIMONY WHEREOF we have caused  
the seal of the said Surrogate's  
Court to be hereunto affixed.

(L.S.)

WITNESS, HON. LARRY M. HIMELEIN,  
Surrogate, Surrogate's Court  
County of Cattaraugus, on  
April 12, 2005.

*Christine M. Wrona*  
\_\_\_\_\_  
Chief Clerk of the Surrogate's Court

File #31,792

## THE PEOPLE OF THE STATE OF NEW YORK:

TO: BARBARA BLIVEN

Send Greeting:

KNOW YE that at a Surrogate's Court held in and for the County of Cattaraugus, State of New York, at Little Valley, New York on April 12, 2005, a decree was duly made and entered appointing BARBARA BLIVEN administrator/administratrix upon the goods, chattels, and credits of DONALD C. BLIVEN who died intestate on November 24, 2004 and who at the time of his/her death was domiciled in the VILLAGE OF PORTVILLE, County of Cattaraugus, State of New York,

And said BARBARA BLIVEN having appeared and duly qualified as required by said decree, now therefore, we do grant these Letters of Administration unto said BARBARA BLIVEN giving and granting unto said BARBARA BLIVEN full power and authority to administer and dispose of the goods, chattels, and credits of the said decedent as required by law,

But in any action hereafter brought by said BARBARA BLIVEN, as such administrator/administratrix, against any person, party, or corporation whatever, for negligently causing the death of the above-named decedent, the authority of said BARBARA BLIVEN is hereby limited to the prosecution of such action, and said BARBARA BLIVEN is hereby forbidden and restrained from compromising said action or enforcing any judgment which said BARBARA BLIVEN may recover until the further order of the Surrogate's Court or Supreme Court or other Trial Court held in and for the County of Cattaraugus.

IN TESTIMONY WHEREOF we have caused  
the seal of the said Surrogate's  
Court to be hereunto affixed.

(L.S.)

WITNESS, HON. LARRY M. HIMELEIN,  
Surrogate, Surrogate's Court  
County of Cattaraugus, on  
April 12, 2005.

*Christie M. Malone*  
\_\_\_\_\_  
Chief Clerk of the Surrogate's Court

Surrogate's Court  
Cattaraugus County, N.Y.

Recorded April 22, 2005

Vol 35 Page 175

Of Administration

Patrick J. Stocker

Deputy Chief Clerk

STATE OF NEW YORK  
SURROGATE'S COURT: COUNTY OF CATTARAUGUS

-----X  
In the Matter of the Application of

BARBARA BLIVEN,

as Administratrix of the Estate of

DONALD C. BLIVEN, Deceased,

for leave to allocate and distribute proposed net settlement proceeds derived from the causes of action arising out of the conscious pain and suffering and wrongful death of said decedent and to judicially settle her account relating to the proceeds thereof.

-----X

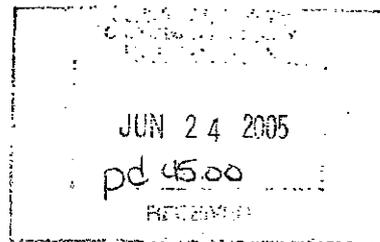
TO THE SURROGATE'S COURT OF THE COUNTY OF CATTARAUGUS

The petition of BARBARA BLIVEN, as Administratrix, domiciled at 33 Brooklyn Street, Box 196, Portville, NY 14770, respectfully alleges:

1. I am the Administratrix of the Estate of DONALD C. BLIVEN, deceased, in an action against defendant GEORGIA PACIFIC.

2. DONALD C. BLIVEN, the above-named decedent, died on November 24, 2004. On the date of death the decedent was domiciled at 33 Brooklyn Street, Portville, NY 14780, where he resided with his spouse.

3. On April 12, 2005, Full Letters of Administration with Limitations were issued to petitioner by the Surrogate's Court of Cattaraugus County, and thereafter



PETITION

File # 31,792

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NEW YORK, N.Y. 10038

said fiduciary duly qualified as such. Such letters are restricted and prohibit me from receiving any money resulting from the settlement of this action.

4. (A) The names and addresses of all persons interested in this proceeding upon whom service of process is required or concerning whom the Court is required to have information are:

NAME	ADDRESS	RELATIONSHIP OR NATURE OF INTEREST/AGE
BARBARA BLIVEN	33 Brooklyn Street Box 196 Portville, NY 14770	spouse/full Administratrix
JESSE BLIVEN	1154 Steam Valley Road Olean, NY 14760	issue/full
VICKIE SHIELDS	2001 Route 305 Cuba, NY 14727	issue/full
DOUGLAS BLIVEN	153 Richardson Avenue Boliyar, NY 14715	issue/full
RONALD BLIVEN	1425 Congress Road Hinsdale, NY 14743	issue/full
WEITZ & LUXENBERG, P.C.	180 Maiden Lane 17th Floor New York, NY 10038	Attorneys for the asbestos action
NY State Tax Commission	TTTB-Estate Tax Audit W.A. Harriman Campus Albany, NY 12227	State taxing authority

(B) All of said persons are of full age and

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are not under disability, or else are corporations or associations.

(C) There are no persons other than those mentioned interested in this proceeding.

5. (A) At the time of his death, the decedent was retired. From 1965 to 1997, the decedent worked as a clipper.

(B) The dates of birth of decedent and of decedent's distributees are as follows:

NAME	DATE OF BIRTH
DONALD C. BLIVEN	10/22/1933
BARBARA BLIVEN	10/25/1935
JESSE BLIVEN	02/19/1956
VICKIE SHIELDS	06/01/1958
DOUGLAS BLIVEN	11/05/1960
RONALD BLIVEN	02/01/1966

6. (A) The decedent, DONALD C. BLIVEN, was diagnosed with asbestosis, a disease related to asbestos exposure. Briefly, the facts underlying these claims for liability based on the negligence of the defendant are as follows: From 1965 to 1997, the decedent, DONALD C. BLIVEN, worked as a clipper and was continuously being exposed to asbestos and asbestos dust. The asbestos-containing products

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(i.e., pipe covering, block covering, tape and cement) were manufactured, sold and/or distributed by the defendant. This defendant knew or should have known that exposure to asbestos-containing products would cause asbestosis, other pulmonary diseases, shortness of breath, inability to walk fast, chest pain, coughing, phlegm, increased risk of cancer, and mental and emotional distress. Despite this knowledge, it sold the asbestos products knowing that workers, like the decedent, would be exposed. Decedent was diagnosed as having asbestosis, and the above symptoms were the result of his having been exposed to asbestos. He was hospitalized on a number of occasions for his various symptoms and asbestosis. He died on November 24, 2004.

(B) No laws of foreign jurisdiction apply to these causes of action or claims.

7. (A) The proposed net amount of the proposed settlement with defendant GEORGIA PACIFIC is \$598.67. The petitioner and her attorneys, WEITZ & LUXENBERG, P.C., do not anticipate any additional settlement proceeds at the present time.

(B) The firm filed its Statement of Retainer with the Judicial Conference of the State of New York. The retainer statement number is 2253425.

8. The proposed gross settlement offer is from

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defendant GEORGIA PACIFIC in the sum of \$1,000.00. I have been advised that the settlement offer from defendant GEORGIA PACIFIC has been extended in connection with an Administrative Settlement Agreement negotiated between the parties. This settlement offer will be finalized for payment after the submission and subsequent verification of qualifying documentation/information including, but not limited to, an executed settlement release and a diagnosing medical document. Based upon information in our files (including, but not limited to, notes, attorney work product, documentation, computer data bases, and client statements), this settlement offer will be finalized for payment in connection with this Administrative Agreement and all required documentation has been/will be forwarded to the defendant. The adequacy of the proposed gross settlement offer from defendant GEORGIA PACIFIC in the sum of \$1,000.00, as well as attorneys' fees to WEITZ & LUXENBERG, P.C. in the amount of \$299.33 and return of disbursements incurred by WEITZ & LUXENBERG, P.C. in the amount of \$102.00 were approved by order of the Supreme Court, New York County dated 6/15/05, leaving proposed net settlement proceeds of \$598.67. It is respectfully requested that this Court determine the allocation and distribution of the proposed net settlement proceeds as set forth herein.

9. Expenses for hospital, medical or nursing

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services incurred prior to the decedent's death have been paid in full. Funeral expenses in the amount of \$6,935.00 were incurred with Guenther Funeral Home, Inc., which have been paid by BARBARA BLIVEN, and reimbursement is waived. (Annexed hereto and made a part hereof is a photocopy of said paid bill.)

10. There are and were no other paid or unpaid claims against decedent or decedent's Estate, including public assistance, except: none.

11. Neither the decedent nor his spouse has received any Worker's Compensation benefits.

12. Petitioner requests that the entire proposed net settlement sum be allocated by this Court as follows: ninety percent (90%) of the proposed net settlement proceeds to the cause of action for conscious pain and suffering and ten percent (10%) of the proposed net settlement proceeds to the cause of action for wrongful death against the aforementioned defendant. The reasons for such proposed allocations are as follows: The decedent was first diagnosed as having asbestosis on or about February 3, 2000, and he died on November 24, 2004. He had a period of approximately 4 years and 10 months of conscious pain and suffering, whereas at the time of the decedent's death, because he was 71 years of age, he had a normal life expectancy. His spouse has been

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deprived of his tutelage, guidance and support by reason of his untimely death.

13. The total amount of the proposed net settlement proceeds allocated to the conscious pain and suffering claim equals \$538.80, which represents ninety percent (90%) of the proposed net settlement proceeds. These monies will be paid to BARBARA BLIVEN, as Administratrix, pursuant to EPTL Section 4-1.1, and will be distributed in accordance therewith.

TO: NAME OF THOSE ENTITLED TO SHARE IN CONSCIOUS PAIN AND SUFFERING PROCEEDS (90% of proposed net settlement proceeds)	AMOUNT
---	--------

To: BARBARA BLIVEN, as Administratrix with limitations, to be administered within the context of the full estate proceedings	\$538.80
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TOTAL:	\$538.80
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14. The total amount of the proposed net settlement allocated to the cause of action for wrongful death equals \$59.87, which represents ten percent (10%) of the proposed net settlement proceeds. The proposed distribution of the wrongful death proceeds to BARBARA BLIVEN, decedent's spouse, is based on EPTL Section 5-4.4.

TO: NAME OF THOSE ENTITLED TO SHARE IN WRONGFUL DEATH PROCEEDS (10% of proposed net settlement proceeds)	AMOUNT
--	--------

To: BARBARA BLIVEN, as and for her share as surviving spouse and beneficiary of said decedent, pursuant to Section 5-4.4 of the Estates, Powers and Trusts Law,	
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equal to 100.0% of proposed net wrongful  
death proceeds \$59.87

TOTAL: \$59.87

15. There are no outstanding hospital or medical bills. There has been no hospital notice lien filed under the Lien Law, Section 189.

16. Your petitioner has been informed by her attorneys that they have made a thorough investigation of this matter and have advised petitioner to accept the settlement herein.

17. The petitioner is aware that pursuant to an order of the Supreme Court, attorneys' fees in the sum of \$299.33 and disbursements in the sum of \$102.00 will be deducted from the proposed gross settlement of \$1,000.00, leaving proposed net proceeds of \$598.67.

18. Petitioner is further advised that upon the acceptance of said settlement, neither your deponent, the issue, nor any other surviving relatives can ever come back to this Court or to any other court to seek recovery of any other, further or additional monies of any type, nature or description as a result of the said occurrence as against the settling defendant listed herein.

19. There are no other assets in or other persons interested in this Estate; no unpaid liens outstanding which were paid by any agency, hospital, physician or undertaker;

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neither the decedent nor his distributees have ever been recipients of public assistance in any form, and there is no claim for public assistance; and your petitioner respectfully prays that this Court approve the application to collect the proposed settlement proceeds in this matter.

20. There are no claims from any governmental agency or department against the decedent or his Estate or distributees. No claims of any creditors have been filed against the Estate of the decedent, nor have any come to the attention of your petitioner. The records of this Court and other courts have been searched, and your deponent has no knowledge of the execution of any such Powers of Attorney or assignments filed or recorded.

21. Your petitioner is not connected in business or otherwise with the defendant or its representatives, and your petitioner did not accept this settlement or retain counsel to represent her in this matter at the insistence or request of the defendant or its representatives, and your petitioner is not employed by the defendant or its representatives.

22. Petitioner waives commissions.

23. Attached herewith is an accounting of the proposed proceeds of the compromise.

WHEREFORE, petitioner prays that a decree be made authorizing BARBARA BLIVEN, as Administratrix of the Estate of

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DONALD C. BLIVEN, deceased,

1. To distribute and allocate the proposed net settlement proceeds of \$598.67, derived from the proposed gross settlement with defendant GEORGIA PACIFIC in the sum of \$1,000.00, the adequacy of the proposed gross settlement offer from defendant GEORGIA PACIFIC in the sum of \$1,000.00, as well as attorneys' fees to WEITZ & LUXENBERG, P.C. in the amount of \$299.33 and return of disbursements incurred by WEITZ & LUXENBERG, P.C. in the amount of \$102.00 having been approved by order of the Supreme Court, New York County, dated **6/15/05**, leaving proposed net settlement proceeds of \$598.67, it being respectfully requested that this Court determine the allocation and distribution of the proposed net settlement proceeds as set forth herein;

2. To allocate ninety percent (90%) of the proposed net settlement proceeds to the cause of action for conscious pain and suffering and ten percent (10%) of the proposed net settlement proceeds to the cause of action for wrongful death against the aforementioned defendant;

3. (a) To allocate the proposed net sum of \$538.80, representing ninety percent (90%) of the proposed net settlement proceeds, to the conscious pain and suffering claim belonging to the decedent's Estate, to be distributed in accordance with EPTL Section 4-1.1:

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TO:	NAME	AMOUNT
	To: BARBARA BLIVEN, as Administratrix with limitations, to be administered within the context of the full estate proceedings	\$538.80
	TOTAL:	\$538.80

(b) To allocate the proposed net sum of \$59.87, representing ten percent (10%) of the proposed net settlement proceeds, to the wrongful death of said decedent, to be distributed pursuant to EPTL Section 5-4.4 as follows:

TO:	NAME	AMOUNT
	To: BARBARA BLIVEN, as and for her share as surviving spouse and beneficiary of said decedent, pursuant to Section 5-4.4 of the Estates, Powers and Trusts Law, equal to 100.0% of proposed net wrongful death proceeds	\$59.87
	TOTAL:	\$59.87

4. To remove and/or modify the restrictions in the Full Letters of Administration with Limitations issued to BARBARA BLIVEN, petitioner as such Administratrix, to the extent necessary to carry out the provisions of such decree;

5. To dispense with the filing of a bond;

6. To discontinue this action against the defendant, GEORGIA PACIFIC, listed herein, and to continue against all other non-settling defendants; and

7. To judicially settle and allow petitioner's account with respect to the proposed total amount of \$1,000.00

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and to grant such other and further relief as may be just and proper.

Dated:

5/4/65

Barbara Bliven  
BARBARA BLIVEN

Attorneys:

WEITZ & LUXENBERG, P.C.

By:

William J. Nugent III  
WILLIAM J. NUGENT III  
180 Maiden Lane, 17th Floor  
New York, NY 10038  
(212) 558-5687

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At a Surrogate's Court, held in and for the County of Cattaraugus, at Courthouse, Little Valley, New York, on the 24th day of June, 2005.

P R E S E N T :

HON. LARRY M. HIMELEIN  
Surrogate

-----X  
In the Matter of the Application of

BARBARA BLIVEN,

as Administratrix of the Estate of

DECREE

DONALD C. BLIVEN, Deceased,

File # 31,792

for leave to allocate and distribute proposed net settlement proceeds derived from the causes of action arising out of the conscious pain and suffering and wrongful death of said decedent and to judicially settle her account relating to the proceeds thereof.

-----X  
Upon the petition of BARBARA BLIVEN, as Administratrix of the Estate of DONALD C. BLIVEN, deceased, duly verified on 5/4/05, and the Accounting sworn to on 5/4/05, in which application was made for a decree permitting the said BARBARA BLIVEN, as Administratrix, to allocate and distribute the cause of action for conscious pain and suffering in the proposed net sum of \$538.80 and the cause of action for wrongful death in the proposed net sum of \$59.87 against defendant GEORGIA PACIFIC, for the conscious pain and suffering and for the wrongful death of DONALD C. BLIVEN,

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deceased,

And the proposed gross settlement offer being from defendant GEORGIA PACIFIC in the sum of \$1,000.00. The adequacy of the proposed gross settlement offer from defendant GEORGIA PACIFIC in the sum of \$1,000.00, as well as attorneys' fees to WEITZ & LUXENBERG, P.C. in the amount of \$299.33 and return of disbursements incurred by WEITZ & LUXENBERG, P.C. in the amount of \$102.00 having been approved by order of the Supreme Court, New York County, dated 6/15/05, leaving proposed net settlement proceeds of \$598.67, it being respectfully requested that this Court determine the allocation and distribution of the proposed net settlement proceeds as set forth herein,

And that the recovery of said actions should be allocated ninety percent (90%) of the proposed net recovery to the claim and cause of action for the conscious pain and suffering of said decedent and ten percent (10%) of the proposed net recovery to the claim and cause of action for the wrongful death of said decedent, to modify the Full Letters of Administration with Limitations to permit said compromise, dispense with the filing of a bond, and judicially settle the account,

In as much as seven months have not elapsed since the date of the issuance of Full Letters of Administration

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with Limitations, nor has there been notice to creditors pursuant to SCPA 1801(1), and waivers and consents having been filed by all interested parties,

And the said BARBARA BLIVEN, petitioner herein, having appeared by her attorneys, WEITZ & LUXENBERG, P.C.,

And the said New York State Tax Commission having appeared by SALVATORE J. RICO, Esq., its attorney, and having filed a Waiver and Consent dated 5/10/05

And the Court having ~~rendered a decision dated~~ \_\_\_\_\_, <sup>ed</sup> granting the petition to compromise the causes of action for conscious pain and suffering and for wrongful death and to judicially settle the account,

And the Court having examined the said account and having found the state and condition of said account to be as set forth in the following statement recorded with the Court:

SUMMARY STATEMENT OF SETTLEMENT PROCEEDS

Amount shown by Schedule A	\$1,000.00
(Principal received)	
Amount shown by Schedule B	\$401.33
(Distributions made)	
Total Credits	\$401.33
Amount shown by Schedule C	\$0.00
(Funeral and administrative expenses)	
Balance on hand shown by Schedule E	\$598.67

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The foregoing balance of \$598.67 consists of \$598.67 in cash and \$0.00 in other property on hand as of 5/4/05. It is subject to deduction of estimated principal commissions amounting to \$0.00 as shown in Schedule I and to the proper charge to principal of expenses of this accounting,

And it appearing the said Administratrix, BARBARA BLIVEN, has fully accounted for all monies and properties of the Estate in said summary statement, and the Administratrix having waived any claim to statutory commissions,

NOW, upon said petition and the affirmation of WILLIAM J. NUGENT III, Esq., affirmed as aforesaid, and ~~upon the decision of this Court dated~~ on motion of WEITZ & LUXENBERG, P.C., attorneys for petitioner, it is hereby

ORDERED, ADJUDGED AND DECREED, that the petitioner's application for leave to compromise and settle the causes of action for conscious pain and suffering and for wrongful death and to allocate ninety percent (90%) of the proposed net recovery to the claim and cause of action for the conscious pain and suffering of said decedent and ten percent (10%) of the proposed net recovery to the claim and cause of action for the wrongful death of said decedent is granted; and it is further

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within the context of the full estate  
proceedings \$538.80

TOTAL: \$538.80

To allocate ten percent (10%) of the proposed net settlement in the sum of \$59.87 of the proposed net settlement proceeds to the wrongful death of the decedent, to be distributed in accordance with EPTL Section 5-4.4 as follows:

TO:	NAME	AMOUNT
	To: BARBARA BLIVEN, as and for her share as surviving spouse and beneficiary of said decedent, pursuant to Section 5-4.4 of the Estates, Powers and Trusts Law, equal to 100.0% of proposed net wrongful death proceeds	\$59.87
	TOTAL:	\$59.87

and it is further

ORDERED, ADJUDGED AND DECREED, that upon the defendant, GEORGIA PACIFIC, for a proposed net total sum of \$598.67, or defendant's insurance company making payments as aforesaid, BARBARA BLIVEN, as Administratrix of the Estate of DONALD C. BLIVEN, be and she hereby is discharged and released as to any and all further liability as to all matters and things embraced in the aforesaid account and determined by this decree; and it is further

ORDERED, ADJUDGED AND DECREED, that the giving of a bond or other security in connection therewith be dispensed with, and the restrictions on the Full Letters of Administration with Limitations be modified to the extent

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OF  
WEITZ  
&  
LUXENBERG, P.C.  
180 MAIDEN LANE  
NEW YORK, N.Y. 10038

ORDERED, ADJUDGED AND DECREED, that the petitioner, BARBARA BLIVEN, as Administratrix of the Estate of DONALD C. BLIVEN, deceased, be and she hereby is authorized and empowered to settle and discontinue the claims and causes of action for conscious pain and suffering and for wrongful death against the defendant, GEORGIA PACIFIC, and petitioner is authorized to deliver general releases and discontinuances and any other papers or documents that may be required to effectuate a settlement and discontinuances and withdrawals of the said claims and causes of action for conscious pain and suffering and for wrongful death upon the payment of such proposed net total sum of \$598.67 in the manner hereinafter provided; and to continue against all other non-settling defendants; and it is further

ORDERED, ADJUDGED AND DECREED, that the said defendant, GEORGIA PACIFIC, or its insurance company, upon receipt of a copy of this decree, with releases, discontinuances and discharges above referred to, shall pay the entire proposed net settlement sum of \$598.67 as follows:

To allocate ninety percent (90%) of the proposed net settlement in the sum of \$538.80 of the proposed net settlement proceeds to the conscious pain and suffering of the decedent, said claim belonging to decedent's Estate:

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&  
LUXENBERG, P.C.  
180 MAIDEN LANE  
NEW YORK, N.Y. 10038

TO:	NAME	AMOUNT
	To: BARBARA BLIVEN, as Administratrix with limitations, to be administered	

necessary to allow the above settlement and to carry out the provisions of this decree; and it is further

ORDERED, ADJUDGED AND DECREED, that upon compliance with the terms of this decree, the account of the said BARBARA BLIVEN, as Administratrix of the Estate of DONALD C. BLIVEN, deceased, shall be judicially settled with respect to the total amount of such settlement as against said defendant, GEORGIA PACIFIC.

Larry M. Komelein  
Surrogate

**ENTERED**

June 24 2005  
Christine M. Wrona  
CHIEF CLERK

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WEITZ  
&  
LUXENBERG, P.C.  
180 MAIDEN LANE  
NEW YORK, N.Y. 10038

**From:** Nora Whalen  
**To:** Christine Wrona  
**Date:** 7/21/2008 11:03 AM  
**Subject:** Re: Estate of Donald C Bliven and Claude F Gienn

Judge Cass will take them per previous email from Lydia Romer.

>>> Christine Wrona 7/16/2008 10:18 AM >>>

Hello, Nora -

Two more proceedings have been filed with this court that need to be reassigned as both Judge Himelein and Nenno have recused themselves from these cases due to litigation that they are involved with. The firm handling the estate is Weitz & Luxenberg. No appearances will be required in either of these matters as all parties have consented to the relief sought so all that is necessary is for decrees to be signed.

Thank you, Chris

Christine M. Wrona, Chief Clerk  
Cattaraugus County Surrogate's Court  
(716) 938-2327  
cwrona@courts.state.ny.us

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&  
L U X E N B E R G  
A PROFESSIONAL CORPORATION  
• LAW OFFICES •

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TEL. 212-558-5500 FAX 212-344-5461  
WWW.WEITZLUX.COM

AUG 16 2007  
RECEIVED

PERRY WEITZ  
ARTHUR M. LUXENBERG  
ROBERT J. GORDON ††

EDWARD S. BOSEK  
EDWARD BRANIFF ††  
JOHN M. BROADDUS \*  
DANIEL C. BURKE  
PATTI BURSHTYN ††  
LISA NATHANSON BUSCH  
BRIAN BUTCHER o  
DAVID A. CHANDLER  
EILEEN CLARKE  
THOMAS COMBERFORD ††  
ADAM R. COOPER  
TERESA A. CURTIN AA  
BENJAMIN D'ARCHE  
CHARLES M. FERGUSON  
STUART R. FRIEDMAN

STEVEN J. GERMAN A  
LAWRENCE GOLDHIRSCH ††  
ROBIN L. GREENWALD ††  
EDWARD J. HAHN \*  
CATHERINE HEACOCK ††  
RENEE L. HENDERSON ††  
MARIE L. JANNIELLO ††  
ERIK JACOBBS  
GARY R. KLEIN ††  
GLENN KRAMER ††  
JERRY KRISTAL ††  
DEBBI LANDAU  
ROBERTO LARACUENTE \*  
HANNAH LIM \*  
JAMES C. LONG, JR. ††

VICTORIA MANIATIS ††  
CURT D. MARSHALL †  
HADLEY L. MATARAZZO ††  
RICHARD S. MCGOWAN \* †† †  
WILLIAM J. NUGENT  
ANGELA T. PACHECO o  
MICHAEL E. PEDERSON  
PAUL J. PENNOCK †  
STUART S. PERRY \*  
ELLEN HELKIN \*A  
STEPHEN J. RIEGEL ††  
MICHAEL P. ROBERTS  
CHRIS ROMANELLI ††  
JILLIAN ROSEN  
DAVID ROSENBAUM

JIM R. ROSS o  
SHELDON SILVER \*  
FRANKLIN P. SOLOMON †  
LEMUEL M. SROLOVIC  
JAMES S. THOMPSON ††  
JOSH VITOW  
DOUGLAS D. VON CISTE †  
WILLIAM A. WALSH ††  
JOSEPH P. WILLIAMS  
NICHOLAS WISE  
ALLAN ZELKOWIC  
GLENN ZUCKERMAN

\* Of Counsel  
‡ Also admitted in CT  
- Also admitted in FL  
†† Also admitted in AA  
†† Also admitted in NJ  
‡ Also admitted in DC  
† Also admitted in NJ and CT  
†† Also admitted in NJ and PA  
A Also admitted in NJ and DC  
AA Also admitted in NJ and ME  
†† Also admitted in DC and TX  
\* Also admitted in DC, VA  
† Admitted only in NJ and PA  
o Admitted only in NJ  
‡ Admitted only in DC, MD, PA and VA  
\* Admitted only in CO  
- Admitted only in IL  
o Admitted only in TX

August 10, 2007  
**VIA FEDERAL EXPRESS**  
Surrogate's Court  
Cattaraugus County  
303 Court Street  
Little Valley, NY 14755

RE: THE ESTATE OF CLAUDE F. GLENN

To Whom It May Concern:

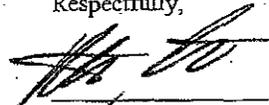
8006-33379

Enclosed please find the following documents for your review regarding the above named decedent;

- Attorney's Certification for Administration Proceeding
- Petition for Letters of Administration
- Decree Appointing Administrator
- Notice of Application for Letter of Administration
- Affidavit of Delay
- Affidavit of Mailing Notice of Application for Letters of Administration
- Certified Copy of the Death Certificate
- Funeral Bill
- \$45 Check for the Filing Fee
- \$12 Check for the (2) Certificates of Appointment
- Return Envelope

If you have any questions, please feel free to contact me at (800) 438-9786 ext. 5908. Thank you in advance for your attention to this matter.

Respectfully,



Daniel Fuchs  
Estate Paralegal



215 South Monarch Street, Suite 202  
Aspen, CO 81611  
(970) 925-6101

210 Lake Drive East, Suite 101  
Cherry Hill, NJ 08002  
(856) 755-1115

76 South Orange Avenue, Suite 201  
South Orange, NJ 07079  
(973) 761-8995

100 E. 15th Street, Suite 400  
Fort Worth, Texas 76102  
(817) 885-7815



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

Filing Fee Paid \$ 45.00  
Certificates Paid \$ 12.00  
Trustee Certs. Paid \$  
Prelim. Certs. Paid \$  
Bond, Fee: \$  
Receipt No.: No.:

ADMINISTRATION PROCEEDING, ESTATE OF AUG 16 2007

14235  
CLAUDE F. GLENN  
a/k/a

RECEIVED  
AUG 16 2007

PETITION FOR LETTERS OF:

- Administration
- Limited Administration
- Administration with Limitations
- Temporary Administration

File No. 2006-32379  
SAFEKEEPING CHECKED 8/16/07

TO THE SURROGATE'S COURT, COUNTY OF CATTARAUGUS

INDEX CHECKED 8/16/07

It is respectfully alleged:

BY CD

1. The name, domicile and interest in this proceeding of the petitioner, who is of full age, is as follows:

Petitioner Information:

Name Pauline A. Glenn Citizenship United States

Domicile Address: Street and Number  
450 1/2 Third Avenue

City, Village or Town Olean State New York ZIP Code 14760 Country United States

County Cattaraugus Telephone (716) 372-8886

Mailing Address: Street and Number (if different from domicile)

City, Village or Town State ZIP Code Country

Interest: (Check One)  Distributtee  Other

Name Citizenship

Domicile Address: Street and Number

City, Village or Town State ZIP Code Country

County Telephone

Mailing Address: Street and Number (if different from domicile)

City, Village or Town State ZIP Code Country

Interest: (Check One)  Distributtee  Other

Is proposed Administrator an attorney?  Yes  No [If yes, submit statement pursuant to 22 NYCRR 207.16(e); see also 207.52 (Accounting of attorney-fiduciary).]

2. The name, domicile, date and place of death, and national citizenship of the above-named decedent are as follows:

**Decedent Information:**

Name <b>Claude F. Glenn</b>		Citizenship <b>United States</b>	
Domicile Address: Street and Number <b>450 1/2 Third Avenue</b>			
City, Village or Town <b>Olean</b>		State/Province <b>New York</b>	ZIP Code <b>14760</b>
Country <b>United States</b>			
County <b>Cattaraugus</b>	Date of Death <b>February 7, 2006</b>	Place of Death <b>VA WNY Healthcare Systems</b>	

The Death Certificate must be filed with this proceeding. If the decedent's domicile is different from that shown on the death certificate, check box  and attach an affidavit explaining the reason for this inconsistency.

3. The estimated gross value of: [Do not include any assets that are jointly held in trust for another, or have a named beneficiary.]

(a) The decedent's personal property passing by intestacy is less than		\$	0.00
(b) The decedent's real property, in this state, which is			
Improved, passing by intestacy, is less than		\$	0.00
Description of each parcel: 0.			
Unimproved, passing by intestacy, is less than		\$	0.00
Description of each parcel: 0			
		\$	0.00
Total		\$	0.00
(c) The estimated gross rent for a period of eighteen (18) months is the sum of		\$	0.00

(d) In addition to the value of the personal property stated in paragraph (3) the following right of action existed on behalf of the decedent and survived his/her death, or is granted to the administrator of the decedent by special provision of law, and it is impractical to give a bond sufficient to cover the probable amount to be recovered therein: *[Briefly state the cause of action and the person against whom it exists, including names and carrier.]*  None

A cause of action exists for wrongful death and conscious pain and suffering of the decedent based on exposure to asbestos against [A.P. Green Industries Inc. f/k/a A.P. Green Refractories Company] at [CT Corporation Systems, 1633 Broadway, New York, New York 10019], et. al.

(e) If decedent is survived by a spouse and a parent, or parents but no issue, and there is a claim for wrongful death, check here  and furnish name(s) and address(es) of parent(s) in Paragraph 7. *[See EPTL 5-4.4.]*

4. A diligent search and inquiry, including a search of any safe deposit box, has been made for a will of the decedent and none has been found. Petitioner(s) has/have been unable to obtain any information concerning any will of the decedent and therefore allege(s), upon information and belief, that the decedent died without leaving any last will.

5. A search of the records of this Court shows that no application has ever been made for letters of administration upon the estate of the decedent or for the probate of a will of the decedent, and your petitioner is informed and verily believes that no such application ever has been made to the Surrogate's Court of any other county of this state.

6. The decedent left surviving the following who would inherit his/her estate pursuant to EPTL 4-1.1 and 4-1.2: *[Information is required only as to those classes of surviving relatives who would take the property of decedent pursuant to EPTL 4-1.1. State "number" of survivors in each class. Insert "No" in all prior classes. Insert "X" in all subsequent classes.]*

- a.  1 Spouse (husband/wife).
- b.  5 Child or children or descendants of predeceased child or children. *[Must include marital, nonmarital, and adopted.]*
- c.  NO Any issue of the decedent adopted by persons related to the decedent (DRL Section 117).
- d.  X Mother/Father.
- e.  X Sisters or brothers, either of whole or half blood, and issue of predeceased sisters or brothers.
- f.  X Grandmother/Grandfather.
- g.  X Aunts or uncles, and children of predeceased aunts or uncles (first cousins).
- h.  X First cousins once removed (children of first cousins).

7. The decedent left surviving the following distributees, or other necessary parties, whose names, degrees of relationship, domiciles, post office addresses and citizenship are as follows: *(Show clearly how each person is related to decedent. If relationship is through an ancestor who is deceased, give name, date of death and relationship of the ancestor to the decedent. See Uniform Rules 207.16(b). If person is a nonmarital person, or descended from a nonmarital person, attach a copy of the order of filiation or Schedule A. If person was adopted by any persons related by blood or marriage to decedent or descended from such persons, attach Schedule B.)*

7. (a) The following are of full age and under no disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached

Name <b>Claudia Ruth Glenn Catalano</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>85 Maple Avenue</b>			
City, Village or Town <b>Allegany</b>	State <b>New York</b>	ZIP Code <b>14708</b>	Country <b>United States</b>
Mailing Address: Street and Number <b>P.O. Box 343</b>			
City, Village or Town <b>Allegany</b>	State <b>New York</b>	ZIP Code <b>14708</b>	Country <b>United States</b>
Relationship <b>Daughter</b>			
Name <b>Deborah Ann Glenn Hackett</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>2310 Dutch Hollow Road</b>			
City, Village or Town <b>Avon</b>	State <b>New York</b>	ZIP Code <b>14414</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Daughter</b>			
Name <b>Timothy Paul Glenn</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>1150 SW Allapattah Road</b>			
City, Village or Town <b>Indiantown</b>	State <b>Florida</b>	ZIP Code <b>34956</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name <b>Linda Kay Glenn Bartlett</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>3701 Union Valley Road</b>			
City, Village or Town <b>Olean</b>	State <b>New York</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Daughter</b>			

Continued on next page.

7. (a) Distributees or Other Necessary Parties (continued)

Name <b>Daniel John Glenn</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>11979 N.W. 12 Street</b>			
City, Village or Town <b>Pembroke Pines</b>	State <b>New York</b>	ZIP Code <b>33026</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Son</b>			
Name <b>Pauline Glenn</b>			Citizenship <b>United States</b>
Domicile Address: Street and Number <b>450 1/2 Third Avenue</b>			
City, Village or Town <b>Olean</b>	State <b>New York</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship <b>Spouse</b>			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

7. (b) The following are infants and/or other persons under disability:

- Schedule A — Nonmarital Persons (Persons Born Out of Wedlock) is Attached
- Schedule B — Issue of the Decedent Who Were the Subject of an Adoption is Attached
- Schedule C — Infants is Attached
- Schedule D — Persons Under Disability Other than Infants is Attached

Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			
Name			Citizenship
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Relationship			

8. There are no outstanding debts or funeral expenses, except:  None

9. There are no other persons interested in this proceeding other than those hereinbefore mentioned.

WHEREFORE, your petitioner respectfully prays that:

- a. Process issue to all necessary parties to show cause why letters should not be issued as requested;
- b. An order be granted dispensing with service of process upon those persons named in Paragraph (7) who have a right to letters prior or equal to that of the person nominated, and who are nondomiciliaries or whose names or whereabouts are unknown and cannot be ascertained;
- c. A decree award Letters of:
- Administration to Pauline A. Glenn
  - Limited Administration to \_\_\_\_\_
  - Administration with Limitation to \_\_\_\_\_
  - Temporary Administration to \_\_\_\_\_

or other such person or persons having prior right as may be entitled thereto, and;

- d. That the authority of the representative under the foregoing Letters be limited with respect to the prosecution or enforcement of a cause of action on behalf of the estate, as follows: the administrator(s) may not enforce a judgment or receive any funds without further order of the Surrogate.
- e. That the authority of the representative under the foregoing Letters be limited as follows:

f. Further relief sought (if any):  
That the filing of bond be dispensed with.

Dated: 8/9/07

Pauline A. Glenn

Signature of Petitioner

**Pauline A. Glenn**

Print Name

Signature of Petitioner

Print Name

Name of Corporate Petitioner

By

Signature

Print Name

Title

**COMBINED VERIFICATION, OATH AND DESIGNATION**  
For use when petitioner is to be appointed administrator

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.:

I, the undersigned, the petitioner named in the foregoing petition, being duly sworn, say:

1. VERIFICATION: I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

2. OATH OF ADMINISTRATOR as indicated above: I am over eighteen (18) years of age and a citizen of the United States; and I will well, faithfully and honestly discharge the duties of Administrator of the goods, chattels and credits of said decedent according to law. I am not ineligible to receive letters and will duly account for all moneys and other property that will come into my hands.

3. DESIGNATION OF CLERK FOR SERVICE OF PROCESS: I do hereby designate the Clerk of the Surrogate's Court of Cattaraugus County, and his/her successor in office, as a person on whom service of any process, issuing from such Surrogate's Court may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used.

My domicile is: 450 1/2 Third Avenue, Olean, New York 14760

Pauline A. Glenn  
Signature of Petitioner

Pauline A. Glenn  
Print Name

On 8-9-2007, before me personally came Pauline A. Glenn to me known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he/she executed the same.

Linda Estes  
Notary Public  
Commission Expires: 3/17/11  
(Affix Notary Stamp or Seal)

LINDA ESTES  
Notary Public, State of New York  
Qualified in Cattaraugus County  
My Commission Expires 03/17/11  
Reg. #6089187

Keith M. O'Connor  
Signature of Attorney

Keith M. O'Connor  
Print Name of Attorney

Weitz & Luxenberg, P.C.  
Firm

(212) 558-5500  
Telephone

180 Maiden Lane, New York, New York 10038  
Address



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

CATTARAUGUS  
CLERK

ADMINISTRATION PROCEEDING, ESTATE OF  
**CLAUDE F. GLENN**  
a/k/a

AUG 16 2007

RECEIVED

NOTICE OF APPLICATION FOR  
LETTERS OF ADMINISTRATION  
(SCPA 1005)

Deceased.

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

**NOTICE IS HEREBY GIVEN THAT:**

1. An application for Letters of Administration upon the estate of the above-named decedent, has been made by Pauline A. Glenn petitioner, whose post office address is: 450 1/2 Third Avenue, Olean, New York 14760, United States

2. Each and every name of the intestate decedent known to the undersigned is as indicated in the above caption.

3. Petitioner prays that a decree be made directing the issuance of Letters of Administration to Pauline A. Glenn

4. The name and post office address of each and every distributee of the above-named decedent, as set forth in the petition and known to the undersigned, are as follows:

(a) Distributees who have been duly cited, have waived citation or have appeared in this proceeding:

Name of Distributee			
<b>Claudia Ruth Glenn Catalano</b>			
Domicile Address: Street and Number			
<b>85 Maple Avenue</b>			
City, Village or Town	State	ZIP Code	Country
<b>Allegany</b>	<b>New York</b>	<b>14706</b>	<b>United States</b>
Post Office Address: Street and Number			
<b>P.O. Box 343</b>			
City, Village or Town	State	ZIP Code	Country
<b>Allegany</b>	<b>New York</b>	<b>14706</b>	<b>United States</b>
Name of Distributee			
<b>Deborah Ann Glenn Hackett</b>			
Domicile Address: Street and Number			
<b>2310 Dutch Hollow Road</b>			
City, Village or Town	State	ZIP Code	Country
<b>Avon</b>	<b>New York</b>	<b>14414</b>	<b>United States</b>
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Continued on next page.

**4. (a) Distributees Who Have Waived Citation or Appeared (continued)**

Name of Distributee <b>Timothy Paul Glenn</b>			
Domicile Address: Street and Number <b>1150 SW Allapattah Road</b>			
City, Village or Town <b>Indiantown</b>	State <b>Florida</b>	ZIP Code <b>34956</b>	Country <b>United States</b>
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Name of Distributee <b>Linda Kay Glenn Bartlett</b>			
Domicile Address: Street and Number <b>3701 Union Valley Road</b>			
City, Village or Town <b>Olean</b>	State <b>New York</b>	ZIP Code <b>14760</b>	Country <b>United States</b>
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Name of Distributee <b>Daniel John Glenn</b>			
Domicile Address: Street and Number <b>11979 N.W. 12 Street</b>			
City, Village or Town <b>Pembroke Pines</b>	State <b>New York</b>	ZIP Code <b>33026</b>	Country <b>United States</b>
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

4. (b) Other Distributees:

Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Domicile Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Post Office Address: Street and Number			
City, Village or Town	State	ZIP Code	Country



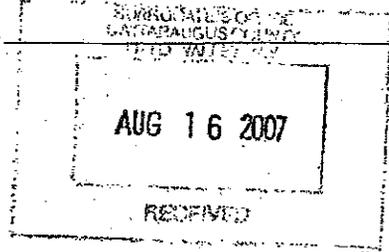


**SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF CATTARAUGUS**

ADMINISTRATION PROCEEDING, ESTATE OF  
**CLAUDE F. GLENN**  
a/k/a  
  
Deceased.

**AFFIDAVIT OF MAILING  
NOTICE OF APPLICATION  
FOR LETTERS OF  
ADMINISTRATION  
(SCPA 1005)**

File No.



STATE OF NEW YORK  
COUNTY OF NEW YORK } ss.:

Daniel Fuchs, residing at  
8 Citation Court, Marlboro, NJ 07746

New York, being duly sworn, deposes and says that deponent is over the age of eighteen years; that on \_\_\_\_\_, deponent mailed a copy of the foregoing Notice of Application for Letters of Administration, contained in a securely closed postpaid wrapper, directed to each of the persons named in paragraph 4(b), respectively, as follows:

Name of Distributee			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country
Name of Distributee			
Mailing Address: Street and Number			
City, Village or Town	State	ZIP Code	Country

by depositing the document in a letter box or other official depository under the exclusive care and custody of the United States Post Office located at:



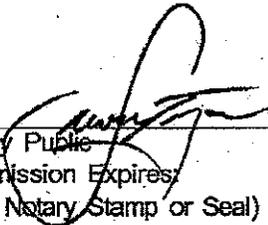
Signature

**Daniel Fuchs**

Print Name

Sworn to before me this

10 day of August, 2007



Notary Public

Commission Expires

(Affix Notary Stamp or Seal)

**STEVEN TRIFON**  
Notary Public, State of New York  
No. 01TR6165413  
Qualified in Bronx County  
Commission Expires 05/07/2011

**Keith M. O'Connor**

Print Name of Attorney

**(212) 558-5500**

Tel. No.

**Weitz & Luxenberg, P.C.**

Firm

**130 Maiden Lane, New York, New York 10038**

Address

At a Surrogate's Court of the State of New York held in and for the County of Cattaraugus at Little Valley, New York.

PRESENT: Honorable Larry M Himelein, Surrogate

---

Administration Proceeding, Estate of  
Claude E Glenn

DECREE GRANTING  
ADMINISTRATION  
WITH LIMITATIONS  
File No. 2006-32379/A

---

Deceased.

A verified petition having been filed by Pauline A Glenn praying that administration of the goods, chattels and credits of the above-named decedent be granted to Pauline A Glenn and all persons named in such petition, required to be cited, having been cited to show cause why such relief should not be granted, have either failed to appear in response to a served citation or having waived the issuance of such citation and consented thereto; and it appearing that Pauline A Glenn is in all respects competent to act as administrator of the estate of said deceased; now it is

ORDERED AND DECREED, that Letters of Administration issue to Pauline A Glenn upon proper qualification and the filing of a bond be and hereby is dispensed with; and it is further

ORDERED AND DECREED, that the authority of such administrator be restricted in accordance with, and that the letters herein issued contain, the limitation(s) as follows:

Limitations/Restrictions: The authority of the administrator is strictly limited to the prosecution of an action for the wrongful death of the decedent and the administrator is forbidden and restrained from compromising said action or enforcing any judgment that said administrator may recover until the further order of this court or Supreme Court or other Trial Court.

DATED: August 17, 2007

  
\_\_\_\_\_  
Surrogate

**On the Date Written Below LETTERS are Granted by the Surrogate's Court, State of New York as follows:**

Name of Decedent: **Claude E Glenn**

File #: 2006-32379/A

Domicile of Decedent: **City Of Olean**

Date of Death: February 07, 2006

Fiduciary Appointed: **Pauline A Glenn**  
Mailing Address 450 1/2 Third Avenue  
Olean NY 14760

Letters Issued: **LETTERS OF ADMINISTRATION WITH LIMITATIONS**

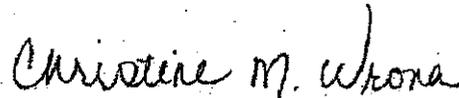
Limitations: **The authority of the administrator is strictly limited to the prosecution of an action for the wrongful death of the decedent and the administrator is forbidden and restrained from compromising said action or enforcing any judgment that said administrator may recover until the further order of this court or Supreme Court or other Trial Court.**

THESE LETTERS, granted pursuant to a decree entered by the court, authorize and empower the above-named fiduciary or fiduciaries to perform all acts requisite to the proper administration and disposition of the estate/trust of the Decedent in accordance with the decree and the laws of New York State, subject to the limitations and restrictions, if any, as set forth above.

Dated: August 17, 2007

IN TESTIMONY WHEREOF, the seal of the Cattaraugus Surrogate's Court has been affixed.

WITNESS, Hon Larry M Himelein, Judge of the Cattaraugus Surrogate's Court.

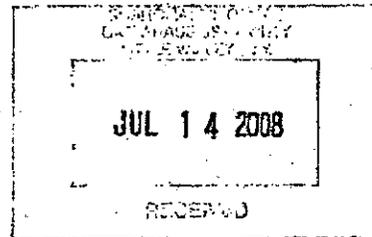


Christine M Wrona, Chief Clerk

*These Letters are Not Valid Without the Raised Seal of the Cattaraugus County Surrogate's Court*

**Attorney for the Estate:**  
**Keith M Oconnor**  
**Weitz & Luxenberg, P.C.**  
180 Maiden Lane  
New York NY 10038

STATE OF NEW YORK  
SURROGATE'S COURT: COUNTY OF CATTARAUGUS



-----X  
In the Matter of the Application of

PAULINE A. GLENN,

as Administratrix of the Estate of

CLAUDE F. GLENN, Deceased,

PETITION

File # 2006-32379/A

for leave to allocate and distribute proposed net settlement proceeds derived from the causes of action arising out of the conscious pain and suffering and wrongful death of said decedent and to judicially settle her account relating to the proceeds thereof.

-----X  
TO THE SURROGATE'S COURT OF THE COUNTY OF CATTARAUGUS

The petition of PAULINE A. GLENN, as Administratrix, domiciled at 450 1/2 Third Avenue, Olean, NY 14760, respectfully alleges:

1. I am the Administratrix of the Estate of CLAUDE F. GLENN, deceased, in an action against defendants BABCOCK & WILCOX TRUST and UNION CARBIDE.

2. CLAUDE F. GLENN, the above-named decedent, died on February 7, 2006. On the date of death the decedent was domiciled at 450 1/2 Third Avenue, Olean, NY 14760, where he resided with his spouse.

3. On August 17, 2007, Full Letters of Administration with Limitations were issued to petitioner by the Surrogate's Court of Cattaraugus County, and thereafter

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said fiduciary duly qualified as such. Such letters are restricted and prohibit me from receiving any money resulting from the settlement of this action.

4. (A) The names and addresses of all persons interested in this proceeding upon whom service of process is required or concerning whom the Court is required to have information are:

NAME	ADDRESS	RELATIONSHIP OR NATURE OF INTEREST/AGE
PAULINE A. GLENN	450 1/2 Third Avenue Olean, NY 14760	spouse/full Administratrix
CLAUDIA RUTH GLENN CATALANO	85 Maple Avenue Allegany, NY 14706	issue/full
DEBORAH ANN GLENN HACKETT	2310 Dutch Hollow Road Avon, NY 14414	issue/full
TIMOTHY PAUL GLENN	1150 Southwest Allapattah Road Indiantown, FL 34956	issue/full
LINDA KAY GLENN BARTLETT	3701 Union Valley Road Olean, NY 14760	issue/full
DANIEL JOHN GLENN	11979 Northwest 12 Street Pembroke Pines, FL 33026	issue/full

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WEITZ & LUXENBERG,  
P.C.  
180 Maiden Lane  
17th Floor  
New York, NY 10038

Attorneys for  
the asbestos  
action.

New York State  
Department of  
Taxation and  
Finance

TTTB - Estate Tax Audit State taxing  
- Waiver of Citation authority  
Unit  
W.A. Harriman Campus  
Albany, NY 12227-0001

(B) All of said persons are of full age and are not under disability, or else are corporations or associations.

(C) There are no persons other than those mentioned interested in this proceeding.

5. (A) At the time of his death, the decedent was retired. From 1942 to 1970, the decedent worked as a supervisor and an electrician's mate.

(B) The dates of birth of decedent and of decedent's distributees are as follows:

NAME	DATE OF BIRTH
CLAUDE F. GLENN	10/24/1926
PAULINE A. GLENN	08/07/1928
CLAUDIA RUTH GLENN CATALANO	01/26/1952
DEBORAH ANN GLENN HACKETT	10/02/1953
TIMOTHY PAUL GLENN	07/22/1959
LINDA KAY GLENN BARTLETT	08/03/1961

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DANIEL JOHN GLENN

12/04/1964

6. (A) The decedent, CLAUDE F. GLENN, was diagnosed with asbestosis and pleural disease, diseases related to asbestos exposure. Briefly, the facts underlying these claims for liability based on the negligence of the defendants are as follows: From 1942 to 1970, the decedent, CLAUDE F. GLENN, worked as a supervisor and an electrician's mate and was continuously being exposed to asbestos and asbestos dust. The asbestos-containing products (i.e., pipe covering, block covering, tape and cement) were manufactured, sold and/or distributed by the defendants. These defendants knew or should have known that exposure to asbestos-containing products would cause asbestosis, pleural disease, other pulmonary diseases, shortness of breath, inability to walk fast, chest pain, coughing, phlegm, increased risk of cancer, and mental and emotional distress. Despite this knowledge, they sold the asbestos products knowing that workers, like the decedent, would be exposed. Decedent was diagnosed as having asbestosis and pleural disease, and the above symptoms were the result of his having been exposed to asbestos. He was hospitalized on a number of occasions for his various symptoms, asbestosis and pleural disease. He died on February 7, 2006.

(B) No laws of foreign jurisdiction apply to

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these causes of action or claims.

7. (A) The proposed net amount of the proposed settlement with defendants BABCOCK & WILCOX TRUST and UNION CARBIDE is \$1,672.98. The petitioner and her attorneys, WEITZ & LUXENBERG, P.C., do not anticipate any additional settlement proceeds at the present time.

(B) The firm filed its Statement of Retainer with the Judicial Conference of the State of New York. The retainer statement number is 3275413.

8. The proposed gross settlement offers are from defendants BABCOCK & WILCOX TRUST in the sum of \$2,265.33 and UNION CARBIDE in the sum of \$500.00, for a proposed gross settlement total of \$2,765.33. I have been advised that the settlement offer from defendant BABCOCK & WILCOX TRUST is from a bankrupt company. This settlement offer was extended by, and through, the Settlement Trust created to administer asbestos claims. The settlement offer may, at any time until actual payment is made, be reduced by the Trust as allowed under the Trust Distribution Procedures. Therefore, the amount in this adequacy order may change between the time of the settlement offer and the acceptance of this offer by the Court and the Estate Representative.

As well, if the Estate has chosen multiple payment option, over a number of years, as allowed in various Trusts,

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the payment percentage may increase or decrease over time. Therefore, the ultimate settlement value may increase or decrease from the original amount.

The settlement offer from defendant UNION CARBIDE was extended in connection with a Trial Settlement. This settlement offer will be finalized for payment after the submission and subsequent verification of qualifying documentation/information including, but not limited to, an executed settlement release and diagnosing medical document. Based upon information in our files (including, but not limited to, notes, attorney work product, documentation, computer data bases, and client statements), this settlement offer will be finalized for payment in connection with this Trial Settlement Agreement and all required documentation has been/will be forwarded to the defendant. The adequacy of the proposed gross settlement offers from defendants BABCOCK & WILCOX TRUST in the sum of \$2,265.33 and UNION CARBIDE in the sum of \$500.00, totaling a proposed gross sum of \$2,765.33, as well as attorneys' fees to WEITZ & LUXENBERG, P.C. in the amount of \$836.49 and return of disbursements incurred by WEITZ & LUXENBERG, P.C. in the amount of \$255.86 were approved by order of the Supreme Court, New York County dated

6/16/07, leaving proposed net settlement proceeds of \$1,672.98. It is respectfully requested that this Court

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determine the allocation and distribution of the proposed net settlement proceeds as set forth herein.

9. Expenses for hospital, medical or nursing services incurred prior to the decedent's death have been paid in full. Funeral expenses in the amount of \$2,460.00 were incurred with Letro-McIntosh-Spink Funeral Home, Inc., which have been paid by PAULINE A. GLENN, and reimbursement is waived. (Annexed hereto and made a part hereof is a photocopy of said paid bill.)

10. There are and were no other paid or unpaid claims against decedent or decedent's Estate, including public assistance, except: none.

11. Neither the decedent nor his spouse has received any Worker's Compensation benefits.

12. Petitioner requests that the entire proposed net settlement sum be allocated by this Court as follows: ninety percent (90%) of the proposed net settlement proceeds to the cause of action for conscious pain and suffering and ten percent (10%) of the proposed net settlement proceeds to the cause of action for wrongful death against the aforementioned defendants. The reasons for such proposed allocations are as follows: The decedent was first diagnosed as having asbestosis and pleural disease on or about November 20, 1999, and he died on February 7, 2006. He had a period of

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approximately 6 years and 3 months of conscious pain and suffering, whereas at the time of the decedent's death, because he was 79 years of age, he had a normal life expectancy. His spouse has been deprived of his tutelage, guidance and support by reason of his untimely death.

13. The total amount of the proposed net settlement proceeds allocated to the conscious pain and suffering claim equals \$1,505.68, which represents ninety percent (90%) of the proposed net settlement proceeds. These monies will be paid to PAULINE A. GLENN, as Administratrix, pursuant to EPTL Section 4-1.1, and will be distributed in accordance therewith.

TO: NAME OF THOSE ENTITLED TO SHARE IN CONSCIOUS PAIN AND SUFFERING PROCEEDS (90% of proposed net settlement proceeds)	AMOUNT
---	--------

To: PAULINE A. GLENN, as Administratrix with limitations, to be administered within the context of the full estate proceedings	\$1,505.68
---	------------

TOTAL:	\$1,505.68
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14. The total amount of the proposed net settlement allocated to the cause of action for wrongful death equals \$167.30, which represents ten percent (10%) of the proposed net settlement proceeds. The proposed distribution of the wrongful death proceeds to PAULINE A. GLENN, decedent's spouse, is based on EPTL Section 5-4.4.

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TO: NAME OF THOSE ENTITLED TO SHARE  
IN WRONGFUL DEATH PROCEEDS  
(10% of proposed net settlement proceeds)

AMOUNT

To: PAULINE A. GLENN, as and for her  
share as surviving spouse and beneficiary  
of said decedent, pursuant to Section 5-  
4.4 of the Estates, Powers and Trusts  
Law, equal to 100.0% of proposed net  
wrongful death proceeds

\$167.30

TOTAL: \$167.30

15. There are no outstanding hospital or medical bills. There has been no hospital notice lien filed under the Lien Law, Section 189.

16. Your petitioner has been informed by her attorneys that they have made a thorough investigation of this matter and have advised petitioner to accept the settlement herein.

17. The petitioner is aware that pursuant to an order of the Supreme Court, attorneys' fees in the sum of \$836.49 and disbursements in the sum of \$255.86 will be deducted from the proposed gross settlement of \$2,765.33, leaving proposed net proceeds of \$1,672.98.

18. Petitioner is further advised that upon the acceptance of said settlement, neither your deponent, the issue, nor any other surviving relatives can ever come back to this Court or to any other court to seek recovery of any other, further or additional monies of any type, nature or description as a result of the said occurrence as against the

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settling defendants listed herein.

19. There are no other assets in or other persons interested in this Estate; no unpaid liens outstanding which were paid by any agency, hospital, physician or undertaker; neither the decedent nor his distributees have ever been recipients of public assistance in any form, and there is no claim for public assistance; and your petitioner respectfully prays that this Court approve the application to collect the proposed settlement proceeds in this matter.

20. There are no claims from any governmental agency or department against the decedent or his Estate or distributees. No claims of any creditors have been filed against the Estate of the decedent, nor have any come to the attention of your petitioner. The records of this Court and other courts have been searched, and your deponent has no knowledge of the execution of any such Powers of Attorney or assignments filed or recorded.

21. Your petitioner is not connected in business or otherwise with the defendants or their representatives, and your petitioner did not accept this settlement or retain counsel to represent her in this matter at the insistence or request of the defendants or their representatives, and your petitioner is not employed by the defendants or their representatives.

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22. Petitioner waives commissions.

23. Attached herewith is an accounting of the proposed proceeds of the compromise.

WHEREFORE, petitioner prays that a decree be made authorizing PAULINE A. GLENN, as Administratrix of the Estate of CLAUDE F. GLENN, deceased,

1. To distribute and allocate the proposed net settlement proceeds of \$1,672.98, derived from the proposed gross settlement with defendants BABCOCK & WILCOX TRUST in the sum of \$2,265.33 and UNION CARBIDE in the sum of \$500.00; for a proposed gross settlement total of \$2,765.33, the adequacy of the proposed gross settlement offers from defendants BABCOCK & WILCOX TRUST in the sum of \$2,265.33 and UNION CARBIDE in the sum of \$500.00, totaling a proposed gross sum of \$2,765.33, as well as attorneys' fees to WEITZ & LUXENBERG, P.C. in the amount of \$836.49 and return of disbursements incurred by WEITZ & LUXENBERG, P.C. in the amount of \$255.86 having been approved by order of the Supreme Court, New York County, dated 6/16/08, leaving proposed net settlement proceeds of \$1,672.98, it being respectfully requested that this Court determine the allocation and distribution of the proposed net settlement proceeds as set forth herein;

2. To allocate ninety percent (90%) of the

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proposed net settlement proceeds to the cause of action for conscious pain and suffering and ten percent (10%) of the proposed net settlement proceeds to the cause of action for wrongful death against the aforementioned defendants;

3. (a) To allocate the proposed net sum of \$1,505.68, representing ninety percent (90%) of the proposed net settlement proceeds, to the conscious pain and suffering claim belonging to the decedent's Estate, to be distributed in accordance with EPTL Section 4-1.1:

TO:	NAME	AMOUNT
	To: PAULINE A. GLENN, as Administratrix with limitations, to be administered within the context of the full estate proceedings	\$1,505.68
	TOTAL:	\$1,505.68

(b) To allocate the proposed net sum of \$167.30, representing ten percent (10%) of the proposed net settlement proceeds, to the wrongful death of said decedent, to be distributed pursuant to EPTL Section 5-4.4 as follows:

TO:	NAME	AMOUNT
	To: PAULINE A. GLENN, as and for her share as surviving spouse and beneficiary of said decedent, pursuant to Section 5-4.4 of the Estates, Powers and Trusts Law, equal to 100.0% of proposed net wrongful death proceeds	\$167.30
	TOTAL:	\$167.30

4. To remove and/or modify the restrictions in the

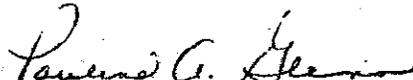
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Full Letters of Administration with Limitations issued to PAULINE A. GLENN, petitioner as such Administratrix, to the extent necessary to carry out the provisions of such decree;

5. To dispense with the filing of a bond;  
6. To discontinue this action against the defendants, BABCOCK & WILCOX TRUST and UNION CARBIDE, listed herein, and to continue against all other non-settling defendants; and

7. To judicially settle and allow petitioner's account with respect to the proposed total amount of \$2,765.33 and to grant such other and further relief as may be just and proper.

Dated: 7/7/08

  
PAULINE A. GLENN

Attorneys:

WEITZ & LUXENBERG, P.C.

By:   
KEITH M. O'CONNOR  
180 Maiden Lane, 17th Floor  
New York, NY 10038  
(212) 558-5687

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STATE OF *New York* ;  
COUNTY OF *Cattaraugus* ;<sup>ss:</sup>

I, the undersigned PAULINE A. GLENN, being duly sworn, say:

I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

*Pauline A. Glenn*  
\_\_\_\_\_  
PAULINE A. GLENN

Sworn to before me this  
7 day of *July*, 2008

*Robin K Bowser*  
\_\_\_\_\_  
NOTARY PUBLIC

ROBIN K. BOWSER  
NOTARY PUBLIC, STATE OF NEW YORK  
REG. NO. 4917576, CATTARAUGUS COUNTY NO. 4917576  
COMMISSION EXPIRES 1-19-2010

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&  
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NEW YORK, N.Y. 10038

File # 2006-32379/A

STATE OF NEW YORK  
SURROGATE'S COURT: COUNTY OF CATTARAUGUS

In the Matter of the Application of

PAULINE A. GLENN,

as Administratrix of the Estate of

CLAUDE F. GLENN, Deceased

For leave to allocate and distribute proposed net settlement proceeds derived from the causes of action arising out of the conscious pain and suffering and wrongful death of said decedent and to judicially settle her account relating to the proceeds thereof.

DEFINITION

SMITH & LINDENBERG, P.C.

Attorneys for PLAINTIFFS

100 Madison Lane  
New York, NY 10036  
212-512-1500

To  
Attorney(s) for

Service of a copy of this within  
is hereby certified.

Dated:

Attorney(s) for

From: Nora Whalen  
To: Christine Wrona  
Date: 7/21/2008 11:03 AM  
Subject: Re: Estate of Donald C Bliven and Claude F Glenn

Judge Cass will take them per previous email from Lydia Romer.

>>> Christine Wrona 7/16/2008 10:18 AM >>>  
Hello, Nora -

Two more proceedings have been filed with this court that need to be reassigned as both Judge Himelein and Nenno have recused themselves from these cases due to litigation that they are involved with. The firm handling the estate is Weitz & Luxenberg. No appearances will be required in either of these matters as all parties have consented to the relief sought so all that is necessary is for decrees to be signed.

Thank you, Chris

Christine M. Wrona, Chief Clerk  
Cattaraugus County Surrogate's Court  
(716) 938-2327  
cwrona@courts.state.ny.us

From: Larry Himelein  
To: [REDACTED]  
Date: 11/9/2007 4:22 PM  
Subject: Re: A MODEST PROPOSAL

Absolutely!! Both of us in Cattaraugus County have recused ourselves (I even got a case from the speaker's firm from which I could gleefully recuse myself). Why doesn't every judge in the state immediately recuse? Grow some stones people. It will always be the only weapon we have. Use it or lose it!

>>> [REDACTED] 11/9/2007 4:13 PM >>>  
Why not recuse ourselves since we are adversaries in litigation with them?

>>> [REDACTED] 11/9/2007 3:59 PM >>>  
Why not adjourn their matters without date in the interests of "judicial economy"? That should get their attention.

>>> [REDACTED] 11/9/2007 3:50 PM >>>

Several months back, as part of her 2007 State of the Judiciary speech, Chief Judge Kaye suggested that one way to address our goal realizing fair judicial compensation was to inquire of the Comptroller and Attorney General of New York what our rights and her powers were. (A review of the memorandum of law submitted in Maron v. Silver demonstrates that given the proclaimed emergency nature of judicial compensation, the Chief Judge, based on Court of Appeals precedent, has the inherent power to resolve this issue by directing the Comptroller to issue payment of the moneys adopted by the Legislature and approved by the Governor in the 2006-7 budget.) This course was taken in lieu of seeking to adjudicate the rights of the beleaguered judges of New York.

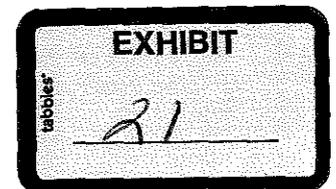
To date, no answer from either the Comptroller or the Attorney General has been forthcoming. Is anyone really surprised about that?

Now, the tables have turned. Governor Spitzer is moving to quash subpoenas served upon the Executive Branch by the State Senate Investigations Committee. The Legislature is suing to overturn the Governor's recently announced drivers license for illegal immigrants initiative. Both the Executive and Legislative Branches are turning to the Judicial Branch for relief. How ironic!

The truth is that they will receive far better treatment from us than we have from them.

I propose that the very same procedure adopted by the Chief Judge be employed by the Governor Spitzer, Senator Bruno and Speaker Silver. That is, have them submit their disputes to the Chief Judge or each other for an advisory opinion as to how to proceed on these issues rather than litigate them. After all, what is good for the goose...

I guess the Governor and Legislature understand that aggressive adjudication of their rights is important to their branches of government.



[REDACTED]

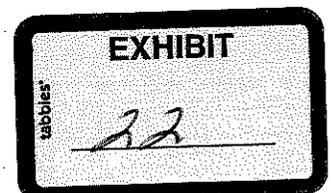
From: Larry Himelein  
To: [REDACTED]  
Date: 12/19/2007 3:23 PM  
Subject: Re: Judge recusal

Amen, Amen, Amen. But it will take EVERY judge in the state to do it and even better if the chief judge mandated it!! How can any self respecting judge even consider sitting on a case with a legislator in a firm? When Shelley's firm can't get a divorce heard or will probated or a trial date, see if that doesn't spur some action. And maybe some of his contributors could ask for their money back. Any judge not willing to recuse has no right to complain.

Larry Himelein

>>> [REDACTED] 12/19/2007 2:52 PM >>>

The rules governing judicial conduct require a judge to avoid the appearance of impropriety and to act, at all times, in a manner that promotes public confidence in the integrity and the impartiality of the judiciary. If that is the ethical rule, how then does any judge allow Sliver and his office to appear in their court? This is actual impropriety. One day we are begging him for a pay rise, the next day he is requesting a ruling on behalf of a private client - - could it appear that one may affect the other? There are no words that I can express by e-mail how unethical this situation is - - the only way to deal with the situation is to make it cost him to continue to be a lawyer legislator. It has costs us everyday to be a judge - we can't practice or have outside income. If he wants to continue in the state legislature and continue to link judges pay raises to irrelevant political issues-- it should cost him to do so, just as it cost us judges. What ethical responsibility does he have? He should not be allowed to practice before the courts of this state so long as this pay raise is held hostage for purely political reason. If we, judges, continue to allow this illegal, unethical and immoral stand off to continue, we have no one to blame but ourselves. He and the members of the assembly should be ashamed of themselves!!!!



From: Larry Himelein  
To: [REDACTED]  
CC:  
Date: 12/20/2007 2:39 PM  
Subject: Re: Recusal- It's All about Shelly

>>> [REDACTED] 12/20/2007 2:16 PM >>>

I would submit that recusal in those (Shelly) cases not only WOULD be the high road, but ethically the proper one. The conflict now seems obvious to me in the current matter.

As for cases involving Senators & firms, their legal opponents & parties could certainly feel that we might be inclined to favor the Senator/firm b/c of their passage FOR us— also an appearance of conflict, and hence I am still recusing on those. The appearance is still there (probably even more strongly than before, actually).

[REDACTED]

>>> Larry Himelein 12/20/07 1:55 PM >>>

Armen Jeff. The problem is that most of the NYC judges are too gutless to recuse themselves from that firm's cases. I agree with you 100% that recusal is the best weapon we have but it requires every judge in this state in order to be successful. I would hope that Judge Kaye would simply mandate it.

Larry Himelein

>>> [REDACTED] 12/20/2007 1:42 PM >>>  
Folks,

As people far more erudite than I have already stated, recusal is a personal matter.



From: Larry Himelein  
To: [REDACTED]  
CC: [REDACTED]  
Date: 12/20/2007 2:39 PM  
Subject: Re: Recusal- It's All about Shelly

According to the court website, the speaker's firm has pending cases in these counties:

Albany (24)  
Bronx (77)  
Clinton (1)  
Erie (5)  
Kings (180)  
Nassau (13)  
New York (2082)  
Oranges (1)  
Oswego (1)  
Rockland (1)  
Schenectady (1)  
St. Lawrence (23)  
Stauben (3)  
Suffolk (17)  
Ulster (1)  
Westchester (9)

How about everyone recuses by 5:00 today???

Larry Himelein

>>> Hon [REDACTED] 12/20/2007 2:16 PM >>>

I would submit that recusal in those (Shelly) cases not only WOULD be the high road, but ethically the proper one. The conflict now seems obvious to me in the current milieu.

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[REDACTED]

>>> Larry Himelein 12/20/07 1:55 PM >>>

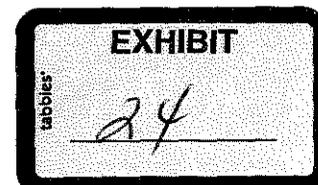
Amen Jeff. The problem is that most of the NYC judges are too gutless to recuse themselves from that firm's cases. I agree with you 100% that recusal is the best weapon we have but it requires every judge in the state in order to be successful. I would hope that Judge Kaye would simply mandate it.

Larry Himelein

>>> [REDACTED] 12/20/2007 1:42 PM >>>

Folks,

As people far more erudite than I have already stated, recusal is a personal matter.



**From:** Larry Himelein  
**To:** JUDGES2-ALL; OCA-Broadcast  
**Date:** 1/4/2008 11:31 AM  
**Subject:** Re: Salary Update

So is this just another wait for those ethical people in Albany to do the right thing? I'm sorry but I think we've done that enough. You keep thinking you are dealing with honorable or ethical people and nothing could be farther from the truth. The ONLY way anything will happen is if you exercise some leadership and commence a lawsuit and MANDATE that all judges in the state recuse themselves from any civil cases where a law firm has any connection to a legislator or any member of a legislator's family. If you don't mandate it, the wimp judges in the city won't recuse. I have asked the leaders of the judicial associations to raise this issue with you. If you're not willing to do so, we simply wait and gather whatever crumbs the legislature throws our way.

Larry Himelein

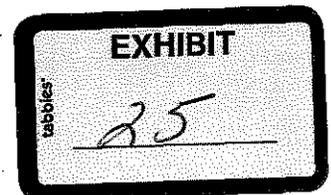
>>> Hon. Judith S. Kaye and Hon. Ann Pfau  
(OCA-Broadcast) 1/4/2008 9:59 AM >>>

We began the New Year by submitting to the Legislature a slightly modified version of the judicial salary bill that the Senate passed in December. We submitted the modification in order to make two important changes in the Senate bill.

The first is to ensure continued salary parity between Federal District Court Judges and State Supreme Court Justices. Effective January 1, 2008, Federal Judges received a cost of living adjustment, increasing the \$165,200 salary of a Federal District Court Judge by approximately 2.5% (although the exact dollar amount is not yet determined). Under our bill, the increased Federal District Court Judge's salary would be included as the new, higher, salary of a State Supreme Court Justice as of January 1, 2008.

The second change would advance to January 1, 2009 (from April 1, 2009) the date of the initial salary adjustment under the proposed bipartisan quadrennial commission. We want to be sure that the adjustment can include any additional raises that Federal Judges may receive this year.

In all other respects, the bill is the same as that passed by the Senate. Most importantly, we want to keep the focus and momentum on judicial salaries as the legislative session begins.



From: Larry Himelein  
To: [REDACTED]  
Date: 4/1/2008 11:20 AM  
Subject: Re: LAST CALL - Judge Kaye's Press Conference

No No No it should NOT be personal. It should be mandated in all cases. If its personal, its useless.

Larry Himelein

>>> [REDACTED] 4/1/2008 11:17 AM >>>

I agree fully. The key is the city of NY. When Weitz and Luxemburg can no longer find a judge in NYC because of Sheldon Silver's relationship to their firm maybe he will "understand" the problem. But it must be remembered recusal is personal.

>>> Larry Himelein 4/1/2008 11:04 AM >>>

The problem as it has always been is that not all judges will recuse. Our brethren in the city generally won't and certain judges will only recuse for one branch or the other based on some nonsensical political beliefs. I have written to Judge Kaye and asked her to mandate recusal when she files her lawsuit. That is the only way it will occur. We upstate judges can recuse all we want but it will take everyone to mean anything. I don't see how the judiciary can sue the state or the legislature and let firms with legislators in them appear in front of us; again, however, it will take every judge in the state to mean anything. Furthermore, it should be permanent.

Larry Himelein

>>> [REDACTED] 4/1/2008 10:57 AM >>>

Does anybody want the list?

>>> Larry Himelein 4/1/2008 10:30 AM >>>

Let me agree completely with Kevin on the issue of recusal. As long as the legislature controls our salaries, the conflict is obvious. Judges have to give up their practices; legislators should have to do the same.

Larry Himelein

>>> [REDACTED] 4/1/2008 10:27 AM >>>

Dear

The lawsuit must be commenced immediately, with 100% recusal on all litigation/proceedings involving state agencies, including the A.G.'s office and state legislator/law firms. The conflict is obvious.

Respectfully,

>>> [REDACTED] 4/1/2008 9:33 AM >>>

Dear Judges in New York: I would like to suggest that at 11 am this morning or tomorrow we WALK Out of Courtroom in recess for a 30 minute period and allow the public to understand what waiting means as there are those who have waited 10 years and have not received a raise. All 3000 +/- Judges must agree. In order for change to occur there must be a crisis. Whether it was ROSA on the bus, or RUBY going to school, or MLK at the white only lunch counter or my great grandmother going to jail for fighting for voting rights for women, the public must be made aware of our struggle and they need to feel our anger and our pain.

EXHIBIT

tabbles

26

From: Larry Himelein  
To: [REDACTED]  
Date: 4/3/2008 9:06 AM  
Subject: Re: How to Get Our Salary Adjustment

I could not agree more. However, we would need the chief judge to mandate recusal. If left to the individual judges, too many wouldn't do it. Some would recuse only for one house or the other and the lackies in the city would be afraid to offend the powers that be.

Larry Himelein

>>> [REDACTED] 4/2/2008 4:34 PM >>>

Everyone,

We are playing patty cake while they use sledgehammers. What does the lawsuit accomplish w/o MANDATORY recusal? Nothing. How could we enforce any potential judgment? We have to beat them using tactics they understand and "respect". Forget marches, speeches, walk outs, etc.

I suggest the following is the only way to accomplish our goals:

- File the lawsuit immediately after the budget is finalized,
- Alert the Gov, Silver and Bruno that the lawsuit will mean mandatory recusal, effective the day of the filing (which can't be cured by Silver leaving his firm). This recusal will extend to all state agencies, including the Attorney General's office, and
- Notify them that if the salary adjustment isn't passed within 30 days, J. Kaye will convene a mandatory judicial convention for every one of us. There would be coverage for Arraignments and OTSC actions ONLY. The convention will last until the bill is passed.

We judges crave control...but on this issue we have totally abdicated it. Let's take it back in a manner that they understand. Every delay in action gives them more power and control. Our leaders mean well and we all know that they want this done...but the means they've employed simply haven't worked. Let's stop being a pawn in this "game" and take decisive measures to accomplish our goal.

Respectfully submitted,

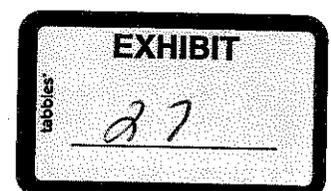
[REDACTED]

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>>> [REDACTED] 4/2/2008 3:15 PM >>>

A good point raised but to me this looks like a "lead, follow or get out of the way." situation.

Come senators, congressmen  
Please heed the call  
Don't stand in the doorway



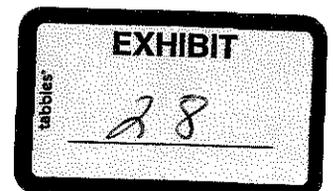
>>> Larry Himelein 4/23/2008 4:21 PM >>>

That's because most of the judges in the city are absolute wusses. I sent a check to support the litigation and I think that requires recusal and I have recused for nearly a year. Who was the guy who recently wrote that HE wouldn't recuse - sure, he's probably appointed and owes someone. I tried to file a complaint with the commission on judicial conduct against any judge who sat on a case involving a legislator because of the obvious conflict but they didn't have the stones for it either. I now know why so many upstaters would like NYC to become a separate state. The upstaters would get a raise and the ones in the city could stay being toadies for the politicians.

Larry Himelein

>>> [REDACTED] 4/23/2008 4:11 PM >>>

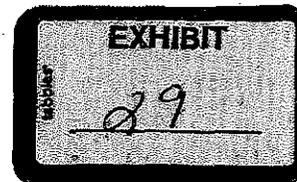
I've been called by a reporter about the Recusal situation. I don't know of any judges in NYC who are recusing themselves on legislator law firm cases (there can never be unanimity here, and one recusal makes no difference - case will just go to the next judge). Are any of you who are recusing yourselves available to speak to a reporter? If so, please stand up and be counted and let me know if you wish to hear from this reporter. [REDACTED]



# NEW YORK POST

## JUSTICE OF THE CEASE

By BRUCE GOLDING



April 27, 2008 —

**Information**  
Lialda is contraindicated in patients with hypersensitivity to celecoxib (including mesalamine) or to any of the components of Lialda.

**Reports of renal impairment, paresthesia, mesalamine-induced cardiac hypersensitivity reactions and acute intolerance syndrome have been reported with mesalamine. If acute intolerance syndrome is suspected, prompt withdrawal is required. Caution should be used in patients with renal impairment, pyloric stenosis, or those allergic to sulfasalazine. In clinical trials, the most common treatment-related adverse events were headache and fatigue.**

**As with other mesalamine-containing products, serious adverse events may occur with Lialda. Before**

New York's judges are waging war on Sheldon Silver and the state Legislature.

Judges across the state are engaged in a "rule-book slowdown" and refusing to hear cases involving firms that employ members of the Assembly and Senate, The Post has learned.

The protest follows years of lobbying for a pay raise, which has gotten the state's 1,300 judges nothing but broken promises and a wage that, when adjusted for cost of living, ranks 49th in the nation.

And the angriest jurists are trying to expand the effort by recruiting recalcitrant colleagues in closed-door meetings and e-mails sent across the state.

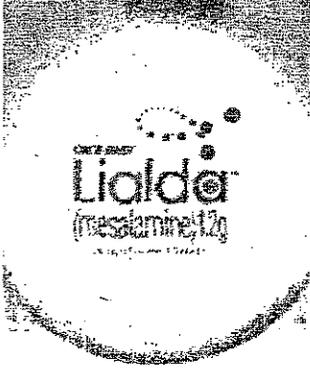
With titles like "How to Get Our Salary Adjustment," the e-mails have included a "blacklist" - obtained by The Post - naming 50 state legislators who are registered as attorneys and the firms where they are employed.

Banding together to tie up cases from lawmakers' firms was also discussed at an April 8 meeting of New York City judges at Erzo's Restaurant in The Bronx, one judge told The Post. There was no resolution on the plan that day, the source said.

One longtime court insider described the situation as a "rule-book slowdown" against the lawmakers and said the judges were playing "hardball" to try to force their first pay raise since 1999.

"It's reminding the firms that [the judges] have the power," the source said.

A prime target is Assembly Speaker Silver, blamed by many judges for refusing to raise their annual income from \$136,700. That rate dates to 1999, when it went up from \$113,000.



Click here to see Full Prescribing Information

The Manhattan Democrat works for the high-profile firm Weitz & Luxenberg, which specializes in asbestos and personal-injury lawsuits. The firm has about 2,200 cases pending across the state - 77 percent of which have lingered in

the system longer than the court system's 30-month timetable for disposing of cases, according to the Office of Court Administrations Web site.

Two upstate judges told The Post that they recently recused themselves from cases involving Silver's firm because of their anger over the stalled pay raises.

"I think the speaker is a slug," said Cattaraugus County Judge Larry Himelein, a Democrat who said he

couldn't be fair to Silver's firm: "The whole New York state political process is a joke."

Cattaraugus County Judge Michael Nenno, who last year joined three other judges in suing the state for a pay raise, also said he felt "some degree of animosity" toward Silver.

"You're in for a penny, you're in for a pound, so if I wouldn't let the speaker appear before me, I wouldn't let anybody from his firm appear before me," Nenno said.

Silver's spokesman declined to comment.

Under court rules, judges do not have to offer an explanation when they recuse themselves from cases.

But Justice Arthur Schack of Brooklyn Supreme Court - who was part of another pay-raise suit against the state last year - last month issued a lengthy opinion explaining why he had refused to consider a real-estate lawsuit involving a firm that employs state Sen. Craig Johnson (D-Nassau County) and Assemblyman Marc Alessi (D-Suffolk County).

"Thanks to our legislators, like Senator Johnson and Assemblyman Alessi, it appears that our judges are the Rodney Dangerfields of government," he wrote.

The e-mail "blacklist" began circulating in late 2006 and has been expanded and updated since then, several recipients told The Post.

It was sent out again earlier this month.

Oneida County Judge Michael Dwyer and Onondaga County Court Judge Joseph Fahey were instrumental in compiling the list, sources said.

Neither returned a call for comment.

Then-Nassau County Supreme Court Justice Joseph DeMaro - a co-plaintiff with Schack - sent out his own e-mail, according to one report, saying, "Re-check the obituary - you died in the last few days" if you are not angry enough to get off cases where legislators' law firms appear.

Sources said that the recusal effort is much stronger upstate but that its effectiveness was limited because the large number of judges in New York City means cases here can be easily reassigned.

As a result, upstate judges have lashed out at their city colleagues as "wusses," one judge said.

Officially, judges say the recusals are about avoiding any conflict of interest because of the ongoing pay dispute.

But the state Advisory Committee on Judicial Ethics has repeatedly tossed out that rationale.

In opinions submitted last February and in September, the committee said the pay dispute alone, as well as lawsuits by individual judges, were not reason enough for recusal.

A third opinion in December maintained that judges should only recuse themselves if they "genuinely" believe they can't be fair because of the controversy.

But the issue has amped up since April 10, when Chief Justice Judith Kaye sued Silver, Senate Majority Leader Joseph Bruno, Gov. Paterson and the entire Assembly and Senate on behalf of all state judges. Her suit demands a raise to \$169,300, the current salary of federal judges.

The state's administrative judges appealed to the advisory committee after an April 15 meeting at the state Judicial Institute in White Plains seeking a positive ruling on the conflict of interest issue.

Among the other judges who have refused to hear cases involving lawmakers' firms are Rockland County Supreme Court Justice Margaret Garvey, Erie County Supreme Court Justice James Dillon, Erie County Supreme Court Justice Patrick Nemoyer and Erie County Family Court Judge David Brockway. They didn't return calls for comment.

State Sen. John DeFrancisco (R-Syracuse), a lawyer and chairman of the Senate Judiciary Committee, called the e-mail campaign "very troubling" and said the judges' rationale for recusing themselves "doesn't ring true."

"Once they have the raises, does that mean there's no conflict anymore?" he said. "If you only have a conflict when a pay raise is pending, it doesn't make any sense."

One Assembly member who works as a lawyer called the judges who have recused themselves "completely and utterly irresponsible."

"If any legislator tried to use their position or mention their position in a courtroom, they'd be disbarred, and I don't think a judge should be held to any different standard - and maybe should be held to a higher standard," the lawmaker said.

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Some New York judges are flexing their muscle against Assembly Speaker Sheldon Silver and the state government over a pay-raise dispute by:

- Refusing to hear cases brought by law firms where legislators are employed.
- Conducting what one court insider called a "rule book slowdown"
- Distributing an e-mail "blacklist" of legislators names
- Meeting to discuss banding together over the issue



**I think the speaker is a slug.**

— Cattaraugus County Judge Larry Himelstein, one of the judges who has recused himself from a case brought by Silver's law firm, Weitz & Luxenberg.

**Panel stats**

State judges' pay-raise  
battle by the numbers:

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**1,300**

judges in New York state

---

**21%**

pay raise in 1999

---

**\$136,700**

in annual salary

---

**\$169,300**

pay rate demanded in a  
new lawsuit

---

**2,200**

active cases from Sheldon  
Silver's firm on  
the docket

---

**77%**

of them have been  
pending longer than  
court's max time frame

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**22%**

of all other cases pending  
are past court time frame

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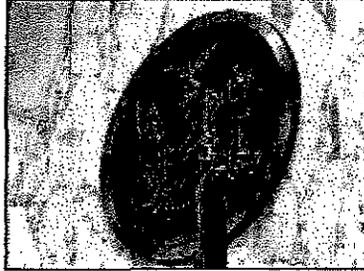
[www.capitalnews9.com](http://www.capitalnews9.com)

### Judges still upset about pay

Updated: 04/29/2008 05:20 AM

By: Erin Billups

**NEW YORK STATE** — Several state judges have banded together to recuse themselves from cases being handled by the law firms of state legislators, saying their anger over the lack of judicial pay raises leaves them unable to judge fairly, potentially stalling thousands of pending court cases.



The governor said in a press conference Monday he understands their frustration.

"It's clear that the judges are very upset, I totally understand how they feel. I think the judges deserve a raise. We won't be able to compete for that kind of talent the way we could if we can't pay them commensurate," said Paterson.

Paterson says he doesn't know if the alleged "slow-down" is a fact, but if it is, it's not the way to handle things.

"A lot of people use the court system for redress, they deserve a professional response and I don't think that it's always the right time to take out your personal anxiety at not getting a pay raise you deserve on your neighbors," Paterson said.

Cattaraugus County Judge Larry Himelein, has already recused himself from four to six cases. He says there are a number of judges, especially upstate, who will continue to recuse themselves until they get a pay raise.

"I think it's unfair, I think it's a conflict of interest. I think it's always been a conflict of interest and the legislature has no one but themselves to blame for having it brought up now," Himelein said.

Himelein criticized Chief Judge Judith Kaye, saying she should have required all state judges to recuse themselves from cases being handled by state lawmakers when she filed a lawsuit against all three branches of state government for its failure to raise judges pay. He says at this point, their protest will not have the so called "slowdown" effect many anticipate on the state's judicial process.

"The judges in NYC, who by in large are appointed by the politicians don't have the guts to do it, and that's where most of the lawyer legislature is from," Himelein said. "What we're saying is you'll have to get a different lawyer. That doesn't do anything to the merits of the person's case."



Judge Himelein says he and several other place the blame largely on the Assembly Democrats from New York City and Speaker Silver, saying it's them who are tying Judges pay raises to legislative pay raises. A spokesperson for Silver declined comment.

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