

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5393

Andrew W. Chandler, Esquire, as
Special Admin. of the Estate of Plaintiff,
Doris Diana Colucci vs.
Dvo Francesco Colucci, et. al.
Defendant.)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Elizabeth Palmer</u> , Bar No. <u>63480</u> Address: <u>Charleston</u> <u>151 Meeting St., Ste. 400, SC 29401</u> Phone: <u>843 577 6726</u> Fax: _____ E-mail: <u>epalmer@rosenhog.com</u> Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>§</u>	
Estimated Time Needed: _____	Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>[Signature]</u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	<u>July 2</u> , 20 <u>17</u> Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____, 20____
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case#: 2017-CP-10-5393

ANDREW W. CHANDLER, ESQUIRE,)
as Special Administrator of the Estate of)
DORIS DUANE COLUCCI, ALSO)
KNOWN AS DORIS D. COLUCCI,)

Plaintiff,)

vs.)

IVO FRANCESCO COLUCCI a/k/a)
IVO F. COLUCCI a/k/a IVO COLUCCI,)
CHRISTA M. YANTIS, as Conservator)
for IVO FRANCESCO COLUCCI, ALICE)
M. NORTON, as Guardian for IVO)
FRANCESCO COLUCCI, COLUCCI'S)
JEWELRY FACTORY, INC., and)
TERRIVO ENTERPRISES, LLC,)

Defendants.)

FILED
2019 JUL -2 PM 10:12
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER APPROVING WRONGFUL DEATH SETTLEMENT

This matter was noticed before me for a hearing on Michael Fox's Motion to Be Substituted As Counsel and the attached verified Petition of Andrew W. Chandler, Esquire, as Special Administrator of the Estate of Doris Duane Colucci, seeking approval of a settlement of the claims of the statutory beneficiaries for the wrongful death of the Decedent under the South Carolina Wrongful Death Statute, S.C. Code Ann. §§ 15-51-10, *et seq.*, against Defendants Ivo Francesco Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, Colucci's Jewelry Factory, Inc., and Terrivo Enterprises, LLC, which arise or might arise from the Decedent's death. The Decedent's

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statutory beneficiaries, pursuant to S.C. Code Ann. § 15-51-20, are her two sons, Michael F. Colucci and John M. Antonio.

Prior to the hearing, Mr. Fox withdrew his motion to be substituted as plaintiff and did not appear at the hearing, either personally or through counsel. Mr. Fox, through his counsel, was given notice of the date and time of this hearing on the Petition for Approval of the Settlement, which, if granted, will end the litigation with prejudice. This Court finds that Mr. Fox's withdrawal of his Motion to be Substituted as Plaintiff is a waiver of any rights he may have had to contest the settlement and that he acquiesces and consents to the terms and conditions of the same.

The Plaintiff/Petitioner was duly sworn and testified before me. From the testimony taken and from the information furnished to the Court by counsel, it appears that the Decedent was shot in the head at close range by her husband, Defendant Ivo Colucci, and instantly killed. The shooting occurred on April 14, 2017, at the business premises of Defendant Colucci's Jewelry Factory, Inc., which premises was owned by Defendant Terrivo Enterprises, LLC, at that time and leased to Defendant Colucci's Jewelry Factory, Inc. Following the shooting, the Dorchester County Probate Court found Ivo Colucci to be an incapacitated adult and appointed Defendant Christa M. Yantis as his Conservator and Defendant Alice M. Norton as his Guardian. They have asserted that Mr. Colucci suffered from dementia and was unable to understand moral or legal right from wrong or otherwise legally incapable of committing a tortious or intentional act.

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It further appears that Plaintiff/Petitioner is the duly appointed Special Administrator of the Estate, being appointed as such by the Dorchester County Probate Court. As such, Plaintiff/Petitioner is authorized to settle this matter pursuant to S.C. Code Ann. § 15-51-42(A), which provides that "[o]nly a duly qualified personal representative, as defined in Section 62-1-

201(30), shall have the authority to settle wrongful death or survival actions.” Pursuant to S.C. Code Ann. § 62-1-201(33)¹, “personal representative” is defined to include a special administrator.

Plaintiff/Petitioner contends that Defendant Ivo Colucci intentionally and/or negligently caused the death of the Decedent and that Defendants Colucci’s Jewelry Factory, Inc., and Terrivo Enterprises, LLC, are jointly liable on negligent supervision and/or premise liability theories; however, there is question as to the liability of Defendants for said incident, the Decedent’s subsequent death, and liability for the aforesaid claims.

The amount of available insurance coverage is as follows:

Terrivo Enterprises, LLC:

Carrier: Allstate Insurance Company
Policy No.: 648626093
Limits: \$1,000,000.00 per occurrence

The Plaintiff/Petitioner informed the Court that the Defendants Ivo Francesco Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, and Colucci’s Jewelry Factory, Inc., or someone on their behalf, without admitting liability, offered to the Plaintiff/Petitioner the total sum of Six-Hundred Fifty Thousand 00/100 Dollars (\$650,000.00). Additionally, Allstate Insurance Company, who provided Defendant Terrivo Enterprises, LLC insurance policy number 648626093 for five policy periods from April 8, 2013 to April 8, 2018, without admitting liability of Terrivo Enterprises, LLC, Ivo Francesco Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, or Alice M. Norton, as Guardian for Ivo Francesco Colucci, offered to the Plaintiff/Petitioner the total sum of Fifty Thousand 00/100 Dollars (\$50,000.00) in complete and final settlement and satisfaction of all claims of the statutory beneficiaries of Doris Duane

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¹ Various revisions to S.C. Code Ann. § 62-1-201 have been made, altering the sequence and numbers of the subsections, resulting in the definition of “personal representative” being moved from § 62-1-201(30) to (33).

Colucci under the South Carolina Wrongful Death Statutes. This settlement does not contemplate the settlement of any matter between Plaintiff/Petitioner and Defendants outside the instant wrongful death action.

In addition to the releases described above, the following will occur upon approval of this settlement:

a. Andrew W. Chandler, Esquire, as Special Administrator of the Estate of Doris Duane Colucci, also known as Doris D. Colucci, will release all of the Defendants in this lawsuit fully and finally for any matters alleged, or which could have been alleged, in the Lawsuit, and dismiss this action with prejudice

b. Terrivo Enterprises, LLC, Ivo Francesco Colucci, Alice M. Norton as Guardian for Ivo Francesco Colucci, and Christa M. Yantis as Conservator for Ivo Francesco Colucci will release Allstate for any claims under the policy related to this action and/or claim, whether sounding in contract or tort;

c. Andrew W. Chandler, Esquire, as Special Administrator of the Estate of Doris Duane Colucci, also known as Doris D. Colucci, will release Allstate for any claims related to this lawsuit and/or claim; and

d. S.C. Code Ann. §15-1-42(E) provides: "Once a settlement agreement has been approved by an appropriate court, the person paying the settlement proceeds and all those on whose behalf the payment is made and any other persons who could be responsible because of the actions on whose behalf the settlement proceeds are being paid, are relieved and discharged from further liability and shall have no obligation or legal duty to see to the appropriate or proper distribution of the settlement proceeds among either the wrongful-death beneficiaries or those entitled to the proceeds of the settlement of the survival action. Once payment has been made to

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the personal representative, the obligations of the person making the payment and those on whose behalf the payment is being made, and all those who could be responsible for the actions of these persons, are fully and completely released and finally and forever discharged from any further responsibility in connection with the action or actions.” Accordingly, upon payment of the funds to Mr. Chandler in accordance with this order, all of the Defendants, any officer, agent, current or former employee, or insurer of each Defendant, any business entity owned, controlled, or operated by each Defendant, all affiliates, subsidiaries, direct and indirect parent entities, franchisees, franchisors, successors, predecessors, assigns, agents, independent contractors, attorneys, officers, directors, shareholders, owners, employers, members, managers, partners, insurers, and employees of any Defendant shall be fully and completely released and finally and forever discharged from any further responsibility in connection with the action or the facts giving rise to the same.

Plaintiff/Petitioner has advised the court that, based on the information available and considering the extent and nature of the Decedent’s injuries, it is reasonably believed that the Decedent died instantly and did not experience any conscious pain or suffering. As such, Plaintiff/Petitioner did not bring an action pursuant to the Survival Statute, S.C. Code Ann. § 15-5-90. Given the information before me, I find that Decedent died instantly and did not experience any conscious pain or suffering, and therefore Plaintiff/Petitioner cannot pursue an action pursuant to the Survival Statute, S.C. Code Ann. § 15-5-90.

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The Plaintiff/Petitioner has represented that there are no outstanding Medicare or Medicaid liens, private health insurer liens, other liens, subrogation claims, or any other creditors’ claims against this estate.

The Plaintiff/Petitioner has been represented by retained legal counsel in this matter and has agreed to pay such counsel a reasonable contingency fee of 40% on the gross recovery for services rendered in connection with this case plus litigation costs, expenses, and advances. Plaintiff/Petitioner is fully satisfied with the services of counsel in this matter.

The Plaintiff/Petitioner and his attorneys Andrew D. Gowdown, Esquire, Elizabeth J. Palmer, Esquire, and Lester S. Schwartz, Esquire, have fully investigated the matter and, after giving careful consideration to all aspects of the situation, have concluded that the settlement offers by Defendants as described above are fair and advantageous from the standpoint of the Estate and the statutory beneficiaries and have asked this Court to approve the same.

It is further clearly understood and agreed by the parties that the Plaintiff/Petitioner shall be solely responsible for and shall satisfy any subrogation interest asserted now or in the future by any and all persons, firms or corporations who provided medical and/or health care benefits to the Decedent. The Plaintiff/Petitioner further agrees to indemnify and forever hold harmless the Defendants and their attorneys against any claims, actions or judgments, and any costs and attorney's fees incurred in defending such claims and/or actions asserted or obtained by such medical and/or health care provider or subrogor.

The Plaintiff/Petitioner expressly represents that he has been represented by counsel, has been fully advised of all facets of this lawsuit, and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this instrument will fully and forever prevent and bar the collection of any additional payments, of any kind, nature or description against the Defendants arising out of the within wrongful death action.

The statutory beneficiaries, Michael Colucci and John Antonio, and their lawyer, Angus Lawton, Esq., were present at the hearing on this petition to approve settlement. They informed

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the court that they were in agreement that the settlement was fair, just, and in their best interests and asked the court to approve the same.

I have given careful consideration to the matter and have concluded that the aforementioned settlement, under all of the circumstances, is fair and just and should be approved.

IT IS, THEREFORE, ORDERED that Mr. Fox's withdrawal of his Motion to Substitute Plaintiff with notice of a hearing on this petition to approve a settlement of the case shall be deemed a waiver of his right to contest the settlement; and

IT IS, THEREFORE, ORDERED that Plaintiff/Petitioner is the duly appointed Special Administrator of the Estate with the authority settle this matter pursuant to S.C. Code Ann. § 15-51-42(A), to release the Defendants and Allstate, and to dismiss this action with prejudice. No other person is so authorized and, should another Estate representative be appointed hereafter, such appointment shall not affect the validity and finality of this settlement; and

IT IS FURTHER ORDERED that upon the payment of Six Hundred Fifty Thousand and 00/100 (\$650,000.00) Dollars by or on behalf of Defendants Ivo Francesco Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, and Colucci's Jewelry Factory, Inc., and the payment of Fifty Thousand and 00/100 (\$50,000.00) Dollars by Allstate Insurance Company to the Plaintiff/Petitioner Andrew W. Chandler, Esquire, as Special Administrator of the Estate of Doris Duane Colucci, the Plaintiff/Petitioner is hereby empowered to execute full and complete releases of all claims of the statutory beneficiaries of the Estate of Doris Duane Colucci under the South Carolina Wrongful Death Act against aforesaid Defendants and Allstate, to dismiss this action with prejudice, and to

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execute all such other documents as are necessary to effectuate a complete settlement of this matter.

IT IS FURTHER ORDERED that, in accordance with the schedule provided to the Court during the hearing, the law firm of Rosen Hagood, LLC, is also hereby authorized to receive and escrow the gross settlement funds; to disburse and pay the attorney's fees and costs, which the Court finds to be reasonable, from the escrowed funds, including repayment of the litigation advances; and to pay over the remaining net proceeds to the statutory beneficiaries of the Estate. The law firm of Rosen Hagood, LLC, is hereby authorized and directed to take any other reasonable and necessary steps to consummate this settlement.

IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 15-51-42(E), once payment has been made to Plaintiff/Petitioner as Special Administrator of the Estate of Doris Duane Colucci, by the Defendants and Allstate, the obligations of the persons making the payment and those on whose behalf the payment is being made, and all those who could be responsible for the actions of these persons, are fully and completely released and finally and forever discharged from any further responsibility in connection with this action and have no further liability to the statutory beneficiaries for the alleged wrongful death of the decedent.

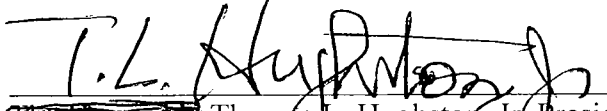
IT IS FURTHER ORDERED that Allstate will disburse its portion of these settlement funds ten (10) days after a final adjudication, including the final adjudication of any related appeals, of the issue of which individual is the proper and appropriate special administrator and/or personal representative of the Estate of Doris Colucci.

IT IS FURTHER ORDERED that the Clerk of Court shall not enter this as a money judgment.

AND IT IS SO ORDERED.

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Charleston, South Carolina
July 2, 2019


~~Thomas L. Hughston, Jr.~~ Thomas L. Hughston, Jr. Presiding Judge
Ninth Judicial Circuit
PRESIDING

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SETTLEMENT STATEMENT

Chandler v. Colucci, et al.

Case#: 2017-CP-10-5393

SETTLEMENT AMOUNT:

Ivo Francesco Colucci	\$	650,000.00
Allstate Insurance Company	\$	50,000.00
<u>TOTAL SETTLEMENT AMOUNT</u>	\$	<u>700,000.00</u>

Ivo Francesco Colucci Settlement Disbursement

Settlement Amount:	\$	650,000.00
Less Attorneys' Fees (40%) ¹ :	\$	260,000.00
<u>Less Costs to Rosen Hagood, LLC:</u>	\$	<u>28,221.12</u>

Due to Statutory Beneficiaries from Ivo Colucci Settlement: \$ 361,778.88

Allstate Insurance Company Settlement Disbursement

Settlement Amount:	\$	50,000.00
<u>Less Attorneys' Fees (40%)²:</u>	\$	<u>20,000.00</u>

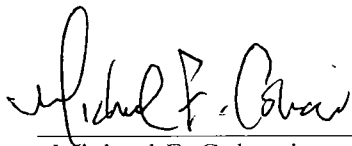
Due to Statutory Beneficiaries from Allstate Settlement: \$ 30,000.00

We authorize the above settlement and fully understand that, upon receipt of these settlement proceeds, our claim against **Defendants** will end and that we can never pursue this claim again against these entities.

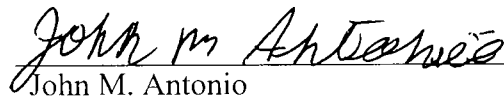
WE UNDERSTAND THAT WE WILL BE RESPONSIBLE FOR THE PAYMENT OF ANY AND ALL BILLS, EXPENSES, AND/OR LIENS NOT DEDUCTED ABOVE.

We have not retained either Rosen Hagood, LLC or Lester S. Schwartz, Esquire, to provide us with advice regarding potential tax implications relating to our recovery in this matter.

The undersigned agree to and acknowledge receipt of a copy of this settlement statement on this the 24~~th~~ day of July, 2019.



Michael F. Colucci



John M. Antonio

¹ To be split equally between Rosen Hagood, LLC, and Lester S. Schwartz, Esquire.

² To be split equally between Rosen Hagood, LLC, and Lester S. Schwartz, Esquire.