

**Janet H. Bate, as Personal Representative
of the Estate of Michael Andrew Robertson Bate
v. James Michael Shortt
Civil Action No: 3:06-647-MJP**

The following documents are being filed for settlement of the above-captioned action:

1. Petition for Approval of Settlement;
2. Verification of Petitioner; and
3. Itemization of Costs.

GERGEL, NICKLES & SOLOMON, P.A.

BY: s/Richard Mark Gergel
Richard Mark Gergel
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ATTORNEYS FOR PLAINTIFF

July 14, 2006

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Janet H. Bate, as Personal Representative)
of the Estate of Michael Andrew)
Robertson Bate,)

Plaintiff,)

v.)

James Michael Shortt,)

Defendant.)
_____)

Civil Action No: 3:06-647-MJP

PETITION FOR APPROVAL
OF SETTLEMENT

The Plaintiff, Janet H. Bate, as Personal Representative of the Estate of Michael Andrew Robertson Bate (hereafter “Mr. Bate”), hereby petitions this Court, pursuant to South Carolina Code §§ 15-51-41 and 15-51-42, for approval of a settlement involving wrongful death and survival claims against Defendant James Michael Shortt.

1. Plaintiff, Janet H. Bate, is the duly appointed Personal Representative of the Estate of Michael Andrew Robertson Bate, pursuant to an Order of the Richland County Probate Court.

2. Plaintiff has asserted herein wrongful death and survival claims. Pursuant to the wrongful death statute, fifty percent (50%) of the recovery is allocated to Mr. Bate’s spouse, Ms. Janet Bate, and fifty percent (50%) is allocated to his natural children, who are Sylvia Bate, Rebecca Bate Tataryn, Risa Bate Caughlin, and Shawn Michael Bate. The proceeds of any settlement of the survival claim are paid to Mr. Bate’s estate.

3. This matter arises out of the medical treatment rendered to Mr. Michael Andrew Robertson Bate by Defendant James Michael Shortt, previously a licensed physician in South Carolina. Plaintiff asserts that Defendant Shortt engaged in the dangerous, unconventional, and contraindicated medical care in the treatment of her husband, including the provision of testosterone to her husband despite the fact that he had been diagnosed with Stage IV prostate cancer and was under the treatment of an oncologist that included hormone therapy to eliminate testosterone in his system. Plaintiff asserts as the direct and proximate result of Defendant Shortt's treatment, her husband rapidly deteriorated and died on July 21, 2004. By way of answer, Defendant denied liability. Defendant Shortt's treatment of Mr. Bate has been the subject of disciplinary actions by the South Carolina Board of Medical Examiners, which explicitly referred to treatment rendered to Mr. Bate in Defendant Shortt's license suspension of April 13, 2005. Defendant Shortt's medical license was subsequently revoked by the South Carolina Board of Medical Examiners.

4. Plaintiff has been advised that Defendant Shortt carried only \$200,000.00 in primary liability coverage with the South Carolina Joint Underwriters Association. Plaintiff is further informed that there is no other coverage available and that Defendant Shortt has no financial resources to satisfy any verdict above the insurance coverage.

5. Defendant, through his carrier, South Carolina Joint Underwriters Association, has offered the full policy limits of \$200,000.00. The Plaintiff has carefully considered this offer and believes, under the circumstances, it is in the best interests of the heirs at law and the statutory beneficiaries to accept the offer. Therefore, the Plaintiff respectfully requests the Court approve the settlement as set forth above.

6. Plaintiff has also reached a settlement of her personal claims against Defendant Shortt, presently pending in the action titled Janet H. Bate v. James Michael Shortt (Civil Action No. 3:06-648-MJP). Since Ms. Bate's action involves her personal claims, court approval is not required pursuant to South Carolina Code §§ 15-51-41 and 15-51-42.

7. Plaintiff seeks approval of attorney's fees in this matter. Plaintiff retained as counsel Richard Mark Gergel of Gergel, Nickles & Solomon, P.A., of Columbia, South Carolina. Pursuant to the fee agreement, Plaintiff agreed to an attorney's fee of forty percent (40%) of the gross settlement amount. Thus, Plaintiff seeks court approval for attorneys fees of \$80,000.00.


8. The fee agreement between Plaintiff and counsel further provides that counsel be reimbursed for all expenses reasonably incurred in the course of the representation. The total documented expenses incurred jointly in this matter and in the related action of Janet H. Bate v. James Michael Shortt is \$4,271.86, as set forth in the attached statement. These costs have been allocated proportionately between the two actions, with \$2,278.61 allocated to this action and \$1,993.25 allocated to the personal action of Janet H. Bate. Thus, Plaintiff seeks approval of \$2,278.61 in costs.

9. Plaintiff seeks the Court's approval of an allocation between the wrongful death and survival action. Plaintiff proposes that fifty percent (50%) of the settlement be allocated to the wrongful death claim and fifty percent (50%) to the survival claim.

WHEREFORE, Plaintiff prays unto the Court for the following relief:

- A. Approval of the settlement as set forth in this Petition;
- B. Approval of attorney's fees as set forth in this Petition;
- C. Approval of the allocation as set forth in this Petition; and

D. Authorization for Plaintiff to execute an appropriate release in favor of the Defendant and the dismissal of this action with prejudice.


Janet H. Bate, Personal Representative
of the Estate of Michael Andrew
Robertson Bate

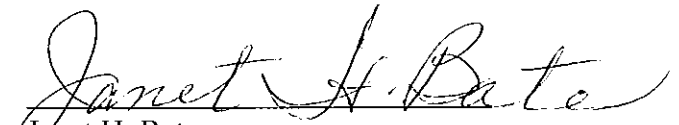
July 17, 2006

STATE OF SOUTH CAROLINA)
) VERIFICATION
 COUNTY OF RICHLAND)

Janet H. Bate, being duly sworn, deposes and states as follows:

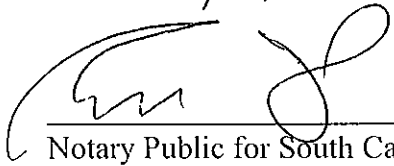
1. I am the duly appointed Personal Representative of the Estate of Michael Andrew Robertson Bate.

2. I have read the foregoing Petition and, to my personal knowledge, it is truthful and accurate.


 Janet H. Bate
 Personal Representative of the Estate
 Michael Andrew Robertson Bate

SWORN TO BEFORE ME THIS

14 day of July, 2006

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 12/14/10

06/28/2006 RMG

GERGEL, NICKLES & SOLOMON, P.A.
P. O. BOX 1866
COLUMBIA, SC 29202-1866

JANET HALLEY BATE
EST. OF MICHAEL ANDREW ROBERTSON BA
211 FOUNDERS RIDGE ROAD
COLUMBIA SC 29229-7632

Client #:
File #: 04-557
As of Date: 06/28/2006

RICHARD M. GERGEL

RE: MED MAL

For Services Rendered From 03/08/2006 Through 06/28/2006

COSTS ADVANCED		DESCRIPTION	AMOUNT
DATE			
			70.00
03/08/2006		ROBERT C. RAY	1,050.00
04/21/2006		DR. MARC ALLEN EISENBAUM	164.50
06/28/2006		COURT REPORTER FEE	1,106.53
06/28/2006		KANE COPIES	755.10
06/28/2006		MEDICAL REPORTS	58.88
06/28/2006		MILEAGE	244.00
06/28/2006		COPIES	50.58
06/28/2006		UPS	64.90
06/28/2006		POSTAGE	500.00
06/28/2006		FILING FEE	14.78
06/28/2006		LONG DISTANCE CALL(S)	192.59
06/28/2006		WESTLAW SEARCH	
TOTAL COSTS ADVANCED:			\$4,271.86
PREVIOUS BALANCE:			0.00
CURRENT CHARGES:			4,271.86
LESS PAYMENTS:			0.00
TOTAL AMOUNT DUE:			\$4,271.86

PLEASE MAKE CHECK OUT TO GERGEL, NICKLES & SOLOMON, P.A.
PLEASE INCLUDE YOUR FILE NUMBER ON YOU CHECK
YOUR PROMPT PAYMENT WILL BE APPRECIATED
ALL TIME IS CALCULATED IN INCREMENTS OF 1/10 OF AN HOUR.