Minor Compromises

A State by State Summary

Edited by:

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INTRODUCTION

The Commercial Transportation Litigation Committee of the Tort Trial & Insurance Practice Section of the American Bar Association is pleased to provide you with this summary of the laws on minor compromises for all states and the District of Columbia. The purpose of the summary is to provide an easy reference for industry members, insurance representatives, adjusters, and attorneys, of the general requirements to settle a minor's claim.

Each article will provide you with a summary of the requirements for each state. At times, where relevant and space limitations allowed, the authors also addressed other issues pertinent to this topic. The summaries are just that, summaries only, and they are not intended to provide an exhaustive analysis of the issue.

The authors are attorneys who practice in the respective jurisdictions. Each author is designated at the bottom of each summary and you are encouraged to contact the author directly for additional information. We hope this summary is helpful to you in your work or practice. As always, for specific legal advice on a specific matter, please contact your attorney. No effort is made hereto to provide such advice.

For further information about the Commercial Transportation Litigation Committee, visit our website at www.abanet.org/tips/commerical/home.

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ALABAMA

By Jeremy Taylor

Settlements with minors in Alabama are governed by the Alabama Uniform Transfers to Minors Act, Alabama Code §35-5A-1 et. seq. (1986). Under the Act, settlements with minors may be made in the amount of $10,000.00 or less by payment of monies to a "custodian" for the holding, management, and distribution of such monies by the custodian for the "health, welfare, and benefit" of the minor. The custodian is said to have a fiduciary duty for purposes of managing the funds, and the custodian is also subject to a request for accounting as well as maintaining the custodial property separate and apart from other monies.

Settlements in excess of $10,000.00 require the establishment of a conservatorship through the probate courts of the State of Alabama, which requires a much more formal procedure. Rather, settlement monies of $10,000.00, or less, paid to the custodian are typically paid to the minor's custodial parent or guardian, meaning that the monies are easily and readily obtained as necessary for the health, welfare, and benefit of the minor.

Procedurally, a settlement with a minor must be court approved. Any settlement, be it pre-litigation or litigation, will require a "pro ami settlement" procedure. In the event litigation has not been brought on behalf of the minor Plaintiff, a Complaint is filed, and an Answer is filed on behalf of a Defendant. Once a Judge is assigned, the parties can then contact the Court to request appointment of a guardian ad litem. The guardian ad litem will serve as the attorney for the minor child, separate and apart from the Plaintiff's attorney. Once the appointment of a guardian is established, all medical records or otherwise are then provided to the guardian ad litem for review, and a hearing is scheduled with the Court, Plaintiff's counsel, guardian ad litem, and defense counsel.

At that time, the parties, on the record, conduct a "walk-through" settlement. The minor as well as the minor's parent (conservator) are questioned with regard to the nature and extent of injuries as well as course of treatment and the Plaintiff's current conditions. The terms of the settlement are then discussed. If the guardian ad litem recommends the settlement and the Court determines the settlement to be fair and reasonable and in the best interests of the minor child, the Court will then sign the Order, which mirrors the petition, both of which are filed at the time of the hearing. Thereafter, the funds are tendered to Plaintiff's counsel, who then executes an Acknowledgment of Satisfaction of the Judgment. The Plaintiff's attorney then either distributes the funds to the parent (conservator) for the health, welfare, and benefit of the minor child or, alternatively, the Plaintiff's attorney proceeds to probate court for establishment of a conservatorship.

The process is generally quite simple and is based upon forms. Settlements can typically be handled over the course of approximately two (2) weeks as long as settlement checks are issued timely. The Defendant typically pays the expense of the guardian ad litem, which generally ranges anywhere from $750.00 to $1,500.00, depending upon the nature and extent of the settlement and injuries. While it is a simple process and is typically

based upon form-work, it is unfortunately necessary that a judgment be entered against a Defendant.

It should be noted that the sum total of $10,000.00 is allowed to be paid to the minor Plaintiff's custodian. The total settlement may actually be much more, but if the parties are able to show that funds are being paid, for example, to reimburse a parent for medical expenses, to pay a hospital lien, or to satisfy attorney's fees and expenses, the settlement can be reduced accordingly. If the minor Plaintiff, however, is receiving more than $10,000.00, a conservatorship will be necessary for amounts exceeding $10,000.00.

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ALASKA

By Richard A. Helm

Settlement of any claim by a minor in Alaska is governed by Civil Rule 90.2. This rule provides that a parent or guardian has the power to execute a full release, but court approval is required before the release is effective. This procedure should be followed whether or not suit has been filed. It may be initiated by a motion or petition.

The petition or motion must give details regarding the date of birth of the minor, the relationship of the moving party to the minor, the circumstances giving rise to the claim, the amount of any insurance and the basis for determining that the settlement is fair and reasonable. It must also describe the extent of the injuries, medical treatment provided and probable future course of treatment. There are different requirements if the injury is death.

The court must also approve the attorneys' fees and costs, and will direct the payment of those fees and costs.

A hearing is required if the settlement exceeds $25,000.

The court will order the disposition of the balance of the settlement after payment of costs and fees. It may order that the settlement be held by a parent or guardian, if the settlement does not exceed $10,000. Otherwise it will order the creation of a formal trust, the appointment of a conservator to hold the proceeds, order the proceeds to be deposited in a federally insured financial institution which will not permit withdrawal without authority of the court, or that the proceeds be transferred to a custodian for the benefit of the minor under the Alaska Uniform Transfers to Minors Act.

The proceeds may be disbursed for the support and education of the minor if the proceeds are the result of the death of another, for medical bills or special education or other costs related to injuries to the minor, or for any payment in the best interests of the minor.

If the funds are the result of a judgment, the funds are to be distributed as provided in this rule.

The rule does not state what happens to the settlement proceeds when the minor reaches the age of majority, which is 18 in Alaska.

Local Rule 68.3 of the Federal District Court for the District of Alaska governs minor settlements of claims filed in the Federal Court. It requires approval of the settlement in the Superior Court for the state of Alaska, pursuant to Civil Rule 90.2, outlined above.

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ARIZONA

By Tamara N. Cook

In Arizona, most civil claims settled with a minor for personal injury or wrongful death require special consideration. Specifically, the Arizona Rules of Probate Procedure require that, "[A]ny settlement of a civil claim brought on behalf of or against a minor for personal injury or wrongful death shall be submitted for review and approval by a judicial officer assigned to hear matters arising under A.R.S. Title 14 [probate]" 17B A.R.S. Rules Probate Proc., Rule 37. The rationale behind this requirement is that, due to the incapacity of the minor, a court should carefully review the terms of the proposed settlement to ensure that it is reasonable and in the minor's best interests**.**

The lone exception to the mandatory judicial review imposed by Rule 37 is A.R.S. § 14-5103 which states that, "Any person under a duty to pay or deliver money or personal property to a minor, including monies related to the settlement of a civil claim, may perform this duty, in amounts not exceeding ten thousand dollars per annum." Therefore, civil claims settled with a minor which are $10,000 or less, may be paid without obtaining prior judicial review of the settlement. Assuming a conservator has not already been (or is in the process of being) appointed, the money can only be paid directly to (1) the minor if they are married**,** (2) any person having care and custody of the minor and with whom the minor resides, (3) the minor's guardian, or (4) a federally insured financial institution which will then deposit the minor's money in a savings account in the minor's name. A.R.S. § 14-5103. Once the minor reaches the age of majority, any balance remaining and any property received will then be returned to the minor.

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ARKANSAS

By Christy Comstock

It has long been the law in Arkansas that the interest of a minor child cannot be compromised without approval by the Court. *Rankin v. Schofield*, 70 Ark. 83, 66 S.W. 197 (1902); *see* Ark. Code Ann. §28-65-302(a)(1)(G). It is not sufficient that the Court is aware of the compromise which has been reached and that the guardian approves the compromise; it is mandatory that the Court make a judicial act of investigation into the merits of the compromise and its benefits to the minor child. *Kuykendall v. Zachary,* 179 Ark. 478, 16 S.W.2d 1929).

Arkansas Code Annotated §28-65-201 (Repl. 2004 and Supp. 2007) authorizes the Court's appointment of guardians; importantly, while qualified and suitable parents are the preferred guardians of minor children, parents are not automatically guardians of their minor children simply through parentage. *Hicks v. Bates,* 104 Ark. App. 348, 292 S.Wd.3d 850 (2009); *Walker v. Stephens,* 3 Ark. App. 205, 626 S.W.2d 200 (1981). In addition to parents and pursuant to Ark. Code Ann. §28-65-203, banks with trust authority are routinely appointed to serve as guardian of the estates of minor children. *Martin v. Decker,* 96 Ark. App. 45, 237 S.W.3d 502 (2006). Once appointed, a minor's guardian must file with the Probate or Circuit Court a petition for approval of any compromise settlement tentatively reached on behalf of the minor, establishing the terms of the settlement and demonstrating that the settlement is fair and in the best interest of the minor child. It is the duty of the Court to examine the merits of the case, *Muncrief v. Green,* 251 Ark. 580, 473 S.W.2d 907 (1971), and the record must establish that judicial inquiry was undertaken to independently evaluate the compromise and its benefits to the minor, and must reflect that the inquiry led to a judicial determination that the compromise was, in fact, in the minor's best interest. *Mainerich v. Wilson,* 2010 WL 1486922 (April 2010). Any minor compromise lacking Court approval as being in the best interest of the minor child is void on its face. *See Rankin v. Schofield, supra*.

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CALIFORNIA

By Virginia L. Price

In California, all persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. Civil Code § 1556. A minor is an individual who is under 18 years of age. The period of minority is calculated from the first minute of the day on which the individual is born to the same minute of the corresponding day completing the period of minority. Family Code 6500.

When contracting with a minor to settle the minor's claims, court approval is therefore required. The procedure for obtaining court approval is as follows:

- File *A Petition to Approve Compromise of Disputed Claim or Pending Action of Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350) verified by the Petitioner, who must be the guardian ad litem. This petition must contain a full disclosure of all information with any bearing on the reasonableness of the compromise. The Petition may be filed in the pending action. If there is no pending action, the Petition is filed independently as an Unlimited Civil Petition.

- The "all information" requirement can be satisfied by filing the *Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor of Person With a Disability* (form MC-350EX) provided that:

    - Petitioner is represented by an attorney authorized to practice in the courts of this state;
    - Claim is not for damages for the wrongful death of a person;
    - No portion of the net proceeds of the compromise, settlement, or judgment in favor of the minor or disabled claimant is to be placed in a trust;
    - There are no unresolved disputes concerning liens to be satisfied from the proceeds of the compromise, settlement, or judgment;
    - The petitioner's attorney did not become involved in the matter at the direct or indirect request of a person against whom the claim is asserted or an insurance carrier for that person;
    - The petitioner's attorney is neither employed by nor associated with a defendant or insurance carrier in connection with the petition;
    - If an action has been filed on the claim:

        - All defendants that have appeared in the action are participating in the compromise; or
        - The court has finally determined that the settling parties entered into the settlement in good faith;

- The judgment for the minor or disabled claimant (exclusive of interest and costs) or the total amount payable to the minor or disabled claimant and all other parties under the proposed compromise or settlement is $50,000 or less or, if greater:

  - The total amount payable to the minor or disabled claimant represents payment of the individual-person policy limits of all liability insurance policies covering all proposed contributing parties; and
  - All proposed contributing parties would be substantially unable to discharge an adverse judgment of the minor's or disabled person's claim from assets other than the proceeds of their liability insurance policies; and

- The court does not otherwise order.

- Expedited Petitions can be granted without a hearing absent objection or court decision to set a hearing.

- If a suit is pending, attach a copy of the Complaint, Amended Complaint, Cross-Complaint and any Dismissals, and a copy of the entire Order Appointing Guardian *Ad Litem* and any awards of arbitrator with no trial de novo having been requested.

- If a hearing is set, the person compromising the claim on behalf of the minor and the minor must attend the hearing unless the court rules otherwise for good cause. The court may also require the presence and testimony of witnesses including the examining physician although the physician's report is typically sufficient.

- The court may order that funds be deposited on the minor's behalf and not disbursed without order of the court. Any such order must include a provision that a certified or filed endorsed copy of the order must be delivered to a manager at the financial institution where the funds are to be deposited, and that a receipt from the financial institution must be promptly filed with the court, acknowledging receipt of both the funds deposited and the order for deposit of funds. The order may require that the depository permit the withdrawal of funds by a minor that has obtained majority after the date of majority, without further order of the court.

- A "reasonable fee standard" will be used by the court when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. A petition requesting court approval of an attorney's fee must include a declaration from the attorney seeking a fee.

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COLORADO

By Paul E. Collins

Rule 16 of the Colorado Rules of Probate Procedure establishes the requirements for obtaining court approval of the settlement of personal injury claims of minors. The purpose of obtaining such approval is twofold. First, the court's approval will ensure that the settlement is in the best interests of the minor. Second, such actions benefit the payor as well by providing final court approval of the terms and amount of payment as well as a binding order on the fiduciary to provide a receipt for payment and execute a release. C. Jean Stewart, *Court Approval of the Settlement of Claims of Persons Under Disability,* 35 Colo. Law. 97 (Aug. 2006). Rule 16 petitions are governed also by the Colorado Uniform Guardianship and Protective Proceedings Act ("UGPPA"), set forth at C.R.S. §§ 15-14-101 *et seq.*

Typically, the minor's guardian, conservator or next friend (or the attorney thereof) files the petition and Rule 16 appears to be written based upon that presumption. C.R.P.P. 16(a). Venue is proper in the county in which the minor resides. C.R.S. § 15-14-108. Pursuant to Rule 16(b), the petition must request the approval of the proposed settlement as being in the minor's best interests and must address a number of areas of inquiry broken down into the following categories: (1) facts; (2) liability; (3) damages; (4) medical status; (5) status of claims; and (6) proposed settlement and proposed disposition of settlement proceeds. C.R.P.P. 16(b)(1)-(7). Finally, any attachments to the petition must be listed and a copy of the proposed settlement agreement and proposed release must be attached to the petition. C.R.P.P. 16(b)(7). If the petitioner believes a certain piece of information is inapplicable that section must be not be left blank; rather, an explanation as to why must be included in the petition. A complete list of the requirements is set forth in Rule 16(b) (1)-(7). The Denver Probate Court's website (www.denverprobatecourt.org) also provides a detailed packet of instructions for attorneys as well as sample forms.

Attention must also be paid to the notice procedures governing the petition process. Under the UGPPA, notice to the respondent must generally be by personal service. C.R.S. § 15-14-404. Notice to others is also required, including the tortfeasor, the insurance company, any party having a subrogation right, any governmental agency paying or planning to pay benefits to the minor, parents, other related parties such as conservators, and any other person ordered by the court. C.R.S. § 15-14-404; C. Jean Stewart, *Court Approval of the Settlement of Claims of Persons Under Disability,* 35 Colo. Law. 97 (Aug. 2006).

According to the Denver Probate Court's "Personal Injury Settlement Packet for Lawyers," the court will consider the following factors in making its determination whether to approve the settlement:

(1) Whether the requirements of Rule 16 have been met;
(2) The nature of the injury;

(3) The appropriateness of the settlement, including whether the settlement is in the best interests of the minor, whether the parties understand the finality of the settlement, whether the proceeds of the settlement will afford the minor the opportunity to obtain future medical treatment, whether the attorney fees are reasonable, and whether an appropriate use and management of the proceeds has been proposed by the petitioner;

(4) Whether the minor would benefit from the appointment of a *guardian ad litem* or conservator; and

(5) Evidence that all liens and claims that could be asserted against the proceeds have been discharged.

It is imperative that any petition filed to obtain court approval of the settlement of a minor's personal injury claim track the very specific requirements of C.R.P.P. 16 and the UGPPA.

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CONNECTICUT

By Pauline C. Will

Personal injury actions involving minors often have overlapping proceedings in the Superior and Probate Courts. The action is brought in Superior Court on behalf of the minor, defined as a person under the age of 18, by an adult. A parent or other interested person can bring the action on behalf of the minor as "next friend", but when it comes to settlement or receiving proceeds of a judgment, a guardian of the estate is required unless the amount in question is less than $10,000. Conn. Gen. Stat. §§ 45a-629, 631; *Saccente v. LaFlamme*, 2003 WL 21716586 (Conn.Super.) at *5. It is the Probate Court that has the authority to appoint the guardian of the estate.

Once the guardian of the estate is appointed, that individual has the full legal authority to attempt to negotiate a settlement on behalf of the minor. If a settlement can be reached without a suit being brought, the Superior Court may not be involved at all. If a suit has been brought and a settlement is reached, the action is withdrawn from Superior Court. If the matter goes to trial and a judgment is rendered by Superior Court, Probate Court approval is unnecessary.

While the Superior Court's involvement is over once a settlement is reached or a judgment is rendered, the Probate Court continues to have oversight of the guardian. The guardian oversees the funds the minor received by way of settlement or judgment until that minor reaches the age of majority.

Probate Court's approval of minor settlements is not mandatory, but guardians often seek approval for their own protection and parties often condition settlement upon Probate Court approval. Conn. Gen. Stat. § 45a-151(a). Prior to authorizing a settlement, Probate Court will evaluate the proposed settlement to determine if it is in "the best interest" of the minor.

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DELAWARE

By Delia A. Clark

In Delaware, an action on behalf of a minor child must be brought by a guardian appointed by the Court. Generally, a parent initiates the lawsuit on behalf of the child and files a petition with the Court to be approved as the Guardian or "Next Friend." Only one parent requests the appointment and consent of the other parent must accompany the petition.

Any settlement reached while the child is under age must be approved by the Court. This requirement is applicable even for matters in which no lawsuit was filed. The petition filed requests the 1) Court to appointment a Guardian of the Property; 2) authority to settle; and 3) authority to deposit the settlement proceeds in a restricted account. The petition must outline the injury, treatment received and any medical expenses incurred and it must attach an expert's report or medical records describing the injury. If the minor is older than fourteen (14) years-old, the petition must contain an affidavit of the minor consenting to the settlement. Likewise, the non-guardian parent must consent by affidavit.

The Superior Court will hold a hearing to approve the settlement. The guardian will testify. If the child is at least fourteen (14) years-old his or her testimony concerning the injury, damages and consent is required.

After the Court grants the petition, the proceeds are deposited with a federally insured institution and the institution must provide proof of deposit. This proof must be filed with the Court of Chancery within thirty (30) days of the Order Approving Settlement. The settlement proceeds can not be used by the minor before the age of majority unless permitted by an order of the Court. Finally, guardianship is transferred to the Court of Chancery.

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DISTRICT OF COLUMBIA

By Wes P. Henderson

The age of majority in the District of Columbia is eighteen (18) years of age. D.C. Code §46-101. In the District of Columbia, the settlement of a claim involving a minor is controlled by D.C. Code §21-120(a) and (b). In relevant parts, they state:

> [a] person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle an action so brought and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but such a settlement is not valid unless approved by a judge of the court in which the action is pending.

D.C. Code §21-120(a).

> [a] person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor or in satisfaction of a judgment in the action, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds $3,000, before he is appointed by a court of competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such.

D.C. Code §21-120(b).

Therefore, in any case where the net value of the money and property due to the minor exceeds $3,000.00, a guardian must be appointed by a court of competent jurisdiction for the estate of the minor to receive the money and/or property on behalf of the minor. It is important to note that the rule applies irrespective of "whether the matter is pending litigation or settlement is made prior to filing suit." *See* The District of Columbia Practice Manual, Volume 2, p. 25-23 (18th Ed. 2009). As a practical matter, it is generally advisable to seek court approval of any settlement involving a minor.

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FLORIDA

By Eugene G. Beckham

Pursuant to Fla. Stats. § 26.012 and 768.25, the Circuit Court has exclusive original jurisdiction to approve all settlements in which a minor has a claim, or when a minor will be affected by the apportionment of a settlement. The mother and father of a minor (whether natural or adoptive) are considered the natural guardians of their own children. The death of one parent vests the survivor as the sole natural guardian. A surviving parent remains sole natural guardian even if remarried. In the event of divorce, the parent having sole custody of the child is considered the guardian, but if parental responsibility is shared both parents remain natural guardians. The mother of a child born out of wedlock is the child's sole natural guardian unless a Court of competent jurisdiction orders otherwise. Fla. Stat. § 744.301. In the absence of a natural guardian, a guardianship must be established to confer rights on a guardian to settle a minor's claim. Fla. R. Civ. P. Rule 1.210(b) provides that the Court may appoint a guardian *ad litem* to protect the interests of a minor who is not otherwise properly represented in an action.

The standard used by Courts to determine whether a minor's settlement should be approved is "whether it is in the best interest of the minor." *See Wilson v. Griffiths*, 811 So. 2d 709, 712 (Fla. 5th DCA, 2002). When the net proceeds to a minor do not exceed $15,000.00 natural guardians may agree to settle claims, subject to court approval, without "appointment, authority or bond" and are authorized to execute the documents needed to reach a settlement, and collect, receive and manage the proceeds. Fla. Stat. § 744.301(2)(a), (b) and (e). The appointed guardian of a minor may similarly tentatively settle a claim, execute documents and receive proceeds "without bond" when the ward will be receiving $15,000.00 or less. Fla. Stat. § 744.387(2). If a minor's net settlement proceeds will exceed $15,000.00, Fla. Stat. § 744.387(2) requires a "legal guardianship" to be established. The required Court approval absolves the guardian of any further responsibility in connection with the settlement. Fla. Stat. § 744.387(1).

To obtain the required approval of a pre-suit settlement, the guardian may file a petition in the Circuit Court complying with Fla. Stat. § 744.387(1). Once an action has been filed on behalf of a minor, a valid settlement cannot be reached without approval of the presiding Circuit Court Judge and the participation of a guardian. Fla. Stat. § 744.387(3)(a) and (b). Because only Florida's Circuit Court has jurisdiction, if a minor's claim is pending in the County Court (which has a jurisdictional amount of less than $15,000.00) or the U.S. District Court, the presiding judge may not approve the settlement and a petition for approval must be filed in the Circuit Court.

Florida probate rules provide the procedure to be followed to settle a minor's claim and dictate the content of the petition seeking approval. Fla. Prob. R. 5.636(d) requires the court to appoint, without bond, a guardian *ad litem* for a minor in connection with any proposed settlement exceeding $50,000.00 if there is no Court-appointed guardian; or, if the court-appointed guardian may have an interest adverse to the minor; or, if the Court otherwise feels that the minor's interests are inadequately represented. The $50,000.00

figure is based upon the gross amount payable, before reductions for fees, costs or to present value.

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GEORGIA

By Matt Stone & Josh Portnoy

The requirements for a final and binding settlement of a minor's claim in Georgia depend, primarily, on the settlement amount and the total value of the minor's personal property. Those requirements, which appear in O.C.G.A. §§ 29-3-1, *et seq*., are summarized below.

To begin, it is important to understand a few key terms used in the statutory scheme. The term "natural guardian" refers to a custodial parent. O.C.G.A. § 29-2-3. The term "conservator" refers to a person appointed by the probate court to act regarding the minor's property; a natural guardian may serve as conservator. O.C.G.A. §§ 29-3-7, 29-3-21, 29-3-22. The term "gross settlement" refers to "the present value of all amounts paid or to be paid in settlement of the claim, including cash, medical expenses, expenses of litigation, attorney's fees, and any amounts paid to purchase an annuity or other similar financial arrangement." O.C.G.A. § 29-3-3(a). Finally, although the term "net settlement" is not expressly defined, as used in the context of these statutes, and below, it refers to a gross settlement reduced by (1) attorney's fees, expenses of litigation, and medical expenses paid from the settlement proceeds and (2) the present value of amounts to be received by the minor after reaching the age of majority. *See* O.C.G.A. §§ 29-3-3(f), (g).

With those definitions in mind, the following rules apply to a compromise and settlement of a minor's claim:

- Where a conservator has been appointed, s/he is the only one who can compromise the minor's claim. O.C.G.A. § 29-3-3(b).

- Regardless of whether legal action has been initiated, if the gross settlement is $15,000 or less, the natural guardian may compromise a claim without becoming the conservator and without court approval. However, a conservator must be appointed if the total value of all personal property of the minor, including the net settlement proceeds, will exceed $15,000. O.C.G.A. §§ 29-3-1, 29-3-3(c).

- If no legal action has been initiated and the gross settlement is more than $15,000, it must be submitted to the probate court for approval. O.C.G.A. § 29-3-3(d)

- If legal action has been initiated and the gross settlement is more than $15,000, it must be submitted to the trial court for approval. The trial court, however, may allow the natural guardian or conservator to present the settlement to the probate court for approval. O.C.G.A. § 29-3-3(e).

- If the net settlement is $15,000 or less, the natural guardian may seek approval of the settlement from the probate court without becoming the conservator. However, a conservator must be appointed if the total value

of all personal property of the minor, including the net settlement proceeds, will exceed $15,000. O.C.G.A. §§ 29-3-1, 29-3-3(f).

- If the net settlement is more than $15,000, a conservator must be appointed. O.C.G.A. § 29-3-3(g).

When settling a claim with a natural guardian who has not been appointed as conservator, the settlement proceeds should not be paid until the natural guardian has executed and delivered an affidavit attesting that (1) the value of all the personal property of the minor, including the net settlement proceeds, will not exceed $15,000 in value; (2) no conservator has been appointed for the minor's estate; and (3) the affiant is the natural guardian of the minor. O.C.G.A. § 29-3-1.

A settlement that complies with all of the foregoing rules will be final and binding upon all parties, including the minor. O.C.G.A. § 29-3-3(i).

One final note: Counsel who handle approval by the probate court should use Georgia Probate Court Standard Form 19, "Petition to Compromise a Doubtful Claim of a Minor/Ward." GPCSF 19.

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HAWAII

By David M. Louie and Rhonda L. Ching

Under Rule 101 of the Hawaii Probate Rules, when a minor person receives a settlement or judgment from any claim or action, a conservatorship action must be initiated by the plaintiff's attorney and any settlement must be approved by the court insofar as it affects the protected person or respondent. The judge presiding in probate court shall appoint a conservator for the minor and determine whether the settlement is reasonable. For purposes of this summary, the terms "minor", "protected person" and "respondent" shall be utilized interchangeably.

When seeking the approval of a settlement on behalf of a protected person, a Petition for Appointment of Conservator and Authority to Compromise Claim with Exhibits needs to be filed along with an Order Setting Date, Time and Place of Hearing on Petition. In addition, an Acceptance of Appointment by the proposed conservator should also be filed. Essentially, the petition requests approval of the settlement and for authority to execute any settlement documents. The petition should also set forth the terms of the settlement in generalized terms in cases where the defendants desire to maintain confidentiality with regard to the settlement. In cases where confidentiality is not required, then such recovery can be outlined in the petition.[1]

The petition may be initiated by the person to be protected, an individual interested in the estate, affairs, or welfare of the person to be protected (including a parent, guardian or custodian), or a person who would be adversely affected by the lack of effective management of the property and business affairs of the person to be protected.[2] The petition should set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment. It should also contain among other things, a general statement of the respondent's property with an estimate of its value, the reason why a conservatorship is in the best interest of the respondent, and a proposed itemized budget of income and expenditures.[3]

Notice should also be served and proof of Service filed.[4] A copy of the petition and the notice of hearing should be served personally on the respondent if the respondent has attained fourteen years of age, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent shall be made by certified or registered mail or by publication. The notice shall contain a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an

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[1] *See* Hawaii Conservatorship and Guardianship Forms Manual (Hawaii State Bar Association, 2005) at 3-2 to 3-3.

[2] *See* Haw. Rev. Stat. Ann. § 560:5-403 (2008).

[3] *Id.*

[4] *See* Hawaii Conservatorship and Guardianship Forms Manual at 3-2.

appointment. Failure to serve the respondent with a notice will preclude the court from granting the petition. Notice shall also be given to the persons listed in the petition. In addition, an original and two copies of flag sheets in the form approved by the court, shall be presented to the clerk of the court for all hearings to appoint a conservator and to compromise a tort claim on behalf of a minor. Failure to present a required flag sheet in time shall cause the hearing

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IDAHO

By Raymond D. Powers

Idaho law requires court approval of the fairness and terms of any settlement involving a minor. Title 15, Chapter 5, Part 4 of the Idaho Code (Protection of Property of Persons Under Disability and Minors) addresses settlements and compromises involving minors. Specifically, Idaho Code § 15-5-409(a) outlines the procedure by which the compromise of a minor's disputed claim is effectuated. That statutory provision provides as follows:

> When a minor shall have a disputed claim for money against a third person, the father or mother or both with whom the minor resides and who has the care and custody of such minor shall have the right to compromise such claim, but before the compromise shall be valid or of any effect the same shall be approved by the court of the county where the minor resides upon a verified petition in writing, regularly filed with said court. If the court approves such compromise he may direct the money paid to the father or mother of said minor subject to the provisions of section 15-5-103, Idaho Code, or he, or any other court of competent jurisdiction, may direct the money be paid subject to the provisions of an appropriate protective order which he, or any other court of competent jurisdiction, may issue, or he may require that the money be paid to a conservator appointed pursuant to chapter 5, part 4, of this code; or he may approve the compromise under the provisions of chapter 14, title 68, Idaho Code. No filing fee shall be charged for the filing of any petition for leave to compromise as provided herein.

I.C. § 15-5-409(a).

Should the compromise involve a sum of $10,000.00 or less, the settlement proceeds may be delivered in accordance with the provisions of Idaho Code § 15-5-103, unless a conservator has been appointed. Should the sum at issue exceed $10,000.00, the minor's compromise process usually begins with the appointment of a conservator, normally the minor's parent, guardian or custodian, upon which the minor can rely to effectively manage his or her property. The conservator is appointed after the filing of an appropriate petition with the court, which meets the requirements outlined in Idaho Code § 15-5-404, as well as following a hearing before the court on said petition. Idaho Code § 15-5-410 outlines the priorities for those who may be appointed the minor's conservator.

Assuming the appointment is granted, the conservator is then required to file a verified petition for approval of compromise with the court, outlining the nature, terms and conditions of the compromise pursuant to Idaho Code § 15-5-409(a). Once the verified petition is filed, the court holds a hearing on said petition, whereby it either approves or rejects the settlement and compromise. Although not mandatory, it is usually recommended for the minor or minors affected by the compromise to be present at the

hearing along with the conservator or other interested person should the court have any questions or concerns over the verified petition or proposed settlement and compromise.

Idaho Code §§ 15-5-417, 418 and 419 describe the conservator's duties, specifically the accounting and reporting required to be made to the court regarding the status and inventory of the minor's property.

In sum, while Idaho Code § 15-5-409(a) is the primary statutory provision outlining the procedure by which the compromise of a minor's claim is handled, there are several other applicable statutory provisions contained within Title 15, Chapter 5 that must also be considered, particularly given the unique circumstances usually surrounding these type of compromises.

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ILLINOIS

By James A. Foster and Joseph A. Panatera

It is the public policy of Illinois that the rights of minors be guarded carefully. *Villalobos v. Cicero School District 99,* 362 Ill.App.3d 704, 712, 841 N.E.2d 87 (1st Dist. 2005). This policy is reflected in the statutory requirement that the court approve or reject any settlement agreement proposed on behalf of a minor. *Id. citing* 755 ILCS 5/19-8 (West 2004). Illinois Courts have held that neither a next friend nor a court-appointed guardian can approve a settlement of a minor's claim without court approval. *Id.*

The first step in having the settlement of a minor's claim approved is to open a probate action and to have a guardian appointed. A person is qualified to act as guardian if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the minor and the proposed guardian: has attained the age of 18 years, is a resident of the United States, is of sound mind, is not disabled as defined in the Probate Act, and has not been convicted of a felony. *See* 755 ILCS 5/11-3 (West 2009). Generally, the guardian of a minor's estate is one or both of the parents of the minor. The parents will file a Petition for Appointment of Guardian of a Minor. Both parents must be notified of the appointment of the guardian. If only one parent is appointed guardian, the parties should obtain a written notarized consent of the appointment from the non-appointed parent and an agreement to waive notice from the non-appointed parent. If the minor is over 14 years of age, the minor must consent in writing of the appointment of the guardian or be given written notice of the hearing on the Petition. Once the guardian is appointed, the guardian must file a bond signed by two sureties or by a corporate surety guaranteeing the bond. The surety bond may be excused if the money in the minor's estate is deposited in a trust or in a government insured account. The local rules of the judicial circuit where the settlement is to be approved must be consulted to determine if any other requirements must be met.

After a guardian is appointed the guardian must obtain approval of the Court to settle the personal injury claim of the minor by filing a Petition For Leave To Settle The Cause Of Action For A Minor Plaintiff. The petition must be accompanied by a report from the attending physician stating the nature and extent of the injury. In addition, the minor must appear in court on the hearing date. After a review of the facts of the matter, the Court may appoint an independent attorney to investigate the settlement or enter an order approving the settlement on behalf of the minor. Again, the local rules of the judicial circuit where the settlement is to be approved must be consulted. When the minor turns 18 years of age the guardianship ends.

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INDIANA

By Robert B. Thornburg

In Indiana, a minor is an individual who is less than eighteen (18) years of age and who is not emancipated. Ind. Code Ann. §29-3-1-10. Anyone desiring to settle a claim with a minor must file a petition requesting the court's approval. Ind. Code Ann. §29-3-9-7(b). If a guardian has been appointed for the minor or the minor's property or the amount of the compromise exceeds $10,000, a guardian for the minor must compromise the claim. *Id.* Otherwise, the parents of the minor may compromise the claim. *Id.* A court may enter an order authorizing the compromise of a minor's claim if the court is satisfied that the compromise will be in the best interest of the minor. Ind. Code Ann. § 29-3-9-7(a).

Regardless of the amount, the court must approve the compromise before the compromise is valid. Ind. Code Ann. § 29-3-9-7(b). If the court approves the compromise, it may direct that the settlement funds be paid in accordance with Ind. Code Ann. § 29-3-3-1, governing the payment of debts owed to minors. *Id.*

Pursuant to Ind. Code Ann. § 29-3-3-1, any person who is indebted to a minor or who has possession of a minor's property in an amount less than $10,000 may pay the debt or deliver the property without a court order or the appointment of a guardian or guardian *ad litem*. Such payment or delivery may be made to any person having care and custody of the minor with whom the minor resides. Ind. Code Ann. § 29-3-3-1(a). Hence, settlements for less than $10,000 are typically paid directly to the minor's custodial parent(s) for the benefit of the minor child. However, a person may not pay the debt or deliver the property if the person is aware that a guardian has been appointed for the minor or that guardianship proceedings are pending. Ind. Code Ann. §29-3-3-1(c).

The person to whom property is delivered is required to apply the property for the use, benefit and support of the minor. Ind. Code Ann. § 29-3-3-1(b). Fortunately, however, the person who in good faith delivers the property or pays the debt is not responsible for its proper application. Ind. Code Ann. § 29-3-3-1(d).

If the amount of the compromise is more than $10,000, or a guardian has already been appointed, or proceedings for appointment of a guardian are pending, the court will require that a guardian be appointed, if one has not already been, and that the settlement be delivered to the guardian upon the term that the court directs. Ind. Code Ann. §29-3-9-7(b). The court may direct that the settlement be placed in a trust. If instead the settlement is distributed to the guardian, the funds become assets of guardianship and ordinarily must comply with the bond requirements of Ind. Code Ann. §§ 29-3-7-1 *et seq*.

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IOWA

By Jennifer L. Smith

A minor child is legally incompetent to sue or be sued in Iowa. A claim for an injury to a child must either be made by the child following its eighteenth birthday, or must be brought by the parent, guardian or a court appointed conservator on behalf of the child. The statute of limitations for an injury to a child is tolled until one year after attainment of majority. Iowa Code § 614.8(2) (2009).

An action by a minor shall be brought by the child's conservator, the guardian, or a "next friend." Iowa R. Civ. P. 1.210 (2010). If it is in the minor's best interest, the court may dismiss the action or substitute a new conservator, guardian, or next friend. *Id.* A parent or guardian may so maintain their own claim while acting in the capacity of a "next friend" for their child.

Iowa also has a Transfer to Minors chapter governing the issue. Under this chapter, Iowa Code 565B, the age of majority is twenty-one. A conservator ensures that the child's best interest is taken into consideration during the litigation process. After a conservatorship is created, the court must approve all settlements and disbursements from the conservatorship over $10,000. Iowa Code § 565B.6.

A party that owes a debt to a minor without a conservator may instead make an irrevocable transfer to a custodian for benefit of the minor. Iowa Code §565B.7(1). A custodian may receive property for the minor and shall hold, manage, invest, and reinvest the custodial property. If there is no custodian nominated and the debt paid to the minor is under $25,000, the money may be paid directly to an adult member of the minor's family. Iowa Code § 565B.7.

A minor may be bound by another person with identical interests to the extent that their interests are adequately represented. Iowa Code § 633A.6304. Thus, a person with identical interests to a minor may be able to bind the minor in a settlement agreement if the person was in the lawsuit on behalf of the minor or as guardian or conservator. *Id.* However, if the Court at any time during the judicial proceeding determines that the representation of the minor's interest is not adequate, the Court may appoint a guardian *ad litem* to represent and approve a settlement on behalf of the interest of a minor. Iowa Code S633A.6306. The "general family benefit" may be considered by the guardian *ad litem* in approving a judicially supervised settlement. *Id.*

Some courts also have local rules on the topic. The Fifth Judicial District of Iowa states that "[i]n personal injury actions where a conservatorship is opened for approval of a settlement agreement and there is a claim on behalf of a minor and parent(s) of said minor, said settlement agreement shall not be approved without a disclosure of the amount reserved by the parent(s)."

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KANSAS

By Brian C. Wright

Court approval of tort settlements with minors should be obtained in all cases. By statute, contracts (such as a tort settlement agreement) entered by or on behalf of a minor may be disaffirmed by the minor within a reasonable time after the minor attains majority. K.S.A. 38-102. In order to disaffirm the settlement, the minor must restore to the other party everything received by the minor by virtue of the contract. *Ibid.*

There is no need for court approval if the settlement involves medical bills only. When a minor suffers personal injury and medical bills are incurred, the responsibility for the medical bills is that of the parents. The parents may bring an action for the medical bills. Because the parents are entitled to pursue the cause of action, if they do not do so, the minor cannot later claim the medical bills in his or her own suit. *Wilson v. Knight*, 26 Kan.App.2d 226, 982 P.2d 400 (1999).

A minor has a right to pursue a personal injury action through his or her natural guardian or next friend. The statute of limitations requires that the action be brought within two years of the tort, with limited exceptions. K.S.A. 60-513(a)(4). However, a person under a legal disability (including the "disability" of minority) is allowed additional time to bring an action; the statute of limitations will not run for a minor until one year after the minor attains the age of majority, i.e. until the minor is 19 years old. This rule is subject to an overall statute of repose, which requires in any event that no action may be brought more than eight years after the time of the act giving rise to the cause of action. K.S.A. 60-515(a).

Therefore, because a minor can disavow a settlement within a reasonable time after reaching the age of majority, and because the minor's right to pursue the action would not be extinguished until eight years after the act giving rise to the cause of action, or the time that the child reaches the age of 19 (whichever is earlier), court approval is routinely sought for any settlement that involves any injury to a minor as a result of a negligent act or other tortious conduct.

Such settlements are specifically required in wrongful death actions. *Railway Co. v. Lasca*, 79 Kan. 311, 99 Pac. 616 (1909). The same rationale also applies to a personal injury settlement. *Childs v. Williams*, 243 Kan. 441, 757 P.2d 302 (Kan. 1988).

Railway Co. v. Lasca set forth a requirement that a settlement must be reduced to judgment. As a routine matter, therefore, to obtain court approval in Kansas an action is filed in the form of a friendly petition that is typically filed along with an answer. An agreed journal entry approving the settlement is prepared and submitted to the judge. An evidentiary hearing is typically held, at which time the details of the settlement are reviewed on the record before the judge, typically through the testimony of a parent or guardian. When perceived to be necessary by the parties, a guardian *ad litem* may be appointed. Evidence may be taken from the guardian *ad litem*, who should be an independent attorney with the opportunity to review relevant materials related to the

settlement prior to the hearing. Expenses and fees of the plaintiff's counsel are specified and submitted to the court along with the details of the settlement.

After receiving evidence, a journal entry approving the settlement is submitted to the judge who typically will approve the settlement if he or she finds from the evidence that the settlement is valid, just and equitable, and in the best interests of the child. In one form or another, typically the judge will then enter judgment in favor of the minor, and approve the settlement as part of the judgment.

As part of the approval of the settlement, prudence dictates the appointment of a guardian or conservator for gross settlement funds in excess of $100,000. K.S.A. 59-3055(a) waives the requirement of appointment of a conservator (and avoids the cost of bonding the conservator) when the amount of the settlement is $100,000 or less, if certain investment requirements are met; in general, unless a conservator is appointed, the settlement funds must be set aside until the minor reaches the age of majority, at which time the proceeds and earnings thereon are payable to the injured person. The statute also allows for waiver of a conservator regarding, and payment of settlements of $10,000 or less directly to the natural guardian, without the need of a conservatorship, if the circumstances are appropriate.

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KENTUCKY

By Stockard R. Hickey, III

If a personal injury claimant is under eighteen years old at the time of settlement, it is necessary to have a court approve any settlement.[1] It is important to note that the release of a minor's claims may not be effective unless appropriate steps are taken.[2]

If the settlement amount is **$10,000 or less**, a custodial parent or legal guardian may effectively release the minor's claim upon the approval of any court with jurisdiction.[3] If a personal injury claim has been filed, that court's express approval is sufficient. Otherwise, a "Petition for Approval of Settlement of Claim of Minor for $10,000 or Less" should be filed with the Probate Clerk of the Kentucky District Court of the county where the minor lives. A copy of the executed settlement agreement should be appended to the petition.

If the settlement amount is **more than $10,000**, a personal representative of the minor's estate must be appointed by a Kentucky District Court. Once a final settlement has been reached, the process starts with the filing of a "Petition for Appointment of Guardian/Conservator for Minor," an "Application for Appointment of Guardian/Conservator for Minor" and a "Motion for Approval of Settlement of Claim of Minor" in the District Court in the county where the minor lives.[4] A copy of the executed settlement agreement should be appended to the petition. The petition is filed on behalf of the minor's parent, guardian or relative who desires to be appointed guardian of the estate. (An attorney representing the tortfeasor can prepare the documents but should not represent the petitioner in this instance). The motion for approval should meet the specific requirements of KRS §387.025, including a verified statement setting out (1) the essential facts of the compromised claim; (2) the amount of the settlement; (3) that the settlement agreement is in the minor's best interests; and, (4) that the petitioner will expend the settlement funds solely for the benefit of the minor. The petition will be placed on the court's docket and reviewed in open court. The petitioner should attend court for the hearing, which is usually very brief. Many judges require the petitioner to post a fiduciary bond, especially for large or structured settlements, so appropriate arrangements should be made and the necessary forms prepared before the court date. The goal is to have the court appoint the guardian and approve the settlement in one proceeding.

[1] KRS §387.280; KRS §387.125(6).
[2] *Jones By and Through Jones v. Cowan*, 729 S.W.2d 188, 190 (Ky.App. 1987).
[3] KRS §387.280.
[4] KRS §387.025. Forms are available at http://courts.ky.gov/forms/formslibrarybycategory.htm.

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LOUISIANA

By D. Kirby Howard, Jr.

Under the Napoleonic Civil Code laws of Louisiana, a tutor may compromise an action or right of action by or against a minor, or extend, renew, or modify in any manner the terms of an obligation owed by or to a minor only with approval from the court. La. Code Civ. P., Art 4256. It has long been held in Louisiana that a compromise by a tutor without court authority is a nullity. *Chambers v. Chmabers*, 41 La. Ann. 443, 6 So. 659 (1889)(a transaction or compromise had no force or effect in respect to minors, unless the same was duly authorized by the judge). Because any compromise by a tutor without court suthority is null, any dismissal resulting from the compromise is also a nullity. *Ronquillo v. State Farm Ins. Co.*, 522 So.2d 134 (La. App. 4 Cir. 2/23/88). In approving a minor's settlement, "a court must not only grant authority to compromise to the party properly representing the minor, but must also determine whether the terms of the proposed compromise are in the best interest of the minor." *Snowden v. Huey P. Long Memorial Hospital, et al.*, 581 So.2d 287 at 290, 89-1105 (La. App. 3 Cir. 4/17/91). The tutor "must make specific recommendations to the court which the court must either approve or reject. In considering the tutor's recommendations to the court which the court may consider evidence. Once the recommendations are approved, the court must render a judgment of homologation." *Id.*

The rules are somewhat less stringent when dealing with one of the parents, or natural tutor, of a minor child. A natural tutor can settle a minor's claim without judicial approval if the claim is valued at less than $7,500 or with judicial approval if the claim is valued at greater than $7,500. *Bowen v. Smith*, 885 So.2d 1, 2003-0432 (La. App. 4 Cir. 9/8/04). In cases such as this, the value must be indicated in the settlement agreement or the claim for damages. In *Bowen*, the court ruled that the parent needed court approval before dismissing the lawsuit that he, as the natural tutor, brought on behalf of his minor daughter. *Id.* The settlement agreement did not apportion the proceeds among the plaintiffs and did not indicate that the value of the child's claim was less than $7,500. *Id.*

There is a structured process in Louisiana with regard to the requirements of minor compromises. Anyone doing business in Louisiana must ensure that when settling a matter involving a minor plaintiff, that the settlement agreement is clear with regard to the amounts apportioned to the minor and all steps are followed to obtain authority from the court.

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MAINE

By Blair A. Jones

Settlements with minors are governed by Maine Rule of Civil Procedure 17A. A guardian, guardian *ad litem* or next friend may move the Court for approval of settlement. If no action is pending, any of the above representatives may file an application where the action could have been commenced for an Order of Approval of Settlement. It is permissible for the attorney for an adverse party to the minor to file the application. Any motion or application must be accompanied by the following supporting papers:

1) An affidavit or verified application of the moving party or plaintiff. This must include:

   a) The terms of the settlement;
   b) Any reasons for approving the settlement;
   c) Any fee to be paid to an attorney for the minor;
   d) A statement that the movant or plaintiff was informed of the right to attend the hearing upon the motion or application and that the right to attend a hearing is waived, where court action without a hearing is sought.

2) A statement by movant of:

   a) The age of the minor;
   b) The nature of the injuries or damages suffered by the minor;
   c) The facts that led to the injury or damage;
   d) If the amount of the settlement exceeds $5,000 or if the attorney who prepared the motion is connected to an adverse party, include copies of any police reports; copies of any emergency room reports; a statement from a physician indicating the nature of the injuries and expectations for recovery or permanent impairment; and such other reports as the Court may require.

3) Affidavit of the attorney who prepared the motion or application stating whether or not the attorney was retained by, represents, or is connected with an adverse party.

4) If the defendant is not represented by counsel, a statement of defendant or defendant's insurer indicating that the defendant consents to judgment in the settlement amount.

5) A draft proposed order. This must include all the financial arrangements for the settlement.

6) The Court may hold a hearing and make inquiry into the circumstances of the claim and the settlement, and make orders as appropriate. This may include provisions for a trust.

7) The Court may order the proceeds to be deposited for the minor at an institution designated by the Court until the child reaches the age of 18. No withdrawals may be made without approval of a judge or justice of the Court.

8) Within 30 days after entry of the Order Approving Settlement, the attorney or party to whom the funds were paid must file a sworn affidavit verifying that the funds paid have been deposited as required by Court order, including the depository institution's name, account number and certifying that a copy of the Court's Order with restriction on withdrawal, if any, has been provided to the institution.

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MARYLAND

By Andrew T. Stephenson

Under Maryland law, there is no general requirement that settlements with minors receive court approval. Indeed, there is no procedural mechanism through which such an approval can be sought or provided. Pursuant to Title 13, § 403 of the Estates and Trusts Article, the proceeds of a personal injury settlement to a minor are to be preserved for the minor until the minor turns eighteen. This statute provides:

> Unless the court appoints a guardian of the property of a minor… if a minor or any other person in whose name a claim in tort is made or judgment in tort obtained on behalf of a minor recovers a net sum of $5,000 or more, the person responsible for the payment of the money shall make payment by check made to the order of: "_____" [*name of guardian*], guardian under Title 13 of the Estates and Trusts Article, Annotated Code of Maryland, for _____ [*name of minor*], minor.

Thus if the total amount of the settlement, after attorney's fees, costs, lien payments, etc., is more than $5,000.00, the above payments instructions must be followed. However, if the net settlement is $5,000.00 or less, there is no need to deviate from standard settlement procedures, besides altering the release language to reflect that the settling party is a minor.

The only exception to the general rule regarding court approval is where a "next friend" is not a parent and there is not a living parent or other person responsible for the care and custody of the child; in such a case, Courts & Judicial Proceedings Article, § 6-405 requires court approval of the settlement. Similarly, if a "next friend" is not a parent, but the minor has a surviving parent or other person standing "*in loco parentis*" for the child, the settlement must be approved by that parent to be valid under Courts & Judicial Proceedings Article, § 6-405.

If a trustee seeks to withdraw all or part of the money held in trust for the minor, the trustee must petition the court to do so. The petition must be in writing and state in detail the purposes for which the withdrawal of the money is desired. The Estates and Trusts Article, § 13-406 states that, if the trustee seeks to withdraw money for any purpose other than to pay for medical expenses of the minor or to further the education of the minor, the court shall require a strong showing of necessity by the trustee in a hearing.

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MASSACHUSETTS

By Andrew J. Fay

In Massachusetts, by statute, any party may petition the court to review and approve a settlement of a claim arising out of a personal injury to a minor. M.G.L. c. 231 § 140C1/2. Approval of a settlement provides security to the parties, the insurer and counsel against efforts to criticize or rescind the settlement when the child reaches his or her age of majority. Obtaining judicial approval may be justified on the grounds that conflicts and financial pressures may arise from coping with an injured child and such pressure can create the potential for parental/guardian action contrary to the child's ultimate best interests. *Sharon v. City of Newton*, 437 Mass. 99, 109 n.10, 769 N.E.2d 738, 747 n.10 (2002). In the event a settlement is entered into without court approval, in the absence of fraud, bad faith, or conscious disregard of a minor's interests, a settlement for a minor will not be set aside. *Nagle v. O'Neil,* 337 Mass. 80, 81, 148 N.E.2d 183 (1958).

The petition must be signed by all parties in the case. *Id.* The statute permits the trial court great latitude in ruling on the petition -- presumably including the power to fully reject the terms of the settlement -- such that the court will not rubber-stamp all settlements. *Id.* In the event that suit has not been filed, any party may initiate a "friendly" suit by filing a complaint and petition for settlement approval for the purpose of seeking the court's approval of the settlement. *Id.*

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MICHIGAN

By Ronald C. Wernette, Jr. and Nicholas G. Even

Introductory Comments

- Any person who has not reached the age of 18 years is a minor under Michigan law. MCL 722.52.
- Michigan has a tolling statute for minors, providing a "year of grace." MCL 600.5851. Notwithstanding otherwise applicable statutes of limitations, such as the three year statute of limitations in typical motor vehicle negligence cases, a claim may be brought by a person who was a minor when their claim accrued at any time up to one year after they reach 18 years of age, even though the limitations period has expired.
- A minor may sue in his/her own name but must be represented by a responsible party. MCR 2.201(E) sets forth the means by which that is accomplished. If the minor has a conservator, the conservator represents the minor. If the minor does not have a conservator, MCR 2.201(E)(1)(B) and (E)(2) specify the procedure by which a representative shall be appointed.
- Settlements for minors are governed by court rule (MCR 2.420 Settlements and Judgments for Minors and Legally Incapacitated Individuals) and statute. That court rule and statutory regime must be followed; it is well settled that, as a general rule, a parent has no authority, merely by virtue of being a parent, to waive, release, or compromise claims of the parent's child. *McKinstry v Valley Obstetrics-Gynecology Clinic, P.C.*, 428 Mich 167, 192; 405 NW2d 88 (1987).
- The specific governing law is controlled by whether or not an action has been commenced (i.e., suit filed), as described in more detail below.

No Lawsuit Filed: Pre-Suit Settlements

- Before an action is commenced, the settlement of a claim on behalf of a minor is governed by the Estates and Protected Individual Code (EPIC), MCL 700.1101, *et seq*. MCR 2.420(A).

Lawsuit Filed: Post-Filing Judgments/Settlements

- MCR 2.420 sets forth the procedure for the entry of a consent judgment, settlement or dismissal pursuant to settlement in an action brought for a minor by a next friend, guardian or conservator, or where a minor is to receive a distribution from a wrongful death claim. In such actions, a proposed consent judgment, settlement or dismissal pursuant to settlement must be brought before the judge, who passed on the fairness of the proposal. MCR 2.420(B)

Claims for Damages Due to Personal Injury to a Minor

- If the claim is for damages because of personal injury to the minor, the minor must appear in court personally to allow the judge an opportunity to observe the nature of the injury unless, for good cause, the judge excuses the minor's presence. MCR 2.420(B)(1)(a).

- The judge may require medical testimony, by deposition or in court, if not satisfied of the extent of the injury. MCR 2.420(B)(1)(b).

Claims In Which Next Friend/Guardian/Conservator Makes a Claim in the Same Action and Will Share in the Minor's Settlement/Judgment

- Where the next friend/guardian/conservator is making a claim in the same action and will share in the minor's settlement/judgment, a guardian *ad litem* for the minor must be appointed by the judge before whom the action is pending to approve the settlement/judgment. MCR 2.420(B)(2).

Approval of a Proposed Settlement/Judgment

- Once a guardian/conservator for the minor has been appointed by a probate court, the court in which the action is pending may approve the terms of the proposed settlement/judgment upon a finding that the payment arrangement is in the best interests of the minor or legally incapacitated individual. MCR 2.420(B)(3).
- The court may not enter the judgment/dismissal until it receives written verification from the probate court, on a form substantially in the form approved by the state court. *Id.*

Settlement/Judgments Which Do Not Require Payment of More than $5,000 During Any Single Year During Minority

- If the settlement/judgment does not require payment of more than $5,000 to the minor in any single year, the money may be paid in accordance with the provisions of MCL 700.5102. MCR 2.420(B)(4)(b).
- If an insurance company will not accept a release from a parent or guardian, a petition for protective order should be filed with the court. MCL 700.5401.

Settlements/Judgments Requiring Payment of More than $5,000 During Any Single Year During Minority

- If a settlement/judgment requires payment of more than $5,000 to the minor either immediately, or if the settlement/judgment is payable in installments that exceed $5,000 in any single year during minority, a conservator must be appointed by the probate court before the entry of the judgment or dismissal. MCR 2.420(B)(4)(a).
- The judgment or dismissal must require that payment be made payable to the minor's conservator on behalf of the minor. *Id.*
- The court shall not enter the judgment or dismissal until it receives written verification, on a form substantially in the form approved by the state court administrator, that the probate court has passed on the sufficiency of the bond of the conservator. *Id.*
- Best practice also suggests that a settling defendant seek court approval of any settlement/judgment, which may be obtained by filing a petition to approve the settlement with the court which provides the facts leading to the case and the details of the proposed settlement.

Settlements/Judgments Providing for Creation of a Trust

- If a settlement/judgment provides for the creation of a trust for the minor, the circuit court shall determine the amount to be paid to the trust. MCR 2.420(B)(5).
- The trust shall not be funded without prior approval of the trust by the probate court pursuant to notice to all interested persons and a hearing. *Id.*

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MINNESOTA

By John R. Crawford

Proceeds of a minor settlement may not be paid without written petition to the court and court approval. Rule 145.02 of the General Rules of Practice for the District Courts requires that the petition include the following:

(a) The name and birth date of the minor.
(b) A brief description of the nature of the claim if a complaint has not been filed.
(c) An attached affidavit, letter or records of a health care provider showing the nature of the injuries, the extent of recovery, and the prognosis if the court has not already heard testimony covering these matters.
(d) Whether the parent, or the minor or incompetent person, has collateral sources covering any part of the principal and derivative claims, including expenses and attorney's fees, and whether subrogation rights have been asserted by any collateral source.
(e) In cases involving proposed structured settlements, a statement from the parties disclosing the cost of the annuity or structured settlement to the tortfeasor.

Rule 145.03 provides that an attorney hired by the tortfeasor or the tortfeasor's insurer may file the petition, but he or she must disclose to the court and to the petitioner the nature of the representation, how he or she is being paid, the frequency with which the lawyer has been retained by the tortfeasor or insurer, and whether the lawyer is giving legal advice to the petitioner.

Rule 145.04 requires that the minor and petitioner personally appear before the court at the hearing on the motion unless their appearance is specifically waived by the court.

Under Rule 145.05, the order approving the minor settlement must approve expenses and attorney's fees. Attorney's fees cannot exceed one-third of the recovery unless there is a showing that: (1) an appeal to an appellate court has been perfected and a brief by the plaintiff's lawyer has been printed therein and (2) there has been an expenditure of time and effort throughout the proceeding which is substantially disproportionate to a one-third fee.

Under Rule 145.05(d)(1), the court may authorize investment of all or part of the proceeds in securities of the United States, or in an annuity or other form of structured settlement, including a medical assurance agreement, but otherwise it must order the balance of the proceeds deposited in one or more banks where the deposits will be fully covered by federal deposit insurance.

Rule 145.06 allows for structured settlements, but requires that the company issuing the annuity or structured settlement must be licensed to do business in Minnesota and have a financial rating equivalent A.M. Best Co. A+, Class VIII or better.

John R. Crawford is certified as a civil trial specialist by both the Minnesota State Bar Association and the National Board of Legal Specialty Certification. His areas of practice include: motor vehicle and commercial trucking liability, workers' compensation, sports and entertainment liability and products liability. Since 1997, he has served as the Editor-in-Chief of the Minnesota Insurance Law Deskbook, a 24-chapter deskbook on insurance coverage. He is also a frequent speaker on insurance coverage and related issues. John holds the Martindale-Hubbell "AV" peer review rating.

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MISSISSIPPI

By W. Scott Welch, III

The age of majority is generally 21 pursuant to §1-3-27, Miss. Code of 1972, Ann.[5]; however, for our purposes, it is 18 by virtue of §93-19-13 which provides that persons eighteen years of age or older, if not otherwise disqualified or prohibited by law, shall have the capacity to enter into binding contracts affecting personal property, including the right to enter into binding settlement of a claim for personal injuries.[6] *See, e.g. Garrett v. gay*, 394 So.2d 321, 323 (Miss. 1981). However, a release executed by one under the age of 18 may not be enforced, unless renewed or ratified in writing by the person sought to be charged, after he or she attains the age of 18. §15-3-11. There is a savings in favor of minors as to limitations of action. §15-1-59.

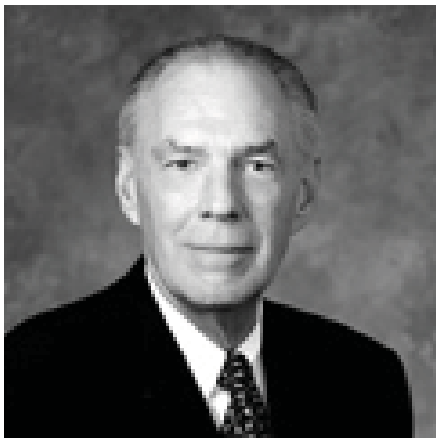
Claims of persons under the age of 18 can be settled in several ways. First, in rare cases in which the paying party is willing to accept considerable risk, one may use a parents' release and indemnity agreement. Parents are natural guardians of a minor in Mississippi. See §93-13-1. Except in cases involving the most minimal of injuries backed up by a physician's report, this is not recommended. Second, one may seek to have the disabilities of minority judicially removed. See Miss. Uniform Chancery Court Rule 7.03. This may now be done only in rare cases for persons under the age of 18.

The third and most common method of compromising minors' claims is appointment of a general guardian.[7] Guardianships are governed by §§93-13-1, *et seq.* Sections 93-13-13, 15 provide for appointment of general guardians with statutory duties. Section 93-15-59 provides for court approval of compromised claims. Section 93-13-17 is of interest, as it allows one to avoid the cost of a surety bond for the guardian, if settlement funds are deposited in an insured financial institution subject to future withdrawal only upon order of the court and those conditions are accepted in writing by the institution. Actual procedures for approval vary from Chancellor to Chancellor, so a call to the Court Administrator is wise. Uniform Chancery Court Rule 6.10 contains the general procedure and provides that proof is taken in open court about the facts of liability, the nature and extend of damages, reasons for settlement, and the guardian's satisfaction with it. Defense counsel should plan to attend and may be called as a witness. For structured settlements, Rule 6.10 requires that a certified copy of the insurance policy or "other security guaranteeing payment" shall be made part of the court file within 90 days of the decree approving settlement. Guardianship approval can cost several thousand dollars for proper preparation and presentation – a fact which should be borne in mind when negotiating settlement. Defense counsel should always insist that counsel for the minor appears on all guardianship pleadings as counsel for the guardian.

If a minor's settlement is not greater than $25,000, an abbreviated procedure that does not require appointment of a guardian is provided in §93-13-211.[8] The same procedures for

[5] All code references are to the Mississippi Code of 1972, Annotated, as Amended.
[6] This summary excludes cases involving workers' compensation claims and Medicare or Medicaid liens.
[7] Guardians *ad litem* are permitted, but not required, §9-5-89.
[8] This amount was increased from $10,000, by amendment to the statute effective July 1, 2010.

approval of settlement outlined above are utilized, and the court is specifically charged to find that the proposed settlement is fair and in the best interest of the minor. Once defendant pays in the manner approved and directed by the court, it is acquitted from future responsibility. The court may retain control over the manner in which the minor's funds can be spent by the person authorized to receive them.



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MISSOURI

By Matthew Shorey

Missouri law seeks to maximize the protection afforded a minor's legal action and insure that any settlement is in the best interest of the child. *Fiegener v. Freeman-Oak Hill Health System*, 996 S.W.2d 767, 774 (Mo. Ct. App. 1999). Minors are to be considered "wards of the court and their rights are to be jealously guarded as provided by statute." *Y.W. By and Through Smith v. National Super Markets, Inc.*, 876 S.W.2d 785, 787 (Mo. Ct. App. 1994).

Minors' agreements are either void or voidable. *Id.* However, minor's personal injury claims may be settled by court-appointed representatives with court approval, so long as the applicable statutes and rules for minor settlements are followed. Failure to follow the statutory requirements of a minor settlement will render even a parent's release on the minor's behalf unenforceable. *Id.*

Settlement with a minor can be accomplished by a court-appointed next friend, guardian *ad litem*, guardian or conservator. Mo. Rev. Stat. §507.184; Missouri Supreme Court Rule 52.02(a). However, the settlement will not be effective unless approved by the court. *Y.W. By and Through Smith v. National Super Markets, Inc.*, 876 S.W.2d 785, 787 (Mo. Ct. App. 1994). The court can either approve or disapprove a proposed contract to settle. *Id.* These requirements apply even to pre-action settlements. Accordingly, to settle a pre-action minor's claim it is necessary to have a next friend, guardian, GAL or conservator appointed by the court or clerk, who then files an action on the minor's behalf and obtains court approval of the settlement.

Rule 52.02 sets forth the procedure for appointment of next friends. A minor who is 14 years or older may petition in writing for the appointment of a next friend. A next friend may only be appointed for a minor under 14 upon the written application of a relative or friend of the minor.

Before a next friend may receive money or property on behalf of a minor, acknowledge satisfaction or discharge any judgment, he or she must execute a bond in favor of the minor. Missouri Supreme Court Rule 52.02(h)(1). However, this requirement does not apply if the total value of the property or money is less than $10,000 and all of the money or property is to be turned over to the minor's parent or if a sufficiently bonded guardian files a receipt approved by the court for such money or property. Missouri Supreme Court Rule 52.02(h)(1). The bond must be approved by the court and in an amount equal to the value of the money or property if there is a corporate surety, otherwise in an amount double the value of the money or property. Missouri Supreme Court Rule 52.02(h)(1). Failure to execute an approved bond will void any settlement, release or discharge. Missouri Supreme Court Rule 52.02(h)(2).

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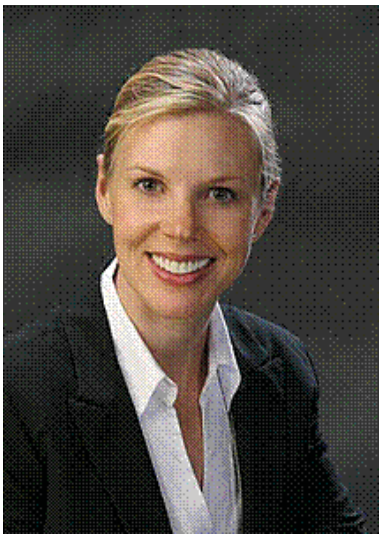
MONTANA

By Tom Singer and Jill Gerdrum

In Montana, "a release is a contract, governed by contract law." *Jacobson v. Allstate Ins. Co*., 2009 MT 248, ¶ 51, 351 Mont. 464, 215 P.3d 649 (citing *Westfall v. Motors Ins. Corp*., 140 Mont. 564, 568, 374 P.2d 96, 98-99 (1962)). And generally, minors are not legally capable of contracting, and may disaffirm a contract made. Mont. Code Ann. §§ 28-2-201, 41-1-302, 41-1-304 (2009), *Parrent v. Midway Toyota*, 192 Mont. 118, 120-122, 626 P.2d 848, 849-850 (1981) (workers' compensation settlement agreement entered by minor without signature of guardian properly disaffirmed even where parent provided input on settlement terms). Emancipation of a minor does not affect the minor's ability to release a claim unless there is a court order granting him or her the right to execute contracts. See Mont. Code Ann. § 41-1-306, *Hoskins v. White*, 13 Mont. 70, 32 P. 163 (1893).

While the Montana Rules of Civil Procedure and statutes require a minor to have a guardian *ad litem* or next of friend in order to defend or prosecute a claim, those rules and statutes do not address the settlement of a claim with a minor. See Mont.R.Civ. P. 17(c), Mont. Code Ann. § 41-1-202. The Montana statutes do provide though that a court may appoint a conservator to protect the property of a minor, and that the conservator may settle a claim on the minor's behalf. Mont. Code Ann. §§ 72-5-409, 72-5-427(s). In settling a claim on behalf of a minor, the conservator must act reasonably and may not have any conflicts of interest. Mont. Code Ann. § 72-5-427(s). A court may also authorize a particular transaction affecting the property rights of a minor without the appointment of a conservator. Mont. Code Ann. § 72-5-422. And in a judicially supervised settlement involving a minor, a parent may represent his or her minor child, so long as a conflict does not exist. Mont. Code Ann. § 72-1-303. The court may review the appointment of a guardian or conservator for a conflict of interest and will review the appointment to insure the best interest of the child is represented. *Matter of Watson*, 283 Mont. 57,60-61 939 P.2d 982, 984-985 (1997) (Montana Supreme Court upheld appointment of mother as guardian *ad litem* to settle the claims of her children arising out of an automobile accident which involved suit against the step-father's employer).



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NEBRASKA

By Matthew F. Heffron

The interest of a minor cannot be compromised without approval of the court. *Zimmerman v. Smile,* 62 Neb. 204, 86 N.W. 1059, 1059 (1901); *see also,* Neb. Rev. Stat. §30-2630. The age of majority in Nebraska is 19 years of age, unless a minor marries, at which point his or her minority ends. Neb. Rev. Stat. §§43-245(1); 43-2101.

A minor has until age 21 before any applicable statute of limitations will start to run. Neb. Rev. Stat. §25-213; *Carruth v. State,* 271 Neb. 433, 712 N.W.2d 575 (2006). Thus, since the statute of limitations in Nebraska is four years for negligence, as well as for any other torts for which a statute of limitations is not specifically assigned, Neb. Rev. Stat. §25-207(3), minors often will have until the age of 25 before a statute of limitations will expire, notwithstanding the minor's age at which time such a tort occurred. Likewise, a settlement agreement signed by a minor, like any contract signed by minor, is voidable by the minor until he or she reaches the age of majority. *First Nat. Bank of Wymore v. Guenther*, 125 Neb. 807, 252 N.W. 395, 396 (1934).

Thus the safest way to settle a case in Nebraska involving a minor is through the use of a conservatorship. *See* Neb. Rev. Stat. §30-2630(1). Conservatorship proceedings are handled in county court, the lower trial court (as opposed to Nebraska district courts, which have general trial jurisdiction). Nebraska law gives priority of a proposed conservator to the parent of the minor child. Neb. Rev. Stat. §30-2639(4). The requirements for a petition to establish such a conservatorship are set forth in Neb. Rev. Stat. §30-2633. Before a hearing can be held on a petition for conservatorship, notice must be given to all interested parties for whom addresses are known by mailing a copy of the Order Setting a Date for Hearing and a copy of the Petition at least fourteen days prior to the conservatorship hearing. Neb. Rev. Stat. § 30-2634. If the addresses of interested parties are not known, notice shall be by publication, pursuant to Nebraska Probate Code. § 30-2220(a)(2). *See also,* Neb. Rev. Stat. § 30-2635 (interested parties may notify the court of their desire to receive notice). The findings of the court after the hearing must be based on clear and convincing evidence. Neb. Rev. Stat. § 30-2630.

The practice in Nebraska is for the conservator to place all cash funds from the settlement in a restricted, insured account, and no funds can be withdrawn without prior court order. This is the practice notwithstanding Neb. Rev. Stat. §30-2654, which provides for the distributive duties and powers of the conservator.

Settlements for amounts less than $25,000 can cause some disagreement among Nebraska practitioners. Neb. Rev. Stat. §30-2603 provides

> Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding twenty-five thousand dollars per annum, by paying or delivering the money or property to:

> (1) The minor, if he or she has attained the age of eighteen years or is married;
> (2) Any person having the care and custody of the minor with whom the minor resides;
> (3) A guardian of the minor; or
> (4) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor

Based on this language, some attorneys claim there is no need for a conservatorship; rather, they argue, settlement proceeds under $25,000 may be paid directly to the parent or guardian of the minor. The problem is that §30-2603 does not authorize a parent or guardian to negotiate the settlement resulting in the obligation. Thus, when the minor reaches the age of 21, he or she could disavow the settlement pursuant to §25-213. Thus, it is the safer practice to use a conservatorship even for minor amounts, despite that it takes weeks to accomplish. Many insurance companies require a conservatorship in such an instance.

Matthew F. Heffron has been a trial attorney since graduating from the Georgetown University Law Center in 1984. For many years, he was a federal prosecutor with the United States Attorney's Office in Phoenix, Arizona, where eventually he was appointed Deputy Chief for the Criminal Division. Since 1998, he has tried cases in Nebraska and Iowa in the areas of commercial litigation, trucking and personal injury litigation, and white-collar defense. He can be reached at Brown & Brown, P.C., L.L.O., 501 Scoular Building, 2027 Dodge Street, Omaha, Nebraska 68102; (402) 346-5010; mheffron@bblaw.us.

NEVADA

By Jonathan B. Owens

In Nevada, a minor's compromise is governed by Nevada Revised Statute 41.200. Pursuant to the statute, when an unemancipated minor has a disputed claim against a third person, the parent or legal guardian has a right to compromise the claim and must file a petition for a minor's compromise with the district court where the minor resides. N.R.S. § 41.200(1). The petition must contain the following information: (1) the name, age and residence of the minor; (2) the underlying facts of the disputed claim, including against whom the claim is made; (3) the name and residence of the parent or legal guardian of the minor; (4) the name and residence of the person(s) having physical custody of the minor; (5) the name and residence of the petitioner and the petitioner's relationship to the minor; and (6) the total amount of the proceeds of the proposed compromise and the apportionment of those proceeds, including the amount to be used for attorney's fees (and whether such is on a fixed or contingency fee basis), medical expenses, and other expenses. *Id.* at § 41.200(2)(a)-(f).

Additionally, the petition must include a statement from the petitioner that he or she believes the compromise is in the minor's best interest and that the petitioner has been advised and understands that acceptance of the compromise bars the minor from seeking further relief from the third party. *Id.* at § 41.200(2)(g)-(h). In the event the disputed claim involves a personal injury suffered by the minor, the petitioner must submit all relevant medical and health care records to the court at the compromise hearing, which includes documentation of the injury, prognosis, treatment and progress of the minor and the amount of medical expenses incurred. *Id.* at § 41.200(2)(3).

If the court ultimately approves the compromise, the court must direct that the money is paid to the parent or guardian of the child, or require that a guardian *ad litem* is appointed and the money paid to the guardian *ad litem*. *Id.* at § 41.200(4). Once the proceeds of the compromise are received, the parent or guardian must establish a blocked financial investment for the benefit of the minor with the proceeds of the compromise. *Id.* at § 41.200(5). The beneficiary of the block financial investment may obtain control of or money from the investment by either (1) order of the court which held the compromise hearing or (2) by certification of the court which held the compromise hearing that the beneficiary has reached 18 years of age. *Id.* at § 41.200(6).

In the Eighth Judicial District for the State of Nevada situated in Las Vegas, there may be additional requirements depending on the Department hearing the Petition for Minor's Compromise. As such, parties are advised to consult the individual department to determine if there are additional requirements beyond those enumerated in N.R.S. 41.200.

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NEW HAMPSHIRE

By Russell X. Pollock

Court approval is required for the settlement of any suit or claim brought on behalf of a minor in which the net amount exceeds $10,000. Superior Court Rule 111(B); District Court Rule 3.24(B); N.H. Rev. Stat. § 464-A:42. Approval may be obtained in the Superior Court or the District Court. The parties to a settlement of a suit or claim brought on behalf of a minor in which the net amount equals or is less than $10,000 may seek court approval, although it is not required.

Approval is obtained by filing a Petition signed by the parent, next friend or guardian of the minor. Superior Court Rule 111(A); District Court Rule 3.24(A). The Petition for approval should contain the following information, if applicable:

1. The minor's age and a brief description of the accident and injury sustained;

2. An itemization of all medical expenses and special damages incurred by the minor;

3. The total amount of the settlement and whether any bills or expenses are to be paid out of the settlement or are being paid as part of the parent's claim. If the parent is being paid anything directly, the petition should contain the amount being paid to the parent and a specification of the items covered;

4. Whether the settlement was negotiated by counsel representing the minor;

5. A statement from the attorney for the minor as to whether there was medical payment insurance available to the minor and whether or not a claim has been made for said benefits or whether payment has been received;

6. A statement from the attorney for the minor as to whether any liens for medical providers have been asserted or can be asserted and how the settlement would resolve those liens;

7. The net amount to be received on behalf of the minor; and,

8. A prayer that the settlement be approved. Superior Court Rule 111(D); District Court Rule 3.24(D).

The petition must be accompanied by the following items:

1. A photocopy of the minor's birth certificate; and

2. An itemized statement from counsel detailing the nature of the work performed and the time spent on the case. An attorney's fee in excess of 25% of the settlement will not ordinarily be allowed unless upon good cause shown. In the event that counsel seeks an attorney's fee in excess of 25%, counsel shall file a motion requesting such an approval which motion shall contain the reasons for the request. A copy of that motion shall be provided to the next friend at least ten (10) days prior to the hearing or conference relative to approval of the settlement. Superior Court Rule 111(E); District Court Rule 3.24(E).

The Court, upon its own motion, may appoint a guardian *ad litem* to represent the interests of the minor child and/or to review the proposed settlement. The fees of the guardian *ad litem* shall be paid by defendant. Superior Court Rule 111(G); District Court Rule 3.24 (G).

A full medical report, including a recent and detailed prognosis from the attending physician, will ordinarily be required. "Recent" shall mean a report dated not more than six months prior to the date of the filing of the petition for approval of settlement. Superior Court Rule 111(I); District Court Rule 3.24 (I).

Additional requirements apply when the parties desire to enter into a structured settlement or periodic payments. Superior Court Rule 111(K); District Court Rule 3.24 (K).

The Court will require proof in the form of a certified statement from the Court of Probate that the guardian *ad litem*, parent, next friend, or other person who receives money on behalf of the minor has been duly appointed as the guardian of the estate of such minor. Superior Court Rule 111(K); District Court Rule 3.24 (K); N.H. Rev. Stat. § 464-A:42.

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NEW JERSEY

By Roy Alan Cohen

A. **State Court** – In New Jersey, settlements involving minor plaintiffs (younger than 18 years-old) must be approved by the court. There are specific New Jersey Civil Practice Rules that apply to settlements reached for, or on behalf of, those under 18 years-old at the time of settlement.

If settlement is reached before a case is in suit, then an action must be filed in the Superior Court on behalf of a minor (or mentally incapacitated person) for the purpose of obtaining the court's approval of a settlement. The case can be brought in any county in which venue might be appropriately laid (generally where the plaintiff or defendant reside or where the cause of action arose). Once the Complaint is filed, the supporting papers must, unless the court otherwise orders, be filed with the deputy clerk of the Superior Court in the county of venue before the hearing on the application for approval. Rule 4:44-1.

The application for a hearing to approve the settlement, often called a "Friendly Hearing" must be drafted to provide an explanation of the liability, proximate cause and damages proofs, with a focus on the minor's injuries, so as to inform the court about the terms of the settlement and the reasonableness of the amount under the circumstances. On notice, the court will schedule the Friendly Hearing, at which the Plaintiffs' attorney and the minor/minor's guardian *ad litem* must appear. Defense counsel is not required to appear, but it is advisable to assure that the proper terms are placed on the record. Medical testimony on the minor's injuries from the attending or consulting physician must be given at the hearing to obtain the approval of a settlement; however, the testimony may be submitted by affidavit unless the court, for good cause shown, permits the testimony of other medical experts or in its discretion requires the physician's personal appearance. Rule 4:44-2.

All proceedings to enter a judgment consummate a settlement in matters involving minors and mentally incapacitated persons will be heard by the court without a jury. The court will determine whether the settlement is fair and reasonable as to its amount and terms. In the case of a structured settlement providing for deferral of all or part of the proceeds thereof, the court will also satisfy itself, based on the financial security of the obligor or surety and such other relevant facts as may be adduced, of the reasonable certainty that all future payments will be made as proposed by the settlement. If the court approves the settlement, it will enter an Order reciting the action taken and directing the appropriate judgment, whose provisions shall also apply to deferred payments under structured settlements. Rule 4:44-3.

The court, on the request of the claimant or the claimant's attorney or on its own motion, will approve the expenses incident to the litigation, including attorney's fees. If the fees of the attorney representing the guardian *ad litem* are to be paid by the defendant, the

defendant will, upon the court's request, make available to it defendant's complaint file in the action. Rule 4:44-3.

Unless judicial approval is obtained pursuant to Rule 4:44-3, and a judgment entered, a settlement involving a minor plaintiff is not binding or enforceable. Once the settlement is approved, a specific Order and Judgment is entered setting forth the terms of the settlement. A copy of the Order, the judgment, and the transcript of the Friendly Hearing will suffice to enforce the settlement.

Once approved, the settlement funds are deposited into court in an account managed by the Surrogate's Court until the minor reaches the age of majority. Those funds may be made available for the health, education or welfare of the minor before the age of majority on appropriate application to the Surrogate's Court.

B. **Federal Court** – There is no federal statute or court rule on the subjection of settlements for or on behalf of a minor plaintiff. However, good practice is to ask the federal judge in such cases to conduct a Friendly Hearing, place all terms on the record in the presence of the minor's guardian *ad litem* and plaintiff's attorney, and enter the judgment with the Order of Dismissal. To the extent that this public filing in the case of a minor requires a protective order or sealing of the record, then the provisions of Local Civil Rule 5.3 must be followed.

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NEW MEXICO

By Lance Richards and Megan Day Hill

New Mexico does not have a statute or rule requiring court approval of minor settlements. *Shelton v. Sloan*, 127 N.M. 92, 100, 977 P.2d 1012, 1021 (Ct. App. 1999). There is a statute requiring judicial approval of settlements on behalf of "incapacitated persons," see NMSA 1978, §38-4-16 (1975), but the statutory definition of "incapacitated persons" excludes minors. NMSA 1978, §38-4-14 (1989). While not mandatory in New Mexico, any minor settlement procured in the absence of court approval is not binding on the minor and can be set aside. *Garcia v. Middle Rio Grande Conservancy Dist.*, 99 N.M. 802, 808, 664 P.2d 1000, 1006 (Ct. App. 1983)(overruled on other grounds by *Montoya v. AKAL Sec.,* 114 N.M. 354, 357, 838 P.2d 971, 974 (1992). A minor has one year after obtaining the age of majority to request that any judicially unapproved settlement be set aside. NMSA §37-1-10. To protect the parties and in the interest of finality, New Mexico practitioners request court approval of all minor settlements.

The minor settlement court review process is left to the discretion of the individual judge and varies significantly from jurisdiction to jurisdiction. As a general rule, most New Mexico judges require the appointment of a guardian *ad litem* to represent the minor in all cases with settlements over $10,000. Some judges require a guardian *ad litem* in all cases where the minor suffered permanent injury or is expected to receive future medical care. A few judges require the appointment of a guardian *ad litem* in every case. The average cost of a guardian *ad litem* is between $1,500 and $3,500, depending on the attorney's hourly rate, travel time, and the complexity of the case. When a guardian *ad litem* is required, it is almost always obtained at the expense of the settling defendant.

In reviewing minor settlements, New Mexico courts are guided by their "special obligation" to see that minor "are properly represented, not only by their own representatives, but also by the court itself." *Garcia*, 664 P.2d at 1006 (citations omitted). In assessing why a settlement agreement is fair, adequate, reasonable, and free from collusion or fraud, the trial court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *In re Norwest Bank of New Mexico, N.A.,* 134 N.M. 516, 524, 80 P.3d 98, 106 (N.M. App. 2003).

As a practical matter, almost all New Mexico judges want to have both the minor and the parent present at the review hearing, unless the minor is very young. If the minor is not present, counsel should be prepared to present photographs of any scars. The guardian *ad litem* usually provides recommendations in person, but can often submit a written report. Additionally, many judges require a medical bill total, as well as a description of any injuries sustained. Counsel should be prepared to describe any liability issues or

important settlement considerations. Before awarding attorney's fees to plaintiff's counsel, many judges require an explanation of the fee agreement and description of the effort that plaintiff's attorney put into the case. Some courts will reduce attorney's fees, if they appear to be unreasonable under the circumstances.

When it comes to protecting settlement funds, decisions are made on a case-by-case basis. Structured settlements are always preferred, whereby an annuity is purchased on behalf of the minor. The annuity will pay under installments according to a set schedule, designed in the settlement process. Unfortunately, most structured settlement companies require an initial contribution of at least $5,000 to $7,000. Before releasing unprotected funds, most New Mexico courts will swear in the parent and request an explanation of how the money will be used. If the parent does not adequately assure the trial court that the settlement money will be used solely for the benefit of the minor, the court will consider protected alternatives. New Mexico courts are reluctant, if not unwilling, to deposit settlement proceeds with the clerk of the court.

After approval is obtained, it is suggested that filed be retained for one year after the minor obtains age of majority. In large or contentious settlements, the transcript of the court approval hearing should be immediately requested and preserved.

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NEW YORK

By Allan I. Young

In New York, an "infant" is a person under the age of 18. [Civil Practice Law and Rules ("CPLR") § 105(j)]. An action on behalf of an infant plaintiff cannot be settled or voluntarily discontinued without judicial permission. [CPLR §§ 1207 and 3217(a)(2)]. Courts are required to determine "the propriety and reasonableness of the proposed settlement of an infant's claim." *Valdimer v. Mt. Vernon Hebrew Camps*, 9 NY2d 21, 24 (1961).

Legal representation of an infant, settlement of an infant's claim, and the disposition of the proceeds of an infant's monetary recovery are governed by Article 12 of the CPLR (§§ 1201-1211) and Rule 202.67 of the Uniform Rules for the Supreme Court and County Court. (The Supreme Court is the trial court of general jurisdiction, with a branch in each of the 62 counties of the state. The County Court is a court of lower monetary jurisdiction – up to $25,000 – handling civil cases in counties outside of the seven counties comprising the City of New York and Long Island.)

The appointment of a guardian *ad litem* is not necessary to prosecute an infant's claim. "Unless the court appoints a guardian *ad litem*, an infant shall appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody[.]" [CPLR § 1201].

If an infant's claim is sought to be settled before it is put into suit, a special proceeding must be commenced by the guardian of the property, or guardian *ad litem*, or parent having legal custody to obtain court approval. [CPLR § 1207].

Court approval of the settlement of an infant's claim can only be brought on by order to show cause. [CPLR § 1207 ("notice … shall be given as directed by the court.")] The papers supporting the motion must include an affidavit of the infant's representative, an affidavit of the attorney, and if the claim is for damages for personal injury, copies of medical or hospital reports. [CPLR § 1208]. The statute provides a list of information that each affidavit must contain. In addition to other things, the affidavit of the infant's representative must explain the proposed distribution and must disclose whether the representative or other members of the infant's family are making claims for damages arising out of the same incident. [*Id.*] The obvious purpose is to satisfy the court that the infant's claim is not being undervalued for the benefit of other family members who are competing for the same pot of money. The attorney's affidavit must explain the reasons for recommending the settlement and must disclose whether the attorney is representing any other individuals asserting claims arising out of the same occurrence (again, to alert the court to any conflict of interest). "No attorney having or representing any interest

conflicting with that of an infant … may represent the infant[.]" [CPLR § 1208(e)]. Uniform Court Rule 202.67 lays out certain additional requirements. For example the rule lists certain disbursements allowed by the court, such as deposition stenographic expenses and experts' fees, that may be deducted by the attorney from the settlement proceeds.

The infant, the infant's representative, and the attorney must appear at the infant's compromise hearing, "unless attendance is excused for good cause." [CPLR § 1208(d)]. Often, these hearings are conducted off the record in chambers, but the end result is the entry of an Infant's Compromise Order.

A guardian *ad litem*, if one has been appointed, has no authority, in that capacity, to receive funds on behalf of the child. *Tudorov v. Collazo*, 215 AD2d 750 (2nd Dept. 1995). Rather, the person mandated by statute to receive and manage the proceeds of the infant's claim is the court-appointed "guardian of the property" [CPLR § 1206]. Usually, the parent qualifies to serve in this capacity.

In lieu of distributing the infant's funds to the guardian of the property, the court may, in its discretion, order an alternate distribution as follows. First, if the infant is married, the court may order the funds distributed to an adult spouse to be held for the benefit of the minor spouse. [CPLR § 1206(a)]. Second, if the funds do not exceed $10,000, they may be distributed "to a person with whom such infant … resides or who has some interest in his welfare to be held for the use and benefit of such infant[.]" [CPLR § 1206(b)]. Third – and this is the most common situation – the court may order the funds deposited into one or more insured banks, or may order that a structured settlement agreement be executed. [CPLR § 1206(c)]. "This money is subject to withdrawal only upon order of the court," except that no further order is required to allow the child to withdraw the money at age 18 unless a court order specifically prevents distribution at age 18. [*Id*.] Court orders that prevent infants from withdrawing their money even at the age of 18 usually involve persons who are mentally incompetent. Only in "unusual circumstances" will the court permit withdrawal prior to age 18. Otherwise, no withdrawal is permitted "where the parents are financially able to support the infant and to provide for the infant's necessaries, treatment and education." [Uniform Court Rule 202.67(g).] Although 18 is the age of majority in New York, parents are obligated to support their children until the age of 21. [Fam. Ct. Act § 413(1)(a)].

In the case of a structured settlement having future installments payable beyond the age of 18, the child – upon reaching the age of 18 – may accelerate such payments if the structured settlement agreement allows it. [CPLR § 1206(c)]. Fourth, the court may direct that the funds be invested in bonds of the State of New York, municipalities of the State of New York, or the U.S. Government or in a "bond and mortgage on unincumbered and improved property within the state [of New York] having a value …

of at least double the amount of principal invested[.]" [CPLR § 1206(d), referencing § 1210(d)].

Attorneys' contingent fees in infants' cases are subject to court approval pursuant to Judiciary Law § 474. Uniform Rule 202.67 limits the fee to no more than ⅓ of the amount remaining after deduction of disbursements.

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NORTH CAROLINA

By D. Erik Albright

North Carolina does not have a statute that directly addresses minor settlements and compromises and any particular form with which they must comply. However, to be valid and enforceable, minor settlements must be investigated and approved by the court regardless of who has negotiated and consented to them. *Ballard v. Hunter*, 12 N.C.App. 613, 618, 184 S.E.2d 423, 427, *cert. denied*, 280 N.C. 180, 185 S.E.2d 704 (1971).

In any state court action or special proceeding, when a minor is the plaintiff, the minor must appear through a general or testamentary guardian, if any exist within North Carolina, or by a guardian *ad litem* appointed pursuant to the terms of N.C. Gen. Stat. §1A-1, Rule 17. *Id.* at (b)(1). Additionally, a minor can proceed through a guardian *ad litem* regardless of the existence of in-state general or testamentary guardians when a court deems such approach expedient, *Id.* at (b)(3), or when a parent also is involved in the action and may have a conflict of interest in representing the minor. *Seibels, Bruce & Co. v. Nicke*, 168 F.R.D. 542 (1996). When a guardian *ad litem* is involved, the court must appoint such person at or before the commencement of any action by the minor upon written application of any relative or friend of the minor or by the court on its own motion. Rule 17 at (c)(1). Similar requirements exist in the federal courts in North Carolina. See, egs., M.D.N.C. R. 17.1 and E.D.N.C. R. 17.1.

Once a guardian has been appointed and an action commenced on behalf of the minor, a court may hear, investigate, and approve any subsequent minor settlement. *See Ballard*, *supra*. There is no specified statutory method for how a state court should conduct its hearing to review and approve a minor settlement. It is the author's experience that some state courts conduct hearings on the record in the courtroom with direct questioning of the minor and guardian about the minor's injuries and recovery and the proposed distribution of the settlement proceeds, while other state courts conduct informal hearings in chambers and permit counsel and guardians to make informal presentations. In contrast to the state court procedure, two of the federal districts in North Carolina have specific lists of factors the courts require the parties to satisfy before they will approve minor settlements. *See* M.D.N.C. R. 17.1(b) and E.D.N.C. R. 17.1(c)-(e). Regardless of the form of the hearing, any compromise settlement negotiated by a guardian without the court's investigation and approval is invalid and unenforceable against the minor. *See Wachovia Bank & Trust Co. v. Buchan*, 256 N.C. 142, 123 S.E.2d 489 (1962). If the hearing satisfies the court, the court will enter an order reflecting its investigation and review and approving the settlement. Settlement funds payable to the minor may be paid to the clerk of court pursuant to N.C. Gen. Stat. §7A-111, who may invest the funds for the minor's benefit as provided in N.C. Gen. Stat. §7A-112.

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NORTH DAKOTA

By Tamara L. Novotny

In North Dakota, minor compromises or settlements, are governed by Chapter 30.1-29 of the North Dakota Century Code (N.D.C.C.), as that chapter sets out of a system of protective proceedings for the management of property of persons who are unable to manger their own affairs, such as minors. Although the chapter generally provides for the appointment of conservators or the creation of other protective orders, N.D.C.C. §30.1-29-09 allows a court to issue an order for a single transaction, such as the approval of a minor settlement, without the appointment of a conservator or other long-term arrangements.

It is first necessary to establish that a basis exists for affecting the property and affairs of the minor. N.D.C.C. §30.1-29-09. This is done through a petition showing, for example, that the minor owns money or property that requires management or protection. N.D.C.C. §30.1-29-01(1). The petition must be brought where the minor resides, not their parent or guardian, if different. N.D.C.C. §30.1-29-03(1). The petition, however, may be brought by any person who is interested in the estate, affairs, or welfare of the minor, including a parent, guardian or custodian, or any person who would be adversely affected by the lack of effective management of the minor's property and affairs. N.D.C.C. §30.1-29-04(1).

The petition must include: 1) the interest of the petitioner; 2) the name, age, residence and address of the minor; 3) the name and address of the minor's guardian, if any; 4) the name and address of the nearest relative to the minor and known to the petitioner; 5) a general statement of the property to be protected, along with an estimate of the value thereof, including any compensation or insurance to which the minor is entitled; and 6) the reason why a protective order is necessary. N.D.C.C. §30.1-29-04(2). A court will consider the interests of any creditors of the minor before approving a protective arrangement and, therefore, the petition should address whether there are any creditors or liens and address how they are to be handled under the proposed settlement. N.D.C.C. §30.1-29-09(3). Notice of the petition hearing must be personally served upon the minor's parents or guardian at least fourteen days before the hearing. N.D.C.C. §30.1-29-05(1) and N.D.C.C. §30.1-29-07(1).

Once a basis for the proceeding has been shown, the court has broad authority to fashion an order governing the minor's property. The court may:

1. Authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the minor. Protective arrangements include payment, delivery, deposit or retention of funds or property, entry into an annuity contract, or addition to or establishment of a suitable trust; or

2. Authorize, direct, or ratify any contract, trust, or other transaction relating to the minor's financial affairs or involving the minor's estate if the court determines that the transaction is in the best interests of the minor.

N.D.C.C. §30.1-29-09(1) and (2). Though not required by statute, setting up a minor settlement through a structure, annuity or CD offers additional protections upon which a court will look favorably.

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OHIO

By Robert Gray Palmer

The Supreme Court of Ohio adopted Rules of Superintendence for the Courts of Ohio. Rule 68 provides that an application to settle an action where a minor is a party must be filed with and approved by the appropriate Probate Court. Sup.R. 68. That court, usually where the minor resides, has exclusive jurisdiction. O.R.C. §2101.24(e) and (m); O.R.C. §2111.50. Substantively similar rules apply to wrongful death actions involving an interested minor. O.R.C. §2125.01 *et seq.* The rationale behind these requirements is that the court acts as a protector of or as *parens patriae* for the minor. The court will ensure that the guardian has authority to sign the release and that the guardian signed the release in the best interests of the minor.

The actual settlement process for court approval varies widely from county to county in Ohio. Most counties have promulgated local rules which mirror Sup.R. 67, 68 and 71(I). These rules establish the framework for minor settlements. Rule 67 addresses settlements of less than $10,000.00. Sup.R. 67. However, effective March 24, 2010, the Ohio legislature raised the limit to "the net amount of twenty-five thousand dollars or less after payment of fees and expenses as allowed by the court, …" O.R.C. §2111.18. That section also does not require a guardian, and provides that the minor's settlement may include a waiver by the parents of any loss of consortium claim. Guardians are often not required since the funds must be deposited in approved financial institutions. The funds can only be released upon court order prior to the minor reaching 18 years, the age of majority. At that time, the funds are to be released to the minor, but some courts will impose other conditions depending upon the circumstances and willingness of the minor. O.R.C. §2111.05.

Rule 68 establishes the general process for approval of all minor settlements. Sup.R. 68. It requires a hearing at which the minor must be present. In some counties, the hearing is recorded. If a structured settlement is involved, courts vary in the evidence that is required. Some set standards for the funding insurance company, e.g., Franklin County requires ratings of A++, A+ or A from A.M. Best Company. Loc.R. 68.4. An injured minor who claims to be emancipated may apply to settle his claim. O.R.C. §2111.181.

As to fees and costs, Rule 71(I) requires pre-approval by the probate court of any contingent fee agreement with a guardian or other fiduciary. Sup.R. 71(I). The actual practice varies within Ohio. Some courts are very strict about this requirement. Some courts have *de facto* caps on such fees, but generally a 33.33% contract will be approved.

There are many detailed and different written and unwritten procedures in effect in Ohio's counties regarding processing a minor's settlement.

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OKLAHOMA

By Carrie Palmer

Where monies are to be paid to a minor as a result of a judgment or compromise of a law suit, Title 12 O.S. §83(A), generally, controls. The statute, entitled, "Conserving moneys obtained for or on behalf of persons under eighteen years of age in court proceedings," requires court approval where a minor (under 18), is to receive an amount of money over $1,000.00, after payment of costs and expenses (including medical bills and attorney fees). If this is the case, such monies must be deposited, "by order of the court, in one or more federally insured banking, credit union or savings and loan institutions, or invested by a bank or trust company having trust powers under federal or state law, approved by the court…", or the court may approve a structured settlement. 12 O.S. §83(a). [9] The monies may be withdrawn during the time of minority, only upon order of the Court. 12 O.S. §83(b). This approval procedure, usually referred to in Oklahoma as a "Friendly Suit," can be completed by a non-attorney, in which case, the appropriate paperwork is completed by the court. 12 O.S. §83(c). The statute does not apply if a legal guardian has been appointed for the minor prior to any award of monies. Further, if a legal guardian is appointed after an award of monies pursuant to subsection A, the legal guardian may petition the district court in the county where the funds are held for an order directing the institution to transfer the funds to the guardian. This transfer may be made subject to reasonable safeguards. 12 O.S. §83(d).

Importantly, the statute only applies to monies exchanging hands in an actual "court proceeding," where the minor is not the ward of a legal guardian. Thus, the statute is not applicable to settlements by or on behalf of minors when such settlements are executed out of court – for instance, where a minor has a personal injury claim against a negligent tortfeasor which is settled with the tortfeasor's insurance company prior to any case filing.

Nevertheless, while the text of 12 O.S. §83, does not require an approval hearing to complete an out-of-court settlement of a minor's claim, it is important to note, pursuant to Oklahoma contract law, contracts entered into by minors are subject to "disaffirmance," by the minor either before reaching the age of majority, eighteen (18) years of age, or within one (1) year thereafter.[10] For this reason, it is generally in the best interests of the defendant to seek court approval of <u>any</u> agreed settlement, whether more or less than $1,000.00.

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[9] It is questionable whether the depositor may take $1,000.00, of that recovery, off the top, after payment of fees and expenses, for the benefit of the minor, given a plain reading of the statute. However, as a practical matter, this is not typically done.

[10] Title 15 O.S. §19. Note, however, a minor who receives no care from a parent or guardian may not disaffirm or void a contract which was otherwise valid upon execution, where the purpose of that contract as to pay the reasonable value of things necessary for the minor's support or that of his/her family. See 15 S. §20. Further, a minor who is or has been married, is viewed as "emancipated." See *Daubert v. Mosley*, 1971 OK 90, 487 P.2d 353 (Okla. 1971).

Practice pointers: When drafting the paperwork for a Friendly Suit, counsel may request the Court to allow a distribution of any amount for which the child can be shown to have a practical need. Although there is no statutory authority for this procedure other than those granting the court's inherent powers, a well-reasoned request with explained safeguards will ordinarily be looked upon favorably by the Court. Whether such item is money for new school clothes, a summer sports camp, a car for a teenager or an advance for a math tutor, most courts will consider a sensible request and allow counsel to make provision for such a distribution, either immediately or on a date certain in the future. Provided the description of such a distribution is in the Order for Distribution to a Minor, the parties do not have to Petition the court, at a later time, for such a withdrawal. If not made in this manner, other disbursement requests which arise during the period of minority, must be made by a Petition for Withdrawal to the Court granting the original Order, per Title 12 O.S. §83(B).[11]

There are no statutory forms or requirements other than as set out in §83, for a court approval hearing. However, the forms typically used by Oklahoma counsel include a Petition and Answer/General Denial (where no suit was previously filed); an Application for Distribution to Minor; an Order for Distribution to Minor; an Order of Trust Deposit; a Receipt of Trust Deposit (to be completed by the financial institution receiving the money and returned to the Court for filing within 5 days of deposit); any associated filings for structured settlements/annuities, where applicable; a Release/Settlement Agreement; and a Dismissal with Prejudice. The Release and any annuity/structure paperwork will generally not be filed with the Court.

Related or potentially useful statutes: Title 12 O.S. §81, governs the court's treatment of monies less than $500.00, paid into the court on behalf of a minor who has no legal guardian; Title 12 O.S. §2025.1, provides a deemed assignment by a parent to the child of the parents' right to recover for injury to the child; Title 12 O.S. §96, controls the exceptions to the statutes of limitations for actions involving minors.

[11] As with much of the law in Oklahoma regarding families and children, 12 O.S. §83(B), maintains with the courts the equitable right to make findings, deny requests, or issue orders. This is typically based upon the concept of the best interest of the child/minor. See, *Harjo v. Johnston*, 187 Okla. 561, 104 P.2d 985, 991 (1940).

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OREGON

By Brian B. Williams

For cases involving settlement for more than $25,000, court approval must be obtained to achieve a valid settlement. A petition must be filed to have a conservator appointed for the minor, with the conservator requesting court approval of the settlement and remaining responsible for ensuring that the settlement be used for the minor's benefit. The process is handled through the probate department of the court. The court will typically require that any funds be placed into a restricted account that is available to the minor only and that no funds be disbursed until the child turns 18. There may be a requirement that an annual report be filed with the court by the conservator every year until the child turns 18. The exact requirements and procedure can vary from county to county. Obtaining court approval is beyond the ability of an unrepresented plaintiff. If the plaintiff is unrepresented, the party seeking the release may need to retain an attorney to obtain necessary court approval.

Because obtaining court approval is time consuming and expensive, there was universal agreement that a more efficient procedure was needed. This resulted in the passage of ORS 126.725 which has a far simpler procedure for claims where the settlement is for $25,000 or less. The $25,000 limit does not include reimbursement of medical expenses, liens, attorney's fees and litigation costs. The statute requires that a person acting on behalf of the minor complete an affidavit stating that the minor will be fully compensated by the settlement and that there is no practical way to obtain additional amounts from the party being released. Money must be paid into a federally insured savings account that earns interest in the sole name of the minor that is restricted such that no money be disbursed until the minor turns 18, dies, or a court enters an order directing something different. The only other investment option is to purchase an annuity, in which case the minor must be designated as the sole beneficiary of the annuity.

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PENNSYLVANIA

By Kandice J. Giurintano

Pennsylvania Rule of Civil Procedure 2039 provides that an action where a minor is a party may not be settled, compromised, or discontinued without the approval of the court. Pa. R.C.P. 2039. Specifically, the guardian of the minor must submit a petition to the court. *Id.* Substantively similar rules apply to wrongful death actions involving an interested minor. *See e.g.*, Pa R.C.P. 2206; *Moore v. Gates*, 580 A.2d 1138, 1141, 1146 (Pa. Super. 1990). The rationale behind this requirement is that the court acts as a caretaker and as *parens patriae*, or financial steward, for the minor. *Shaw by Ingram v. Bradley*, 672 A.2d 331, 333 (Pa. Super. 1996). The court will ensure that the guardian has authority to sign the release and that the guardian signed the release in the best interests of the minor.

The petition process seeking the court's approval varies widely for each county within Pennsylvania. Some counties merely provide that the petition must set forth (1) the facts of the case, (2) the damages sustained, (3) all expenses incurred, including counsel fees, and (4) any other relevant information. *See e.g.*, L.C.R.C.P. No. 2039. Other counties, however, have much more detailed requirements; in York County, the local rules specify fifteen (15) items that must be in the petition. YCCiv. Rule 2039.1. It is thus imperative that the petitioner's counsel consult the appropriate county's local rules to determine the necessary contents of the petition. The identity of the proper county depends upon the status of the suit. If no suit has commenced, the petition should be filed in the Orphan's Court where the minor resides, but if suit has commenced, the petition should be filed in the court where the suit was filed. *See e.g.,* D.C.C.R. No. 2039; YCCiv. Rule 2039.1. Some courts will also require that the petitioner attach certain information to the petition, including copies of medical reports, investigative reports, and counsel fee agreements. *See e.g.,* Sch.R.C.P. No. 2039. Other courts have rules specifying the necessary contents of the court order. *See e.g.*, D.C.C.R. No. 2039.

Pennsylvania courts do not always require a hearing before confirming a minor's settlement or compromise agreement. The amount of counsel fees is a common reason why a court would require a hearing. Counties within Pennsylvania differ on whether there is a cap on counsel fees, and, if so, the amount of the cap. In many counties, a presumptive cap of 25% of the settlement or compromise amount applies to counsel fees. *See e.g.*, D.C.C.R. No. 2039; Sch.R.C.P. No. 2039; YCCiv. Rule 2039.1. In determining the proper amount of counsel fees, many courts will look to the factors cited by Pennsylvania's Supreme Court, including the amount of work involved, the difficulty of the case, and the amount of money involved. *In re LaRocca's Trust Estate*, 246 A.2d 337, 339 (Pa. 1968).

Rule 2039 also governs the distribution of the fund created by any settlement, compromise, or discontinuance. Pa. R.C.P. 2039(b). After counsel fees and expenses, the method and medium by which the court may permit the distribution includes lump distribution to the guardian of the minor estate, lump distribution of less than $25,000 to the guardian of the person or natural guardian, investment in federally insured and

restricted instruments and accounts, structured settlements, and the creation of trusts. Pa. R.C.P. 2039(b). Several strict conditions and limitations may apply, including restrictions on the withdrawal of funds from an account and requiring an affidavit or proof of deposit to insure proper investment. *Id.* There is a presumption against sealing records involving a minor's settlement. *See Storms ex rel. Storms v. O'Malley*, 779 A.2d 548, 569 (Pa. Super. 2001).

Overall, there are many detailed procedures and restrictions regulating a minor's settlement. It is vital that parties consult and comply with the relevant state and local rules.

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RHODE ISLAND

By Gary N. Stewart

In the State of Rhode Island, any release given by a parent or guardian on behalf of a minor which is in excess of $10,000 in value must be executed by a court-appointed guardian *ad litem* and approved by a court to be binding upon the minor. This is commonly referred to as a "Friendly Suit" action.

Conversely, any release executed on behalf of a minor which is for $10,000 or less needs no court approval to be binding.

This rule is based upon the statutory language of R.I. Gen. Laws §33-15.1-1 which states,

> A release given by both parents or by a parent or guardian who has the legal custody of a minor child or by a guardian or adult spouse of a minor spouse shall, where the amount of the release does not exceed ten thousand dollars ($10,000) in value, be valid and binding upon the minor.

This statute (or its predecessor) was interpreted by the Supreme Court of Rhode Island in the case of *Julian v. Sayre Corporation, et al.*, 120 R.I. 494, 388 A.2d 813 (1978).

In *Julian*, the minor child sustained personal injuries while riding a tricycle when struck by a motor vehicle. The mother filed suit on her behalf and on behalf of the minor child against the driver. A settlement was then achieved wherein the mother signed a release that discharged "any other person, firm or corporation charged or chargeable with responsibility or liability from any and all claims, actions, and causes of actions, belonging to the said minor or to the undersigned." *Id.*

Thereafter, the mother and minor child brought suit against both the seller and manufacturer of the tricycle. Predictably, the defendants in the case relied upon the language of the release signed and argued that its breadth shielded them from any liability relating to the accident.

The Court held that the mother could not execute a valid and binding release upon the minor because it was above the $1,000 (now $10,000) statutory authority.

The Court held that

> …the rule is that where the purported release of a minor by his parent involves a sum in the excess of the $1,000 amount that limits the scope of §33-15-1(a), in order to make the release valid and binding as to the rights of the minor, it must be executed on the minor's behalf by a court appointed guardian *ad litem* and approved by a court.

Thus, in the present day, any release for a minor's claim which exceeds $10,000 must be executed by a court-appointed guardian *ad litem* and approved by a court.

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SOUTH CAROLINA

By Kurt M. Rozelsky

Section 62-5-433 of the South Carolina Code of Laws provides the basic statutory definitions and procedures for the settlement of claims in favor of or against minors or incapacitated persons.

I. AMOUNT OF CLAIM DETERMINES JURISDICTION

"Claim" means the actual amount the minor will receive after payment of all expenses of litigation (e.g., attorney fees and litigation costs) and all outstanding reimbursements (e.g., medical bills, Medicaid liens, reimbursements to parents, etc.). S.C. Code § 62-5-433(A)(2)

Claims Over $25,000, S.C. Code § 62-5-433(B)
- Circuit Court has exclusive jurisdiction.
- Conservator appointment is required.

Claims Under $25,000, S.C. Code § 62-5-433(C)
- Circuit and Probate Courts have concurrent jurisdiction.
- If a conservator has been appointed, the conservator may settle the claim with or without court authorization. If no conservator has been appointed, the guardian or guardian *ad litem* must seek court approval (with or without appointment of conservator);
- payment must be made in accordance with § 62-5-103 to (1) a person having the care and custody of the minor or incapacitated person with whom the minor or incapacitated person resides; (2) a guardian of the minor or incapacitated person; or (3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.

Clams Under $2,500, S.C. Code § 62-5-433(D)
- Settlement may occur without court approval.
- Settlement may occur without appointment of a conservator.
- Payment may be made in accordance with § 62-5-103.

When a conservator is to be appointed, the conservator must be appointed by the Probate Court, pursuant to § 62-5-402. There is no requirement for the appointment of a conservator for claims under $10,000, nor is there a prohibition against it. If requested by the parties or on its own motion, the court, upon good cause shown, may appoint a conservator for amounts under $10,000. Additionally, when a structured settlement is over $10,000, but the minor will not receive more than $10,000 per year during his or her minority, it is generally not appropriate to appoint a conservator. It is not appropriate to appoint a conservator when the minor will not receive any funds under a structured settlement until after the minor reaches adulthood.

Where appointment of a conservator is not required by statute, but is required by an insurance carrier, all costs of appointment should be borne by the carrier.

II. INITIATION OF PROCEEDING

A proceeding is initiated by the filing of a verified petition in the appropriate court in "the county in which the minor or incapacitated person resides," S.C. Code § 62-5-433(A)(1). The verified petition must contain (§ 62-5-433(B)(1) or § 62-5-433(C)(1)): (a) all pertinent facts of the claim, (b) any payments made, (c) attorneys fees, (d) expenses, (e) statement of jurisdiction, (f) comments on best interest of minor for claims over $25,000, and (g) statements regarding notice requirements. This is not an *ex parte* petition.

The Order approving the settlement must contain: (a) approval of settlement, (b) authorization to consummate and execute a proper receipt and release or covenant not to sue, and, (c) if the net amount is over $10,000, require that payment be made through the conservator or, if no conservator has been appointed, through the clerk of court until a conservator is appointed, or, if net amount is under $10,000 and a conservator exists, require that payment be made to conservator with notice to the Probate Court which appointed conservator, or if no conservator, require that payment be made in accordance with § 62-5-103. S.C. Code § 62-5-433(B)(2) and (3).

III. ATTORNEY

A guardian *ad litem* is appointed in most cases. Pursuant to S.C. Code § 62-5-407(a),

> …if at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian *ad litem*. If the minor already has an attorney, that attorney shall act as his guardian *ad litem*.

The court may approve a reasonable attorney's fee to be paid from the settlement proceeds.

IV. BOND

Bond is not required in minor settlement proceedings. However, a bond is generally required, pursuant to § 62-5-411, in the appointment of a conservator, and shall be paid from the funds over which the conservator exercises authority.

V. STRUCTURED SETTLEMENTS

Structured settlements should be approved with appropriate consideration of appointment of a conservator for monies paid to a minor during minority. The jurisdictional amount is determined by the present value of the structured settlement.

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SOUTH DAKOTA

By Jay C. Shultz

In South Dakota, any claim for compensation and damages in behalf of a minor must be brought by and through a guardian or guardian *ad litem* for the minor. The exclusive method for pursuing and settling a claim for damages on behalf of a minor is set forth in South Dakota Codified Laws (SDCL), § 15-6-17(c):

> Whenever a minor . . . person has a guardian or conservator, such guardian or conservator may sue or defend on behalf of the minor . . . person. If the minor . . . person does not have a guardian or conservator, he may sue by a guardian *ad litem*. The court shall appoint a guardian *ad litem* for a minor . . . person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor . . . person and may make such appointment notwithstanding an appearance by a guardian or conservator. Unless the court otherwise orders, no guardian *ad litem* shall be permitted to receive any money or other property of his ward except costs and expenses allowed to such guardian *ad litem* by the court or recovered by the ward in the action until such guardian *ad litem* has given sufficient security approved by the court to account for and apply such money or property under direction of the court. Such guardian *ad litem* may with the approval of the court settle or compromise in behalf of his ward, the case in which he is appearing and any judgment entered therein.

Minors are persons under eighteen years of age. SDCL § 26-1-1.

When a minor is a party to a small claims action (limited to claims not exceeding $12,000), a parent or guardian or conservator shall be considered a guardian *ad litem* for purpose of commencing said action or receiving service of process of said action. SDCL § 15-39-77.

When there is potential conflict between perceived parental responsibility and the obligation to assist the court in achieving a just and speedy determination of an action, parents have no right to act as guardians *ad litem*. *Matter of Guardianship of Petrik*, 1996 SD 24, 544 N.W.2d 388. In other words, the duty of a court-appointed guardian *ad litem* of a minor is to the court and not to the parents of the minor. *Id.*

Generally, the guardian *ad litem* must satisfy the court that under the facts and circumstances of the case, including the nature and extent of the injuries sustained by the minor, the sum offered to settle the claim is fair and equitable and represents adequate compensation for the injuries and damages sustained.

The failure to appoint a guardian *ad litem* for a minor is not an error affecting the court's jurisdiction. Any judgment rendered against a minor without the appointment of a guardian *ad litem* is at most voidable, but not void. *Moore v. Connecticut General Life Ins. Co.*, 71 S.D. 512, 26 N.W.2d 691 (1947). Likewise, the minor must have a guardian *ad litem* appointed before he commences an action and if the minor fails to do so, the defendant may move to have the proceedings set aside for irregularity. *Fink v. Fink*, 70 S.D. 366, 17 N.W.2d 717 (1945).

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TENNESSEE

By Scott D. Blount

Tennessee courts are empowered by statute with the authority to approve settlements on behalf of minors injured by the alleged wrongful act of another. T.C.A. § 34-1-121(b). If the court determines a settlement is in the best interest of the minor, then the order approving such a settlement binds the minor to the terms of the settlement. T.C.A. § 34-1-121(b).

Tennessee Code Annotated § 29-34-105 sets forth the requirements for approval of a settlement on behalf of a minor involving a tort claim. The statute divides the settlements into two categories based on the amount of the settlement. Regardless of the category of the settlement, the court has the discretion to determine whether the settlement proceeds are to be paid to the minor's legal guardian or held in trust by the court until the court finds it appropriate to release the funds. T.C.A. § 29-34-105(d).

A judge or chancellor has the authority to sign an order or decree approving a tort claim settlement on behalf of a minor if the amount of the settlement is less than $10,000. T.C.A. § 29-34-105(a). The order submitted to the court must be supported by an affidavit from the minor's legal guardian. T.C.A. § 29-34-105(a). The affidavit must contain the following:

1) A description of the tort,
2) A description of the injuries to the minor involved,
3) A statement that the affiant is the legal guardian,
4) The amount of the settlement,
5) A statement that it is in the best interest of the minor to settle the claim in the approved amount, and
6) A statement of what the legal guardian intends to do with the settlement proceeds until the minor reaches the age of eighteen.

T.C.A. § 29-34-105(b). The affidavit is the only technical requirement set forth in the statute for settlements under $10,000; however, many courts still require a hearing before any settlement is approved.

For settlements over $10,000, the court will conduct a hearing in the presence of the minor and legal guardian to determine whether or not to approve the settlement. T.C.A. § 29-34-105(a). Furthermore, it is standard practice for many courts to appoint a guardian *ad litem* to investigate the settlement and provide a report to the court as to whether the settlement is in the best interest of the minor.

As a practical matter, any attorney seeking court approval for a minor settlement in Tennessee should determine if any medical or Medicaid liens exist that could effect the settlement and should seek a release from any insurance carrier that paid any portion of medical expenses incurred by the minor. Many courts will not approve a settlement until such issues are satisfied, even if the settlement is under $10,000.

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TEXAS

By David L. Sargent

"Compromise" may be defined as an agreement between two or more parties in settlement of matters in dispute between them. For a compromise agreement to be binding, the parties must have capacity and authority to contract with regard to the subject matter of the compromise. When compromise and settlement involve the interests of minor children, the law requires that specific safeguards be in place to protect their interests due to their legal incapacity to enter into a contract.

Parents acting as next friends and their minor children typically have a potential conflict of interest in settlement negotiations. For instance, settling claims sooner rather than later may be in the best interest of the parents; however, once the minor children reach the age of majority, the children may determine that their best interests would have been better served by taking another course of action. The conflicts of interest need not be actual to warrant the appointment of a Guardian *Ad Litem*. *McAllen Medical Center v. Rivera*, 89 S.W.3d 90, 95 (Tex.App.—Corpus Chrisi, 2002). A Guardian *Ad Litem* is not appointed to duplicate work of the attorney retained by the minor children's parents, but rather to review the compromise and settlement agreement to determine whether the compromise is in the best interest of the minor children. VERNON'S ANN. TEXAS RULES CIV. PROC., RULE 173.7. *Youngstown Area Jewish Federation v. Dunleavy*, 223 S.W.3d 604 (Tex.App.—Dallas, 2007).

Once the Guardian *Ad Litem* has reviewed and approved the settlement agreement, the Guardian *Ad Litem* writes a recommendation report to the court, stating whether the settlement agreement is in the best interest of the minor children. Settlement funds may be deposited in the court registry. Sometimes a settlement agreement involving minor children specifies or a Guardian *Ad Litem* may suggest that settlement funds be used to purchase an annuity. If so, it is imperative to make sure that the judgment is signed and approved by the court before the deadline to fund the annuity and also that the annuity is properly funded.

If the Guardian *Ad Litem*'s report recommends to the Court that the settlement agreement be approved, then a minor prove-up hearing is scheduled. A minor prove-up hearing serves to prove up the final judgment in a suit and also to preserve a clear record stating that all settlement of claims has been made and is in the best interest of the minor children. *Goodyear Dunlop Tires North America, Ltd. v. Gamez* 151 S.W.3d 574 (Tex.App.—San Antonio, 2004).

At the minor prove-up hearing, evidence is presented on the record *via* the examination of the parents by their attorneys, defendant's attorneys, and the Guardian *Ad Litem*. The record must establish that the plaintiffs understand that they are waiving their right to a jury trial; that they could have received more, less or nothing in damages at trial; and that they believe the settlement is fair, reasonable and in the best interest of the children. The Guardian *Ad Litem* makes a recommendation in open court to accept the settlement as it

is in the best interest of the minor. The proposed final judgment is presented to the judge with the settlement agreement attached as an exhibit. The proposed judgment must be accepted and signed by the judge to take effect.

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UTAH

By Joel Jonathan Kittrell

In Utah, the process for securing a minor's settlement is found in U.C.A. §75-5-401, *et seq.* The process requires a filing fee and the filing of various pleadings (*i.e.,* Nomination of Conservator, Petition for Appointment of Conservator to Serve Without Bond, Acceptance of Appointment of Conservator, etc.). It is common for an insurance carrier to pay the filing fee and hire counsel to facilitate this process when the minor is not represented by an attorney. If the settlement amount exceeds $10,000, court approval of the settlement is required. However, it is recommended that a party seek court approval of any settlement to protect against future claims.

The first item that must be determined is the proper venue, which generally is in the county where the minor resides, or in any county where the minor has property if the minor does not reside in the state.

The Nomination of Conservator will then be filed by either or both parents of the minor, or the minor's legal guardian. In an instance where the minor is fourteen years or older, the minor may be allowed to nominate the conservator. The court will require the conservator to accept the appointment by proper pleading. Appropriate conservators will include either one or both biological parents, a person nominated by the will of a deceased person, any relative that the minor has lived with at least six months prior to the filing of the petition, or a person nominated by the individual who is paying the benefits to the minor. The conservator must be prepared to present to the court an accounting of the settlement up until the minor reaches the age of majority.

The Petition for Appointment of a Conservator includes several key elements. The petition must set forth the purpose of requesting a minor settlement, a brief description of when and how the minor was injured, who was at fault for causing the injury, and the amount of the settlement. If an insurer is involved, such insurer will be listed as providing the source of the settlement detailing the structure of the terms of the settlement if applicable. Additionally, the petition must contain a statement that the conservator finds that the settlement is fair and reasonable and that the conservator has the authority to settle the claim, sign a release, and to disperse the proceeds in accordance with the court's order. If applicable, a statement should be included that the counsel for the insurer has made it known that the counsel does not represent the minor.

A petition and the accompanying pleadings will be filed with the district court, which will then schedule a hearing to determine if the settlement is fair and reasonable.

If a minor is represented, counsel for the minor will generally draft the pleadings and pay all associated fees and costs. Utah courts generally will require a sworn statement from the conservator and/or an examination of the conservator under oath acknowledging that they believe the settlement is fair and in the best interests of the minor. Counsel and the conservator should be ready to answer any questions the court may have regarding future

medical expenses, details of a structured settlement, outstanding liens, and other related matters.

Overall, the process for obtaining court approval of a minor's claim is not complicated and does not require an extensive amount of time. However, various factors could lengthen the process, including the amount of the settlement, verifying all applicable benefits, eligibility for public assistance programs, and language and communications barriers, among others. It is well worth it to hire counsel with experience in obtaining court approval of minor settlements.

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VERMONT

By William D. Riley

In Vermont, a parent's agreement to compromise a claim held by a minor child is governed by statute. Section 2643 of Title 14 provides as follows:

> (a) The superior judge of the superior court within and for the county where the minor resides, on behalf of a minor, must approve of and consent to a release to be executed by a parent in the settlement of any claim which does not exceed the sum of $1,500.00. A release so furnished shall be binding on the minor and both parents, their heirs, executors, administrators or assigns, respectively.
>
> (b) Any claim settled for a sum in excess of $1,500.00 shall require the approval of a court-appointed guardian.

14 V.S.A. § 2643. With respect to settlements of $1,500.00 or less, a parental release is unenforceable unless the superior judge of the superior court within which the minor resides independently determines that the proposed settlement is in "the best interests of the minor." *Whitcomb v. Dancer*, 443 A.2d 458, 461 (Vt. 1982).

With respect to settlements in excess of $1,500.00, the Vermont Supreme Court has construed § 2643 to require the approval of both a court-appointed guardian and a superior court judge. *See Whitcomb*, 443 A.2d. at 461 ("[A]t common law even one appointed guardian *ad litem* cannot bind a minor litigant to settlement agreement 'absent an independent investigation by the court and a concurring decision that the compromise fairly promotes the interests of the minor.'").

The Vermont Supreme Court has further held that an agreement providing for the lump sum settlement of claims held by a parent and a minor child is ineffective. *Whitcomb*, 443 A.2d at 461-62 ("Defendants seeking to contract with parents in settlement of litigation involving a minor plaintiff must expressly allocate any settlement between the plaintiffs."). The Court noted that such allocation is necessary to enable the superior court to properly perform its supervisory role where the proposed settlement is $1,500 or less and, where the proposed settlement exceeds $1,500, to allow the parties and the court to determine that the appointment of a guardian is necessary. *Id.* at 462.

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VIRGINIA

By Helen D. Neighbors

In Virginia, claims asserted on behalf of minors for injuries or property damage are treated as a claim being made by a person under disability. In order to be binding on a minor, compromise settlements of these claims must be court approved. If the minor is a party to a suit, the court in which the matter is pending has the power to approve and confirm a compromise of the controversy on behalf of the minor. This includes claims being asserted under an insurance liability policy. As long as the settlement is deemed by the court to be in the best interest of the minor, the minor is bound by the Order or Decree entered by the court. The only basis for setting aside a court approved settlement is fraud.

In cases involving bodily injury or property damage to a minor caused by negligence, neglect or default of another, not resulting in death, any person including an insurance carrier interested in entering into a compromise settlement may petition the court where the suit is pending to approve the compromise settlement. If the matter is not in litigation, any party including an insurance carrier may petition any circuit court to approve the compromise settlement after the moving party has given reasonable notice to all parties and any other person found by the court to be interested in the compromise.

If the minor or the natural parent or guardian of the minor are not represented by counsel at the time of compromise settlement, independent counsel will need to be retained to represent the minor's interest in the court approval process. Even if the minor or the natural parent or guardian of the minor are represented by counsel, some jurisdictions still require the appointment of a guardian *ad litem* on behalf of the minor. The local rules for the jurisdiction where the matter is pending will need to be reviewed in order to determine whether the jurisdiction requires the appointment of a guardian *ad litem* even though the minor or natural parent or guardian are represented by counsel.

When seeking court approval of a minor's settlement, the local rules of the jurisdiction where the matter is pending must be reviewed in order to determine if the amount of settlement will need to be paid into the court or the court's registry.

The Court has the discretion to authorize payment of a compromise settlement, not to exceed $15, 000.00, to a minor's parent or guardian to be held in trust for the benefit of the minor until the minor reaches the age of majority.

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WASHINGTON

By Christopher W. Tompkins and Brandon R. Carroll

In Washington, minor settlement procedure is governed by Superior Court Special Proceeding ("SPR") 98.16W. Generally, a parent may not release a child's cause of action and court approval is required before settlement of an unemancipated minor's claim. SPR 98.16W; *Scott v. Pac. W. Mountain Resort*, 119 Wn.2d 484, 494, 834 P.2d 6, 11 (1992). The rule is intended to ensure that the interests of a minor/incompetent person are protected and that their settlements are reasonable. The requirements of SPR 98.16W are specific and must be consulted when petitioning the court for approval of a proposed minor's settlement.

The settlement approval procedure is commenced by filing a petition with the court. SPR 98.16W(b). The petition should be served on all parties and must contain the information required under SPR 98.16W(b). Upon the filing of the petition, the court shall appoint a Settlement Guardian *ad Litem* ("SGAL") to assist the court in determining the adequacy of the proposed settlement. SPR 98.16W(c). In multiple minor settlements, each minor should have separate a SGAL. *In Re The Guardianship of* Lauderdale, 15 Wn. App. 321, 325, 549 P.2d 42, 46 (1976). The SGAL must–within 45 days–file a written report containing its recommendation regarding approval. *Id.* However, in certain circumstances a SGAL may not be necessary. *See* SPR 98.16W(c)(2).

A hearing on the petition is required under SPR 98.16W(f). In determining the adequacy of the settlement the court considers requests for fees, costs, and other incidental charges which may be deducted from the settlement funds. SPR 98.16W(f). Upon approval, settlement proceeds are entered into the court registry and are distributed in accordance with SPR 98.16W(j).

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WEST VIRGINIA

By Patrick T. White

Compromises with minors must comply with West Virginia Code § 44-10-14. It allows and governs compromises reached with or without the filing of a lawsuit for damages. *Id.* at (a). The minor's parent, guardian, or next friend may negotiate the settlement. *Id.*

The circuit court must approve the settlement before the party against whom the claim is asserted may obtain a release. *Id.* at (b). The parent, guardian, or next friend begins the approval process by filing a verified petition with the circuit court. *Id.* The verified petition may be filed in the county where the minor resides, in any county with venue over the claim, or in conjunction with a pending lawsuit. *Id.*

West Virginia Code § 44-10-14 provides detailed guidance concerning the information that must be included in the petition. *Id.* at (c). In twelve subparagraphs, the statute requires the petition to provide information regarding the accident and settlement, including background information on the minor, details of the accident, the minor's injuries, the settlement amount, and the net settlement amount the minor will receive after all expenses are paid, etc. *Id.*

Once the petition is filed, the court appoints a guardian *ad litem* to review the petition and settlement. *Id.* at (d). After his or her review, the guardian *ad litem* files an answer setting forth his or her opinion on the petition and settlement and whether the settlement is in the best interest of the minor. *Id.*

Ultimately, the circuit court must approve the settlement prior to the execution of a release. The court conducts a hearing wherein testimony is provided regarding the accident and settlement. *Id.* at (e). The minor may testify at the court's discretion. *Id.* After the hearing, the court must enter an order approving or rejecting the settlement. *Id.* at (g). An order approving the settlement sets forth the utilization and distribution of the settlement proceeds. *Id.* Net settlement proceeds less than $25,000 may be deposited in the minor's name and in interest bearing certificates of deposits, accounts, or securities at an FDIC insured financial institution located in West Virginia. *Id.* at (g)(4). Alternatively, the statute sets forth procedures for creating a trust from the proceeds, appointing a conservator for the trust, and reviewing the management of the trust proceeds. *Id* (g- h).

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WISCONSIN

By John J. Reid

A fundamental principle of Wisconsin law is that a minor's cause of action is a property right protected by the Due Process Clause of the Fourteenth Amendment.[12] Before a minor's property right is destroyed or adversely affected, he or she is entitled to notice and an opportunity to be heard. In addition, Wisconsin Statue reflects the general policy that minors are special objects of the solicitude of the courts and of the government generally.[13] The minor is always the ward of every court where his rights or property are brought in jeopardy, and is entitled to the most jealous care that in injustice be done him.[14]

Wisconsin law requires that in all cases, a minor who is a party to an action must have a guardian or a guardian *ad litem*.[15] If the minor has a guardian and the guardian is represented by an attorney, the guardian is allowed to settle the minor's claim. Alternatively, in all cases where the minor does not have a guardian, a guardian *ad litem* shall be appointed by the circuit court of the county where the action is to be commenced or pending to evaluate, and potentially settle, the claim on a minor's behalf. The requirement of a guardian for purposes of settlement are applicable both in cases in which no action has commenced [16] as well as in pending actions.[17] The guardian *ad litem*'s role includes gathering all information necessary to determine what is in the minor's best interests and making recommendations to the court based on those determinations. The role of guardian *ad litem* is an advisory one. Under section 807.10, a guardian's approval of a settlement does not make it binding. Rather, the settlement become binding only after its approval by the appropriate court. The court should look to the guardian for a recommendation but should not substitute the guardian *ad litem*'s judgment for its own. If the court finds after the entry of judgment, settlement, or final order that a minor was not properly represented in the action or proceeding, the judgment or order shall be vacated on motion of the minor or personal representative of the minor.[18]

Wisconsin courts have found that a guardian is one *appointed by a court* to have care, custody, and control of the person of a minor or the manager of the estate of a minor and have refused to equate "guardian" as contemplated by the legislature for purposes of a minor's settlement with "natural" guardians, such as a parent .[19] Wisconsin courts have also found that an attorney who represents the parents does not also represent the minor *unless*

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[12] *See Jensen v McPherson*, 258 Wis.2d 962,971, 655 N.W.2d 487 (Ct.App.2002), *citing Brandt v Brandt*, 161 Wis.2d 784, 789, 468 N.E.2d 769 (Ct. App. 1991).
[13] *Id.*; WIS STAT §803.01(3)(a).
[14] *Id.*
[15] WIS STAT §807.10(2); WIS STAT §803.01(3)(a)
[16] WIS STAT §807.10(2).
[17] WIS STAT §807.10(1).
[18] *Jensen*, 258 Wis.2d at 972; WIS STAT §803.01(3)(c)(2).
[19] *Jensen*_, 258 Wis.Ed at 976-77.

that attorney has also been court appointed as the minor's guardian *ad litem* or guardian of the minor's property.[20] With certain exceptions, the courts will typically appoint the attorney of record for the minor as the minor's guardian *ad litem*.[21]

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[20] *Id.*
[21] WIS STAT §803.01(3)(a).

WYOMING

By Greg Greenlee & Heather A. Zadina

The age of majority in Wyoming is 18. Wyo. Stat. Ann. §14-1-101. Although no specific statutes or Wyoming Supreme Court case law pertain directly to the settlement of a claim with a minor, it is generally recognized in Wyoming that court involvement, in the form of a conservatorship and judicial approval of the settlement, is necessary. In Wyoming, minors have the capacity to contract (when of "sufficient age to understand what they are doing"), but they also have the capacity to void that contract at their election. *Novosel v. Sun Life Assur. Co. of Canada,* 55 P.2d 302 (Wyo. 1936). Likewise, unpublished District Court opinions have held that parents cannot compromise or release claims belonging to a minor, unless the parent had been appointed guardian.

Wyoming has two relevant statutes which pertain to payment to minors. Wyo. Stat. Ann. §14-2-202, provides:

> (a) Money or other property not exceeding three thousand dollars ($3,000.00) in value belonging to a minor having no guardian of his estate may be paid or delivered to a parent entitled to the custody of the minor to hold for the minor, upon written assurance verified by the oath of the parent that the total estate of the minor does not exceed three thousand dollars ($3,000.00) in value. The written receipt of the parent shall be an acquittance of the person making the payment or delivery of money or other property.
>
> (b) It is the duty of the parent to apply the funds received to the use and benefit of the minor.

Similarly, Wyo. Stat. Ann. §3-3-108 states:

> (a) Any person under a duty to pay or deliver money or personal property to a minor for whom no conservator has been appointed may pay not more than five thousand dollars ($5,000.00) per annum or may deliver property of a value not more than five thousand dollars ($5,000.00) to:
>
> (i) a married or emancipated minor;
> (ii) any person having the care and custody of the minor and with whom the minor resides;
> (iii) a guardian of the minor; or
> (iv) a financial institution incident to a deposit in a federally insured interest bearing account in the sole name of the minor with notice of the deposit to the minor.

At least one District Court judge, in an unpublished opinion, has held that the above statutes do not apply to personal injury claims, however. In more significant cases (and even in those cases involving settlements of less than $5,000.00 or $3,000.00) it is recommended that a conservator be appointed pursuant Wyoming's conservatorship statutes and that court approval of the settlement is obtained. *See,* Wyo. Stat. Ann. §§ 3-3-104, *et seq.* The process is initiated by filing a petition for appointment of a conservator. The petition may be filed by any person and must contain certain information required by Wyo. Stat. Ann. §3-3-101.

A parent of the minor is the preferred conservator, however, a person nominated as conservator in the will of the custodial parent; a person requested by a minor who has reached fourteen (14) years of age; or any other person who is willing to serve as conservator may also be appointed. Wyo. Stat. Ann. §3-3-105. The parties are entitled to a jury trial if requested, however, usually only a brief hearing before the judge is necessary. Wyo. Stat. Ann. §3-3-103. The Court may, in its discretion, order the appointment of a Guardian *Ad Litem* to represent the interests of the minor child. The costs for doing so are "taxed" as costs of the conservatorship. Wyo. Stat. Ann. §3-3-608.

A conservator owes a fiduciary duty to the minor child. Wyo. Stat. Ann. §3-3-609.

> The conservator of the estate shall protect and preserve it, invest it prudently, account for it as provided in the Wyoming statutes, expend it for the benefit of the ward and perform all other duties required by law. At the termination of the conservatorship, the conservator shall deliver the assets of the ward to the person entitled to receive them.

Wyo. Stat. Ann. §3-3-601. The conservator must make file periodic reports with the Court with regard to the assets of the minor, including an initial "inventory" to take place within 90 days of appointment. Wyo. Stat. Ann. §3-3-602. (*See also*, Wyo. Stat. Ann. §3-3-901-902 for further reporting requirements. Wyoming Statute §3-3-606 provides a listing of those actions the Conservator may take without prior court approval, while Wyoming Statute §3-3-607 sets forth a list of actions which require prior court approval.)

Finally, court approval of the settlement with the minor should be obtained to ensure that the minor will not attempt to assert his/her claim once he/she has reached the age of majority.

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