Minor Settlements from Alabama to Wyoming

April 2012

Prepared By:
Eagle International Associates, Inc.

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twaldeck@waldeckpa.com

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April 2012

Dear Clients:

Minor Settlements from Alabama to Wyoming is a compilation of the 50 states and District of Columbia's statues and rules concerning Minors. Eagle members for all states contributed to this publication. This is an example of the collective efforts of Eagle providing both service and benefits to clients. We hope that you will find this booklet informative and useful in your respective practices and businesses. We invite you to contact any Eagle member with questions or comments.

With best wishes!

The Members of Eagle International Associates, Inc.

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ALABAMA

In Alabama, settlements on behalf of minors are commonly referred to as "pro-ami settlements". Such settlements are governed by Rule 17(c) of the Alabama Rules of Civil Procedure. The minor is not bound by a settlement and release of his claim by the next friend, minor's parent, minor's attorney, or a guardian ad litem. The only effective settlement of a minor's claim is achieved by court approval of the settlement regardless of proposed settlement amount. This is accomplished by notifying the court of the proposed settlement and requesting that the court approve the settlement after a hearing. A minor's settlement is binding and enforceable, where a court, after hearing the facts, determines that the proposed settlement is in the minor's best interest. The court enters a judgment approving the settlement.

It is not necessary for the court to appoint a guardian ad litem if the minor' interests are represented by counsel, and if the minor's representative has no conflict of interest. However, courts routinely appoint guardian ad litems to represent the interests of the minor during the pro ami settlement proceeding. Attorney's fees are also subject to court approval in a pro-ami settlement. The court, using its discretion, determines a reasonable fee for the guardian ad litem's representation of the minor. Unless otherwise agreed upon, the courts generally tax the guardian ad litem's fees on the defendant.

Contributed by William Scott (AL) 205-967-9675 (wscott@sssandf.com)

ALASKA

In Alaska, the age of majority is eighteen. AS 25.20.010. Minor settlements in Alaska are governed by Alaska Rule of Civil Procedure 90.2. It provides that a parent or guardian of a minor has the power to execute a full release, covenant not to sue, or stipulation of entry of judgment on the minor's claim; however, the document will only be effective once a court has approved it. Rule 90.2.

In order to get court approval, a petition or motion must be filed. Rule 90.2(a)(2). It must state: (1) The minor's date of birth; (2) the relationship between the moving party and the minor; (3) the circumstances of the claim; (4) the amount of applicable liability insurance; and, (5) the basis for determining that the settlement is fair and reasonable. Further, if the settlement involves a personal injury claim, the motion must also describe the extent of the injuries, the medical treatment provided, and the

probable course of future treatment. Where the settlement involves a claim of $25,000 or less (exclusive of attorney fees and costs), the court can approve the settlement without holding a hearing. Rule 90.2(a)(3). Finally, if the minor is represented by counsel, the court must also preapprove the amount of attorney fees and costs payable from the settlement proceeds.

Once a court has held the hearing on the reasonableness of the settlement, the court must order that reasonable expenses, costs, and attorney's fees be paid from the settlement. Reasonable expenses include, but are not limited to, medical expenses and reimbursement to a parent, guardian or conservator. After payment of reasonable expenses, the remaining balance must "be disposed of in a manner which benefits the best interests of the minor." ARCP 90.2(b)(2). That provision also describes possible appropriate dispositions of the remaining balance (establishment of a trust, appointment of a conservator to hold the proceeds, transfer to a custodian for the benefit of the minor under the Alaska Uniform Transfers to Minors Act.).

A master appointed in probate proceedings has authority to conduct the hearing, recommend that the settlement be approved, receive proof of proper disposition of the proceeds, and issue orders approving appropriate withdrawals from the funds; however, a judge must still approve the settlement. Rule 90.2(c).

Contributed by Jeff Hill (OR) 503-417-1104 (hill@bodyfeltmount.com)

ARIZONA

Ariz. Rev. Stat. §14-5401 et. seq.

Court approval is required for settlements of $10,000 or more. (see, Ariz. Rev. Stat. § 14-5103.)

For venue requirements, see Ariz. Rev. Stat. § 14-5403.

A guardian ad litem is not required but if the court determines that the interests of the minor are or may be inadequately represented, it shall appoint an attorney to represent the minor. (Ariz. Rev. Stat. § 14-5407.)

For settlements of $10,000 or more, a conservatorship hearing or court order is required. (See, generally, Ariz. Rev. Stat § 14-5401.)

For Notice requirements, see Ariz. Rev. Stat. § 14-5405.

Contributed by Jack Storer (AZ) 602-776-5690 (jstorer@swensonlaw.com)

ARKANSAS

The age of majority in Arkansas is 18. Ark. Code Ann. § 9-25-101(a). Minor settlements are governed, generally, by Ark. Code Ann. § 28-65-318(a). In order to effectively settle a personal injury claim of a minor, a guardian must be appointed and the probate division of the circuit court petitioned for approval of the settlement. Ark. Code Ann. § 28-65-318(a).

Necessary pleadings and orders for probate approval include a petition for appointment of a guardian, an order appointing the guardian, a petition from the guardian to the court for authority to settle the claim, and an order authorizing settlement of the claim. Most probate judges require a hearing at which the petition is considered and evidence is heard regarding whether the settlement is in the best interest of the minor.

Ark. Code Ann. § 28-65-502 allows the circuit court to dispense with a guardianship when the minor's estate does not exceed $5,000. In such cases, the circuit judge may issue an order dispensing with a guardianship and approving the settlement.

Contributed by Jason Campbell (AR) 501-372-1887 (Campbell@amhfirm.net)

CALIFORNIA

Under California law, when a minor is a party to an action or proceeding, that minor shall appear either by a guardian or a guardian ad litem appointed by the court in which the action or proceeding is pending. [CCP §372]

There is no monetary threshold when a minor's claim can be settled without approval by the court.

To be enforceable in California, the settlement of a minor's claim can only be consummated with court approval. [Prob.C. §§2504, 3500, 3600 et seq.; CCP §372] For this purpose, a petition for approval must be filed with the court. Until the petition is approved by the court, there is no final settlement. Any settlement agreement is therefore voidable by the minor's guardian ad litem. [Scruton v. Korean Air Lines Co., Ltd. (1995) 39 CA4th 1596, 1603-1605, 46 CR2d 638, 641-642.] The petition for court approval of a minor's compromise under CCP §372 must comply with CRC (Probate Rules) 7.950, 7.950.5, 7.951 and 7.952. It is mandatory that the petition be prepared on Judicial Council form MC-350. Counsel should also prepare the order approving compromise of the claim and bring it to the hearing. It is mandatory that the order be prepared on Judicial Council form MC-351.

The petition must be executed by counsel and must be verified by the petitioner under penalty of perjury. [CRC (Probate Rules) 7.950] The petition must contain a full disclosure of all information that has "any bearing upon the reasonableness" of the compromise. [CRC (Probate Rules) 7.950]. In addition to the petition, a current medical report or medical doctor's declaration describing the minor's current condition and future medical needs should be provided to the court. Even if the petition is unopposed, the attorney responsible for handling the matter should be present at the hearing rather than delegate the matter to another. The judge often has questions regarding liability and/or damages, and counsel needs to be thoroughly familiar with the minor's injuries and prognosis.

The person compromising the claim on behalf of the minor and the minor must attend the hearing on compromise of the claim unless the court for good cause dispenses with their personal appearance. [CRC (Probate Rules) 7.952] At the hearing, the judge may question the minor about his or her injuries, including present condition and, especially where the minor is older, his or her feelings about the settlement.

If a minor's settlement does not exceed $5,000, the court may order it paid to the custodial parent to be held in trust until the minor reached majority. [Prob.C. §§3611(e), 3401] Nevertheless, the judge has the discretion to order the settlement funds placed in a blocked account with withdrawals subject to court approval where the judge believes this is in the minor's best interest. Where the settlement proceeds are $5,000 or more, the court may direct that the money be: 1) Deposited in an insured account in a California financial institution, subject to withdrawal by court order; 2) used to purchase a single-premium deferred annuity, subject to withdrawal by court order; 3) deposited in a special needs trust for the benefit of the minor or person with a disability; or 4) delivered to the trustee of a trust that is revocable by the minor upon attaining age 18, with such terms and conditions as the court determines to be necessary to protect the minor's interests. [See Prob.C. §3611 (b), (c), (f), (g), (h)] An order for deposit of funds of a minor and a petition for the withdrawal of such funds must comply with CRC (Probate Rules) 7.953 and 7.954. [CRC 3.1384]

Contributed by Paul de Lorimier (CA) 213-386-6900 (pdelorimier@mbglaw.com)

COLORADO

Colorado's minor settlements are governed by C.R.S. § 15-14-401 et seq. Specific procedures are provided for by C.R.P.P. Rule 16, which establishes the requirements for a petition to settle the personal injury claim of a minor.

Both a hearing and a court order are required for a minor settlement to be approved. The proper venue to file the petition is the county in which the minor resides. If the minor is not a Colorado resident, but has property in Colorado, the correct venue is the county where such property is located.

Colorado has no specific dollar threshold that must be met for court approval of the settlement to be necessary. However, a settlement with a minor is voidable when the minor reaches majority without court approval; thus, all minor's settlements should be approved by a court to ensure enforceability. Moreover, in cases involving a settlement of over $10,000, a conservator must be appointed. C.R.S. § 15-14-118. Additionally, some districts have special rules pertaining to minor settlements. For instance, El Paso District County assigns minor settlement issues to a Magistrate. Thus, parties need to comply with local requirements to obtain approval for the minor's settlement.

Contributed by Sonja McKenzie (CO) 303-320-0509 (smckenzie@sgrllc.com)

CONNECTICUT

In Connecticut, a "minor" is defined as an "individual who has not yet attained the age of twenty-one." C.G.S. § 45a-557.

In general, when money or property is or is about to be transferred to a minor, the process by which the funds are transferred and held is governed by the Connecticut Uniform Transfers to Minors Act. C.G.S. § 45a-557 to C.G.S. § 45a-560b.

The settlement of claims belonging to minors is governed by C.G.S. § 45a-631 which states: "(a) A parent of a minor, guardian of the person of a minor or spouse of a minor shall not receive or use any property belonging to the minor in an amount exceeding ten thousand dollars in value unless appointed guardian of the estate of the minor.... (b) A release given by both parents or the parent who has legal custody of a minor or by the guardian or spouse shall, if the amount does not exceed ten thousand dollars in value, be valid and binding on the minor."

Based upon the statute, a parent, an individual appointed as a guardian of the person of a minor or the spouse of a minor can sign a release on behalf of the minor if the amount involved does not exceed $10,000 gross.

If the amount exceeds $10,000, then an estate must be created with the Probate Court for the Probate District in which the minor resides and a guardian of the minor's estate must be appointed and approved by the

Probate Court. This is usually one or both parents. In addition, the appointed guardian or the attorney for the minor must file with the Probate Court an Application to Compromise the Claim. The Application can be manuscripted and must give a detailed account of: the nature of the case; the facts giving rise to the injuries sustained by the minor; the nature of the injuries; the necessity for future medical treatments; the medical bills with information on how much has been paid and by whom and how much is outstanding; the costs of future medical treatments; the amount of available insurance coverage held by the tortfeasor; the legal fees and costs being taken by the minor's attorney (if there is one); and a proposed settlement statement.

The Probate Court will conduct a hearing and must approve the creation of the estate of the minor, the appointment of the guardian of the estate and the Application to Compromise the Claim. Once the Probate Judge approves each of the applications, the Guardian must set up a restricted account and provide the Probate Court with proof of the creation of the restricted account.

If less than $10,000, the parents, the parent who has legal custody of the minor, the legal guardian or an adult spouse of the minor can sign the release on behalf of the minor. If the settlement exceeds $10,000, then an estate must be created with the Probate Court and a guardian of the minor's estate must be appointed and approved by the Probate Court as discussed above. There is no requirement for the appointment of a guardian ad litem.

No hearing is required if the settlement is less than $10,000. If the settlement is greater than $10,000 then a hearing is required.

Contributed by Chris Harrington (CT) 860-525-3101 (cmh@hksflaw.com)

DELAWARE

Delaware Civil Procedure Rule 17 governs the classification of parties to civil suits and their individual capacities to sue. While there is no particular designation for minors as parties, Rule 17(a) states as follows: Real party in interest. -- Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been

allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest".

In reference to infants and/or "incompetent persons", Rule 17(c) provides as follows: "Whenever an infant or incompetent person has a representative, such as a general guardian, trustee, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person".

There is no dollar threshold. The Court has the discretion to determine a fair and reasonable settlement.

Pursuant to Rule 17, a guardian ad litem is appointed when the minor has no other guardian either through selection of the minor or appointment of the court by other means (i.e. appointment of a family member). As in other states, the appointment of a guardian ad litem is generally used in custody cases or when a party is deemed incapacitated. However, in the less common circumstance of a minor party in a civil action not having an appropriate guardian, the court may appoint a GAL upon proper application.

For a Minor's Compromise or Structured Settlement, a hearing and court order is required.

Title 12 of the Delaware Code, Sections 3901 - 3910 further outlines the scope and responsibilities of guardianship of a minor's claims from the initiation of litigation through settlement. Sections 3941 - 3947 mandate the guardian's duty to account to the court and obey by all court orders regarding settlement of a minor's claim.

Title 12, Section 3971 governs the investment power of the Court involving monies paid out in the settlement of a child's claim as follows:

3971. Investment Power of Court of Chancery: General Requirements.

(a) The Court of Chancery shall have control of money paid into Court to the credit of any minor who cannot be located, and may invest such money in bank deposits as the Court shall approve, and may change, renew, extend, call in or collect any such investment.

(b) The investment shall be in the name of the minor or minors entitled to the money, either personally or by designation as children, legatees, heirs or representatives of another and the Court may, at any time, apportion and divide the same among them.

(c) At such time as the minor for whom money is held or invested under this subchapter is located, the Court may direct the evidence of such investments to be delivered to the former minor, the guardian of the property of the minor, or in case of death of the minor, to his executors or administrators and may by order direct the bank to pay to the person entitled or to his agent or representative the evidences of ownership of the money. Such order shall vest in such person full power over such investment or all unpaid interest which may have accrued thereon.

Contributed by David Pennington (PA) 215-563-4470 (dpennington@harvpenn.com)

DISTRICT OF COLUMBIA

In the District of Columbia, settlements of actions involving minors are governed by DC ST § 21-120. Any person who is entitled to maintain or defend an action on behalf of a minor is competent to settle such an action, and upon settlement or satisfaction of a judgment, is competent to release liability in connection with the action. However, such a settlement requires approval by a judge of the court in which the action is pending in order to be valid.

Where the net value of the money and property due to the minor exceeds $3,000 (after deduction of fees, costs, and other incidental expenses), a person must be appointed and qualified as guardian of the estate of the minor in order to receive money or other property on behalf of the minor in settlement of the action. The appointment must be made by a court of competent jurisdiction.

Contributed by David Hudgins (VA) 703-739-3300 (dhudgins@hudginslawfirm.com)

FLORIDA

Fla. Stat.744.301, 744.3025, 744.387

Dollar threshold:

Gross settlement equals $15,000 or less
No need for court approval, unless lawsuit has been filed
No need for legal guardianship
No need for guardian ad litem

Gross settlement exceeds $15,000, but is not more than $50,000
Needs court approval
Needs legal guardianship if net settlement exceeds $15,000
May need guardian ad litem at the judge's discretion

Gross settlement exceeds $50,000
Needs court approval
Needs legal guardianship if net settlement exceeds $15,000
Needs guardian ad litem

Other thresholds: If an action was NOT filed, then natural guardians are authorized to settle without court approval on behalf of any of their minor children when the amounts received, in the aggregate, do not exceed $15,000. (Fla. Stat. 744.301(2)(a))

A guardian ad litem is required when net settlement exceeds $15,000. (Fla. Stat. 744.387(2))

If an action was filed, then court approval of the settlement is necessary. (Fla. Stat. 744.387(3)(a))

Other noteworthy mandates: A court need not appoint a guardian ad litem if a previously appointed guardian has no potential adverse interest to the minor. (Fla. Stat. 744.3025(1)(e))

The petition must set forth:

a) the name, residence address, and date of birth of the minor

b) the name and address of any guardian appointed for the minor

c) the name and residence address of the natural guardians or other persons having legal custody of the minor

d) a statement disclosing the interests of any natural or court-appointed guardian whose interest may be in conflict with that of the minor

e) a description of the cause of action in which the minor's interest arises

f) a summary of the terms of the proposed settlement

g) copies of all agreements, releases, or other documents to be executed on behalf of the minor

Contributed by Peter Miller (FL) 305-671-2980 (pmiller@pmillerlaw.com)

GEORGIA

Official Code of Georgia Annotated (O.C.G.A.) § 29-3-3.

For purposes of O.C.G.A. § 23-3-3, the term "gross settlement" means "the present value of all amounts paid or to be paid in settlement of the claim, including cash, medical expenses, litigation expenses, attorney's fees, and any amounts paid to purchase an annuity or other similar financial arrangement."

Gross Settlement of Minor's Claim is $15,000 or Less
Regardless of whether legal action has been initiated, the natural guardian of the minor may compromise the claim without becoming the conservator of the minor and without court approval. However, the natural guardian must qualify as conservator of the minor in order to receive payment if required by O.C.G.A. § 29-3-1.

Gross Settlement of more than $15,000 (No Legal Action Initiated)
The settlement must be submitted for approval to the probate court.

Gross Settlement of more than $15,000 (Legal Action Initiated)
The settlement must be submitted for approval to the court where the action is pending. The natural guardian or conservator shall not be permitted to dismiss the action and present the settlement to the probate court for approval without the approval of the court in which the action is pending.

If the Gross Settlement is more than $15,000, but the gross settlement will be reduced by attorney's fees, litigation expenses, and medical expenses that will be paid from the settlement proceeds, the following requirements apply:

If the present value of the amounts that the minor will receive upon reaching majority is $15,000 or less after the above-referenced deductions, the natural guardian may seek approval from the appropriate court without becoming the conservator of the minor. However, the natural guardian must qualify as conservator of the minor in order to receive payment if required by O.C.G.A. § 29-3-1.

If the present value of the amounts that the minor will receive upon reaching majority is more than $15,000 after the above-referenced deductions, the natural guardian may not seek approval from the appropriate court without becoming the conservator of the minor.

O.C.G.A. § 29-3-3 does not require the appointment of a guardian ad litem.

Hearing and Court Order Requirements: See requirements for approval of gross settlements, above.

Other noteworthy mandates:

> If the minor has a conservator, the only person who can compromise the minor's claim is the conservator. Id. at § 23-3-3(b).
>
> If the natural guardian or custodian receives an order of approval from the probate court or the court where the legal action is pending, based on the best interest of the minor, the natural guardian/custodian is authorized to compromise any contested or doubtful claim in favor of the minor without receiving consideration for such compromise as a lump sum. The consideration may involve a structured settlement or creation of a trust on terms that the court approves. Id. at § 23-3-3(h).

Contributed by Annarita Busbee and Burt Satcher (GA) 404-688-2600 (abusbee@og-law.com - bsatcher@og-law.com)

HAWAII

Hawaii Probate Rule 101

There is no dollar threshold.

Under Hawaii Probate Rule 28, the court may appoint a guardian ad litem for a minor not otherwise represented in an action and may make other orders for the protection of a minor as it deems proper.

When a minor receives a settlement (or judgment) from a personal injury claim, the plaintiff's attorney must initiate a conservatorship action and any settlement must be approved by the court (insofar as it affects the protected person or respondent). The presiding probate judge shall appoint a conservator for the minor and determine whether the settlement is reasonable. A flag sheet must be presented for any hearing on a petition that seems to compromise a tort claim on behalf of a minor.

Contributed by Alison Crane (CA) 415-981-5411 (acrane@bledsoelaw.com)

IDAHO

Generally, the citations at issue are within Title 15, Chapter 5, Idaho code. Specific citations include: Idaho Code 15-5-409A (deals with minors compromises) and Idaho Code 15-5-103 (deals with limits for appointing a conservator)

Any minor's compromise must be approved (i.e. $0 or greater) – Idaho Code 15-5-409A.

Any minor's compromise where the amount is greater than $10,000 requires a conservator – Idaho Code 15-5-103.

Other thresholds: The $10,000 threshold above which a conservator must be appointed.

A conservator is required if the settlement amount is greater than $10,000.

A hearing or court order is necessary – Idaho Code 15-5-409A.

The conservator, if one is appointed, must report to the Court on an annual basis. Idaho Code 15-5-419.

Petition requirements are set forth in the citations provided.

Contributed by Rob Anderson (ID) 208-344-5800 (randerson@ajhlaw.com)

ILLINOIS

Illinois courts have based the requirement that the court approve of all settlements on behalf of a minor on 755 ILCS 5/19-8 *See Villalobos v. Cicero School District 99,* 362 Ill.App.3d 704, 712, 841 N.E.2d 87 (1st Dist. 2005). Rules governing the process for confirming minor settlements are set by local rules for each county.

All settlements of minors, regardless of dollar amount, must be approved by Probate Court. Whether funds can be distributed without a guardian depends on local county rules. In Cook County, for settlements less than $10,000, and if no guardian has been appointed in the Probate Division, the court may distribute the funds directly to the parent or legal guardian on behalf of the minor. The local rules of the county where the settlement is to be approved should always be consulted to determine if any dollar thresholds exist.

A guardian ad litem is required only if a general guardian or guardian of the estate of the minor has been appointed, then that guardian has the right to compromise the claim. Court approval is still necessary.

Is a hearing or court order necessary? Yes.

Anyone can become the guardian of the child for purposes of the litigation, and generally, the parents become the guardians of the minor's estate. 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.

The mandates of the settlement petition seem to differ slightly from county to county. For example, DuPage County requires the petition to provide the name and address of the liability insurance carrier affording coverage to the defendant, as well as the limits of the policy, while Cook County does not. The local rules of the county where the settlement is to be approved must be consulted to determine if all requirements have been met when submitting the settlement petition.

If the court approves the compromise of the claim of the minor, the court must direct the money to be paid to the parent or guardian of the minor. A guardian must put up a bond of one and a half times the value of the estate. However, no bond is required if the money is deposited in a bank, trust, or other government insured account.

Contributed by Mitch Orpett (IL) 312-201-6413 (maorpett@tribler.com)

INDIANA

Burns Ind. Code Ann. § 29-3-9-7

There is no dollar threshold.

There are no other thresholds.

A guardian ad litem is required for amounts exceeding $10,000.

Is a hearing or court order necessary? Yes

Other noteworthy mandates:

> Simple submission of settlement agreement and court has wide latitude in approving.
>
> While the guardian is required to apply the settlement proceeds for the use, benefit and support of the minor, the person who in good faith pays the debt is not responsible for its proper application. Ind. Code Ann. § 29-3-3-1(d).

Contributed by Mitch Orpett (IL) 312-201-6413 (maorpett@tribler.com)

IOWA

Iowa Code §633.647, 633.648, and 633.574 provide requirements for approval of a minor settlement.

All settlements over $25,000 require a conservator to be appointed. Iowa Code §633.574 provides a procedure for those claims less than $25,000. For those claims less than $25,000, such property must be delivered the parent or other person entitled to the custody of the minor and it is for the sole use of the minor. A written receipt from the parent or other person constitutes in accordance of the person make the payment or delivering said property.

All settlements require approval by a court of law. Prior to authorizing a compromise of a claim for damages, the Court may order an independent investigation by an attorney other than the attorney for the conservator. The conservator is required to file an inventory within 60 days of the conservator's appointment. The conservator is generally the parents of the minor child. The inventory must include all property of the minor that has come into the conservator's possession or of which the conservator has knowledge. Additional written verified reports and accounting must be filed annually unless the Court otherwise orders on good cause shown, within 30 days following the date of the removal, upon filing resignation before the resignation is accepted by the Court, within 60 days following the date of termination and at other times the Court may order.

Contributed by Steve Fields (MO) 314-863-6311 (sfields@brinkerdoyen.com)

KANSAS

In Kansas, settlement agreements are a type of contract and, therefore, governed by Kansas contract law. Under K.S.A. § 38-102, a minor is bound by contracts, including necessaries. However, the minor may disaffirm the contract within a reasonable time after the minor attains the age of majority and restores to the other party all money or property received by the minor. Therefore, a minor is not bound by a settlement agreement until court approval has been obtained and may repudiate or withdraw from a settlement prior to such approval. Even after court approval, the minor may escape the settlement if the review hearing was inadequate to protect his or her interests.

Under K.S.A. § 60-217, a minor may be represented by a guardian, committee, conservator, or some other fiduciary at the settlement review hearing. The court must appoint a guardian ad litem, or issue another appropriate order, to protect a minor or incapacitated person who is unrepresented in an action.

Once the parties settle the court will conduct a hearing to review the settlement. The court must exercise extensive oversight to ensure that the injured minor's claims are not sold short by the settlement agreement. If the claim was settled prior to court approval, the parties will typically file a "friendly lawsuit" to obtain the necessary court order approving the settlement.

Under K.S.A. § 59-3055 and K.S.A. § 38-1708, a conservator or guardian is required if the settlement amount with the minor exceeds $10,000.00. The conservator will hold the settlement proceeds in trust for the minor's benefit.

Contributed by Brad Russell (KS) 913-234-6100 (b.russell@swrllp.com)

KENTUCKY

In Kentucky, minor settlements are governed by K.R.S. § 387.280. This statute applies when any minor (defined in Kentucky as a person less than eighteen (18) years of age) is "entitled to receive a sum not exceeding ten thousand dollars ($10,000), exclusive of interest, in any action in which real estate has been sold or in the settlement of any estate or from any other source." When a minor is entitled to receive money, "the person having custody of the minor may settle or compromise the dollar amount when in the interest of the minor…" A release executed by the person to whom the court has ordered the sum paid shall have the same effect as a release by a duly appointed guardian.

The court which has jurisdiction to order payment to the minor is the court in which the action giving rise to the settlement is pending. If there is no pending action, the District Court for the county where the minor resides has the authority to order that the sum be paid to the person having custody of the minor. The Court must approve any settlement or compromise, based upon affidavit or oral testimony that the minor is in the custody of the person to whom it is proposed to pay the money and the latter, upon withdrawal of the money, shall be under obligation as trustee to expend it, for the support, maintenance, or education of the minor.

A petition for approval of a minor settlement should contain the following information:

- The name, age and birthdate of the minor;
- The identity of the person seeking to administer funds on behalf of the minor or be appointed guardian of the minor's estate, including name, address and relationship, if any, to the minor;

- The details surrounding the incident or injury giving rise to the settlement;
- A description of the past medical treatment required to treat said injury;
- A description of any future medical treatment which is anticipated as a result of the injury;
- Identification of any existing liens related to the injury;
- The identity of the entity proposing to pay settlement proceeds on behalf of the minor;
- The amount of the proposed settlement;
- Details regarding distribution of the settlement proceeds;
- The movant's belief that the settlement terms are fair and reasonable; and
- A request for the waiver of requirements regarding bond, surety and reporting, if applicable.

If the settlement or amount to be paid is greater than $10,000.00, an Estate in the minor's name must be opened (in the District Court of the county where the minor resides) and proceeds paid to the Estate. In addition to the above Petition for Approval of the Settlement, the person seeking appointment as the minor's Guardian, for purposes of this Estate, must file Forms AOC-852 ("Petition for Appointment of a Guardian/Conservator for Minor"); AOC-853 (Affidavit of person seeking appointment); and AOC-856 ("Periodic/Final Settlement of Guardian/Conservator"). Note: even a parent must be officially appointed as a guardian for purposes of an Estate and settlement greater than $10,000.00.

Regardless of whether the settlement proceeds are greater than $10,000.00, the party seeking court approval of a minor settlement must also submit a proposed Order setting forth the details of the settlement which were included in the Petition for approval, as well as a statement that bond, surety and reporting requirements (if any) are waived.

Contributed by Shea Conley 859-233-1311 (sconley@reminger.com)

LOUISIANA

Either parent or person with custody of the minor can be appointed tutor for the minor with authority for purposes of compromising a claim for an unemancipated minor domiciled in Louisiana (La. C.C. Art. 4031). A natural tutor of a minor may file for damages in a delictural action without qualifying as tutor. Additional Louisiana law regarding minors requires the appointment for an undertutor for concurrence in any settlement and any settlement requires court approval. The Court may order the funds placed

into the registry of the Court for the minor's account with Court approval required for any withdrawal.

Contributed by James Ryan (LA) 504-799-6330 (jryan@ryan-law.com)

MAINE

(1) 14 Maine Rev. Stat. § 1605

(2) Maine Rules of Civil Procedure 17A

(3) Corey v. Corey, 803 A.2d 1014 (Me. 2002) (setting forth the criteria to be considered by the Court in approving a minor's settlement).

Dollar Threshold: None, with the exception that MRCP 17A (b)(2) requires greater substantiation of a minor plaintiff's damages in support of a petition to approve a minor's settlement if the proposed settlement exceeds $5,000.

There are no other thresholds.

Guardian ad litem not required, but may be appointed within the discretion of the Court.

Hearing: MRCP 17A(c) would appear to require a hearing, at which the Court "may make such inquiry as it deems necessary." The statute is silent with respect to the requirement of a hearing.

Other noteworthy mandates:

The statute states that no settlement involving a minor, as plaintiff or defendant, is "valid unless approved by the court," and that "an order approving such a settlement has the effect of a judgment."

Both the Rule and the statute contain provisions for seeking court approval of a minor's settlement if an action has not yet been filed in court.

Contributed by John Egan (MA) 617-330-7181 (jegan@rubinrudman.com)

MARYLAND

MD Code Ann., Estates And Trusts, §13-401 et seq.

Dollar threshold: Net sum of $ 5,000 or more after the deduction of the fee of the attorney and expenses. MD Code Ann., Estates And Trusts, §13-401(c)

Other thresholds: Under 18 years of age (1) who resided in the State at the time of occurrence, or (2) who resides in the State when money is paid because of a claim, action, or judgment in tort. MD Code Ann., Estates And Trusts, §13-401(b)

The court may appoint a guardian if the court determines that the appointment would be in the minor's best interest. MD Code Ann., Estates And Trusts, §13-403(c)

A hearing or court order is not required for the appointment of a trustee, but strongly recommended.

Issuance of a check to the trustee as set forth below satisfies the obligation of the "person responsible for the payment of the money." As it relates to the appointment of a trustee, no other act is necessary to constitute a trustee. MD Code Ann., Estates And Trusts, §13-403(b)

Appointment of a guardian requires a hearing and court order. MD Code Ann., Estates And Trusts, §13-403(d)

Other noteworthy mandates: There are specific requirements for issuance of checks:

> If no court-appointed guardian: MD Code Ann., Estates And Trusts, §13-403(a)
>
> [Name of trustee], trustee under Title 13 of the Estates and Trusts Article, Annotated Code of Maryland, for [Name of Minor], minor.
>
> If court-appointed guardian: MD Code Ann., Estates And Trusts, §13-403(d)
>
> [Name of guardian], guardian under Title 13, Subsection 2 of the Estates and Trusts Article, Annotated Code of Maryland, for [Name of Minor], minor.

Contributed by Paul Finamore (MD) 410-783-6349 (pmfinamore@nilesbarton.com)

MASSACHUSETTS

Mass. Gen. Laws, ch. 231, § 140 C ½

There is no dollar threshold.

Other Thresholds: None. The filing of a petition for approval of a minor's settlement is not required by statute, but most defense counsel now insist on them, even though the statute is silent as to what the legal effect of court approval is.

Guardian ad litem not required, but may be appointed within the court's discretion.

Hearing: Not expressly required by the statute, but the typical practice is to conduct a hearing, with the parent or guardian testifying to the reasonableness of the settlement.

Other noteworthy mandates:

> The statute permits an action to be filed for the sole purpose of approving settlement of a claim that had not yet been put into suit.

Contributed by John Egan (MA) 617-330-7181 (jegan@rubinrudman.com)

MICHIGAN

Since a minor cannot act for her/himself, he/she needs someone to act in a representative capacity to sue or agree to a settlement. MCR 2.420 governs this procedure if a suit has been instituted. If a suit has not been instituted, the Estates and Protected Individuals Code governs, specifically MCL 700.5102; 700.5401; 700.5409; and 700.5423. (These are the basic sections which govern the claims of minors and their resolution. Other sections of the Estates and Protected Individuals Code may be applicable based on the factual scenario in the case. Therefore, anyone settling a pre-suit case with a minor in Michigan should thoroughly review the entire Estates and Protected Individuals Code to determine if any other code sections apply to their particular factual scenario.)

Settlement payments can be agreed to and made without Court approval. MCL 700.5102 provides that an individual may deliver money or personal property to a minor if it does not exceed $5,000 per year to any of the following: The minor, if he or she is married; an individual having the care and custody of the minor with whom the minor resides; a guardian of the minor; or a financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of deposit to the minor. In this scenario, there is no court involvement, however, since the minor cannot contract, there would be no valid release that could be signed to preclude future liability. In addition, the recent case of Woodman ex rel Woodman v Kera LLC, 486 Mich 228, 785 NW2d 1 (2010), which held that the waiver of liability signed by a father on behalf of a child was unenforceable, even a release obtained from someone other than a court appointed conservator, may not withstand a later attack by the minor.

The most prudent course of action in resolving a case prior to suit being filed is to file a petition for the appointment of a guard ad litem (only if

the parent is taking a portion of the settlement), petition for appointment of conservator and protective order with the attachment regarding the proposed settlement and distribution; a protective order to appoint conservator, approve settlement and to preserve the account; and either an agreement in regard to a restricted account or a restricted annuity account and a verification of funds/certificate of officer from the institution wherein the account or annuity is maintained.

Once the above mentioned forms are filed, the probate court, if the parent or other person takes any of the monies in the settlement, will appoint a guardian ad litem who will conduct a background check and interview the conservator, parents and the minor. A hearing will then be held wherein the court will consider the agreed upon settlement and approve it along with its distribution. The conservator will be required to set up the appropriate annuity or restricted account and both the conservator and the financial institution represented will have to verify the deposit of funds in the restricted account to the probate court. Following the approval, the conservator can sign the release and settlement agreement and the settlement draft shall be addressed and deposited as required by the court.

When a suit has been filed, MCR 2.420, governs settlements and judgments for minors, governs. Pursuant to the rule, the court wherein the action is pending has jurisdiction (if a circuit court case, a probate court action need not be started). The next friend shall present with the minor before the circuit court judge for examination. The next friend may sign the release and settlement agreement on behalf of the minor. After taking testimony, the court will approve the settlement and distribution. If anyone other than the minor is taking in the distribution, a guardian ad litem would have to have been appointed to review the settlement and distribution and file a report with the court agreeing with same, prior to final approval and distribution. The testimony before the judge will require medical details concerning the injury. If the next friend, guardian or conservator for the minor was appointed by the probate court, the terms of the proposed settlement or judgment may be approved by the circuit court, only after the circuit court receives written verification from the probate court that it has passed on the sufficiency of the bond and the bond, if any, has been filed with the probate court.

Contributed by David Thomas (MI) 313-961-9344 (dthomas@rmrtt.com)

MINNESOTA

Minor settlements are governed by M.S.A. § 540.08 which states in relevant part, “No settlement or compromise of the action [brought on behalf of a

minor] is valid unless it is approved by a judge of the court in which the action is pending." Specific procedures are provided for by Minn. Gen. R. Prac. 145. The petition must have the name and date of birth of the minor, a brief description of the nature of the claim if a complaint has not been filed, an affidavit, report, or records showing the nature of the injuries and prognosis, whether the child or parent has received collateral source payments and whether subrogation rights have been asserted, and cases proposing structured settlements must provide a statement disclosing the cost of the annuity or structured settlement to the tortfeasor.

These approvals can be done on behalf of the tortfeasor or its insurer, but they must disclose that relationship. Included therein is how much they are being paid, the frequency of which they do business with the insurer or tortfeasor, and whether the lawyer is giving legal advice. The court may refer petitioner to a lawyer selected by the petitioner to evaluate the claim, but that attorney cannot represent a claimant and the opinion is not binding on the court. The court must approve the settlement and direct all payments.

Contributed by Tim Waldeck (MN) 612-375-1550 (twaldeck@waldecklind.com)

MISSISSIPPI

In Mississippi jurisdiction for minor settlements is vested in the chancery courts. A minor is statutorily defined as anyone under the age of 21. Minor settlements are governed, generally, by Miss. Code Ann. § 1-3-27, which authorizes chancellors to approve settlements not exceeding $25,000 of unemancipated minors. If the settlement exceeds $25,000, a guardianship is required, and the funds must be deposited into a restricted, federally-insured guardianship account. Note, however, that Miss. Code Ann. § 93-19-13, as interpreted by the Mississippi Supreme Court, effectively removes the disability of minority of all persons 18 years of age or older for the purpose of entering into contracts affecting personal property, including the right to settle a claim for personal injury, to execute a contract settling the claim, and to accept money in settlement of the claim. Garrett v. Gay, 394 So. 2d 321, 323 (Miss. 1981).

The minor settlement petition can be brought in the chancery court of either the county where the minor resides or where the accident occurred. Pursuant to Miss. R. Civ. P. 17., the petition may be brought by the minor's next friend, guardian, or other duly appointed representative. Additionally, if the minor has no legal guardian, then both parents must be made parties to the petition, unless one parent has complete custody, and that fact is made clear in the petition. The parents may be joined as either co-petitioners, or for non-petitioner, by executing a Joinder and Waiver or being properly served with process.

Uniform Chancery Court Rule 6.10 mandates that every minor settlement petition must contain the factual basis for the settlement, the reason for the compromise and settlement, and the amount of the settlement. Generally, the minor's medical records, medical expenses, and evidence of liens or collateral source payments, are attached as exhibits to the petition and/or produced at the settlement hearing in support of the basis for the settlement. Furthermore, in "future payment" or structured settlements, certified copy of insurance policy or other security guaranteeing payment must be filed with court within 90 days from date of entry of judgment or decree authorizing settlement unless waived by the court for good cause.

The standard for minor settlements is whether the settlement is fair, reasonable, and in the best interest of the minor. For the minor settlement to be valid, the chancellor must make an actual, first-hand inquiry into the facts of the settlement. Material witnesses concerning the minor's injury and resulting damages must be produced to the chancellor for examination. Thus, a record including witness testimony and evidence substantiating the minor's injuries and potential value of the claim is prudent for the chancellor to make an independent determination that the legal requirements are satisfied and that the settlement is in the best interest of the minor. While the minor and petitioner are not required by law to be separately represented, many chancellors, in their discretion, may require separate representation at the hearing. The court may also appoint a guardian ad litem for the minor or to independently report to the court regarding the reasonableness of the settlement. Furthermore, if minor and petitioner are represented, their attorney must appear and give testimony regarding counsel's results of investigation and advice regarding settlement.

Upon the court's approval of the minor settlement, the person receiving the settlement money remains amenable to the court for disposition of the funds for the use and benefit of the minor until the minor attains the age of 21 but is not required to furnish security for the funds unless by court order.

Contributed by Wade Manor (MS) 601-607-4800 (wmanor@sssf-ms.com)

MISSOURI

Mo.R.Civ.P. 52.02 & Sections 507.110-507.220, R.S.Mo. govern actions on behalf of minors, including settlement. Statute 507.184 specifically addresses settlement on behalf of minor, but must be used in conjunction with Rule 52.02.

All minor settlements require court approval regardless of dollar amount. If the Next Friend or Guardian ad litem on behalf of the minor is to receive an

amount in excess of $10,000.00 (after attorney's fees and expenses) then a conservatorship has to be established to execute a bond or annuity. Rule 52.02(h). There are no other thresholds.

If a Next Friend or Guardian has not been appointed to represent the minor, a guardian ad litem will be appointed. Rule 52.02(a). Typically, the Next Friend is a close family member, i.e. mother or father.

Is a hearing or court order necessary? Yes to both.

Other noteworthy mandates: The Next Friend or guardian must be appointed by the court in a separate petition to appoint Next Friend or guardian. Settlements can still remain confidential by outlining the settlement amount on an exhibit, which can be removed from the court file. The court file can also be sealed.

Contributed by Steve Fields (MO) 314-863-6311 (sfields@brinkerdoyen.com)

MONTANA

Generally, the citations at issue seem to be within Montana Statutes Chapter 72, Chapter 5.

Montana Code 72-5-104 – Payments under $5,000 to a minor may be made in the ways outlined.

Montana Code 72-5-409 – Appointment of a conservator.

See also Adair v. Safeco Ins. Co., CV-09-31-BU-SEH-RKS, 2010 WL 2079542 (D. Mont. May 24, 2010) (addressing general rules for settling with a Minor)

Dollar threshold: $5,000 or less (Montana Code 72-5-104) – Payment may be made by:

(i) Delivery to the minor, if they have reached 18 or are married

(ii) Any person having custody or care of the minor, with whom the minor lives

(iii) The minor's guardian

(iv) Depositing the money into a financial institution in the minor's name, and giving notice to the minor. If there is a conservator, payment must be made to the conservator.

A conservator must be appointed if the Court determines that a minor owns money or property that requires management (Montana Code 72-5-409)

Guardian ad litem requirement: There does not appear to be a limit (Montana Code 72-5-409), but since no conservator is required under $5,000, that is probably the minimum.

Hearing or court order necessary: For amounts under $5,000 or less, it does not appear so. (Montana Code 72-5-104). Where a conservator is required, it appears so.

Contributed by Rob Anderson (ID) 208-344-5800 (randerson@ajhlaw.com)

NEBRASKA

Nebraska's Probate Code: Neb. Rev. Stat. 30-2603 provides that with amounts not exceeding twenty-five thousand dollars ($25,000) per annum can be paid to the guardian of the minor.

Settlements exceeding twenty-five thousand dollars ($25,000) can be paid to a conservator in administration. Neb. Rev. Stat. 30-2653. Court approval is required for all settlements.

A guardian ad litem is not required.

Contributed by Steve Fields (MO) 314-863-6311 (sfields@brinkerdoyen.com)

NEVADA

NRS 41.200

Dollar threshold: None. However, if the balance of the investment in a court ordered blocked financial invested is more than $10,000, the parent, guardian or person in charge of managing the investment shall annually file with the court a verified report detailing the activities of the investment during the previous 12 months. If the balance of the investment is $10,000 or less, the court may order the parent, guardian or person in charge of managing the investment to file such periodic verified reports as the court deems appropriate.

Other thresholds: Covers any unemancipated minor has a disputed claim for money against a third person.

Guardian ad litem requirement: Only if a general guardian or guardian of the estate of the minor has been appointed, then that guardian, has the right to compromise the claim.

Is a hearing or court order necessary? Yes

Other noteworthy mandates:

The petition must set forth:

(a) The name, age and residence of the minor;

(b) The facts which bring the minor within the purview of this section, including:

(1) The circumstances which make it a disputed claim for money;

(2) The name of the third person against whom the claim is made; and

(3) If the claim is the result of an accident, the date, place and acts of the accident;

(c) The names and residence of the parents or the legal guardian of the minor;

(d) The name and residence of the person or persons having physical custody or control of the minor;

(e) The name and residence of the petitioner and the relationship of the petitioner to the minor;

(f) The total amount of the proceeds of the proposed compromise and the apportionment of those proceeds, including the amount to be used for:

(1) Attorney's fees and whether the attorney's fees are fixed or contingent fees, and if the attorney's fees are contingent fees the percentage of the proceeds to be paid as attorney's fees;

(2) Medical expenses; and

(3) Other expenses, and whether these fees and expenses are to be deducted before or after the calculation of any contingency fee;

(g) Whether the petitioner believes the acceptance of this compromise is in the best interest of the minor; and

(h) That the petitioner has been advised and understands that acceptance of the compromise will bar the minor from seeking further relief from the third person offering the compromise.

If the 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. The records must include documentation of:

(a) The injury, prognosis, treatment and progress of recovery of the minor; and

(b) The amount of medical expenses incurred to date, the nature and amount of medical expenses which have been paid and by whom, any amount owing for medical expenses and an estimate of the amount of medical expenses which may be incurred in the future.

If the court approves the compromise of the claim of the minor, the court must direct the money to be paid to the father, mother or guardian of the minor, with or without the filing of any bond, or it must require a general guardian or guardian ad litem to be appointed and the money to be paid to the guardian or guardian ad litem, with or without a bond, as the court, in its discretion, deems to be in the best interests of the minor.

Upon receiving the proceeds of the compromise, the parent or guardian to whom the proceeds of the compromise are ordered to be paid, shall establish a blocked financial investment for the benefit of the minor with the proceeds of the compromise. Money may be obtained from the blocked financial investment only pursuant to terms of statute. Within 30 days after receiving the proceeds of the compromise, the parent or guardian shall file with the court proof that the blocked financial investment has been established. If the balance of the investment is more than $10,000, the parent, guardian or person in charge of managing the investment shall annually file with the court a verified report detailing the activities of the investment during the previous 12 months. If the balance of the investment is $10,000 or less, the court may order the parent, guardian or person in charge of managing the investment to file such periodic verified reports as the court deems appropriate. The court may hold a hearing on a verified report only if it deems a hearing necessary to receive an explanation of the activities of the investment.

The beneficiary of a block financial investment may obtain control of or money from the investment:

(a) By an order of the court which held the compromise hearing; or

(b) By certification of the court which held the compromise hearing that the beneficiary has reached the age of 18 years, at which time control of the investment must be transferred to the beneficiary or the investment must be closed and the money distributed to the beneficiary.

The clerk of the district court shall not charge any fee for filing a petition for leave to compromise or for placing the petition upon the calendar to be heard by the court.

Contributed by Gene Backus (NV) 702-872-5555 (gbackus@backuslaw.com)

NEW HAMPSHIRE

As of June 3, 1973, the age of majority in New Hampshire is 18, however, the legal drinking age is 21.

The settlement of claims involving minors is governed by RSA 464-A § 42 which is entitled Settlement on Behalf of Minors or Judgments or Decrees in Favor of Minors. Under this statute, net settlements under $10,000 do not need judicial approval. If the net settlement exceeds $10,000, the person who is receiving the funds on behalf of the minor must be appointed as a guardian of the estate by the Probate Court under RSA 463:19 and RSA 464-A:41 and the settlement must be approved by the superior or district court.

Net settlements which exceed $10,000, including structured settlements, must be approved by the superior court or the district court.

For net settlements which exceed $10,000, the superior court or the district court must be provided with a certified statement from the Probate Court that a guardian ad litem, a parent, next friend or other person who is receiving the settlement funds on behalf of the minor has been appointed as the guardian of the estate of the minor.

A guardian ad litem is only necessary if the Probate Court determines that the minor requires additional protection or if there is no other adult who can be appointed as the guardian of the estate.

Hearings are only required for net settlements in excess of $10,000. The first hearing is with the Probate Court who will appoint a guardian of the estate. The second hearing is with the superior or district court which will approve the settlement.

Contributed by Chris Harrington (CT) 860-525-3101 (cmh@hksflaw.com)

NEW JERSEY

(1) NJ Rule 4:44 Proceedings to Approve Settlements

(2) Hojnowski v. Vans Skate Park, 187 N.J. 323, 334 (2006) (describing the import of Rule 4:44, and reciting case law authority mandating court approval of minor's settlements of claims and/or suits.

There is no dollar threshold.

Other Thresholds: None. Applies to settlements of suits and pre-suit claims.

Guardian Ad Litem: Not required, except in an action or proceeding seeking approval of a transfer or assignment of structured settlement rights if the payee-transferor is a minor. NJ Rule 4:44A.

Hearing and Order: NJ R. 4:44-3 requires a hearing for the court to "determine whether the settlement is fair and reasonable as to its amount and terms." In the event the settlement is structured, in any part, the court will also need to satisfy itself regarding the financial security of the obligor. Upon approval of a settlement, the court will issue an Order directing an appropriate judgment be entered under NJ Rule 4:48A.

Other noteworthy mandates:

> A minor plaintiff will enter judgment upon the court's approval of the settlement. Upon payment/satisfaction of the judgment by defendants, a "warrant of satisfaction" is to be issued under NJ R 4:48-1, directing the clerk to record the satisfaction of the judgment. Typically the settlement proceeds are deposited into the custody of the court (i.e. into the Surrogate's Intermingled Trust Fund), but the Court may, pursuant to NJ R. 4:48A permit a guardian, upon good cause shown, to control the investments on behalf of the minor.

Contributed by David Abrams (NJ) 973-758-9301 (dabrams@sralawfirm.com

NEW MEXICO

N.M. Stat § 45-5-401 et. seq.

Court approval is required for settlements of $10,000 or more. (See, N.M. Stat. § 45-5-103.)

Other thresholds: For venue requirements, see, N.M. Stat. § 45-5-403.

Guardian ad litem requirements: See, N.M. Stat. § 45-5-407. See also N.M. § 45-5-405.1

If at any time in the proceeding the court finds the minor is 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. An attorney appointed by the court to represent a minor shall represent and protect the interests of the minor. See, N.M. Stat. § 45-5-407

A guardian ad litem will be appointed by the court if protective arrangements and single transactions authorized include payment, delivery, deposit or retention of funds or property and annuity contracts. See N.M. § 45-5-405.1

For settlements of $10,000 or more, a conservatorship hearing or court order is required. (See, generally, N.M. § 45-5-405.1)

Other noteworthy mandates:

> As part of the procedure for court appointment of a conservator, and separate from a guardian ad litem, the court shall also appoint a visitor who shall interview the person seeking appointment as conservator and the person to be protected. The visitor shall submit a written report to the court that includes a recommendation regarding the appropriateness of the appointment of the proposed conservator. See N.M. § 45-5-407.

Contributed by Jack Storer (AZ) 602-776-5690 (jstorer@swensonlaw.com)

NEW YORK

Procedure: Motion & Court Order

In short, the necessary supporting papers on the application for a settlement of an action commenced by or on behalf of the infant, incapacitated person, or conservatee are:

(1) an affidavit of the infant's or incapacitated person's representative;

(2) if the infant or incapacitated person or his or her representative is represented by an attorney, an affidavit of such attorney;[2]and

(3) if the claim is based on a personal injury, a medical or hospital report.

(See, 21 Carmody-Wait 2d § 124:55)

The settlement of an action or claim by and infant or person judicially declared incompetent shall comply with CPLR 1207 and 1208. These two statutes require that the representative for the infant submit a motion for an order of settlement to the court along with supporting affidavits. Additionally, if the action or claim is for damages for personal injuries to the infant or incompetent, one or more medical or hospital reports, which need not be verified, shall be included in the supporting papers.

CPLR 1207 states that upon motion of a guardian or person having legal custody of an infant, the court may order settlement of any action commenced by or on behalf of the infant, incompetent or conservatee. The order given on such a motion shall have the effect of a judgment.

CPLR 1208 provides that along with the motion for order of settlement, the representative for the infant must include an affidavit in the supporting papers. The affidavit shall state the following:

1. his name, residence and relationship to the infant or incompetent;
2. the name, age and residence of the infant or incompetent;
3. the circumstances giving rise to the action or claim;
4. the nature and extent of the damages sustained by the infant or incompetent, and if the action or claim is for damages for personal injuries to the infant or incompetent, the name of each physician who attended or treated the infant or incompetent or who was consulted, the medical expenses, the period of disability, the amount of wages lost, and the present physical condition of the infant or incompetent;
5. the terms and proposed distribution of the settlement and his approval of both;
6. the facts surrounding any other motion or petition for settlement of the same claim, of an action to recover on the same claim or of the same action;
7. whether reimbursement for medical or other expenses has been received from any source; and
8. whether the infant's or incompetent's representative or any member of the infant's or incompetent's family has made a claim for damages alleged to have been suffered as a result of the same occurrence giving rise to the infant's or incompetent's claim and, if so, the amount paid or to be paid in settlement of such claim or if such claim has not been settled the reasons therefore.

If the representative for the infant is an attorney, then the affidavit must state the following:

1. his reasons for recommending the settlement;
2. that directly or indirectly he has neither become concerned in the settlement at the instance of a party or person opposing, or with interests adverse to, the infant or incompetent nor received nor will receive any compensation from such party, and whether or not he has represented or now represents any other person asserting a claim arising from the same occurrence; and
3. the services rendered by him.

If the action or claim is for damages for **personal injuries** to the infant or incompetent, one or more medical or hospital reports, which need not be verified, shall be included in the supporting papers. The petition or affidavit in support of the application also shall set forth the total amount of the charge incurred for each doctor and hospital in the treatment and care of the infant, or incapacitated person and the amount remaining unpaid to each doctor and hospital for such treatment and care. If an order be made approving the application, the order shall provide that all such charges for doctors and hospitals shall be paid from the proceeds, if any, received by the parent, guardian, or other person, in settlement of any action or claim for the loss of the infant's, or incapacitated person's services; provided, however, that if there be any bona fide dispute as to such charges, the judge presiding, in the order, may make such provision with respect to them as justice requires. With respect to an incapacitated person, the judge presiding may provide for the posting of a bond as required by the Mental Hygiene Law.

Dollar Thresholds

22 NYCRR 202.67 provides that "if the net amount obtained for the infant in any approved settlement does not exceed the amount set forth in CPLR 1206(b), the court may permit it to be paid pursuant to CPLR 1206(b)"

CPLR 1206(b) provides that if the value of the property does not exceed $10,000 then the court may order that the property be distributed to a person with whom the infant resides who has some interest in his welfare, to be held for the use and benefit of such infant.

If the amount exceeds $10,000 the money shall be distributed to the guardian of his property to be held for the use and benefit of the infant.

Guardian Ad Litem

A guardian ad litem is not authorized to obtain the necessary judicial approval to settle the claim of an infant and the proceeds of a judgment or settlement in favor of an infant ordinarily **cannot be paid to a guardian ad litem** (see CPLR 1206). So, if the infant is the plaintiff and the parties wish to settle the case, a proceeding for ancillary letters would be necessary (CPLR 1201, 1206, 1207).

The right to apply for court approval of a proposed settlement and to receive settlement proceeds is granted to a guardian appointed in accordance with the Mental Hygiene Law. McKinney's Mental Hygiene Law § 81.02; Sills v Fleet Nat. Bank, 32 A.D.3d 1157, 820 N.Y.S.2d 826 (4th Dept 2006).

A court lacks authority to authorize the plaintiffs guardian ad litem to settle a personal injury claim over his or her objection and to receive the proceeds of settlement on his or her behalf; the right to apply for court approval of a proposed settlement and to receive the settlement proceeds is granted to the guardian appointed in accordance with the provisions of the Mental Hygiene Law governing the proceeds for the appointment of a guardian for personal needs or property management. The power of the trial court to approve settlements in cases involving infants is limited by the legislative preference for the appearance of a parent as the natural guardian and where a parent negotiated and agreed to accept a substantial sum in settlement of severe malpractice-caused injuries to a child, the court lacks power to impose a structured settlement and to remove the parent as guardian when the parent refuses to acceded to the courts additional terms. (Sutherland by Sutherland v. City of New York 107 A.D.2d 568 (1st Dept 1985) 21 Carmody-Wait 2d § 124:53.

Other

According to 22 NYCRR 202.67, in addition to complying with CPLR 1207 and 1208, settlements of an action or claim by an infant, must also comply with Section 474 of the Judiciary Law, which deals with compensation of the attorney who represents the infant. Section 474 basically states that Attorney may contract with guardian to prosecute infants claim, but the compensation is based on the success of the claim and subject to the power of the court to fix the amount of compensation.

A parent is required to have legal custody over the infant to be entitled to move for settlement of an action on the infant's behalf. (See, CPLR 1201)

As an alternative to appearing though a parent (and assuming there is no guardian of his property), a married infant may appear through his spouse if the spouse is an adult and resides with the infant. (See, CPLR 1201).

Contributed by George Sacco (NY) 516-248-6777 (GSaccoLaw@aol.com)

NORTH CAROLINA

North Carolina's minor settlements are governed by N. C. G. S. § 1-400 and 1-402. If there is a lawsuit pending, the Order approving settlement is filed in the action. If there is no lawsuit pending, the Clerks have recently conferred and determined that the parties will need to file a complaint, answer and motion for approval of a minor settlement, thus opening a "friendly" lawsuit.

There is no dollar threshold for minor settlements, except that there are jurisdictional amounts for the state courts. Matters under $10,000 are

heard by the State District Court. Matters over $10,000 are heard by the State Superior Court. This can affect from which Court approval is sought.

In all cases, the Court will want to know that a guardian is representing the interests of the minor. In some cases the Court will accept a family member as guardian. However, there have been cases where a particular judge will not approve a minor settlement without a disinterested guardian who has no family relationship to the minor.

The settlement must be approved by the Court, and the most common route is through a hearing in open court. Some Judges will also agree to hear form the parties, review the proceedings, and confirm consent of the parties in chambers. However, all minor settlements will require the entry of an order approving settlement.

Contributed by Alex Hagan (NC) 919-865-7000 (alex_hagan@elliswinters.com)

NORTH DAKOTA

Infant compromises are governed by Chapter 30.1-29 of the North Dakota Century Code (N.D.C.C.). In particular, N.D.C.C. § 30.1-29-09, allows a court to issue an order for a single transaction, such as approving the settlement of a minor claim, without appointment of a conservator. A minor is anyone under the age of 18 (N.D.C.C. § 30.1-01-06).

There is no dollar threshold. Infant compromise orders are required in all cases. To obtain the same, the petitioner must establish that there is a basis for affecting the property of minor.

A guardian ad litem is not required to obtain permission to settle an infant claim. The petition can be brought by anyone interested in the estate of the minor (parent, etc.), or any person that would be adversely affected by the lack of management of the minor's property (N.D.C.C. § 30.1-29-04(1)).

The petition must be served upon the minor's parent or guardian at least fourteen days prior to the hearing (N.D.C.C. § 30.1-29-05(1). As a result of the hearing, the court has broad authority to fashion an order governing the minor's property, including the express authority to order protective arrangements such as the entry into an annuity contract (N.D.C.C § 30.1-29-09).

The petition must be brought where the minor resides, not necessarily where the parent or guardian resides (N.D.C.C. § 30.1-29-03).

Contributed by Michael Coutu (NY) 716-853-2050 (mcoutu@sliwa-lane.com)

OHIO

In Ohio, minors' settlements are governed by O.R.C. § 2111.18 and Rule 68 of the Ohio Rules of Superintendence. Whenever a minor is receiving a settlement from a personal injury, regardless of the amount of the award, the Probate Court must approve the settlement. If the gross settlement is over $25,000.00, then a guardian of the estate must be appointed to file the Application for Approval of the Settlement in the county of the minor child. If, however, this amount is less than $25,000.00, a parent or custodian may file the Application. The Application will then be assigned to a magistrate and set for hearing.

Along with the completed Application, the following documents must be attached to the Application:

1. A certified copy of the child's birth certificate and original social security card;
2. A narrative statement in support of the proffered settlement, which must include a description of the occurrence and the extent of the injury or damage;
3. A current statement from the treating physician regarding the injuries sustained, the extent of recovery, and the permanency of any injuries;
4. If the settlement is structured, an affidavit from an independent certified public accountant (or equivalent professional) specifying the present value and the method by which it was calculated.

Additionally, prior to entering into a contingent fee contract with an attorney for services, a motion to approve the contingent fee contract shall be filed with the court pursuant to Ohio Rule of Superintendence 71(I) at the time of the filing of the Application. The attorney or applicant is also required to file an Entry Setting Hearing and Ordering Notice, as well as a Waiver and Consent to Settle Minor's Claim, which requires that both parents waive notice or receive notice by certified mail of the hearing date and time. Non-custodial parents who have not waived service must be given at least seven days notice of the hearing. Notably, if there is a residual injury to the child or soft tissue damage, the court may appoint a guardian ad litem to represent the child's interest.

The attorney, applicant, and child must appear at the hearing. If a guardian is required to be appointed, the Magistrate or Judge will address that at the hearing prior to the minor settlement being herd. After the settlement is

approved, the attorney shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry. Within seven days from the issuance of the entry, the attorney shall obtain a Verification of Receipt and Deposit from the financial institution, and file the form with the court. The court will then direct that the funds be deposited in an interest bearing account in the name of the minor with a financial institution located in the county where the action was brought. Absent good cause shown, no funds shall be released until the minor reaches the age of majority (18).

Within 30 days after the Entry Approving Settlement is signed, the Report of Distribution of Minor's Claim and signed annuity contract (if applicable) must be filed.

Contributed by Mario Ciano (OH) 216-687-1311 (mciano@reminger.com)

OKLAHOMA

Purpose and Authority

In Oklahoma, binding settlements cannot be legally entered into by minors (anyone under the age of 18). Minor settlements require court approval of the amount and distribution. This process is commonly referred to as a "Friendly Suit". The purpose is to provide the insured and insurer finality through judicial estoppel. Therefore, there is no minimum settlement threshold for court approval. To provide finality, all minor settlements should go through the "friendly suit" process.

Specifically, Oklahoma courts have authority to act upon and provide judicial approval of (1) a litigation compromise agreement, (2) the asserted shares of recovery, and (3) the manner in which to invest the minor's portion of the judgment proceeds. Tisdale v. Wheeler Brothers Grain Company, Inc., 1979 OK 94, 599 P.2d 1104, 1106. Once court approval has been obtained, it is not typically set aside due to a later change of condition or evidence showing that the injuries sustained by the minor were more serious than may have been believed at the time of the settlement. 42 Am. Jur. 2d, Infants, § 223, 175. When determining whether to approve a minor settlement, the court looks at what is in the best interest of the minor at that time. Lambert v. Hill, 1937 OK 331, 73 P.2d 124, 127; See also Sneed v. Sneed, 681 P.2d 754 (Okla 1984) (the Trial Court has a duty to protect the interests of the minor child Plaintiff).

Proper Party to Present Settlement and Guardian Ad Litem

Friendly suits are typically brought by the minor's parent, conservator or other similar fiduciary. 12 O.S. § 2017(C). If, however, the minor does not

have such a representative, the minor's claim may be brought by a next friend or a guardian ad litem. Id. A guardian ad litem is not usually required, but will be appointed by the Court if a minor is not otherwise represented, or if the Court deems it necessary for the protection of the minor (typically arising from a conflict of interest between the parent and minor on fault issues). Id.

Threshold for Court Supervision of Settlement Proceeds

When the amount of the settlement that is to be disbursed to the minor exceeds $1,000.00, the money must be held in trust for the benefit of the minor child. When determining if a trust account is required, the court allows reductions from the total settlement for attorney fees, litigation costs, and payment of medical expenses. Okla. Stat. Tit. 12 § 83 governs the conservation of monies on behalf of minors. This statute requires that the money to be held in trust at one or more financially insured banking, credit union or savings and loan institutions, or invested by the trust department of a banking institution. Structured settlement of minor proceeds is another available option, provided the annuity is placed through an insurance company licensed in Oklahoma, which also must be approved by the court. The minor may not access the money without a court order until he or she turns eighteen. The discretion of the court in releasing money prior to the age of eighteen is generally limited to past and future support and education. 30 O.S. § 2 108.

Procedure for Obtaining Court Approval

A hearing and court order are required. A "friendly suit" is commenced by filing a Petition and Answer in the general civil docket of a court with venue. Often proper venue is waived and the case is filed by agreement in the most convenient venue for the parties. The case is then set for an approval and distribution hearing. Testimony is taken to establish that the parent understands the settlement terms and the rights that are extinguished if the settlement is approved. At the hearing, the Judge will approve both the total settlement amount and the distribution of the settlement monies. The Judge will also order any monies disbursed to the minor over $1,000.00 to be placed in a trust account for the minor. The Judge will typically order that a receipt be completed by the financial institution setting up the trust account to be filed in the case.

Contributed by Michael Woodson (OK) 405-272-0322 (mwoodson@edmondscole.com)

OREGON

The age of majority in Oregon is eighteen. ORS 109.510. Minor settlements in Oregon are governed by ORS 126.725. Oregon law includes different provisions for minors' settlements depending on whether the amount is more or less than $25,000.

For claims where the total amount is $25,000 or more (exclusive of fees, costs, medical expenses, and other expenses), a conservator must be appointed and the court must approve the settlement. Where the total amount of the claim is $25,000 or less (exclusive of medical expenses, liens, attorney fees and costs) the legal custodian of a minor may enter into a settlement agreement to settle a claim on the minor's behalf if no conservator has been appointed. When doing so, the person must complete an affidavit that attests that the person has made a reasonable inquiry, and either: (1) To the best of the person's knowledge, the settlement will fully compensate the minor; or, (2) there is no practical way to obtain any additional amount from the settling party.

There are specific rules about how the settlement funds will be paid to the minor. For cash settlements where the minor's guardian has attorney representation, the settlement moneys must be paid by direct deposit into the attorney's trust account to be held for the benefit of the minor. The attorney must then deposit the money received into an interest bearing federally insured savings account in the sole name of the minor and provide notice of the deposit to the minor and his/her guardian via personal service or first class mail. Where no attorney represents the guardian, the process is the same, except that the cash settlements must be deposited directly into the bank account with no trust account deposit required. Finally, the funds in the minor's savings account may not be transferred, paid out, or removed, except where: (1) The minor turns age 18, (2) it is done pursuant to a court order; or, (3) the minor dies. ORS 126.725(4).

Under ORS 126.725(5) which provides that if a settlement agreement with a minor complies with ORS 126.725(1), the minor will be bound to the agreement without the need for further court approval or review. Further, such an agreement will have the same effect as if the minor were a competent adult. To ensure that the minor's settlement is in fact binding on the minor, good practice requires defendants to obtain proof that whoever is acting on the minor's behalf has legal, not just physical, custody of the minor.

Contributed by Jeff Hill (OR) 503-417-1104 (hill@bodyfeltmount.com)

PENNSYLVANIA

Pennsylvania Rule of Civil Procedure 2039 requires that any claim involving a Minor as a party must have a Court Order approving the settlement of the case. Rule 2039(a) states that "No action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor."

There is no dollar threshold for the settlement amount. However, Pennsylvania case law has consistently held that it is the Court's discretion to determine whether a settlement is fair and reasonable (see other noteworthy mandates below).

Other thresholds: Pennsylvania Rule of Civil Procedure 2039(b) outlines provisions for the payment of counsel fees and other expenses. Rule 2039(b) states that "When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment." Rule 2039(b) also provides that "the court may make such order as it deems proper fixing counsel fees and other proper expenses." Rule 2039(b) goes on to outline how funds are payable once a settlement is approved by the court (see other noteworthy mandates below).

Pennsylvania Rule of Civil Procedure 2027 states that "When a party to an action, a minor shall be represented by a guardian who shall supervise and control the conduct of the action in behalf of the minor". Rule 2031 governs the selection and appointment of guardians ranging from the minor plaintiff selecting his/her own guardian to one that is court appointed. Pursuant to Rule 2039, although minor are parties to an action in Pennsylvania, a guardian is required for compromise and settlement of a claim. Generally, an appointment of a guardian ad litem is done when the minor has no other guardian either through selection of the minor or appointment of the court by other means (i.e. appointment of a family member). While the appointment of a guardian ad litem is generally used in custody cases or when a party is deemed incapacitated, Rule 2031 does not prohibit the appointment of same. As such, appointment of a GAL is left to the discretion of the court as necessary.

A parent or legal guardian of the child must file with the Court a Petition for Minor's Compromise. The Petition will tell the Court what the amount of the settlement is, what the case was about, it will include relevant medical

records and any legal costs and fees. The parent or legal guardian must sign a verification that they believe the settlement is fair and reasonable. The Judge will then schedule the case for a hearing.

At the hearing, the parent or legal guardian must be there with the child. Usually, the Judge will have the parent or legal guardian of the minor sworn in and ask them questions about the medical treatment, the condition of the child, how the injury happened and whether the parent understands that the settlement of the case is final. The Court will look to determine whether the settlement is fair and reasonable first. They want to protect the interests of children. The Judge will go by the medical records and the child's current medical condition. The other reason a Court Order is needed is because Minors cannot enter into contracts or agreements and in Pennsylvania a contract entered by a parent on behalf of a Minor might be nullified by the Minor once they turn 18.

Other noteworthy mandates:

> If the Minor's personal injury settlement is approved by the Court, the Judge will require that the funds payable to the minor go into an FDIC interest-bearing account until the child turns 18. The funds will not be permitted to be withdrawn without a Court Order approving (it would require extenuating circumstances such as medical bills or a legitimate emergency). If the case involves an insurance company paying a settlement, then that Insurer will be aware of these Rules. You would need to provide them with the Court Order approving the settlement before they will send a settlement check.

Contributed by David Pennington (PA) 215-563-4470 (dpennington@harvpenn.com)

RHODE ISLAND

Under the Rhode Island General Laws a minor's release given by both parents or a custodial parent or guardian for a sum not exceeding $10,000 is binding on the minor. No court proceeding is necessary to validate the release.

Statute: § 33-15.1-1
(b) 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.

If the settlement exceeds $10,000 then a friendly suit must be filed in the Superior Court, a guardian ad litem is appointed to report to the court on the advisability of the settlement, and the court rules the settlement fair or

unfair. If the court accepts the settlement, it is very important that the court order approving the settlement expressly approves the form of the release and empowers the guardian ad litem to execute the release on behalf of the minor. If this is not done, the settlement and release are voidable.

Contributed by Gordon Cleary (RI) 401-421-3060 (gcleary@vetterandwhite.com)

SOUTH CAROLINA

SC Code Ann. § 42-5-433

Dollar threshold: The important number is the net to the minor.

If the net to the minor is $2,500 or less, court approval is not required. The parent or guardian of the minor can accept the settlement funds on behalf of the minor and release the claims.

If the net to the minor is more than $2,500 but not more than $25,000, court approval is required when the guardian or guardian ad litem is seeking approval of the settlement. A conservator is not required, but if a conservator is in place, the conservator may settle the minor's claim without court approval. The circuit court and probate court have concurrent jurisdiction over these claims.

If the net to the minor is more than $25,000, court approval is required, and the circuit court has exclusive jurisdiction. A conservator is also required.

There are no other thresholds.

A guardian ad litem is not required by statute, but as a matter of practice, courts appoint the parent(s) as guardian ad litem for these proceedings. As noted above, a conservator is required if the net to the minor is more than $25,000.

Other noteworthy mandates:

> Venue for these matters is either where the minor resides or where suit is pending.

Contributed by John Cuttino (SC) 803-227-4271 (jcuttino@turnerpadget.com)

SOUTH DAKOTA

South Dakota codified Laws Sec. 15-6-17(c)

There is no dollar threshold.

There are no other thresholds.

A guardian or conservator is required and if there are none the Court will appoint a guardian ad litem

Court approval of the settlement is required although no procedure specified.

Contributed by John VanDenburgh (NY) 518-862-9292 (jwv@nvnlaw.com)

TENNESSEE

Court Approval

All minor settlements in Tennessee have to be court approved. The Tennessee Code controls the structure of handling minor settlements. The relevant provisions can be found at T.C.A. § 29-34-105.

Tennessee Divides Minor Settlements into two categories:

a. Settlements over $10,000.00
b. Settlements under $10,000.00.

In general, any minor settlement should be approved with an in person hearing before a Judge or Chancellor, if possible. However, if the total settlement for each child is less than $10,000.00, it is possible to have the settlement approved without the necessity of an in person hearing before a judge or Chancellor. The approval without a hearing is a relatively new procedure in Tennessee, and some judges may still require an in chambers hearing where the judge or chancellor can see and speak to the minor child.

Basic Elements to a Minor Settlement Approval

a. If the action has not been filed the parties must file a Joint Petition, an affidavit and a proposed which will bring the matter before the court.

b. If the action has already been filed with the Court, there is no need to file a Joint Petition. The parties can simply arrange a hearing if necessary and/or submit a motion for approval of settlement along with the affidavit described in the above section.

Guardian Ad Litems

The judge or chancellor has discretion to appoint a guardian ad litem (GAL) at any point that he or she may feel it necessary to adequately protect a minor's interest. GALs are not typically appointed for smaller

settlements. If the settlement exceeds $50,000.00, there is a larger chance that the court might appoint a GAL. Another instance where a GAL might be appointed is in instances where the parents of the minor are separated and neither can agree on an adequate settlement amount or what to do with the settlement proceeds. However, unlike other states, there is no definite requirement that a GAL be appointed.

Contributed by Dan Ripper (TN) 423-756-5034 (dan@lutheranderson.com)

TEXAS

Legal claims asserted on behalf of minors in the State of Texas are addressed primarily in Rule 44 and Rule 173 of the Texas Rules of Civil Procedure. These Rules apply to all cases, regardless of the dollar amount in controversy.

Minors may be represented by a "next friend" in litigation if they have no legal guardian. A next friend has the same rights as a guardian in representing minors in litigation matters, but may be required to give security for costs. The next friend or his or her attorney of record may, with the approval of the court, compromise suits and agree to judgments. When approved by the court, such judgments, arguments and compromises will be forever binding on the minor who is the party plaintiff in the suit.

The court must appoint a guardian ad litem for a party represented by a next friend or guardian only if (1) the next friend or guardian appears to the court to have an interest adverse to the party, or (2) he parties agree. Typically, the courts will find an adverse interest where the guardian or next friend also has an individual claim against the defendant that is asserted in the litigation. The court must appoint the same guardian ad litem for similarly situated parties unless the court finds that the appointment of different guardians ad litem is necessary.

The court may appoint a guardian ad litem on the motion of any party or on its own initiative. Any appointment must be made by written order. Once appointed, the guardian ad litem acts as an officer and ad visor to the court. When an offer has been made to settle the claim of a party represented by a next friend or guardian, the guardian ad litem has the limited duty to determine and advise the court whether the settlement is in the party's best interest.

Regardless of whether a guardian ad litem has been appointed, the parties should conduct a prove up bearing and obtain a court order approving the settlement to ensure that the settlement will be binding and enforceable on the minor when he or she reaches the age of majority. If the claim is settled prior to the filing of a lawsuit, the parties often file a "friendly lawsuit" to

obtain the necessary court order to ensure that the settlement will be fully enforceable.

Contributed by David Macdonald (TX) 214-651-3300 (dmacdonald@macdonalddevin.com)

UTAH

U.C.A. 1953 Section 75-3-1102

There is no dollar threshold.

There are no other thresholds.

There is no requirement for a guardian ad litem.

Is a hearing or court order necessary? Yes

Simple submission of settlement agreement and court has wide latitude in approving.

Contributed by Gene Backus (UT) 702-872-5555 (gbackus@backuslaw.com)

VERMONT

The age of majority in Vermont is 18. 1 V.S.A. § 173.

The settlement of claims involving minors in Vermont is governed by 14 V.S.A. §2643(a) and (b).

14 V.S.A. § 2643(a) requires settlements of less than $1,500.00 to be approved by a superior court judge. For claims in excess of$1,500.00, 14 V.S.A. § 2643(b) requires the appointment of a guardian of the estate of the minor and the approval of the settlement by the guardian of the estate and by the Probate Court.

Pursuant to Rule 17 of the Vermont Rules of Civil Procedure, a minor can sue through a next friend and the court has discretionary authority to appoint a guardian ad litem to protect the minor's interests. The appointment of a guardian ad litem is mandatory if the minor is not is not otherwise represented.

A hearing is required by the Probate Court for the settlement of claims in excess of

$1,500.00. For the settlement of claims less than $1,500.00 the superior court judge for the county in which the minor resides need only approve of the release to be executed by the minor's parents.

Contributed by Chris Harrington (CT) 860-525-3101 (cmh@hksflaw.com)

VIRGINIA

In Virginia, settlements on behalf of persons "under a disability" (including minors) are governed by Va. Code Ann. § 8.01-424. In any action where a minor is a party, the court in which the action is pending has the power to approve and confirm a compromise on behalf of the minor, if the court deems the compromise to be in the interest of the minor. Where the minor is the damaged party, any person (or insurer) interested in compromise of the damages claim may file a motion with the court to approve the compromise. The motion should be filed in the court where the action is pending; if no action is pending, then the motion may be filed in any circuit court. The movant is required to give reasonable notice of this motion to all parties and any person the court finds to be interested in the compromise.

Specific procedures for how payments may be made are set forth under Va. Code Ann. 8.01-424(D). Where the minor is the damaged party, payments may be made to the parent or guardian of the minor to be held in trust for the minor's benefit. Any such trust is subject to court approval, and the court may provide for termination of such trust at any time after the minor reaches the age of majority. The court may order the trustee to qualify in the clerk's office and file an inventory and annual accountings with the commissioner of accounts.

Contributed by David Hudgins (VA) 703-739-3300 (dhudgins@hudginslawfirm.com)

WASHINGTON

The age of majority in Washington is eighteen years old. RCW 26.28.010. Washington Court Rule 98.16W sets out the requirements and procedures for a valid settlement with a minor. The settlement of a claim by a minor requires court approval and appointment of a guardian ad litem. Rule 98.16W. The rule's intent is to ensure that the minor's interests are protected and that the settlement is reasonable. The rule is complex, and should be consulted as necessary.

Upon settlement of a minor's claim, the minor's guardian must petition the court for approval of the settlement. The petition must include the minor's name and date of birth, the name and relationship of others having claims from the same event, and a list identifying the amount of all liens, reimbursements, fees, costs, or expenses requested to be paid from the settlement funds. The list must include a columnar listing of all amounts to be received, paid, or claimed, and the net amount of money or property remaining for the minor.

Once the petition is filed, the court must appoint a Settlement Guardian ad Litem. There are a couple of exceptions to that rule. A court will not have to appoint a Settlement Guardian ad Litem if either a guardian has already been appointed or the minor has independent counsel. This exception only applies if the guardian or counsel have no conflicts of interest and are at least as qualified as a Settlement Guardian ad Litem. The person appointed to represent the minor must then make a report to the court addressing a variety of topics.

The report of the Settlement Guardian ad Litem or other person authorized above shall include a description, in depth appropriate to the magnitude of injuries and settlement, of at least:

(1) the background of the appointment and qualifications of the writer including any relationship with involved parents, guardians, insurers or attorneys;

(2) a description of the investigation conducted, the persons interviewed and the documents reviewed, if any;

(3) a description of the incident and the affected person's potential legal claims;

(4) a description of the affected person's injuries, general treatment, diagnosis and prognosis attaching a recent supporting medical report or office record;

(5) a discussion of the damages potentially recoverable including identification of all special damages;

(6) a discussion of the potential liability of all persons and entities;

(7) an identification of other insurance or collateral sources for payment of any bills or expenses;

(8) a discussion and recommendation regarding any lien, subrogation or reimbursement claims, including any suggested retention in an attorney's trust account of the full amount claimed until the final resolution of such claim;

(9) an identification of all other claims, specifically including any claims held by other family members;

(10) a discussion of any proposed apportionment of claim proceeds among family members or unrelated claimants, if any;

(11) a discussion and recommendation regarding the proposed settlement form, documents and amounts;

(12) a discussion and recommendation regarding the expenses and fees for which payment is requested;

(13) a discussion and recommendation regarding the requested disposition of net proceeds;

(14) a statement of time spent, expenditures made and the fees and costs requested by the Settlement Guardian ad Litem;

(15) a discussion and recommendation regarding the presence of the affected person and the Settlement Guardian ad Litem at any court hearings on the Petition;

(16) a statement as to whether the Petition has been submitted for approval in any other jurisdiction.

When the court hears the petition for approval of the settlement, the court should also determine the allowance of fees, costs, and other charges incident to the settlement. The total settlement amounts must be paid into the registry of the court, or as ordered by the court. If a party wants to pay certain amounts such as costs, attorney fees, medical expenses or other such expenses out of the settlement proceeds, that party must first obtain approval from the court.

After the court has approved the settlement and payment of fees, bills and expenses, how the remaining balance will be handled depends on whether it is more or less than $25,000. If the remaining funds are less than $25,000, the court shall require that the funds be: (1) Deposited in an insured financial institution for the benefit of minor; (2) paid to a guardian; or, (3) placed in trust. If the total funds exceed $25,000, then upon guardian approval, the court will include in the order or judgment that the funds be deposited in an account for the benefit of the minor and subject to withdrawal only upon order of the court. Alternatively, if there is no appointed guardian, then the court can at that time either appoint a guardian or place the funds in trust, subject to certain restrictions. Rule 98.16W (j).

Contributed by Jeff Hill (OR) 503-417-1104 (hill@bodyfeltmount.com)

WEST VIRGINIA

Minor settlements in West Virginia are governed by W. Va. Code § 44-10-14, which sets forth in specific detail all rules and requirements for

minor settlements. Under this statute, known as the "Minor Settlement Proceedings Reform Act," a parent, next friend or guardian of a minor may negotiate settlement of the minor's claim for damages before or after filing a civil action for injury to person or property.

In order to secure a valid release of the party allegedly responsible for the minor's injury or loss, the parent, next friend or guardian of the minor must file a verified petition in the Circuit Court of the county where the minor resides or in the court where the action is pending. This verified petition must contain the following information:

- Terms of the proposed settlement;
- The release of liability;
- The manner of distribution of the settlement proceeds;
- The name, gender and age of the minor;
- The facts of the injury and damages of the minor relied upon in requesting the court to consider and approve the proposed settlement and release;
- The circumstances and events leading to the injury or loss at issue and the identities of the persons or entities alleged to be responsible for the injury or loss;
- The identities of the persons or entities to be released;
- The circumstances of the minor at the time of the petition or motion;
- The relationship of the petitioner or moving party to the minor;
- The nature and effect of the injury;
- The sum of expenses expended for the treatment and care of the minor for the injuries at issue;
- An estimate of future expenses for the treatment and care of the minor related to the injury and how such expenses would be satisfied from the settlement proceeds;
- A proposal as to how the costs and expenses of processing the settlement and release are to be satisfied;
- A proposal for distribution of other settlement proceeds; and
- A request for such other relief as the court may determine is appropriate in the best interests of the child.

Upon the filing of this petition by the minor's parent, next friend or guardian, the court must appoint a guardian ad litem to review and confirm the facts set forth in the Petition and the facts and circumstances of the minor. The guardian ad litem will file an answer to the Petition or Motion on behalf of the minor, stating whether the guardian believes the proposed settlement and release are in the best interests of the minor.

The court must hold a hearing on the Petition, and consider testimony and arguments regarding the minor's alleged injury or loss and the terms of the proposed settlement and release. The court may order the minor to appear and testify if the court finds that his or her appearance or testimony is appropriate for consideration by the court of the proposed settlement. If the court grants the requested relief, the party seeking release (or any party seeking release on behalf of another party) must execute the statutorily provided form. The language of the form is as follows:

> I, ..., the [guardian or other person authorized to execute the release] of ....., a minor, in consideration of the sum of $....., and under authority of an order of the Circuit Court of County, entered on the .....day of ....., 20....., pursuant to West Virginia Code 44-10-14, do hereby release ..... from all claims and demands on account of injuries allegedly inflicted upon the minor and any property of the minor on the .....day of ....., ..., at .....
>
> _____
>
> (Signature)
>
> [Guardian or other person authorized by the court to execute the release] of .....

The court will enter an Order with findings of fact and granting or rejecting the proposed settlement, release and distribution of settlement proceeds. The court also discretion to approve payment of attorney fees, legal expenses, court costs and other costs of securing the settlement in such reasonable amounts as the court finds in its discretion to be appropriate. Within sixty (60) days of the entry of the court's Order, a statement of initial expense payments and an inventory of net settlement trust proceeds and any income earned thereon shall be filed by the person authorized to pay initial expenses with the fiduciary commissioner or supervisor of the county commission designated by the court to review the status of settlement proceeds for the minor.

If the settlement proceeds are greater than twenty-five thousand dollars ($25,000.00), the Court may appoint a conservator to serve as the person responsible for investment and control of net settlement trust proceeds until the minor attains the age of majority or at such later time as the court may order upon terms the court finds to be in the best of the interest of

the minor, taking into consideration any special needs of the minor at any age. The conservator may not use the principal or income accumulated on the settlement proceeds for the care and maintenance of the minor during his or her minority, absent unusual circumstances. The court may require a bond for the conservator in its discretion. The conservator shall be required to file a report of net settlement trust proceeds and income earned each year on February 1.

If the settlement proceeds are less than $25,000.00, the court may include in the Order approving settlement a waiver of any and all requirements regarding reference to a fiduciary officer, requirements of a bond or surety, and annual reporting requirements.

Contributed by Shea Conley (KY) 859-233-1311 (sconley@reminger.com)

WISCONSIN

Wisconsin's minor settlements are governed by Wis. Stat. § 807.10. Where actions have been filed the petition must go to the court where it's pending, otherwise it can be filed in any court in the state. The petitioner may be either a guardian ad litem or a general guardian and the filing of the petition for approval tolls the statute of limitations until the decision is made.

If the proceeds from the settlement do not exceed $50,000 it may be paid into an existing guardianship account. If the settlement exceeds $50,000 then a guardianship must be established. The court must approve settlement and order the distribution of the proceeds.

Contributed by Tim Waldeck (MN) 612-375-1550 (twaldeck@waldecklind.com)

WYOMING

Settlements with minors are governed by Wyoming Statutes, section 14-2-202 which states as follows:

(a) Money or other property not exceeding three thousand dollars ($3,000.00) in value belonging to a minor and 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 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.

As per Wyoming Statutes, section 14-2-202, money or other property not exceeding three thousand dollars ($3,000.00) may be paid.

There are no other thresholds.

It is recommended that a Conservatorship be established to settle any claims with a minor when the amount of the settlement exceeds three thousand dollars ($3,000.00). The Conservatorship is established pursuant to Wyoming Statutes, section 3-3-101 through 3-3-108.

It is recommended that all settlements with minors in excess of three thousand dollars ($3,000.00) be approved by the court and that an Order Approving the Settlement be obtained from the Court. Typically, this can be accomplished by a Petition to the court requesting an Order Approving the Settlement. Hearings are very rare.

Other noteworthy mandates:

> The Petition for Involuntary Appointment of Conservator must be served on the proposed ward, his custodian, the proposed Conservator and upon the ward's parents if the minor is under 14 years of age. Wyoming Statutes, section, 3-3-102. If the minor has reached the age of 14 years, then a Voluntary Conservatorship may be established pursuant to Wyoming Statutes, section 3-3-106.

Contributed by Bill McKellar (WY) 307-637-5575 (bmckellar@mtslegal.net)

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EAGLE INTERNATIONAL ASSOCIATES, INC.
PO Box 371510
LAS VEGAS, NV 89137-1510
888-313-2661
702-221-1399
WWW.EAGLE-LAW.COM