IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
DIVISION TWO

MEMORANDUM REGARDING SETTLEMENT OF MINOR'S CLAIMS AND FRIENDLY SUITS

Please take notice regarding the following information and procedure to be followed regarding applications to approve minor settlements and friendly suits. Counsel will find that the disposition of minor's settlements will be much easier if the following are supplied by letter to the clerk of the Court **prior** to contacting the Court to schedule a hearing. In addition, please complete Form A relating to friendly suits.

1. **Initiation of suit by Next Friend:** Counsel is reminded that pursuant to Rule 52.02, the minor's next friend must be appointed by court order prior to, or at the time of, the filing of the suit.
    a) Next friend must be qualified to serve;
    b) Next friend must obtain a bond to serve unless waived by the Court for good cause shown.

2. **Before a hearing** can be scheduled, a letter from counsel must be delivered to the Division Clerk which includes the following:

    a) the current age of the minor;

    b) a description of the cause of action and the underlying facts;

    c) a description of the injuries or damages suffered by the minor;

    d) a statement as to whether or not the minor has been released from medical care as a result of injuries arising from the instant case;

    e) If the minor is going to need future medical care, please describe the future care (both in the near and distance future);

    f) The aggregate medical expenses to date and an estimate as to whether or not medical expenses will arise in the future;

    g) Whether all, or part, of any medical expenses are expected to be paid from the settlement sums, or whether payment has been received from some other source which **will** or **will not** be seeking subrogation or reimbursement;

h) Whether there are other claimants against the same policies, if liability insurance is involved;

i) The gross amount of the settlement and the amount of attorney's fees requested, and the amount and nature of the expenses to be deducted from the settlement; (*Reminder*: contingent fees agreements must be in writing);

j) Whether the parents intend to receive a portion of a settlement of any claims that they may have as a result of the injury to their child, and, if so, the terms of the parent's settlement. **Justification of payment to a parent is required. Caution:** The minor child's share of the settlement **cannot** be paid directly into the hands of a parent or guardian. See the comments about the need for a conservator estate or a restricted deposit account set forth below

3. The application and a proposed judgment should be filed at least FIVE DAYS before the proposed hearing. Hearings for these types of cases are typically set for Wednesday mornings at 9:00 A.M., but please coordinate with the opposing counsel and the division clerk before setting.

No hearing will be scheduled unless paragraph 1 above has been completed.

4. **Conservator estates**: If net proceeds exceed Ten Thousand Dollars ($10,000.00) to the minor a conservatorship estate **IS** required. However, a conservatorship **MAY** still be required even if the amount is less than $10,000.00 under certain circumstances. Applications to establish a conservator estate must be filed with the Probate Court in the County where the minor child resides. In Clay County, the Probate Court is in Division 4. Parties should become acquainted with the special rules and procedures applicable to the Probate Court and seek to establish any necessary conservatorship estate prior to, or in conjunction with, the application to approve minor settlement filed with this Court. You should also obtain a copy of the Probate Court's Memorandum regarding Conservatorship Cases. Counsel should be aware both Chapters 475 and 507 RSMo. The Court will not approve any payment of a minor's share of a settlement to a parent or guardian unless it is in the capacity of a conservator appointed by the Probate Court.

5. **Conservator bond may be required**: Note, the Probate Court may require a corporate surety bond for the conservator before Letters of Conservatorship are issued. (Any proposed conservator should be qualified to obtain a bond.) The Probate Court may also, in certain instances permit the payor to pay the settlement directly into a bank or savings and loan institution which has agreed to accept a restricted deposit. In limited cases, the Probate Court may permit the bond requirement to be adjusted. It is best to obtain this permission well in advance of the hearing on the minor's suit.

6. **Restricted deposit, UTMA Accounts, or Special Needs Trusts in lieu of a conservator estate**:

    a) **Restricted deposit accounts:** It is possible for the Probate Court to waive opening a conservatorship and authorize a restricted deposit account, and then require the parents to deposit the sums in the restricted account for the benefit of their child, even if the sums received are less than Ten Thousand Dollars ($10,000.00).

    b) **A Uniform Transfer to Minors Act ("UTMA") Account:** This type of an account can be created without going through the Probate Court under §436.700 RSMo. or Missouri's adopted UTMA statutes. The transaction must comply with the statute and the amount transferred cannot exceed $35,000.00. Although this is permitted, the statute must be **strictly followed.** For example, the disbursement of settlement funds by check has to be made payable to the child pursuant to the UTMA and placed in a UTMA account with a qualified bank. This information should be presented at the hearing. If the minor has a pre-existing UTMA account, this account may be used to receive the settlement proceeds. *The proposed judgment shall include an order requiring the Next friend to file proof of UTMA deposit with the Court within a reasonable time after judgment entry.* A detailed record regarding the intended UTMA account should be made at the time of the hearing to approve the settlement.

    c) **A Special Needs Trust**: This Trust must be set up through the Probate Court and can receive the settlement proceeds. The trustee is the fund administrator and must be bonded. **Note:** If the trust distributes its balance on the death of the minor, the distribution must be "**to the heirs of" the minor** and is governed by Missouri's law regarding descent and distribution under the testate or intestate succession statutes. The trust **may not** list the child's parent(s) or guardian, or another person, as the distributee. *A parent, guardian or next friend is not legally authorized to decide a minor's estate plan or name individual beneficiaries.* The special needs trust must be in place before the proceeds can be transferred or deposited.

    Candor by counsel as to whether or not this should be a consideration of the Court is appreciated.

7. Settlements that are structured **solely for the purpose** of avoiding the creation of a conservatorship are strongly discouraged.

8. **Annuity Settlements**: Annuity settlements are examined carefully regarding the current or potential needs of the minor. Settlements where only an annuity is delivered to the minor (i.e. there is no cash payment at the time of settlement for the minor's current injury related needs) **will be heavily scrutinized.** Counsel must be

prepared to make a record explaining to the Court why the minor will not need access to money for injuries or treatment during the time period before the annuity begins payment. Annuity contracts with a payable or transfer on death provision must name "**the heirs of" the minor** as the death beneficiary. (A next friend or guardian is not legally authorized to decide who the minor's heirs shall be or select named individuals as beneficiaries.) **Caution:** All conservator estates must terminate and distribute all estate assets to the child when the child becomes age 18. Therefore, if the minor child is a party to an annuity contract that seeks to bind the child after age 18 there is a possibility a party can attack the contract as voidable by the child upon age 18.[1] After the child turns age 18, the child becomes competent to make all decisions and the legal authority of child's parent, guardian, conservator, or next friend terminates. This Court does not require that an annuity contract pay out to the minor upon age 18, **however, the Court does require that a record shall be made at the hearing** for approval of a minor settlement that (1) discloses whether the annuity contract is *capable* of paying out or distributing to the child at age 18; and (2) confirming that all parties, including defendants, are aware that annuity contracts entered into by a guardian, conservator, or next friend *may or may not become voidable* when the child becomes 18.

9. The clients should be advised that the Court may, in limited cases, want to visit with the minor and/or view the area of injury.

10. If a case presents an unusual problem, please do not hesitate to schedule a conference call (attorneys only) to facilitate the settlement.

[1] There is currently no case law interpreting whether §436.700 RSMo. permits the next friend or guardian of a minor to bind the minor as a party to an annuity contract beyond age 18.

In the Circuit court of Clay County, Missouri
Division Two

Plaintiff: _____

v. Case No: _____

Defendant: _____

FRIENDLY SUIT -- FORM A

Gross Settlement to Minor
$_____
Medical Bills incurred
$_____
Other special damages incurred
$_____
(describe in cover letter)

Will minor likely need future medical care? (circle) Yes No
(describe in cover letter)

Has minor been released from medical? (circle) Yes No

Estimated amount of future medical care $_____

Is anyone seeking reimbursement, restitution, or

subrogation from the settlement? (circle) Yes No

If yes, amount $_____

Gross amount of attorney fees, costs, and reimbursements
$_____

Written fee agreement? (circle) Yes No

Current age and Net amount to minor.

Age_____ Net Amount $_____

Has conservator been appointed? (circle) Yes No

Has conservator received the Probate Division
Memo to Guardians & Conservators? Yes No

Are the proposed Annuity Documents and particulars
Filed with the Court. (Recommended) Yes No