

FORM - SIMPLE ORDER FOR A STRUCTURED SETTLEMENT¹

At an IAS ____ of the Supreme Court of
The State of New York, held in and for the
County of Bronx, at the Courthouse thereof,
_____ day of _____, 200__.

Present: Hon. Paul A. Victor, J.S.C.
_____ X

Index No:

Infants Compromise Order For
A Structured Settlement

Plaintiff(s)
-against-

Defendant(s)
_____ X

PROPOSED STRUCTURED SETTLEMENT

WHEREAS the plaintiff(s) and the defendant(s) seek judicial approval for a structured settlement and to settle this action for the sums set forth in decretal paragraph 1; and

WHEREAS it is the intention of the parties to comply with all the requirements of section 104 and 130 of the Internal Revenue Code, relating to a structured settlement; and

THE TOTAL SETTLEMENT COST

WHEREAS the plaintiff(s) and the defendant(s) have agreed upon the sum of \$ _____ as the total cost of the settlement to defendant(s) (the "Total Settlement Cost"); and

WHEREAS the Total Settlement Cost is comprised of up-front money totaling \$ _____, plus \$ _____ to fund the purchase of an annuity contract that will make the periodic payments set forth below, and

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TOTAL SETTLEMENT PAYOUT

WHEREAS, based on plaintiff's normal life expectancy set forth below, it is expected that plaintiff will receive a total settlement payout of \$_____ (“Total Settlement Payout”), consisting of the up-front money totaling \$_____ plus future periodic payments totaling \$_____ (all of which are set forth in decretal paragraph 1); and

GUARANTEED PERIODIC PAYMENTS

WHEREAS, \$_____ of the above total future periodic payments are guaranteed payments (i.e., payments that are payable regardless of whether the plaintiff is alive); and

LIFE EXPECTANCY AND DATE OF BIRTH

WHEREAS the infant plaintiff is now _____ years of age, having been born on _____; and based on normal life expectancy is expected to live to the age of _____ years; and

THE ASSIGNMENT, THE ANNUITY ISSUER AND THE GUARANTOR

WHEREAS the defendant(s) propose(s) to assign the liability to make the aforesaid periodic payments to an “assignee” company, which will purchase an annuity contract from the hereinafter described annuity issuer, and

WHEREAS said “assignee” company will have its obligation to make said future periodic payments guaranteed by the hereinafter described “guarantor”; and

SUPPLEMENTAL EXHIBITS

WHEREAS, the following documents and proposed implementing agreements have been appended as Exhibits to this application (ie., Settlement Agreement [Ex. A]; Assignment Agreement [Ex. B]; Annuity Contract [Ex. C]; Guaranty Agreement [Ex.D]; Alternate and/or Competing proposals [Ex. E]; and

INDEPENDENT PROFESSIONAL ADVICE

WHEREAS plaintiff has been advised to obtain independent professional advice relating to the legal, tax and financial implications of the settlement; and has received all information required by §5-1702 of the General Obligations Law, including the amounts and due dates of the periodic payments to be made; the amount of the premium payable to the annuity issuer; the nature and amount of any cost that may be deducted from any periodic payments; and the prohibitions against transfer of the periodic payments; and

THE HEARING

WHEREAS the (petitioner/the mother and natural guardian) and the (infant/impaired person) plaintiff and their attorney having appeared before me on the ____ day of _____ 200_;

NOW THEREFORE, upon the application of plaintiff's counsel and upon reading and filing the petition of _____, parent and natural guardian of the infant herein, duly sworn to the ____ day of _____, 20__; the affidavit of _____, the infant plaintiff duly sworn to the ____ day; of _____ 200__; the affirmation of _____ attorney for plaintiff(s), dated the ____ day of _____ 20 __; the affirmation of _____, M.D., dated the ____ day of _____, 20__; the affirmation of _____, a structured settlement broker, dated the ____ day of _____, 20__; and upon all of the exhibits, papers, pleadings and proceedings heretofore had herein, and/or attached hereto; and it appearing that the best interests of the infant will be served by approval of this settlement, it is:

1. **ORDERED**, that the plaintiff(s) and the defendant(s) be, and hereby are, authorized and empowered to execute a settlement agreement to settle this action for the up-front sum of \$_____, (as apportioned in paragraph 2 (A) below) plus the following periodic payments:

- (A) The sum of \$_____ per month for the life of the infant plaintiff [increasing by ____% per year compounded annually], for a guaranteed minimum of _____ years with the first payment on _____ and the last guaranteed payment on _____; and
- (B) A guaranteed payment of \$_____ on _____; and
- (C) A guaranteed payment of \$_____ on _____; and
- (D) A guaranteed payment of \$_____ on _____; and
- (E) A guaranteed payment of \$_____ on _____; and
- (F) A guaranteed payment of \$_____ on _____; and
- (G) A guaranteed payment of \$_____ on _____; and
- (H) A guaranteed payment of \$_____ on _____; and
- (I) A guaranteed payment of \$_____ on _____; and
- (J) A guaranteed payment of \$_____ on _____; and
- (K) A guaranteed payment of \$_____ on _____; and

all of which said periodic payments shall be made payable to (here name the payee); and it is further

2. **ORDERED** that the Total Settlement Cost of \$ _____ shall be paid by the defendant(s) within 20 days of the service of this signed order, as follows:

UP-FRONT MONEY

(A)(1) The sum of \$ _____ to the order of the above named attorneys for the plaintiff as and for attorneys fees, inclusive of all disbursements and expenditures made on plaintiff's behalf; and

(2) The sum of \$ _____ to the order of _____, in full satisfaction of the outstanding lien for services rendered and/or money advanced to said plaintiff; and

(3) The sum of \$ _____ to the order of _____, the parent and natural guardian of the said infant, jointly with an officer of the

Bank, located at _____;

said funds to be deposited in said Bank and held therein for the sole use and benefit of said infant, subject to the further order of this Court; and

COST OF ANNUITY

(B) The sum of \$ _____ to the order of _____ to fund the purchase of a structured settlement annuity which will provide the periodic payments described in paragraph 1 above; and it is further

3. **ORDERED**, that the defendant (the “Assignor”), shall make a qualified assignment under Section 130 of the Internal Revenue Code to _____ (the “Assignee”) of the Assignor’s obligation to make the periodic payments set forth in Paragraph 1; and it is further

4. **ORDERED**, that aforesaid Assignee shall fund its obligation to make such periodic payments by the purchase of an annuity contract at a cost of \$_____ from _____(the “Annuity Issuer”) which is licensed to do business as a life insurance company in the State of New York, and which is rated _____ by A.M. Best Company; and it is further

5. **ORDERED** that in accordance with the terms of said assignment, the aforesaid Assignee shall be substituted as obligor of such periodic payments for the Assignor, which shall be released from any further obligation to make said periodic payments; and it is further

6. **ORDERED**, that the obligations of the Assignee to make the periodic payments shall be guaranteed by _____ (“Guarantor”); and it is further

7. **ORDERED**, that none of the above described obligors and guarantors, nor the infant, nor his/her guardian, nor any payee may sell, assign, pledge, transfer or encumber the annuity benefits hereinabove described or take any other action to defeat or impair the intent of this Court to provide to the infant plaintiff the payments hereinabove set forth, absent a further order of the Court; and it is further

8. **ORDERED**, that plaintiff’s attorney shall serve upon the plaintiff, a copy of this executed order and all supporting papers, as well as a copy of the final and executed structure documents (including the annuity contract, the settlement agreement, the assignment agreement; and the guarantee agreement); and counsel shall file a copy of all of the above with the office of the Clerk for the Court, together with proof of service of same; and it is further

9. **ORDERED**, that aforesaid depository Bank which, pursuant to this Order, receives funds jointly with the parent and natural guardian of the infant, shall place said funds in the highest interest bearing time accounts or certificates of deposit, and said certificates and accounts shall be renewed upon maturity, provided, however, the maturity date of such certificates and accounts or any renewal thereof, shall not extend beyond the date of the infant's eighteenth (18th) birthday; and it is further

10. **ORDERED**, that the attorney for the plaintiffs shall serve a copy of this Order upon said Bank and shall arrange for the deposit of said funds as expeditiously as is reasonably possible; and it is further

11. **ORDERED**, that within thirty (30) days of the deposit of said funds in the above-designated bank(s) the above guardian shall submit to the Office of the Clerk for the Court, a copy of each certificate of deposit(s) issued by said bank(s); and there shall be no right of withdrawal from any of the aforesaid account(s) and certificates of deposit until the infant plaintiff's eighteenth (18th) birthday, except upon further order of this Court, which said Order shall be certified by the Clerk of this Court; and it is further

12. **ORDERED**, that in the event that the amount on deposit at any Bank exceeds the then prevailing Federal Deposit Insurance Corporation limits, the officer-trustee of said Bank and the infant's guardian herein are directed to notify the Court so that a further designation of an additional depository may be made in order to keep the amount within federally insured limits; and it is further

13. **ORDERED**, that said Bank shall pay over all monies held in the aforesaid certificates and accounts to the infant plaintiff herein upon demand and without further Court order when the infant reaches the age of eighteen (18) years upon presentation of proper proof and compliance with the Bank rules of withdrawal; and it is further

14. **ORDERED**, that each year (or quarterly as the case may be) during the minority of the infant plaintiff, upon presentation to the above Bank of a duly executed income tax return or other document showing the amount of income tax or estimated income tax due on behalf of the infant, said Bank shall provide the infant's guardian herein with checks made payable to the Internal Revenue Service and/or State and/or Municipal Taxing Authority to which said income tax is owed by said infant. However, said checks shall be only for the amounts as may be due and payable for that portion of the infant's personal income tax liability attributable to income earned on the accounts maintained pursuant to this Order [including interest and penalties thereon] as shown on any official bill therefor issued by the taxing authority. Said checks shall identify the infant and said infant's social security number in order to insure that said amounts are being made for the benefit of the infant; and it is further

15. **ORDERED**, that the above Bank is hereby authorized without further order of this Court to pay out of the infant's bank accounts, reasonable fees for the preparation of any income tax return or estimated income tax return or accounting that may be required to be filed by or on the infant's behalf. Said fees shall not exceed \$ _____ without the further order of the Court; and it is further

16. **ORDERED**, that in the event of the death of said infant plaintiff prior to the date of any guaranteed periodic payment, all sums shall be paid to the estate of said infant plaintiff unless, upon reaching the age of 18, the infant plaintiff has changed his designated beneficiary, in which event said sums shall be paid to said designated beneficiary; and it is further

17. **ORDERED**, that the cause of action for loss of services and/or medical expenses of the guardian be and the same hereby is dismissed without costs and with prejudice; and it is further

18. **ORDERED**, that conditioned upon compliance with the terms of this order, the aforesaid parent and natural guardian of the infant plaintiff, be and hereby is authorized and empowered to execute and deliver a general release and all other instruments necessary to effectuate the settlement herein; and it is further

19. **ORDERED**, that upon the payment of the amounts set forth in paragraph 2 and execution of the settlement agreement and the assignment agreement, defendant and its insurer shall have no further liability herein; and it is further

20. **ORDERED**, that if it appears that any government agency may attach a lien to the infant's payment, this Order may be amended to allow the creation of a Supplemental Needs Trust for the benefit of the infant and the Supplemental Needs Trust will be substituted as the payee of the payments.

21. **ORDERED**, that the filing of a bond be dispensed with in accordance with the applicable provisions of the Civil Practice Law and Rules.

Date

Hon. Paul A. Victor, J.S.C.

INSTRUCTIONS
FOR THE SIMPLE ORDER FOR A STRUCTURED SETTLEMENT

The Court's Rules and Forms

This form is designed for settlements where there is only one defendant (and its insurer) participating in the settlement and in the funding of the purchase of the annuity. If there is a different number of defendants, or more than one annuity is being purchased, the form must be modified accordingly; or the alternate form order (for complex settlements), should be used.

Before completion and submission of the application to settle a claim or action of an infant or impaired person, counsel is cautioned to read the court's rules and to use the court's forms; all of which are available in Part 3 of this court and /or the OCA website.

(http://www.courts.state.ny.us/courts/12jd/civil_cityparts.shtml). If counsel has any question, or is unsure of how to proceed, counsel is invited to call Chambers and arrange for an appointment to discuss the matter before an application is filed.

After a hearing has been conducted you will be required to serve a copy of the proposed structured settlement order on all defendants and insurance carriers, with a Notice of Settlement so that they will have an opportunity to be heard and object before being bound by its terms.

Note: only the proposed order need be served, not the underlying supporting papers.

Preamble (Whereas) Clause

The terms of the settlement and other relevant information and requirements are outlined in the "Whereas" clauses. Note: This form complies with the requirements of the Internal Revenue Code and explains in its opening "Whereas" clauses, the significant difference between the "Total Settlement Payout" and the "Total Settlement Cost." Decretal Paragraph 1 has been specifically designed to comply with Internal Revenue Code requirements and should not be

modified, (except however, to conform it to the specific periodic payments proposed in this application). Note, that when all future periodic payments are guaranteed, the amount set forth in the Whereas Clauses for “future periodic payments” and for “guaranteed periodic payments” will obviously be identical. However, if any of the future periodic payments will terminate upon death, the above amounts will be different. In any event, the whereas clauses can be modified accordingly.

All information set forth in the proposed “Order” must be supported by the underlying affidavits and affirmations as well as in the exhibits set forth in the last “Whereas” clause.

A structured settlement plan will be approved by the court after a hearing has been conducted. In most instances defendants insist that a structure plan be provided by a structure broker that is selected by defendant and/or its insurer. The Court requires that plaintiff’s counsel retain a structure broker before discussing a structured settlement with the defendants, [See, City Part Rules for Settlement of Claims By Infants and Impaired Persons at pages 16 to 21]. Both brokers can be compensated by a splitting of the annuity commission so there is no cost to the plaintiff or the attorney. There are many such plaintiffs’ structure brokers and some of them are listed in the New York State Trial Lawyers Association [NYSTLA] website.

[<http://www.nystla.org/index.cfm?fuseaction=article&articleID=1551>].]

If the plaintiff’s attorney has failed to retain a structure broker to represent the plaintiff, and the structure plan submitted to the Court was prepared by the defendant’s structure broker, the Court requires that at least one other competitive quote for that structure plan be provided by a structure broker selected by plaintiff. If the plan being proposed has been selected by a plaintiff’s structure broker, a competitive quote need not be submitted.

Although all proposed plans are to be submitted to the court for its review, the application to settle the claim must be supported by an affidavit by the structure broker whose structure plan is recommended to the court by plaintiff's counsel to be best for the infant/impaired person. After a hearing and review of all submitted plans, one will be selected by the court.

Last Whereas Clause

The proposed implementing documents which are set forth in this whereas clause must be appended as exhibits to the application. These exhibits must identify all the necessary parties thereto as well as the annuity payout being proposed. Of course, the order in which these documents are set forth and identified may be modified to accommodate an orderly presentation thereof.

Decretal Paragraph No. 1

Modify the form to comport with the proposed periodic payments which are described in the underlying documents, but do not otherwise modify the format since this paragraph was designed to comply with Internal Revenue Code requirements.

The Guarantees

The "guaranteed" payments mentioned in this paragraph (as well as in the preamble "Whereas" clauses) refer to that part of periodic payments that will not terminate upon the death of the infant/impaired person. Upon death, these "guaranteed" payments will be made to the estate of the infant/impaired person, or to the designated beneficiary of said person. The "guarantee" mentioned in this paragraph is not to be confused with the guaranty which is provided by a "guarantor" company which will guarantee the obligation of the assignee company to make all of the future periodic payments [See, decretal paragraph No. 6]. Nor should the guarantee mentioned

in decretal paragraph 1 be confused with the additional guaranty provided under New York Insurance Law, Article 77.

Under N.Y. Ins. Law Article 77, the Life Insurance Company Guaranty Corporation of New York provides \$500,000 of protection with respect to an annuity in the event an annuity issuer becomes insolvent if the annuity issuer is licensed in New York and the plaintiff is a New York resident. See N.Y.S. Ins. Dept. O.G.C. Opinion 95-65 (9/24/95); See also N.Y.S. Ins. Dept. O.G.C. Opinion 5-1-96 (May 1, 1996), General Counsel Opinion 2-20-2003 (February 20, 2003). In view of this, where the amount structured is more than \$500,000, it is prudent, but not required by law, to purchase annuities from more than one issuer to keep the cost of each annuity below \$500,000. The court is informed, however, that purchasing more than one annuity generally results in lower payments to the plaintiff.

The Payee

At the end of decretal paragraph No. 1, insert the name of the “payee.” Here you should insert the name the infant plaintiff individually if payments commence on or after infant’s 18th birthday. If payments commence before the 18th birthday or if payments are to an impaired person, provisions must be made for payments to the parent or guardian together with a Bank Officer; or to a guardian appointed pursuant to Article 81 of the Mental Health Law. In cases where an infant or impaired person is receiving , or may in the future receive, needs based governmental benefits, such as Medicaid or Supplemental Security income, Counsel should consider making provision for, and the order should provide for, the creation of a Supplemental Needs Trust to preserve eligibility for such benefits, in which event the trust should be named as the payee in this paragraph.

Decretal Paragraph No. 2

Paragraph (A) sets forth the up-front money to be paid by defendants, to cover the costs for plaintiff's counsel fees, disbursements, liens and up front money to the plaintiff, if any. If other up-front money must be added, the form should be modified accordingly. Paragraph (B) provides for the payment by defendant to fund the purchase of an annuity which will provide the future periodic payments. If this defendant is purchasing more than one annuity, then an additional subparagraph should be added for each payment toward an annuity.

Decretal Paragraphs No. 3 and No. 4

The "Assignor", The "Assignee" and The "Annuity Issuer"

The defendant (or its insurer), the "assignor", usually assigns the obligation to make the periodic payments to an "assignee" company, which is usually a shell affiliate of the annuity issuer. That "assignee" company will then purchase the annuity contract from the annuity issuer.

The "annuity issuer" must be licensed to do business in the State of New York, in order for the annuity to be protected by the Life Insurance Company Guaranty Corporation of New York discussed above, and it should have an A.M. Best Company rating of no less than A++ or A+, which are the two highest ratings. The ratings of the proposed annuity issuer must be described in the broker's affidavit and must be supported by an appropriate exhibit attached thereto.

The "Settlement Agreement" and the "Assignment Agreement"

The "Settlement Agreement" and the "Assignment Agreement" will provide among other things, that the defendant (or its insurer) will assign the obligation to make the future periodic payments to an assignment company which is usually an affiliate of the annuity insurer. In decretal paragraph No.3 that assignment company (the "assignee") must be identified, and in decretal paragraph No. 4, the life insurance company (the "annuity issuer") and its A.M. Best Company rating must be set forth.

The Court's Rules for a structured settlement require a copy of each of the proposed agreements to be

submitted as exhibits to the structured settlement broker's affidavit, which is submitted in support of the application to settle the claim or action. There is no standard form of "settlement agreement." However, there are several forms of assignment agreements generally used in structured settlements. The plaintiff should request that the form known as the Uniform Qualified Assignment, Release and Pledge Agreement be used, since it grants the plaintiff a security interest in the annuity. Most annuity issuers will use such a form, if requested. If the annuity issuer does not offer a security interest, then the "Uniform Qualified Assignment and Release Agreement" must be used, and the plaintiff will be a general, unsecured creditor of the Assignee. Please note, that decretal paragraph No.8 of the order requires, among other things that, after all of the documents have been signed, a copy of each must be provided to plaintiff by plaintiff's counsel; and proof of service of same must be filed with the Clerk of the Court.

Decretal Paragraph No. 6

The "Guarantor"

Here insert the name of the "guarantor" company. The obligations of the "assignee" company to make the periodic payments are guaranteed by the annuity issuer or a substantial affiliated company unless the assignee is a substantial company.

Notice of Settlement

After a hearing has been conducted you will be required to serve a copy of the proposed structured settlement order on all defendants and insurance carriers, with a Notice of Settlement so that they will have an opportunity to be heard and object before being bound by its terms. Note: only the proposed order need be served, not the underlying supporting papers.

The order will be signed on the "settlement" date, if no issue or objection has been raised by the defendant or the insurance carriers involved in the transaction.

Compliance With Remainder of Decretal Paragraphs

Counsel should carefully read and implement the remainder of the decretal paragraphs after the order has been signed. The order will be signed on the “settlement date” if no issue or objection has been raised by the defendants or the insurance carriers involved in the transaction.

Counsel should take special notice of the obligations imposed by decretal paragraphs No. 8 and 11 which, among other things, require service of the documents on plaintiff, and the filing of the documents with the Clerk for the Court, with proof of compliance.