

SAMPLE ORDER FOR A STRUCTURED SETTLEMENT IN AN INFANT'S COMPROMISE PROCEEDING

At a Settlement Conference Part of the Supreme Court of the State of New York, held in and for the County of Westchester located at the Honorable Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Boulevard, Courtroom 1600, White Plains, New York 10601 on the _____ day of _____, 2019.

P R E S E N T :

HONORABLE JOAN B. LEFKOWITZ,
Justice of the Supreme Court.

XX, an infant, under/over the age of fourteen (14) years
by his parent and natural guardian, Jane or John Roe,

Plaintiff,

- against -

Index No. XXXXX/20

John Doe and Jane Doe,

Defendants. X

Upon the reading and filing of the affidavit of _____, as parent and natural guardian of XX, an infant, under/over the age of fourteen (14) years; the affirmation of _____, Esq., of the firm of _____, attorney for the plaintiffs herein; [where the infant plaintiff is fourteen (14) years of age or over:] the affidavit of XX, the infant plaintiff herein, duly sworn to the ___ day of _____, 20__; the affirmation/report of _____, M.D., dated the ___ day of _____; the affidavit of _____, a structured settlement broker duly sworn to the _____ day of _____, 20__; and upon all the exhibits, papers, pleadings and proceedings heretofore had herein and/or attached hereto including but not limited to the following documents and proposed implementing agreements: Settlement Agreement [Exhibit A]; Assignment Agreement [Exhibit B]; Annuity Contract [Exhibit C] and Guaranty Agreement [Exhibit D] and such other exhibits as identified in the above referred to supporting affidavits and affirmations; and

WHEREAS the plaintiff(s) and defendant(s) seek judicial approval for a structured settlement and to settle this action for the sums set forth below in decretal paragraph 2; and

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

WHEREAS plaintiff(s) has/have been advised to obtain independent professional advice relating to the legal,

tax and financial implications of the settlement herein and has/have received all information as required by Section 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

WHEREAS the plaintiff(s) and defendant(s) have agreed upon the sum of _____ and XX/100 (\$.00) dollars as to the total cost of the settlement herein to defendant(s) which represents the “ Total Settlement Cost”; and

WHEREAS the Total Settlement Cost is comprised of up-front money [INCLUDE ATTORNEYS’ FEES, DISBURSEMENTS, LIENS AND BANK DEPOSIT] totaling the sum of _____ and XX/100 (\$) dollars plus _____ and XX/100 (\$) dollars to fund the purchase of an annuity contract that will make the periodic payments set forth below; and

WHEREAS based on the infant plaintiff’s life expectancy as set forth below, it is expected that the infant plaintiff will receive a total settlement payout of _____ and XX/100 (\$) dollars constituting the “ Total Settlement Payout” consisting of the up-front money totaling _____ and XX/100 (\$) dollars plus future periodic payments totaling _____ and XX/100 (\$) dollars (all of which are set forth in decretal paragraph “ 1”; and

WHEREAS the sum of _____ and XX/100 (\$ _____) dollars of the above total future periodic payments are guaranteed payments (*i.e., payments that are payable regardless of whether the infant plaintiff is alive*); and

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 there hereinafter described annuity issuer which is licensed to do business as a life insurance company in the State of New York and which is rated A++ or A+ by A.M. Best Company; and

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

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

WHEREAS the parent and natural guardian and the infant plaintiff and their attorney having appeared before

me on the _____ day of _____, 20__; and it appearing that the best interests of the infant will be served by approval of this proposed settlement;

NOW upon the motion of _____, Esq., of the firm of _____, attorney for plaintiffs herein, it is

ORDERED *that*, the plaintiff(s) and defendant(s) be and hereby are authorized and empowered to execute a settlement agreement to settle the within action for a total payout consisting of the up front sum of _____ and XX/100 (\$) dollars as set forth in decretal paragraph 2 below plus the following periodic payments:

- (a) The sum of _____ and XX/100 (\$) dollars per month for the life of the infant plaintiff [increasing by ___% per annum 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

all of which said periodic payments shall be made payable to **INSERT THE INITIALS OF INFANT (UNLESS PAYABLE TO A SUPPLEMENTAL NEEDS TRUST)**; and

it is further

ORDERED *that*, the total settlement cost of _____ and XX/100 (\$) dollars shall be paid by the defendant(s) within twenty (20) days of the service of this signed order with notice of entry as follows:

- (A) (1) The sum of _____ and XX/100 (\$) dollars to the order of _____ as attorneys for the plaintiff herein as and for its/their/his/her attorneys' fees exclusive of all disbursements and expenditures properly made on the plaintiff's behalf;
- (2) The sum of _____ and XX/100 (\$) dollars to the order of _____ as attorneys for the plaintiff herein as and for its/their/his/her attorneys' disbursements and expenditures properly made on the plaintiff's behalf;
- (3) The sum of _____ and XX/100 (\$) dollars to the order of _____ in full satisfaction of the claim(s) by Medicaid/Medicare for reimbursement (OR OTHER LIEN);
- (4) The sum of _____ and XX/100 (\$) dollars to the order of _____ as parent and natural guardian of the infant herein, jointly with an officer of **INSERT THE NAME OF THE NEW YORK BANK** located at **INSERT THE ADDRESS OF THE NEW YORK BANK**; said funds to be deposited in such bank and held therein for the sole use and benefit of such infant, subject to the further order of this Court.

(5) The sum of _____ and XX/100 (\$ _____) dollars 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*

ORDERED *that*, the defendant (the "*Assignor*"), shall make a qualified assignment pursuant to 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*

ORDERED *that*, the aforesaid Assignee shall fund its obligation to make such periodic payments by the purchase of an annuity contract at a cost of _____ and XX/100 (\$ _____) dollars 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*

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*

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

ORDERED *that*, none of the above-described obligors and guarantors, nor the infant, nor his/her guardian(s), 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 this Court; *and it is further*

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 County Clerk of the County of Westchester (*or via NYSCEF as the case may be*) with all confidential personal information redacted as required by 22 NYCRR 202.5(e), together with proof of service of same; *and it is further*

[If Bank Deposit incorporate following language:]

ORDERED *that*, the aforesaid depository Bank which, pursuant to the Order herein, receives funds jointly with the parent and natural guardian of the infant, shall place said funds to be held for the sole use and benefit of said infant, to be deposited in said bank, in a high-yield, interest-bearing bank account in the name of said guardian jointly with an officer of the bank as provided hereinabove. No withdrawals shall be made from said account before the infant reaches the age of eighteen (18) years, except by further order of this Court. The date of the maturity of the account shall not be extended beyond the infant plaintiff's eighteenth (18th) birthday, and shall be continuously renewed, and when no such account is available due to the infant's age, the accumulated funds shall then be placed in an insured, savings, interest-bearing account to be held until the infant plaintiff reaches the age of eighteen (18) years and makes a demand for the monies. When the infant plaintiff reaches the age of eighteen(18) years of age, the said depository is directed to pay over, without further order of this Court or any other proceedings, to said infant plaintiff, upon prior proof of age and identification, upon demand, all of the monies in the aforesaid account; *and it is further*

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*

ORDERED *that*, within thirty (30) days of the deposit of said funds in the above-designated bank(s) the above parent and natural guardian shall submit to the Office of the Clerk for the Court (*or via NYSCEF, as the case may be*), a copy of each deposit slip or certificate of deposit issued by said Bank with the confidential personal information redacted, including the full name of the infant and the account number(s) except for the last four digits; *and it is further*

ORDERED *that*, there shall be no right of withdrawal from any of the aforesaid account(s) until the infant plaintiff's eighteenth (18th) birthday, except upon further order of this Court; *and it is further*

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 parent and natural guardian herein are directed to promptly notify the Court so that a further designation of an additional depository bank may be made in order to keep the amount deposited within federally insured limits; *and it is further*

ORDERED *that*, each year (or quarterly as the case may be) during the minority of the infant plaintiff, upon presentation to the above-designated Bank of a duly executed income tax return or other document reflecting the amount

of income tax or estimated income tax due on behalf of the infant, such Bank shall provide the infant's parent and natural 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 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 solely for the benefit of the infant herein; *and it is further*

ORDERED *that*, the above-designated 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 two hundred and fifty and 00/100 (\$250.00) dollars without the further order of the Court; *and it is further*

[Include following language in all orders]

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 fiduciary of the estate of such infant plaintiff unless, upon reaching the age of eighteen (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*

ORDERED *that*, the cause of action for loss of services and/or medical expenses of the parent and natural guardian has been waived and the same is hereby discontinued without costs and with prejudice; *and it is further*

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*

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

[Include following paragraph only if infant would qualify for a Supplemental Needs Trust due to chronic and severe nature of the medical condition (see EPTL sec. 7.12 and Mental Hygiene Law sec. 1.03[22])]

ORDERED *that*, if it appears that any government agency may attach a lien to the infant's payment(s), this order may be amended to allow the creation of a Supplemental Needs Trust for the sole benefit of such infant and the Supplemental Needs Trust will be substituted as the payee of the payments; *and it is further*

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

HON. JOAN B. LEFKOWITZ, J.S.C.