WEST VIRGINIA CODE: §44-10-14

§44-10-14. Minor settlement proceedings.

This section shall be known as the "Minor Settlement Proceedings Reform Act".

(a) If a minor suffers injury to his or her person or property, the parent, guardian or next friend of the minor may negotiate a settlement of the minor's claim for damages prior to or subsequent to the filing of an action for damages.

(b) Filing of petition or motion. -- In order to secure a release of the party or parties allegedly responsible for the injury or loss, the parent, next friend or guardian of the minor shall file a verified petition in the circuit court of the county in which the minor resides or in which an action for damages may be filed in accordance with the provisions of section one, article one, chapter fifty-six of this code: Provided, That if an action for damages of the minor is pending in circuit court, the petition shall be filed, verified and served as a motion in the pending action and may be filed by a parent, guardian or next friend.

(c) Contents of petition or motion. -- The petition or motion shall request approval by the court of the terms of the proposed settlement, the release of liability and the manner of distribution of settlement proceeds. The petition or motion shall also state the following:

(1) The name, gender and age of the minor;

(2) 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;

(3) 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;

(4) The identities of the persons or entities to be released;

(5) The circumstances of the minor at the time of the petition or motion;

(6) The relationship of the petitioner or moving party to the minor;

(7) The nature and effect of the injury;

(8) The sum of expenses expended for the treatment and care of the minor for the injuries at issue;

(9) 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;

(10) A proposal as to how the costs and expenses of processing the settlement and release

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are to be satisfied;

(11) A proposal for distribution of other settlement proceeds; and

(12) A request for such other relief as the court may determine is appropriate in the best interests of the child.

(d) Guardian ad litem. -- Upon the filing of a petition or motion, the court shall appoint a guardian ad litem to:

(1) Review and confirm the facts set forth in the petition and the facts and circumstances of the minor, including the injuries and losses of the minor alleged to have been caused by the party or parties to be released as alleged in the petition or motion; the treatment and conditions past, present and in the foreseeable future of the minor as a result of the injuries and losses at issue; the proposed amounts and procedures for distribution of settlement proceeds; and other relevant information appearing in the petition or motion or otherwise; and

(2) File an answer to the petition or motion on behalf of the minor, stating the opinion of the guardian ad litem as to whether or not the proposed settlement and release and the proposed distribution of proceeds are in the best interest of the minor.

(e) Hearing. -- A hearing shall be conducted on the petition or motion, at which time the court shall take testimony and consider arguments regarding the alleged injuries or losses and the proposals for the settlement, release, initial payment of expenses and the distribution of settlement proceeds: Provided, That the court may order that the minor 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.

(f) Release form. -- If the court grants the requested relief, a release of the claim of the minor against the persons or entities alleged to be responsible for the injuries or losses and who are identified in the petition or motion to be released from liability, any other persons or entities making payment on behalf of those persons or entities and any subsidiaries or successor persons or entities shall be executed by a party authorized by the court to execute the release. The release shall be in form or effect 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 .....

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[Guardian or other person authorized by the court to execute the release] of .....

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(g) Order approving or rejecting settlement. -- The court shall enter an order with findings of fact and granting or rejecting the proposed settlement, release and distribution of settlement proceeds. If the requested relief is granted, the court shall provide by order that an attorney appearing in the proceeding or other responsible person shall negotiate, satisfy and pay initial expense payments from settlement proceeds, the costs and fees incurred for the settlement and any bond required therefor, expenses for treatment of the minor related to the injury at issue, payments to satisfy any liens on settlement proceeds, if any, and such other directives as the court finds appropriate to complete the settlement and secure the proceeds for the minor.

(1) In allowing the payment of settlement proceeds for 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, the court shall consider the amount to be paid as damages, the age and necessities of the minor, the nature of the injury, the difficulties involved in effecting the settlement, legal expenses and fees paid to attorneys in similar cases and any other matters which the court determines should be considered in achieving a proper and equitable distribution of settlement proceeds.

(2) In allowing any sums to be paid to the minor or to another person to be used for the immediate personal benefit of the minor, the court shall state further the terms under which such payments shall be made, including the use for which such sums may be expended and the times on which such payments shall be made: Provided, That such payments shall be made no later than twenty-four months after entry of the order.

(3) The order shall provide that settlement proceeds remaining after the initial payment of expenses shall be deemed net settlement trust proceeds.

(4) If the net settlement proceeds are less than $25,000, the court may order that the person authorized to pay the initial expenses deposit net settlement trust proceeds into a regulated financial institution or institutions with a principal place of business in this state, in interest bearing certificates of deposit or accounts or securities that are fully insured by federal deposit insurance, in the name of the minor and payable by the financial institution only to the minor upon presentation of proper identification after the minor attains the age of majority: Provided, That such person may be authorized by the court to transfer funds to a substitute qualified institution or institutions from the financial institution or institutions initially selected: Provided, however, That any substitution shall be reported to any fiduciary commissioner or supervisor of the county that the court has designated to review of the status of the investment and security of net settlement trust proceeds: Provided further, That whenever net settlement trust proceeds are deposited into a bank pursuant to the provisions of this paragraph, such bank shall, within ten days of receipt of such funds, file with the clerk of the court an acknowledgment that the funds have been received and that such funds may be withdrawn only by the minor upon his or her reaching the age of majority or upon order of the court.

(5) The order shall provide that within sixty days of the entry of the order, a statement of

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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.

(6) The order shall direct that a certified copy of the order of the court approving the settlement be provided by the clerk of the circuit court to the fiduciary commissioner or supervisor designated by the court to review the status of settlement proceeds.

(h) Appointment of conservator and reports to fiduciary officers. -- 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 interest of the minor, taking into consideration any special needs of the minor at any age. The conservator may be a guardian appointed pursuant to section three of this article or other responsible person.

(1) Neither the corpus nor income accumulated on net settlement trust proceeds shall be used for the maintenance or care of the minor during his or her minority, absent unusual circumstances or special needs of the minor specified in the order approving the settlement. The corpus or income earned thereon may not be invaded, revised or subjected to assignment, levy, garnishment or other order, except as shall be first approved by order of the court approving the settlement.

(2) The court shall determine the amount and necessity for bond of the conservator and for any surety of the bond of the conservator, payable on behalf of the minor in an amount sufficient to protect the principal of net settlement trust proceeds, unless the court finds the conservator is already under bond and surety of bond sufficient for the purpose. The bond of the conservator and surety for the bond of the conservator shall be in form and type acceptable to the fiduciary commissioner or supervisor of the county commission designated by the court to review the reports of the conservator and shall be conditioned to account for and pay over the amount of net settlement trust proceeds as provided for by the order of the court. The clerk of the circuit court shall provide to the office of such fiduciary commissioner or supervisor a certified copy of the court's order approving the settlement and distribution of proceeds and such fiduciary commissioner or supervisor shall file and record the order with any bond of the conservator that may be required by the court approving the settlement and distribution of proceeds.

(3) A report of net settlement trust proceeds and income earned thereon for each calendar year shall be filed by the conservator by February 1 next following the end of the calendar year in the order approving the settlement is entered and every year thereafter in accordance with the terms of the court order.

(4) If the amount of net settlement trust proceeds is less than $25,000, the court may include in the order approving the settlement a waiver of any or all of the requirements regarding reference to a fiduciary officer, the filing of the order or of any other reports or statements

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of accounts with a fiduciary commissioner or supervisor of the county commission designated by the court, the posting of bond and corporate or other surety of bond of the conservator and any listing and publication of accounts.

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