

WORKSHEET/CHECKLIST FOR COMPROMISE APPLICATIONS

Court Use Only - Do Not Write In This Box

Index No. _____

Date Application Submitted _____

Hearing Date _____

Date Order Signed _____

NAME OF INFANT/IMPAIRED PERSON _____

Residence: _____

Age & D.O.B _____ Date of Injury _____

For a Structured Settlement

Life Expectancy _____ Years Rated Age (if used) _____

NAME OF PETITIONER: _____ Relationship _____

Residence _____ Phone No. _____

ATTORNEY OF RECORD FOR PETITIONER: _____

Address _____ Phone No. _____

Fax No. _____

E-Mail Address _____

ATTORNEY APPEARING AT HEARING

Address _____ Phone No. _____

THE APPLICATION AND ORDER

Read The Rules and Use the Court's Forms

_____ Make certain that all information required by law and the court's rules is set forth in the proposed order and in the supporting papers. It is strongly recommended, therefore, that, before filing an application, the court's rules and instructions be read and that the forms provided by this Court on the OCA Website be utilized! This worksheet /checklist only provides an outline for your guidance.

Be Consistent

Make certain that all information in this worksheet is also included in the formal application submitted to the Court, and that the information contained in both the application and worksheet is consistent.

PROPOSED SETTLEMENT COST

(\$ _____)¹

- If a structured settlement is being proposed please provide details on the next page.
- If more than one defendant is contributing to the settlement please provide an explanation and an apportionment of the settlement proceeds.

PROPOSED DISTRIBUTION OF SETTLEMENT PROCEEDS

<u>UP FRONT AMOUNTS</u>	<u>Proposed</u>	<u>Allowed</u>
(1) Counsel Fees	\$ _____	\$ _____
(2) Legal Disbursements	\$ _____	\$ _____
(3) Other Disbursements	\$ _____	\$ _____
Doctor	\$ _____	\$ _____
Liens	\$ _____	\$ _____
Other	\$ _____	\$ _____
(4) <u>Up Front Cash to Infant</u>	\$ _____	\$ _____
<u>COST TO FUND ANNUITY</u>	\$ _____	\$ _____
<u>TOTAL SETTLEMENT COST</u>	\$ _____	\$ _____

¹ For the ordinary settlement the cost to the defendant and the total settlement payout are identical. However, for a structured settlement the “total settlement payout” and the “settlement cost” are different. For a structured settlement, the “total settlement payout” is the sum of all periodic payments (itemized on the next page) plus the up front amounts listed above. For a structured settlement, the “cost” of the settlement to the defendant is the sum of the up front amounts listed above, plus the sum expended to purchase the annuity. For a structured settlement, it is essential, for income tax purposes, that the documents clearly identify and distinguish both amounts.

PROPOSED STRUCTURED SETTLEMENT

TOTAL SETTLEMENT PAYOUT

Up-front Amounts	\$ _____
Total All Periodic Payments	\$ _____
<u>TOTAL PAYOUT</u>	\$ _____

PROPOSED PERIODIC PAYMENTS:

_____ Payable as follows:

- _____ (1) The sum of (\$ _____) per month for the life of the 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
- (2) A guaranteed payment of (\$ _____) on _____; and
- (3) A guaranteed payment of (\$ _____) on _____; and
- (4) A guaranteed payment of (\$ _____) on _____; and
- (5) A guaranteed payment of (\$ _____) on _____; and
- (6) A guaranteed payment of (\$ _____) on _____; and
- (7) A guaranteed payment of (\$ _____) on _____; and
- _____ (8) Non guaranteed life payments (\$ _____); to full life expectancy

<u>TOTAL GUARANTEED PAYMENTS</u>	\$ _____
<u>TOTAL PERIODIC PAYMENTS</u>	\$ _____ ²

PARTIES TO THE TRANSACTION	NAMES
_____ (1) Plaintiff/Payee of Annuity	_____
(2) Defendants/Assignors;	_____
_____ (3) Annuity Owner/ Assignee	_____
(4) Annuity Issuer	_____
(5) Guarantor _____	_____

ADDITIONAL REQUIRED SETTLEMENT DOCUMENTS

- _____ Affidavit of Structure Broker; Settlement Agreement;
- Assignment Agreement; Annuity Contract; Guaranty Agreement

²This amount should include the total of all proposed periodic payments i.e., non-guaranteed life payments to full life expectancy as well as guaranteed payments.

THE AFFIRMATION AND AFFIDAVIT OF COUNSEL AND PETITIONER

Retainer No. _____ Date filed _____ [UCR 202.67(d)]

The supporting affidavit by counsel must recite (check those that apply)

- that counsel has utilized one of the court's proposed form orders;
- that counsel has read and has fully complied with the court's rules for settlement of claims made by infants/impaired persons; and that counsel's affirmation and petitioners affidavit contains all information required by CPLR 1207, 1208 AND UCR 202.67; and for structured settlements, GOL §§ 5-1700 et seq.
- that petitioner is qualified and authorized by CPLR 1207 to bring the application;
- that all services rendered and details which support the claim for counsel fees and disbursements have been described;[CPLR 1208 (b) and UCR 202.67 (a)],
- that all other claims or other circumstances which might possibly result in a conflict of interest, have been identified;
- that all medical services rendered, amounts paid, by whom paid, amounts remaining unpaid and possible liens have been identified; and documentation regarding same has been appended to the application;
- that counsel has made personal efforts to ascertain if the infant/impaired person currently has, or in the recent past has had, any limitations or complaints of pain which may be related to the injuries sustained in this action.
- that petitioner's affidavit contains an acknowledgment of:
 - the reasons given by counsel for recommending settlement;
 - the proposed distribution of settlement proceeds; _____
 - all injuries, conditions sustained by the infant/impaired person plaintiff, as well as the current and/or recent past limitations or complaints of pain if any, made by said plaintiff;
 - all medical services rendered, amounts paid, by whom paid, amounts remaining unpaid and all possible liens; and
- that for structured settlements; that the form structured settlement broker's affidavit and copies of all of the "additional required documents" above have been appended as exhibits; and that counsel's affirmation_ includes a discussion of the "due diligence" utilized in selection of a structured settlement broker and an annuity.
- whether a previous application for the same relief was denied, and if so, an explanation thereof.

If any of the above recitals are not checked off, please explain _____

Check off and/or describe all of the applicable stages of this proceeding which have been completed. Action commenced; Discovery completed; Note of Issue filed; Jury selected; Other _____

Provide the history and circumstances giving rise to the action or claim. [§ 1208 (c) (3)]: _____

Provide the nature and extent of injuries and damages sustained and the present (and or recent, past) complaints, conditions and/or limitations of infant/incompetent, if any. [§1208 (a) (4)]

Set forth the period of disability and wages lost, if any: [§ 1208 (a) (4)]: _____

Provide the reasons as to why the proposed settlement is fair and reasonable? [§1208 (b) (1)]. Please address the issues of liability and damages and insurance coverage issues if any. Caveat: Conclusory assertions (such as “poor liability” or “best interest of child”) without elaboration and supporting facts will not be sufficient and will result in a denial: _____

Provide the name of each hospital and medical facility and each doctor and medical provider that treated the infant or incompetent. Also provide the amounts charged or

incurred and the amounts remaining unpaid. [CPLR 1208 (a)4; UCR 202.67(b)].

<u>Name of Provider</u>	<u>Charge</u> ³	<u>Unpaid</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Identify all persons or entities that paid the medical expenses and identify all liens or potential liens that have been or may be filed. Vague Statements such as, "I am not aware of any liens" or "no liens have yet been filed", are not sufficient: _____

Have medical or other expenses been reimbursed from any source, and if so, identify same [§1208 (a) (7)]:

Is the loss of service claim being waived and discontinued? _____
(answer)

³ For each medical provider, proof of payment and an invoice must be provided setting forth the charges for each service rendered and the amounts remaining unpaid. When it is claimed that Medicaid made said payments, an HRA "Client Detailed Report" (CDR) must also be provided.

MEDICAL REPORTS, RECORDS OR AFFIRMATION

Unless waived by the Court the application must include a recent [not stale] medical record, report or affirmation which provides:

- (1) History obtained;
- (2) Infant's complaints of pain and/or limitations (past, recent and present);⁴
- (3) Treatment rendered;
- (4) Details of the examination recently rendered upon which current opinion and conclusion is based;
- (5) Diagnosis;
- (6) Prognosis, especially if there are any present or recent limitations or complaints of pain;
- (7) Opinion, conclusion and recommendations.

Caveat: If the infant does have any current, or in the recent past has had, any limitations or complaints of pain, a prognosis must be provided!

Does the recent medical report/affirmation, which you have submitted contain all of the above information; and if not, please explain. **Caveat:** Do not provide a vague explanation.

THE INFANT'S AFFIDAVIT

If the infant is over the age of 14, said infant must provide an affidavit acknowledging all statements made in the other supporting affirmations; and must state whether or not he/she consents to the proposed settlement. In any event, the infant must appear at the hearing unless a waiver is obtained.

THE HEARING

Unless attendance is excused for a good cause the petitioner, the infant and counsel must attend the hearing. [CPLR 1208(d). This hearing will be scheduled only after the court has had an opportunity to review the application as well as this worksheet/checklist.

⁴ If the issue of present and/or recent complaints and/or limitations is not addressed in the application, the application will probably be denied. [See, the Court's Procedures and Rules for Settlement of Claims by Infants and Incompetents.]

FOR THE COURT

<u>Documents Reviewed</u>	<u>Dated</u>	<u>Description/Name</u>
<input type="checkbox"/> The Order;	_____ ,	_____
<input type="checkbox"/> Petitioner's Affidavit	_____ ,	_____
<input type="checkbox"/> Infant's Affidavit	_____ ,	_____ <u>D.O.B.</u>
<input type="checkbox"/> Attorney's Affirmation	_____ ,	_____
<input type="checkbox"/> Medical Report/Affidavit	_____ ,	_____

FOR STRUCTURED SETTLEMENTS;

- Structure Broker's Affidavit _____; and the following proposed documents
- Settlement Agreement; Assignment Agreement; Annuity Contract; and
- Guaranty Agreement

OTHER:

COURT'S COMMENTS UPON REVIEW OF THE APPLICATION:

COURTS COMMENTS POST HEARING : _____
