

**APPROACH TO REVIEW OF SETTLEMENT AGREEMENTS  
FOR THE COURT**

Recommendations as to considerations when reviewing settlement agreements for children or incapacitated persons;

1. Read the entire file from the Court. I know this is obvious but it will help you focus in on the issues and possibly save you time on the file.
2. Start to determine the players. On a separate piece of paper of the inside flap of your file folder write down the players, addresses and phone numbers from the petition. Look for:
  - a. the ward,
  - b. parents of the ward,
  - c. attorney for the ward (there may not be one)
  - d. conservator (if one is appointed or often will be a simultaneous petition),
  - e. the opposing party from the lawsuit or claim, which is usually the insurance company and any adjuster assigned to the case.

There may be an attorney that prepared the settlement agreement and the Petition to the Court that does not place their name on the Petition. Be sure to ask the questions regarding that. When the ward is unrepresented, it has becoming increasingly common for insurance companies to hire attorneys to prepare the settlement agreement and the Petition for the wards conservator or proposed conservator.

3. These are the people that must be interviewed. I like to start with the petitioner and ward and ward's parents or conservator/guardian. Do not conduct the majority of your interview over the phone and than just go meet the ward. Face to face interviews of the ward and/or conservator/guardian are much more valuable as you are sure to have the other persons full attention and can make observations. The initial phone call is to build a rapport and explain the Court process and your role as Guardian ad litem and to schedule the interview. I like to go to them. I like to observe their living arrangements and have them comfortable in familiar surroundings. I also find that they can retrieve documents and name and numbers or other players right then without the need of having to get back with me or having me have to remind them to provide me with the information.
4. Key matters to investigate and obtain from interviews:
  - a. Get a history;
  - b. Ask them who drafted the settlement agreement and petition if no attorney is listed;
  - c. Ask them their understanding of the settlement agreement;
  - d. What was their goal for the settlement, main concerns to address or objectives to achieve;
  - e. Is there anything missing from the settlement agreement that concerns them;
  - f. Extent of injuries (scaring? Permenant?);

- g. How far did they get in the claim process. For example was the matter settled as a claim, was there a lawsuit? How far in the lawsuit did the matter get. Was it mediated? For what amount? Review the court file or have the attorney send you any Complaints, case evaluation summaries or key depositions;
- h. Strengths of the claim or lawsuit;
- i. Weaknesses of the claim or lawsuit;
- j. Amount if insurance or claim limits;
- k. Any liens on the claim (medical bills, costs of litigation, attorney fees)
- l. Have any of the liens been negotiated down such as medical bills.
- m. Are the other liens reasonable (attorney fees)
- n. Is the division of the settlement monies properly calculated. You should know the bottom line for the ward.
- o. If it is a No-fault first party benefits case what services are they currently availed of and how are those benefits addressed in the Settlement Agreement
- p. You must know the area of the law, for example, personal injury, No-fault first party benefits and No-fault third party benefits to know what the ward may be entitled to. If you do not know, you must research. The internet is a wonderful thing. ICLE books are helpful also.
- q. Do you fully understand the Settlement Agreement? Are you clear on what is being relinquished by the ward.
- r. Pay special attention to any release language and hold harmless language.
- s. You also may run into an annuity pursuant to a structured settlement. If so, please consider the age of the ward, needs of the ward and what benefits will be received by the ward at a particular time. Also it is imperative that you find out what insurance company is issuing the annuity and if they are sound. You can do this by first of all seeing if it is a well known insurance company and if not seeing if it is rated on Standard and Poor's or another credit rating company. All insurance companies doing business in Michigan must be registered and regulated under LARA, Department of Licensing and Regulatory Affairs for Financial and Insurance Regulation.

5. Application of above:

- a. Please read the provided "SETTLEMENT AGREEMENT & PARTIAL RELEASE OF NO-FAULT PERSONAL PROTECTION INSURANCE BENEFITS" Case study of this actual case. How conducted and my report to the court.
- b. Further discussion with seminar attendees as to the case study.

6. Questions and answers.

Exhibit A

**SETTLEMENT AGREEMENT & PARTIAL RELEASE OF NO-FAULT  
PERSONAL PROTECTION INSURANCE BENEFITS**

NOW COMES [REDACTED] Conservator of the Estate of [REDACTED], a Protected Individual, the injured party, and titleholder, hereinafter known as the "insured", and the [REDACTED] INSURANCE [REDACTED], hereinafter known as the "insurer", and the parties agree as follows:

WHEREAS, the insured, [REDACTED], suffered catastrophic injuries in a motor vehicle accident on January 31, 1997 in the State of Michigan; and,

WHEREAS, the insurer provided no-fault insurance benefits for the insured for said injuries; and,

WHEREAS, the [REDACTED], is the titleholder/owner of a co-op residence located at [REDACTED] Michigan; and

WHEREAS, the insured, [REDACTED], has filed a claim, [REDACTED], with the [REDACTED] Insurance [REDACTED], and the [REDACTED] Insurance [REDACTED] and the insured have amicably resolved their differences with regard to home modifications and room and board, pursuant to the paragraphs hereinafter;

NOW, THEREFORE, in consideration of the aforesaid, [REDACTED], the insured and titleholder, and the [REDACTED] Insurance [REDACTED], the insurer, agree as follows:

**(A) HOME MODIFICATIONS**

(1) It is agreed between the [REDACTED], the insured, and titleholder, and the insurer that in consideration of approximately FOUR THOUSAND SEVEN HUNDRED SIXTY-SIX AND 95/100 Dollars (\$4,766.95), to be used toward the modification of a co-op residence located at [REDACTED], Michigan for handrails; deck; deck guard rail; stairway; treated stringers and treads; and grab bar, per the attached estimates from [REDACTED] Company dated August 24, 2012 and made part of this Settlement Agreement, and NINE THOUSAND EIGHTY THREE and 13/100 Dollars (\$9,083.13) for a down payment on the aforesaid property, and in consideration of reasonable and necessary modifications for the care, recovery and rehabilitation of the insured, the insured releases the insurer from all liability for past, present and future home modifications and room and board for a period of ten (10) years from the date of execution of this Settlement Agreement, unless there is a substantial change in her medical condition resulting in the need for additional modifications.

(1a) It is further agreed between the Estate of [REDACTED] the insured and titleholder and the insurer that the insurer makes no representations or warranties, expressed or implied, and the insured/titleholder does not rely on Insurer in any way as to

[REDACTED]

the condition, appropriateness, workmanship or suitability of the modifications to be made to the home located at [REDACTED], Michigan, the parties having relied upon the expertise of a licensed occupational therapist and a licensed residential builder.

#### **(B) RENT**

(2) It is further agreed between the insured and titleholder and the insurer, that the insurer shall be liable for one-half of the monthly rent on behalf of the insured, [REDACTED], at the residence described in paragraph (1) of this Settlement Agreement with a beginning amount of \$215 per month for a period of ten (10) years from the date of the execution of this Settlement Agreement.

(2)(a) It is further agreed between the insured and titleholder and the insurer that the insurer shall pay 50% of any increase in rent during the ten year period of the Settlement Agreement.

(2)(b) It is further agreed between the insured and titleholder and insurer that if the insured, [REDACTED] is absent from the residence as described in paragraph (1) of this Settlement Agreement for a period of 360 continuous days or more either as a result of medical necessity or institutionalization, or takes up a residence at another location, the insurer shall no longer be liable for any monthly rent during the period of the insured's absence from the aforesaid residence.

#### **(C) HOMEOWNERS INSURANCE**

(4) It is further agreed between the insured and titleholder and the insurer that the insured/titleholder shall pay for a homeowner's policy on the home, as described in paragraph (1) of this Settlement Agreement.

#### **(D) UTILITIES**

(5) It is further agreed between the insured and titleholder and the insurer that the insured/titleholder shall be liable for the payment of the monthly use of electricity, gas and water bills at the aforesaid residence.

(5)(a) It is further agreed between the insured and the insurer that the insurer shall not be responsible for the payment of telephone or cable bills.

#### **(E) REAL ESTATE TAXES**

(6) It is further agreed between the insured and titleholder and the insurer, that the insured/titleholder shall be liable for the payment of all costs of real estate / property taxes on the home located at the aforesaid property, as described in paragraph (1) of this Settlement Agreement.

**(F) MAINTENANCE OF RESIDENCE & PROPERTY**

(7) It is further agreed between the insured and titleholder and the insurer, that the insured/titleholder shall be liable for the payment of all costs of maintenance of the home and property located on the aforesaid property, as described in paragraph (1) of this Settlement Agreement except the insurer shall be liable for all costs of maintenance of the modifications stated in paragraph (1) of the Settlement Agreement only, at the aforesaid residence described in paragraph (1) of this Settlement Agreement.

**(G) FUTURE ALLOWABLE EXPENSES**

(8) It is further agreed between the Estate of [REDACTED], the insured, and the insurer that pursuant to Section 3107(1)(a) of the Michigan No-Fault Act that the insurer shall be responsible for reasonably necessary products, services and accommodations, except as limited herein by this Settlement Agreement and Partial Release of No-Fault Personal Protection Benefits.

**(H) INVALIDITY & UNENFORCEABILITY OF SECTIONS**

(9) It is further agreed between the Estate of [REDACTED], the insured and titleholder and the insurer that the invalidity or unenforceability of any paragraph in this Settlement Agreement shall not in any way affect the invalidity or unenforceability of any other paragraph.

[REDACTED] CONSERVATOR OF THE ESTATE OF [REDACTED] A PROTECTED INDIVIDUAL, DECLARES THAT HE HAS READ THIS SETTLEMENT AGREEMENT & PARTIAL RELEASE OF NO-FAULT PERSONAL PROTECTION INSURANCE BENEFITS AND THAT HE UNDERSTANDS ITS TERMS.

EXECUTED ON: \_\_\_\_\_, 2012

\_\_\_\_\_  
CONSERVATOR  
OF THE ESTATE OF \_\_\_\_\_  
\_\_\_\_\_, A PROTECTED INDIVIDUAL

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
NOTARY PUBLIC, \_\_\_\_\_ COUNTY, MI  
MY COMMISSION EXPIRES:

\_\_\_\_\_  
INSURANCE \_\_\_\_\_,  
BY \_\_\_\_\_