

Chapter 40A
SUMMARY PROCEEDINGS AND STRUCTURED
SETTLEMENTS: A GUIDE TO FORMS

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HOW TO USE THIS CHAPTER

This chapter was prepared as a form guide to be used by attorneys and is not meant to be a replacement for legal research. Statutory and procedural requirements vary from one jurisdiction to another, and the composite forms in this book should be adapted to meet local rules where necessary. It is recommended that these forms be considered only as drafting or typing guides, to be checked and revised by the attorney to conform to local procedure and the specific facts of a case.

Some insurers and corporate clients furnish model forms for a release and assignment when the settlement of a claim is to be structured. The forms contained in Section 5 are composites of the ones most commonly provided.

Appendix A contains two blank information forms for use in recording the specific names, dates, amounts and facts to be inserted into the forms.

Appendix B sets forth a variety of sample paragraphs for examples of language to describe different types of injuries and fact situations, to be used as an aid in forming the particular language needed to describe what ever claim is involved in the papers being prepared.

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SUMMARY PROCEEDINGS: PROTECTING THE INTERESTS
OF INFANTS OR MENTALLY IMPAIRED PERSONS

In the majority of jurisdictions, when an agreement for settlement is reached in a personal injury or wrongful death claim, the pleadings and documents necessary to properly finalize the matter become more complicated when one of the parties involved is an infant under the age of eighteen years, or is a person over the age of eighteen years but mentally incompetent, mentally retarded, or mentally handicapped. This is also true when the circumstances of a particular matter require the transfer of an infant's or impaired person's interest in real property.

There are special provisions in the law to protect the interests of infants and mentally incompetent, mentally retarded, or mentally handicapped persons, and, therefore, the Court's approval must be obtained in most states before any transaction which affects their interests can be resolved. Gaining the requisite court approval is generally accomplished by the "summary proceeding" which, in a nutshell, means that the preparation of the majority or all of the pleadings and documents necessary for the Court to consider the facts of a situation and enter its order are expedited, and must be ready for filing or submission to the Court shortly before or at the same time the matter is set down for hearing.

Satisfying these requirements can mean panic-time in any law office, since the preparation of the documents can easily encompass

fifty pages or more of typing and, when in connection with the settlement of litigation, the time in which the documents must be completed is often as short as one or two days.

While the basic set of pleadings in a summary proceeding are pretty much the same, the forms will vary according to whether the infant or legally protected person is the individual who was actually injured in the original fact situation, or whether he is merely a distributee of an injured decedent. The language in the basic pleadings will also change when the settlement of a claim is only partial; i.e., with only one defendant out of several. The wording of the forms is altered again if the decedent had or the facts involve more than one child or protected person, and the complexity and length of the documents may be doubled when a settlement is to be structured.

For the transfer of an infant's or protected person's interest in a parcel of real property, the time in which the papers must be prepared is usually more relaxed, even if the number of pages and their complexity remain unchanged. The problem faced in the settlement of high-dollar litigation, however, is that the required pages are not decreased but the time for preparation often is, since a typical situation has the attorneys reaching the agreement on one afternoon with the completed papers being needed in time for a Court hearing the next morning or the day after.

The basic set of documents needed for a summary proceeding is as follows:

1. The Petition:

The petition sets forth the legal authority of the petitioner to come into Court, such as his appointment as guardian or conservator of the infant or protected person; an explanation of the infant's or protected person's interest which is involved; the specifics of the situation which causes the petition to be brought, such as the filing of the original lawsuit; the details of the claim for injury or wrongful death, or a legal description of the land; the terms of the proposed settlement or sale of property; and a request that the Court give its approval. The Petitioner's verification must be attached.

In addition to the petition, when the summary proceeding is in connection with the transfer of land, notice is required to be served on all parties of interest. If one of the parties is a non-resident, an affidavit of non-residence and order of publication will also be needed.

2. The Preliminary Order.

The preliminary order grants the permission of the Court to file the Petition, sets the day and time for the hearing, and appoints a local attorney as guardian ad litem and officer of the Court to represent the infant's or protected person's interest.

3. The Guardian's Answer.

The verified Answer of the guardian ad litem appointed by the Court states that the guardian has thoroughly investigated all aspects of the situation involved and that he or she believes the

proposed settlement or sale of land is fair and in the best interest of the infant or protected person. An infant over the age of twelve may be permitted to have his own attorney and file a separate answer in some cases.

4. The Final Order.

The Final Order of the Court sets out the date of the hearing and the names of each of the parties and their counsel who were present. The Final Order generally recites all of the basic facts in the same way as in the Petition, and then approves and orders the exact terms of the distribution of the settlement proceeds or authorizes the guardian/conservator to sell the land and execute a deed on behalf of the protected person.

Unlike tort litigation, the summary proceeding for the sale of an infant's or protected person's interest in land necessitates the preparation of two additional pleading. The guardian/conservator must file a Report of Sale which states that the sale has taken place and sets forth the amount of the proceeds received, giving an accounting of their distribution. At the same time, another Order is required in which the Court ratifies, approves and confirms the sale and dismisses the case from the docket.

5. The Release or Deed.

The Release again sets forth the names of the parties, the total amount and terms of the settlement agreement, and also contains the usual language to release all claims involved in the litigation or dispute against the defendants as well as their

insurance companies. A structured settlement often requires the preparation of an Assignment and Assumption Agreement in order to transfer the obligation to make deferred future payments to an annuity company. When the summary proceeding concerns the transfer of land, the document in this last category will be the new deed in which the guardian/conservator conveys the parcel of real estate as grantor on behalf of the infant or protected person.

Whether a law office chooses to organize these summary proceeding documents and program them into permanent computer storage or not, their preparation will still be required from time to time. The most painless method is to store the pleadings slowly over a period of time, doing the sets only as they are necessary in the ordinary course of business, and saving the forms in the computer according to an organized and indexed plan for future use. The size of the law firm and its practice will determine how long a period of time will be required to finally accumulate a complete summary form file in computer storage. In a medium-sized law firm, it is not unusual to have as many as a dozen cases a year that necessitate the preparation of these forms. Neither is it unrealistic to expect that, occasionally, two or three cases will finalize at the same time, and, if and when this occurs, pre-typed summary proceeding forms will prove to be useful indeed.

SECTION 1

PERSONAL INJURY -- Infant/Protected Person

Claim Not in Suit

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

THE PETITION OF _____,
GUARDIAN/CONSERVATOR FOR _____,
FOR APPROVAL AND CONFIRMATION OF A COMPROMISE OF
THE MATTERS IN CONTROVERSY WITH _____,
ON BEHALF OF SAID _____

CIVIL ACTION NO. _____

PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Your petitioner, _____, Guardian/Conservator
for _____, an infant/protected person of the
age of _____ years, respectfully represents and shows unto
Your Honor the following:

I

That petitioner is the duly appointed, qualified and acting
Guardian/Conservator for _____,
infant/protected person, as more fully appears from a certified
copy of his order of appointment by the Circuit Court of
_____ County, West Virginia, filed herewith as a part
hereof, and marked for identification as "Exhibit A".

II

That said _____, infant/protected person, sustained personal injuries resulting from _____ (Event), on or about _____ (Date), at _____ (Place). The nature and extent of said injuries are more fully disclosed in the physician's report attached hereto as "Exhibit B" and made a part hereof. Petitioner believes that said infant/protected person has made a good recovery from the effects of his/her injuries and that there is no permanent injury except for _____.

III

Nevertheless, _____ denies that he/she/it was guilty of any negligence in and about or relating to the injuries allegedly suffered by _____, but has offered to settle the claim herein as a compromise and settlement of a contested claim.

IV

That petitioner has, subject to the Court's approval and confirmation herein, agreed with _____ to compromise the matters in controversy herein upon the payment of the total sum of _____ Dollars (\$_____), said total sum to be divided as follows:

1. Payment of _____ Dollars (\$_____) to _____, Guardian/Conservator for _____, infant/protected person, for and on behalf of _____, infant/protected person.

2. Payment of the sum of _____ Dollars (\$_____) to _____, attorney for petitioner, as and for attorney's fees.

3. Payment of the sum of _____ Dollars (\$_____) to _____, attorney for petitioner, as and for reimbursement for expenses incurred in pursuing this claim.

All of which petitioner feels is fair and reasonable and in the best interests of said infant/protected person.

This petition was prepared by _____, attorney at law, who represents the petitioner in the prosecution of this action on behalf of the said infant/protected person. Said attorney was employed and retained on behalf of the said infant/protected person and the petitioner, and he/she has not received or been promised any compensation for his/her services in connection herewith from any person other than the party whom he/she represents and in the amounts as hereinabove stated. The

attorney has no connection, directly or indirectly, with the parties against whom the claim of the infant/protected person is asserted.

WHEREFORE, your petitioner respectfully prays that the proposed compromise be approved and confirmed; that this Court authorize the petitioner to accept, on behalf of _____, infant/protected person, the terms of the settlement offered by _____, as set forth above, and to execute and deliver a full and proper release of all claims therefore; and that petitioner be granted such additional relief as the Court deems just and proper from the circumstances herein.

GUARDIAN/CONSERVATOR FOR

INFANT/PROTECTED PERSON
Petitioner

Counsel for Petitioner
WV State Bar No. _____
(Address)

V E R I F I C A T I O N

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit;

_____, Guardian/Conservator for
_____, infant/protected person, the
petitioner named in the foregoing petition, being first duly sworn,
says that the facts and allegations therein contained are true,
except insofar as they are therein stated to be upon information
and belief, and that insofar as they are therein stated to be upon
information, he/she believes them to be true.

Taken, subscribed and sworn to before me this _____ day of
_____, 20__.

My commission expires _____

Notary Public

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

THE PETITION OF _____,
GUARDIAN/CONSERVATOR FOR _____,
FOR APPROVAL AND CONFIRMATION OF A COMPROMISE OF
THE MATTERS IN CONTROVERSY WITH _____,
ON BEHALF OF SAID _____

CIVIL ACTION NO. _____

O R D E R

This _____ day of _____, 20____, came the petitioner, in person and by his/her attorney _____, and tendered to the Court and asked leave to file his/her Petition, seeking the authority of this Court to compromise and settle for the injury to _____, an infant/protected person, _____ and the Court, inspecting the Petition and finding it proper, hereby ORDERS the same filed.

Thereupon, the Court appointed _____, a competent attorney practicing before this Court, to act as the guardian ad litem for _____, and directed the guardian ad litem to prepare and file an Answer in this proceeding.

It is FURTHER ORDERED that the matters and things arising on
this Petition be set down for hearing before this Court at _____
o'clock on _____, 20____.

ENTER:

Judge

PRESENTED BY:

Counsel for Petitioner
WV State Bar No. _____

APPROVED BY:

WV State Bar No. _____
Counsel for _____

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

THE PETITION OF _____,
GUARDIAN/CONSERVATOR FOR _____,
FOR APPROVAL AND CONFIRMATION OF A COMPROMISE OF
THE MATTERS IN CONTROVERSY WITH _____,
ON BEHALF OF SAID _____

CIVIL ACTION NO. _____

THE SEPARATE ANSWER OF _____,
GUARDIAN AD LITEM OF
_____, INFANT/PROTECTED PERSON,
TO THE PETITION OF _____,
HIS/HER GUARDIAN/CONSERVATOR

TO THE HONORABLE JUDGE OF SAID COURT:

I

Your guardian ad litem has read the Petition and finds the matters stated therein to be true.

II

Your guardian ad litem has read the file of _____, counsel for the petitioner, concerning the facts resulting in the injuries suffered by _____, has examined the medical and hospital records relating to the care and treatment of _____, and has met with the petitioner _____, and _____.

III

It is the opinion of your guardian ad litem that the offer on the part of _____ to settle the claim against him/her/it for the injuries of _____ for the total sum of _____ Dollars (\$____) to be divided as outlined in the Petition, is for the best interest of the said infant/protected person, and your guardian ad litem recommends that the Court approve said settlement in view of the facts and circumstances of this case and that it is in all respects proper.

Now, therefore, having answered the said Petition, your guardian ad litem asks to be dismissed with his/her costs in this behalf expended.

_____,
Guardian Ad Litem
of _____,
an Infant/Protected Person

(Name, WV State Bar No.,
& Address)

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit:

_____ says that he/she is the guardian ad litem of _____, an infant/protected person, and the respondent named in the foregoing Answer; that the facts and allegations therein stated to be upon information, and insofar as they are therein stated to be upon information, he/she believes them to be true.

Taken, subscribed and sworn to before me, the undersigned authority, this _____ day of _____, 20__.

My commission expires _____.

Notary Public

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

THE PETITION OF _____,
GUARDIAN/CONSERVATOR FOR _____,
FOR APPROVAL AND CONFIRMATION OF A COMPROMISE OF
THE MATTERS IN CONTROVERSY WITH _____,
ON BEHALF OF SAID _____

CIVIL ACTION NO. _____

O R D E R

This _____ day of _____, 20____, came the
petitioner, in person and by his/her attorney, _____
_____, and pursuant to his/her Petition already filed
in this action, seeks the authority of this Court to compromise and
settle for the injuries to _____ infant/protected
person, with _____.

Thereupon, came _____, as guardian ad
litem, and tendered to the Court and asked leave to file his
Answer, and the Court, inspecting the Answer and finding it proper,
Orders the same filed.

Thereupon, the Court proceeded to hear the petitioner, the
guardian ad litem and others in relation to the matters arising
upon the Petition, and independent of anything contained therein,
the Court is of the opinion and does find that the settlement for

the injuries to _____ with _____, in the amount of _____ Dollars (\$____), is a fair and equitable one and that the granting of the prayer in said Petition would promote the best interest of _____, infant/protected person, said total sum of \$_____ to be divided in the following manner:

1. \$_____ to _____ Guardian/Conservator for _____, infant/protected person, for the benefit of _____, infant/protected person.

2. \$_____ to _____, attorney for petitioner, for attorney's fees.

3. \$_____ to _____, attorney for petitioner, as reimbursement for expenses incurred in pursuing this claim.

It is, therefore, considered by the Court and ORDERED and ADJUDGED that petitioner be and he/she is hereby authorized, directed and empowered to settle the claim as a result of the injuries to _____, infant/protected person, with _____.

It is further ORDERED and ADJUDGED that upon the receipt of the sum of _____ Dollars (\$____), the petitioner is authorized and empowered to execute a release to _____, releasing him/her/it of and from all liability, of whatever nature, arising from or by reason of the injuries to _____ infant/protected person.

Thereupon, _____ tendered to the said Petitioner the sum of _____ Dollars (\$____), and the petitioner accepted said sum and executed the release herein before authorized.

It is further ORDERED and ADJUDGED that the said _____ be and he/she/it is forever released and discharged of and from all claims for damages, of whatever kind of nature, on account of, connected with, or growing out of the injuries to _____.

It is further ORDERED and ADJUDGED that the sum of _____ Dollars (\$____) be awarded to _____, for his/her services as guardian ad litem, said sum to be taxed to _____, as part of the costs of the proceeding.

It is FURTHER ORDERED that, pursuant to the provisions of West Virginia Code 44A-3-10, the net amount paid to the legal guardian herein being less than Ten Thousand Dollars (\$10,000.00), the requirement that annual accountings be filed with the Clerk of this Court be, and the same is, hereby waived.

The legal guardian is hereby authorized to use the net proceeds of the settlement for the support, maintenance and education of _____, infant/protected person, and the surety on his/her bond is hereby forever released and discharged as to this proceeding.

And it appearing to this Court that there is nothing further to be done herein, the Clerk of this Court is directed to strike the above civil action from the docket of this Court.

ENTER:

Judge

PRESENTED BY:

WV State Bar No. _____
Counsel for Petitioner

APPROVED BY:

WV State Bar No. _____
Counsel for _____

WV State Bar No. _____
Guardian ad Litem

RELEASE AND SETTLEMENT AGREEMENT

The undersigned, _____ Guardian/Conservator
for _____, infant/protected person, for and
in consideration of the payment of _____ Dollars (\$____), by
_____, and _____ Insurance
Company, does hereby release, acquit and forever discharge
_____, and _____ Insurance
Company, their agents, servants, employees, representatives and
subsidiaries from all claims and demands of all kind and character,
both known and unknown, arising out of the alleged injuries to
_____ on or about _____ as a result of
_____.

In further consideration hereof, the undersigned does hereby
agree to indemnify and hold harmless the said _____,
and _____ Insurance Company, their agents, servants,
employees, representatives and subsidiaries, of and from any and
all claims, demands, actions or causes of action that may hereafter
be asserted against them or their agents, servants, employees,
representatives or subsidiaries, as a result of or in any way
connected with the alleged injuries to _____ on or
about _____. Specifically, the undersigned does agree to
indemnify and hold harmless the said _____, and
_____ Insurance Company, their agents, servants,

employees, representatives and subsidiaries, of and from any and all claims, demands, actions or causes of action, including, but not limited to, third party claims for contribution and/or indemnity by any persons, firms or corporations. It is also understood and agreed that this settlement is a settlement of a contested claim and that _____ does not admit liability for the injuries to _____, and to the contrary, expressly denies liability for any injuries to _____.

WITNESS the following signature and seal this _____ day of _____, 20____.

SIGNED:

Guardian/Conservator of _____,
_____, Infant/Protected Person

DATE:

WITNESSES:

1.06 -- Confidentiality Provision

The parties mutually agree that neither they nor their attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this Settlement Agreement and Releasee or any of the amounts, numbers or term and conditions of any sums payable to claimant hereunder, except as may be required by governmental or legal process.

SECTION 2

PERSONAL INJURY -- Infant/Protected Person
In Litigation

IN THE CIRCUIT COURT OF _____, COUNTY, WEST VIRGINIA

Plaintiffs,

v.

CIVIL ACTION NO. _____

Defendants.

THE PETITION OF _____,
PROPOSED GUARDIAN/CONSERVATOR FOR _____,
INFANT/PROTECTED PERSON, FOR PERMISSION AND AUTHORITY
TO COMPROMISE A TORT CLAIM ON BEHALF OF SAID
INFANT/PROTECTED PERSON

TO THE HONORABLE JUDGE OF SAID COURT:

Your petitioner, _____, mother/father and
proposed guardian/conservator, of _____, a
male/female infant/protected person, age _____ years, respectfully
represents and shows unto Your Honor the following:

I

Your petitioner has filed a petition with the Clerk of this
Court requesting that he/she be appointed as guardian/conservator
for the benefit of _____, an infant/protected person.

II

That said _____, an infant/protected person
sustained personal injuries while said infant/protected person was
a patient in _____ Hospital and under the care and

treatment of _____, M.D., on or about _____ (Date), the nature and extent of said injuries being more fully disclosed by the physician's report attached hereto as "Exhibit B" and made a part hereof. Your petitioner alleges that said injuries are permanent in nature, that _____'s ability to do and perform the normal, usual and ordinary activities of life have been diminished and impaired, and that his/her learning and earning capacity (his/her ability to be independent and experience enjoyment of life) have been permanently impaired for the balance of his/her life.

III

Nevertheless, the defendants herein deny that they were guilty of any negligence or medical malpractice in and about or relating to the medical care and treatment of _____, infant/protected person, but have offered to settle the claims herein as a compromise and settlement of a contested claim.

IV

That petitioner has, subject to the Court's approval and confirmation herein, agreed with the defendants to compromise the matters in controversy herein between the plaintiffs and defendants upon the payment of _____ Dollars (\$____) to settle the entire claim of all of the plaintiffs. The total amount of the settlement is to be divided in the following manner:

1. \$_____ to _____, as guardian/conservator of _____ infant/protected person, for the benefit of _____, infant/protected person.

2. \$_____ to _____, individually, mother/father of _____, infant/protected person.

3. \$_____ to _____, attorney for plaintiffs, as attorney's fees and reimbursement of costs and expenses.

All of which petitioner feels is fair and reasonable and in the best interests of said infant/protected person.

This petition was prepared by _____, attorney at law, who represents the petitioner in the prosecution of this action on behalf of the said infant/protected person. Said attorney was employed and retained on behalf of the said infant/protected person and the petitioner, and he/she has not received or been promised any compensation for his/her services in connection herewith from any person other than the party whom he represents and in the amounts as hereinabove stated. The attorney has no connection, directly or indirectly, with the parties against whom the claim of the infant/protected person is asserted.

WHEREFORE, your petitioner respectfully prays that the proposed compromise be approved and confirmed; that this Court authorize him/her to accept, on behalf of said infant/protected

person, the terms of the settlement offered by _____
and _____, as set forth above, and to execute and
deliver a full and proper release of all claims therefor; and that
petitioner be granted such additional relief as the Court deems
just and proper from the circumstances herein.

_____, Guardian/Conservator
of _____,
Infant/Protected Person,
Petitioner

WV State Bar No. _____
Counsel for Petitioner
(Address)

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit:

_____, Guardian/Conservator of
_____, an infant/protected person, the
petitioner named in the foregoing petition, being first duly sworn,
says that the facts and allegations contained in said petition are
true, except such as are therein stated to be upon information, and
that such as are therein stated to be upon information, he/she
believes them to be true.

Taken, subscribed and sworn to before me this _____ day of

_____, 20____

My commission expires _____.

Notary Public

IN THE CIRCUIT COURT OF _____, COUNTY, WEST VIRGINIA

Plaintiffs,

v.

CIVIL ACTION NO. _____

Defendants.

ORDER

This day came the petitioner, _____,
Guardian/Conservator of _____, infant/protected
person, in person and by his/her attorney, _____, and
tendered to the Court and asked leave to file his/her Petition
seeking the authority of this Court to compromise and settle for
the injuries to _____, infant/protected person,
and the matters in controversy between the plaintiffs and the
defendants, _____ Hospital, and _____, M.D.

The Court, having seen and inspected the Petition and finding
it proper, hereby ORDERS the said Petition be filed.

Thereupon, the Court appointed _____, a
competent attorney practicing before the Court, to act as the
guardian ad litem for the said _____,
infant/protected person, and directed the guardian ad litem to
prepare and file an answer in the proceeding.

It is FURTHER ORDERED that the matters and things arising on
this Petition be set down for hearing before this court at _____.m.
on _____, 20_____.

ENTER:

Judge

Date: _____

PRESENTED BY:

WV State Bar No. _____
Counsel for Petitioner
(Address)

APPROVED BY:

WV State Bar No. _____
Counsel for _____ Hospital

WV State Bar No. _____
Counsel for _____ M.D.

IN THE CIRCUIT COURT OF _____, COUNTY, WEST VIRGINIA

Plaintiffs,

v.

CIVIL ACTION NO. _____

Defendants.

ANSWER OF GUARDIAN AD LITEM

TO THE HONORABLE JUDGE OF SAID COURT:

I

Your guardian ad litem has read the Petition and finds the matters stated therein to be true.

II

Your guardian ad litem has read the file of _____, counsel for the petitioner, concerning the facts resulting in the injuries suffered by the said infant/protected person, has examined the medical and hospital records relating to the care and treatment of said infant/protected person and has met with him/her and the petitioner, _____, his/her mother/father and Guardian/Conservator.

III

It is the opinion of your guardian ad litem that the offer on the part of defendants, _____, Hospital and _____, M.D., to settle the claim against them for the injuries of said infant/protected person, for the total sum of _____ Dollars (\$____) to be divided as outlined in the Petition is for the best interests of the said infant/protected person, and your guardian ad litem recommends that the Court approve said settlement in view of the facts and circumstances of this case and that it is in all respects proper.

Now, therefore, having answered the said Petition, your guardian ad litem asks to be dismissed with his/her costs in this behalf expended.

_____, Guardian Ad Litem
of _____,
Infant/Protected Person

(Name, State Bar No.,
& Address)

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit:

_____, says that he/she is the guardian
ad litem of _____, an infant/protected person,
and the respondent named in the foregoing Answer; that the facts
and allegations therein contained are true, except insofar as they
are therein stated to be upon information, and insofar as they
therein stated to be upon information, he/she believes them to be
true.

Taken, subscribed and sworn to before me, the undersigned
authority, this _____ day of _____, 20____.

My commission expires _____

Notary Public

IN THE CIRCUIT COURT OF _____, COUNTY, WEST VIRGINIA

Plaintiffs,

v.

CIVIL ACTION NO. _____

Defendants.

FINAL ORDER

This _____ day of _____, 20____, came the petitioner, in person and by his/her attorney, _____, and pursuant to his/her Petition already filed in this action, seeks the authority of this Court to compromise and settle for the injuries to _____, an infant/protected person.

Thereupon, came _____, as guardian ad litem, and tendered to the Court and asked leave to file his/her Answer on behalf of _____, and the Court, inspecting the answer and finding it proper, ORDERS the same filed.

Thereupon, the Court proceeded to hear the petitioner, the guardian ad litem and others in relation to the matters arising upon the petition, and independent of anything contained therein, the Court is of the opinion and does find that the settlement for the injuries to _____, infant/protected person, with

the defendants, _____ Hospital and _____
M.D., in the amount of _____ Dollars (\$____) is a fair and
equitable one and that the granting of the prayer in said Petition
would promote the best interests of the infant/protected person,
said total sum of \$_____ to be divided in the following manner:

1. \$_____ to _____, as
Guardian/Conservator of _____ infant/protected
person, for the benefit of _____, infant/protected
person.

2. \$_____ to _____, individually,
mother/father of _____, infant/protected person.

3. \$_____ to _____, attorney for
plaintiffs, as reimbursement for incurred in prosecuting this
action.

4. \$_____ to _____, attorney for
plaintiffs, as attorney's fee.

It is, therefore, considered by the Court and ORDERED and
ADJUDGED that petitioner be and he/she is hereby authorized,
directed and empowered to settle the claim as a result of the
injuries to the said _____ infant/protected
person, with the defendants, _____ Hospital and
_____, M.D..

It is further ORDERED and ADJUDGED that upon the receipt of
the sum of _____ Dollars (\$____), the petitioner is authorized

and empowered to execute a release on behalf of _____,
infant/protected person to _____ Hospital and
_____, M.D., releasing them of and from all
liability, of whatever nature, arising from or by reason of the
injuries to _____ infant/protected person.

Thereupon, _____ Hospital and _____ M.D.,
tendered to the said petitioner the sum of _____ Dollars
(\$____), and the said petitioner accepted said sum and executed the
releases hereinbefore authorized.

It is further ORDERED and ADJUDGED that the said _____
_____ Hospital and _____ M.D., be and they are
forever released and discharged of and from all claims for damages,
of whatever kind or nature, on account of, connected with, or
growing out of the injuries to _____ infant/protected
person.

It is further ORDERED and ADJUDGED that the sum of _____
Dollars (\$____) be awarded to _____ for his/her
services as guardian ad litem, said sum to be taxed to the
defendants and shared by them in equal amounts as part of the costs
of this proceeding.

It is further ORDERED that the Clerk of this Court be and he
is hereby directed forthwith to provide all parties to this action
with a certified copy of this order in lieu of notice of entry
thereof as required by Rule 77(d) of the West Virginia Rules of
Civil Procedure for trial courts of record.

And it is now appearing to the Court that the above-styled action presently pending against the defendants, _____ Hospital and _____ M.D., has been settled, compromised and adjusted by and between the plaintiffs and the defendants, _____ Hospital and _____ M.D., it is hereby ORDERED that this cause be dismissed, with prejudice, and the Clerk is instructed to remove the same from the docket of this Court.

ENTER:

Judge

PRESENTED BY:

WV State Bar No. _____
Counsel for Plaintiffs

APPROVED BY:

WV State Bar No. _____
Counsel for Defendant,
_____, M.D.

WV State Bar No. _____
Counsel for Defendant,
_____, Hospital

WV State Bar No. _____
Guardian ad Litem

RELEASE AND SETTLEMENT AGREEMENT

The undersigned, _____, individually, and as mother/father and Guardian/Conservator of _____, infant/protected person, and _____, individually, and as father/mother and natural guardian of _____, infant/protected person, for and in consideration of the payment of _____ Dollars (\$____), by _____ Hospital, and the _____ Insurance Company, and _____, M.D., and the _____ Insurance Company, do hereby release, acquit and forever discharge _____ Hospital, and the _____ Insurance Company, and _____, M.D., and the _____ Insurance Company, their agents, servants and employees from all claims and demands of all kind and character, both known and unknown, arising out of any injuries allegedly suffered by said infant/protected person while under the medical care and treatment of _____, M.D., on or about _____, and while said infant/protected person was a patient at _____ Hospital, as more completely set forth in the Complaint filed in the Circuit Court of _____ County, West Virginia, and designated Civil Action No. _____.

In further consideration hereof, the undersigned do hereby agree to indemnify and hold harmless the said _____,

M.D., and his/her insurer, _____ Insurance Company,
and _____ Hospital, and its insurer, _____
Insurance Company, and their agents, servants and employees, of and
from any and all claims, demands, actions or causes of action that
may hereafter be asserted against them, their agents, servants, and
employees, as a result of or in any way connected with the alleged
injuries suffered by _____, infant/protected
person, while under the aforementioned medical care and treatment
of _____, M.D., on or about _____,
while said infant/protected person was a patient in
_____ Hospital. Specifically, the undersigned do
agree to indemnify and hold harmless the said _____,
M.D., and his/her insurer, _____ Insurance Company,
and _____ Hospital, and its insurer, _____
Insurance Company, their agents, servants and employees, of and
from any and all claims, demands, actions or causes of action,
including, but not limited to, third party claims for contribution
and/or indemnity by any persons, firms or corporations. It is also
understood and agreed that this settlement is a settlement of a
contested claim and that _____, M.D., and the
_____ Insurance Company, and _____
Hospital, and the _____ Insurance Company do not admit
liability for the injuries to _____ infant/protected

person, and to the contrary, expressly deny liability for any injuries to _____, infant/protected person.

The parties hereto acknowledge and agree that it is their mutual intent to enter into this Release And Settlement Agreement in good faith as contemplated by the Supreme Court of Appeals of West Virginia in Board of Education v. Zando, Martin, et al., 390 S.E.2d 796 (W. Va. 1990).

WITNESS the following signatures and seals this _____ day of

_____, 20____.

SIGNED:

_____, Individually and as
Mother and Guardian/Conservator of
_____, Infant/Protected Person

SIGNED:

_____, Individually and as
Father and Natural Guardian of
_____, Infant/Protected Person

DATE:

WITNESSES:

SECTION 3

PERSONAL INJURY -- Infant/Protected Person
Structured

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

_____, an infant
under the age of 18 years, who
brings this action by his mother
and next friend, _____,
and _____, individually
and in his/her own right,

Plaintiffs,

v.

CIVIL ACTION NO. _____

_____, M.D.,

Defendant.

THE PETITION OF _____
GUARDIAN/CONSERVATOR OF _____
AN INFANT, FOR APPROVAL AND CONFIRMATION OF
A COMPROMISE OF THE MATTERS IN THE CONTROVERSY
HEREIN ON BEHALF OF SAID INFANT

TO THE HONORABLE JUDGE OF SAID COURT:

Your petitioner, _____, guardian/conservator of
_____, a male/female infant of the age of _____
years, respectfully represents and show unto Your Honor the
following:

I

That petitioner is duly appointed, qualified and acting
guardian/conservator of _____, an infant, born on
_____, as more fully appears from a certified copy of
her order of appointment by the Circuit Court of _____

County, West Virginia, filed herewith as a part hereof, and marked for identification as "Exhibit A". Additionally, as the petitioner will be returning to the State of _____, following this proceeding, attached as "Exhibit B" is the certified copy of her order of appointment as guardian/conservator of _____, infant, in the State of _____.

II

That said _____, an infant, allegedly sustained personal injuries during delivery and while said infant was under the care and treatment of _____, M.D.. including but not limited to injuries to his central nervous system resulting in various permanent physical and mental infirmities, as more fully described in the physician's report attached hereto as "Exhibit C" and made a part of hereof.

III

Nevertheless the defendant herein denies that he/she was guilty of any negligence or medical malpractice in and about or relating to the pre-natal medical care, birth, post-partum medical care and other medical treatment of _____, infant, and/or _____, his mother, but have offered to settle the claim herein as a compromise and settlement of a contested claim.

IV

That petitioner has, subject to the Court's approval and confirmation herein, agreed with the defendant to compromise the

matters in controversy herein between the plaintiffs and defendant upon the following terms follows:

1. Payment of _____ Dollars (\$____) to _____, as guardian/conservator of _____, infant, to be paid on the date of the settlement proceeding.

2. Payment of the sum of _____ Dollars (\$____) per month to _____, as guardian/conservator of _____, an infant, for _____ (____) months, and guaranteed by the _____ Insurance Company, to begin on _____, 20____.

3. Beginning on _____, 20____, payment of _____ Dollars (\$____) per month to _____ (____) month, and guaranteed by _____ Insurance Company.

4. Beginning on _____, 20____, to pay to _____, as guardian/conservator of _____, an infant, the sum of _____ Dollars (\$____) per month for _____ (____) months, guaranteed by the _____ Insurance Company.

5. Beginning on _____, 20____, payment of _____ Dollars (\$____) per month guaranteed by the _____ Insurance Company for _____ (____) months to _____, as guardian/conservator of _____, an infant. Thereafter, payments of _____ Dollars (\$____) per month of

_____, as guardian/conservator of _____, an infant, for his life with an annual growth factor of ____%.

6. Should _____ die prior to the expiration of _____ (____) months from the date of _____, 20____, all payments shall be paid to the estate of _____ in regular monthly installments as they fall due, not in one lump sum.

7. The duty and obligation of making the delayed payments set forth above, is the obligation solely of the _____ Insurance Company, and not the individual defendant.

All of which petitioner feels is fair and reasonable and in the best interests of said infant.

This petition was prepared by _____, attorney at law, who represents the petitioner in the prosecution of this action on behalf of the said infant. Said attorney was employed and retained on behalf of the said infant and the petitioner, and he/she has not received or been promised any compensation for his/her services in connection herewith from any person other than the party whom he/she represents and in the amounts as hereinabove stated. The attorney has no connection, directly or indirectly, with the parties against whom the claim of the infant is asserted.

WHEREFORE, your petitioner respectfully prays that the proposed compromise be approved and confirmed; that this petitioner

be authorized to accept, on behalf of said infant, the terms of the settlement as hereinbefore set forth, and to execute and deliver a full and proper release of all claims therefore; and that petitioner be granted such additional relief as the Court deems just and proper from the circumstances herein.

_____,
Guardian/Conservator of
_____, an infant,
Petitioner

By Counsel

WV State Bar No. _____
Counsel for Petitioner
(Address)

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit;

_____, guardian/conservator of _____,
an infant, the petitioner named in the foregoing petition, being
first duly sworn, says that the facts and allegations contained in
said petition are true, except such as are therein stated to be
upon information, and that such as are therein stated to be upon
information, she believes them to be true.

Taken, subscribed and sworn to before me this _____ day
of _____, 20____.

My commission expires _____

Notary Public