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We have been asked on numerous occasions to facilitate the approval of settlements for minor plaintiffs for our clients. In these situations, a settlement has been reached with a minor plaintiff's parent(s). The question then arises whether or not to probate the settlement. This answer is usually based on the size of the settlement. In most situations, the minor and the parents are represented by counsel. Issues arise when the minor and the parents have agreed to resolve the case but are not represented by an attorney.

On numerous occasions, this firm has been retained to represent the interests of the insurance company to obtain approval of the settlement in the Probate Court of the county in which the minor resides. This has nearly always resulted in a prolonged and unduly complicated process to obtain the probate approval. It has been our experience that the Probate judge is reluctant to approve the settlement in this situation and on several occasions judges have appointed a guardian ad litem. The GAL will invariably find that the settlement is insufficient, suggest a new attorney and the entire settlement collapses into litigation.

This firm has advised clients on several occasions that, in these situations, alternative means of approving the settlement should be used. We have advised that the parent should pursue the approval pro se or extra money should be paid so that the parent can retain an attorney directly, thereby eliminating the risk that a GAL will be appointed.

A different problem arises when the settlement is below the jurisdictional requirement for probate approval. Each county has a jurisdictional minimum for which probate approval is required. In Cook County, that minimum is $10,000. Other counties require probate approval at $5,000 or $10,000. Most counties require that the net amount received by the minor meet the jurisdictional requirement. As such, a $15,000 settlement in which the minor will receive less than $10,000 after attorney's fees and costs may not require probate approval.

The question arises what must be done when a settlement is reached with a minor that does not meet the jurisdictional threshold. A recent Illinois case addresses this issue and holds that any settlement with the parents of a minor is "unenforceable" unless approved by a probate court.

In the case of Villalobos v. Cicero School District, (362 Ill. App 3d 704, 841NE21 87 2005) the Illinois Appellate Court addressed a settlement entered into between Allstate Insurance Company and a minor. The minor sustained lacerations to her head and face and fractured her collarbone. The parents and daughter were leaving for Mexico and settled the daughter's case for $3,000. The parents signed full releases and accepted a

check for $3,000. Prior to the minor reaching her majority, a lawsuit was filed by the minor's father. In response, Allstate alleged that the releases signed acted as a bar to the suit.

The Illinois Appellate Court held:

> Under Illinois law, a minor involved in litigation is a ward of the court and the court has "a duty and broad discretion to protect the minor's interests. Further, it is the public policy of this state that the rights of minors be guarded carefully. This policy is reflected in the statutory requirement that the court approve or reject any settlement agreement proposed on a minor's behalf. In accordance with this provision, Illinois courts have held that neither a next friend nor a court-appointed guardian can approve a settlement of a minor's claim without court approval. Similarly, a parent has no legal right, by virtue of the parental relationship, to settle a minor's cause of action; and court review and approval of a settlement reached by a parent also is mandatory. Therefore, "any settlement of a minor's claim is unenforceable unless and until there has been approval by the probate court." **Villalobos v. Cicero School District 99**, 362 Ill. App. 3d 704, 841 N.E.2d 7, 298 Ill. Dec. 944 (Ill. App. 1 Dist. 2005) citations omitted.

The court went on to address the issue of unenforceability and held that a settlement agreement signed by a parent on behalf of a minor is more than simply voidable, it is entirely unenforceable. As such, any release signed by a parent would have no effect if that same parent chose to later file suit after signing a release and accepting payment for the minor. Additionally, the minor could easily disaffirm the agreement and file suit upon reaching majority. The court went on to state that the filing of a suit by the parent that signed the release can act as a disaffirmance of the settlement by the minor.

Clearly, Illinois courts closely scrutinize any settlements entered into by the parents of a minor and now require, without fail, that any settlement be approved by the probate court. Failure to do so can result in the settlement eventually being undone in a future proceeding by either the parent or the minor.

Lastly, the Villalobos opinion does leave open the possibility that the release may become enforceable if the minor is a party to the release. The court stated the general rule that minors who enter into contracts may either disaffirm or ratify the contract within a reasonable time after reaching majority. Although the court does not specifically state that a minor signing a release will change the outcome of this case, the signing of the release by the minor could potentially increase the probability of successfully enforcing a release.

Please feel free to contact the undersigned with any questions.

Very truly yours,

BUSSE & BUSSE, PC

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