



If you have questions or would like further information regarding Settlements Involving Minors, Incompetents or Estates, please contact:

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ILLINOIS LAW MANUAL

CHAPTER X SETTLEMENTS & RELEASES

C. **SETTLEMENTS INVOLVING MINORS, INCOMPETENTS, OR ESTATES (PROBATE OF CLAIMS)**

Effectuating a settlement with a minor or an incompetent, whether the claim is in litigation or settled outside of court, requires court approval. Ott v. Little Co. of Mary Hosp., 273 Ill. App. 3d 563 (1st Dist. 1995); Wreglesworth v. Arctco, Inc., 316 Ill. App. 3d 1023 (1st Dist. 2000). Illinois public policy protects minors and their property from the consequences of dealing with others. As such, Illinois courts consistently and assiduously guard the rights of minors. Iverson v. Scholl, Inc., 136 Ill. App. 3d 962 (1st Dist. 1985).

1. Compromising Disputed Claims Valued At No More Than \$10,000.00

To compromise a disputed claim involving a minor or incompetent, a petition for leave to settle the claim generally must be presented in court, with one exception. Section 25-2 of the Illinois Probate Act, 755 ILCS 5/25-2 (2005), allows for the settlement of a minor's claim without court intervention when both the amount owed to the minor and the minor's personal estate do not exceed \$10,000.00. In these cases, an insurer must receive an affidavit from a parent or a person standing *in loco parentis*

to the minor establishing that the value of the estate does not exceed \$10,000.00. Upon receipt of such affidavit, a carrier is entitled to settle the action or claim for not more than \$10,000.00. CAUTION: Illinois law is unclear on whether a settlement under Section 25-2 will protect the insurer against a claim that the settlement amount was inadequate made by the minor either through a representative or upon reaching majority. However, recent Illinois case law has reinforced the notion that the only way a minor settlement can be binding on the minor is through court approval. Smith v. Smith, 358 Ill. App. 3d. 790 (4th Dist. 2005). The court in Smith held that Section 25-2 of the Probate Act, 755 ILCS 5/25-2 (2005), allows the payer to discharge its obligations pursuant to a properly filed affidavit, but it does not obviate the need for the court to approve of a minor's settlement. Id. at 793. The court ultimately held that the settlement entered under Section 25-2 on behalf of the minor was not binding on the minor as the settlement was not approved by the court. Id. at 794.

2. Compromising Disputed Claims Valued at More than \$10,000.00

When a minor has a disputed claim for damages and a settlement has been reached for more than \$10,000.00, court approval of the minor's settlement is required. The Illinois Probate Act contemplates the creation of a personal estate for a minor bringing a cause of action. Burton by Burton v. Estrada, 149 Ill. App. 3d 965 (1st Dist. 1986). 755 ILCS 5/19-8 provides, in pertinent part,

. . . by leave of court . . . a representative . . . may compound or compromise any claim or any interest of the ward . . . in any personal estate . . . upon such terms as the court directs.

This provision mandates court approval of any settlement because it is intended to substitute a judicial determination for the guardian's personal discretion in order to

provide additional protection to the minor or incompetent. Mastroianni v. Curtis, 78 Ill. App. 3d 97 (1st Dist. 1979); Ott, 273 Ill. App. 3d at 571.

A minor who becomes a party to litigation is a ward of the court, and a duty devolves upon the court to protect the minor's rights. Ott, 273 Ill. App. 3d at 571; Mastroianni, 78 Ill. App. 3d at 100. A parent, simply by virtue of the parental relationship, has no legal right to settle a minor's cause of action. Therefore, a court must not only approve the settlement agreement, but must also enter an order appointing the minor's parent or a representative standing *in loco parentis* as guardian on behalf of the minor.

Overall, the Probate Act has been held to require that the terms and conditions of any proposed compromise involving a minor or incompetent be submitted to, inquired into, and passed upon, by that court having special jurisdiction over the estate of minors. Hayes v. Massachusetts Mutual Life Ins. Co., 125 Ill. 626 (1888); Ott, 273 Ill. App. 3d at 571. In addition, the local rules of the judicial circuit where the settlement is to be approved must be consulted.

Typically, local rules have further requirements involving the appointment of a guardian *ad litem* to review and make recommendations concerning the guardian's *ad litem* approval or rejection of the proposed settlement. Almost all circuits require that any petition for leave to settle a minor's claim be supported with an updated report prepared by the primary treating medical personnel concerning the prognosis, nature, and extent of the minor's injuries. The guardian *ad litem* is routinely duty-bound to review the proposed settlement and medical reports and to file a written report concerning his or her recommendation for approval or rejection of the settlement. While

the guardian's *ad litem* recommendations are considered by the court, it is ultimately the court's own determination, keeping in mind the interests of the minor (who is a ward of the court), in deciding whether to approve, modify, or reject the settlement.