

HANDLING SETTLEMENTS INVOLVING MINORS

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I. INTRODUCTION

Court approval is necessary to finalize a settlement involving a minor. This manuscript will review the applicable law and ethics opinions and provide some practical advice to assist you with obtaining judicial approval of a settlement.

II. THE SETTLEMENT OF A CASE INVOLVING A MINOR PLAINTIFF

A person within the age of 18 years is considered a minor (also referred to as an “infant”) under North Carolina law. N.C. Gen. Stat. §1-17 (2008). A minor does not have the capacity to sue or to be sued and must therefore appear in a civil action by and through a general or testamentary guardian or a guardian *ad litem*. N.C. Gen. Stat. §1A-1, Rule 17(b) (2008).

A. APPOINTMENT OF A GUARDIAN AD LITEM.

Because most minors do not have a general or testamentary guardian, it is common for a guardian *ad litem* to be appointed for the purpose of prosecuting the action. A guardian *ad litem* must be appointed either before or at the time of the filing of the action upon written application by a relative or friend. N.C. Gen. Stat. §1A-1, Rule 17(c). The appointment is customarily handled by the Clerk of Superior Court and involves the submission of a Petition for Appointment; a Consent to Appointment (signed by the prospective guardian); and, a Proposed Order. If a specific individual has not consented to the appointment, then the Clerk will appoint someone from the Clerk’s list of guardians.

The same requirements for the appointment of a guardian *ad litem* exist under the Federal Rules of Civil Procedure. However, the appointment is customarily handled by the District Court Judge assigned to the case.

1. Attorney-Client Relationship

When an attorney is retained to represent a minor plaintiff, the attorney represents the minor and the guardian *ad litem* in his or her representative capacity. 2006 FEO 9, July 21, 2006. Despite the dual representation, the attorney's primary duty is to represent the interests of the minor, who is the real party in interest. *Id.* (Citing RPC 163, April 15, 1994). In addition, if the guardian acts outside his or her official capacity, the information learned by the attorney may be disclosed to others (even over the guardian's objections) when necessary to properly represent the minor. 2006 FEO 9. This situation may arise when the attorney must file a motion to remove and replace a guardian *ad litem*.

A minor's parents will often consult with an attorney about legal matters concerning their child. Please remember that the attorney owes the parents a duty of confidentiality even if representation is declined. 2005 FEO 4, April 21, 2006.

2. Use of a Parent as Guardian *Ad Litem*

A parent may serve as guardian *ad litem* for his or her child. Before you recommend to a parent that he or she serve as guardian, you must consider the ethical issues which may arise during the litigation. Under North Carolina law, two claims arise when a minor is injured by the actions of another. The minor has a claim for his or her damages (i.e., pain and suffering, scars or disfigurement, permanent injury) and the parent has a separate claim for the loss of the child's services (until the child reaches age 18) and the medical expenses which were reasonably necessary to treat the minor's injuries. *Bolkhir v. North Carolina State Univ.*, 321 N.C. 706, 713, 365 S.E.2d 898, 902 (1988)(*citations omitted*).

If the parent serves as guardian *ad litem* and does not assert a separate claim for lost services and medical expenses, then the parent has waived these claims and allowed the child to recover them.¹ *Id.*; *Shields v. McKay*, 241 N.C. 37, 40-41, 84 S.E.2d 286, 288-89 (1954). Under this scenario, no ethical problems exist. However, the situation is different when the parent serves as guardian *ad litem* and asserts a separate claim for damages.

3. Ethical Considerations Which May Arise When the Parent Serves as Guardian *Ad Litem* and Files a Separate Claim for Damages

In 1992, the North Carolina State Bar issued an ethics opinion which held that a lawyer may not represent parents as guardians *ad litem* for their injured child and as individuals concerning their related tort claim after receiving a joint settlement offer which is insufficient to fully satisfy all claims. In RPC 109, issued January 17, 1992, the State Bar ruled that there was an irreconcilable conflict between the parent acting as guardian and the parent pursuing his or her personal claim. Any attempt by the attorney to resolve this conflict would be to the benefit of one client and at the expense of the other. As a result, the State Bar decided that:

Under the circumstances, law firm A must withdraw from representing both clients. The attorneys may not continue representing either of their clients unless their continuing participation is intelligently consented to by the other client, and this is impossible under the facts stated.

RPC 109, January 17, 1992.

Fortunately, the State Bar also issued RPC 123, which was “intended to address in a broader way the issues raised in RPC 109. It is offered for the general guidance of the bar and is not intended to contradict the advice given in response to the specific facts recited in RPC 109.”

¹ The parent may also assign his or her claim for medical expenses to the minor child. Whether the claim is waived or assigned, it must still be pursued within the 3-year statute of limitations and is not tolled while the child is under 18. *Vaughan v. Moore*, 89 N.C. App. 566, 366 S.E.2d 518 (1988).

In RPC 123, the State Bar opined that an attorney could represent the parents on their individual claim for medical bills and the child in a personal injury action. However, the attorney must insist upon the appointment of an independent guardian *ad litem* for the child when a lawsuit is filed. The State Bar reasoned that because the interests of both the child and the parents are aligned in establishing the tortfeasor's liability, it is unlikely that any actual conflict will arise before the receipt of a settlement offer.²

The receipt of a single settlement offer to settle both claims does not automatically disqualify the attorney. The attorney may attempt to assist the clients in evaluating the claims and reaching an amicable agreement as to how to divide the proceeds. But, under no circumstances is the attorney permitted to advocate for one client over the other. If a dispute does arise, the attorney would be permitted to withdraw from the representation of one client upon the consent of the other. RPC 123, January 17, 1992.

Once the attorney recognizes that there are insufficient funds, informed consent to the dual representation must be obtained from each client. The necessary disclosures "must include an explanation of the consequences of limited insurance funds and the possibility of a dispute among the claimants as to the division of the insurance proceeds." RPC 251, July 18, 1997. Before a lawsuit is filed, the parents or the minor's legal guardian may consent to the representation. After litigation is commenced, the consent to dual representation must be given by the independent guardian *ad litem*.

Therefore, whenever a potential conflict exists in your representation of a parent and child, an independent guardian *ad litem* must be appointed. The independent guardian will help ensure that any settlement is in the best interests of the child and not tainted by the parent's own claim for relief. In addition, if an existing guardian *ad litem*, typically a parent, has an obvious conflict of interest, then an attorney may seek the appointment of an independent guardian for the child. RPC 163, April 15, 1994.

² If the minor has a potential claim against the parent, then a conflict of interest may exist and a dual representation will ordinarily be impermissible. RPC 251, July 18, 1997.

4. How to Handle a Situation in Which the Attorney Discovers that a Claim Involving a Minor Plaintiff is Frivolous

When an attorney discovers during litigation that a minor's claim is frivolous, he or she must consult with the guardian *ad litem* and seek permission to dismiss the claim. If the guardian refuses to consent and insists that the attorney prosecute the claim, the attorney must either file a motion to: (1) withdraw from representation, or (2) remove and replace the guardian *ad litem* with someone who can objectively evaluate the claim and make an unbiased decision. However, the attorney may not file a motion to remove the guardian *ad litem* if the attorney also represents, or represented, the guardian in his or her personal capacity. 2006 FEO 9, July 21, 2006.

B. EVERY SETTLEMENT INVOLVING A MINOR MUST BE APPROVED BY THE COURT

Settlements of claims involving minors must be approved by court order.³ This applies regardless of whether settlement is reached before or after filing suit. A minor cannot be bound by a proposed compromise and settlement of a minor's personal injury claim unless it is properly approved by a judge. *Gillikan v. Gillikan*, 252 N.C. 1, 113 S.E.2d 38 (1960); *Creech v. Melnik*, 147 N.C. App. 471, 556 S.E.2d 587 (2001), *review denied by*, 355 N.C. 490, 561 S.E.2d 498, *reconsideration denied by*, 355 N.C. 747, 565 S.E.2d 194 (2002) (holding that a covenant not to sue on behalf of a minor is invalid without court approval).

The courts of this state have inherent authority over the property of a minor and will exercise this jurisdiction whenever necessary to preserve and protect a child's estate and interests. *Sternberger Foundation, Inc. v. Tannenbaum*, 273 N.C. 658, 161 S.E.2d 116 (1968). The courts will look closely into contracts or settlements which materially affect the rights of a minor. *Redwine v. Clodfelter*, 226 N.C. 366, 38 S.E.2d 203 (1946). In examining a minor settlement, the child's "welfare is the guiding star in determining its reasonableness and validity." *Id.* at 370, 38 S.E.2d at 206 (*citing, In re Reynolds Guardianship*, 206 N.C. 276, 173 S.E.789 (1934)). In addition, the court should "lend its wisdom, experience, and circumspection to the infant, who legally wants

³ This includes wrongful death claims in which a beneficiary is a minor.

these faculties and is therefore a likely victim of overreaching.” *Payseur v. Rudisill*, 15 N.C. App. 57, 63, 189 S.E.2d 562, 566, *cert. denied by*, 281 N.C. 758, 191 S.E.2d 356 (1972)(*citation omitted*).

1. Procedure for obtaining court approval

If a settlement is reached after the lawsuit has already been filed, the guardian *ad litem* or general guardian needs to file a Petition for approval of the minor’s settlement and obtain a Judgment approving the settlement. The Judgment must contain sufficient findings of fact and conclusions of law.

Frequently an agreement to settle is reached before any action is filed. In such a case there are two ways to proceed. First, a special proceeding may be instituted under N.C. Gen. Stat. §1-400 with the consent of all parties. A judgment may then be submitted to the senior resident superior court judge for approval of the minor settlement under N.C. Gen. Stat. §1-402. The use of a special proceeding for this purpose was expressly sanctioned in *Gillikan v. Gillikan*, *supra* at p. 5.

The second, and more common, procedure for obtaining court approval is to file a friendly civil action with the issuance of a Summons and Complaint in either District or Superior Court, depending upon the amount in controversy. In this situation, the procedural aspects of the case are greatly expedited since counsel for the defendant(s) cooperates in the process. The documents necessary to consummate the settlement of a minor’s claim include a Petition for Appointment of Guardian *ad litem*; an Order Appointing Guardian *ad litem*; a Summons and Complaint; a Petition for Approval of a Minor’s Settlement; and, a Judgment Approving the Minor’s Settlement.

Depending on the method of investing and holding the minor’s funds, there may be additional proceedings required as discussed hereinafter. It is not uncommon to have the Summons, Complaint, Acceptance of Service, Answer and Petition for Approval of Minor’s Settlement to all be filed simultaneously. In the case of a “friendly suit” all that remains is to schedule the hearing for purposes of obtaining the judge’s signature on a Judgment approving the settlement.

The procedure to be followed by a particular judge in obtaining approval of a minor's settlement varies greatly. There are judges who will approve such settlements based upon a Consent Judgment signed by all parties having an interest in the matter. In this situation, the court is obviously giving great deference to the guardian *ad litem* or general guardian and their counsel in ensuring that the interests of the minor are protected. Other judges require that the minor be present in court with a parent or parents. Additionally, many judges insist on a structured settlement with an insurance company which has the highest possible rating according to Standard & Poor's, or a surety bond from an insurance company which insures the obligation of the company issuing the annuity contract.

Before you appear before a judge for the purpose of obtaining a minor's settlement, inquire as to what information the judge will want at the hearing and the people whose appearance will be required. You can examine the local rules,⁴ speak to the judge's clerk or the trial court administrator, or confer with other lawyers. By making a simple inquiry, you will save yourself and your client much time and potential embarrassment.

In the process of approving the settlement, the judge should consider the following:

- The strength of the plaintiff's case and the existence of any viable defenses;
- The nature and extent of the minor plaintiff's injuries;
- The amount of insurance coverage and, if applicable, the defendant's ability to contribute money to a settlement or to satisfy a judgment;
- Whether the minor's representative and parents think the settlement is fair and reasonable;

⁴ For example, see Local Civil Rule 17.1 for the United States Middle District Court of North Carolina and Local Civil Rule 17.1 for the Eastern District of North Carolina.

- The exact amount that the minor will receive as a result of the settlement and whether this amount is fair and reasonable;
- The propriety of any proposed payments from the settlement funds; and,
- The nature of the proposed release.

a. Liens and Subrogation Claims

Medical Provider Liens

If the minor child does not have a claim for medical expenses, the settlement proceeds cannot be used to pay any outstanding medical bills because those are owed by the parents, and not the child. However, when the minor asserts a claim for medical expenses, a medical provider lien will attach to the settlement proceeds to the extent that medical expenses are owed and the lien is perfected. N.C. Gen. Stat. § 44-49(a) (2008). The attorney must then assure that the lien is properly paid in the judgment approving the minor's settlement. *See* N.C. Gen. Stat. § 44-50 (2008); *Triangle Park Chiropractic v. Battaglia*, 139 N.C. App. 201, 532 S.E.2d 833 (2000).

Medicaid Claims

The State of North Carolina may be entitled to reimbursement for Medicaid payments even though the minor child did not assert a claim for medical expenses. *Campbell v. North Carolina Dep't of Human Resources* 153 N.C. App. 305, 569 S.E.2d 670 (2002). The State's recovery may also not be limited to the amount received by the parent for medical expenses. *Payne v. North Carolina Dep't of Human Resources*, 126 N.C. App. 672, 486 S.E.2d 469 (1997). It is unclear whether the principles articulated in *Campbell* and *Payne* are still valid in light of *Ahlborn v. Arkansas Dep't of Health and Human Services*, 547 U.S. 268, 126 S.Ct. 1752 (2006) (holding that Medicaid's lien is limited to the amount received by the recipient for medical expenses). However, if the minor asserted a claim for medical expenses, then the State must be paid 1/3 of the gross amount recovered pursuant to N.C. Gen. Stat. § 108A-57(a). *Andrews v. Haygood*, 362 N.C. 599, 669 S.E.2d 310 (2008).

ERISA Subrogation Claims

An ERISA subrogation claim is governed by the terms of the plan. If the plan document allows a right of subrogation and recovery on the entire settlement, then the claim must be satisfied even when the minor did not assert a claim for medical expenses. *See Rhodes, Inc. v. Morrow*, 937 F.Supp. 1202 (M.D.N.C. 1996). However, if the plan document limits the right of subrogation to “recovery from a third party for medical benefits,” then a minor will not need to satisfy the claim absent a recovery for medical expenses. *McIntosh v. Pacific Holding Co.*, 992 F.2d 882 (8th Cir. 1993).

b. Attorney’s Fees

The court should also consider the reasonableness of the attorney’s fees. Because the minor is unable to enter into a binding contract, it is essential that the amount of attorney’s fees be approved by the court. In passing on the amount, the judge is not bound by any fee contract signed by the parents and the attorney. Rather, the court is required to make an independent inquiry. Generally, in a minor’s claim, the attorney should maintain a record of the hours spent in handling the claim and be prepared to offer an Affidavit in support of the proposed fee, depending on the judge’s requirements. *See Pellegrin v. National Union Fire Ins. Co.*, ___ F.Supp.2d ___, Case No. 5:08-cv-349 (E.D.N.C. 2009) (holding that counsel for an incompetent plaintiff, who did not keep time records, was entitled to 1/10 of the requested contingent attorney’s fee). In a case involving a substantial recovery, it is wise to obtain an Affidavit from another attorney supporting the proposed fee. Any such affidavit should address the various factors to be considered as outlined in Rule 1.5 of the Revised Rules of Professional Conduct.⁵

⁵ These factors include (1) the time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

2. Disbursement of the minor's settlement proceeds

The proceeds of a minor's settlement can be disbursed in the following three ways:

a. To the Clerk of Superior Court

The simplest and most conservative approach to the disbursement of the settlement funds is to have them paid into the Clerk of Court for the county in which the Judgment was approved. *See*, N.C. Gen. Stat. §35A-1227. When this is done, the Clerk invests the funds for the benefit of the minor child in very secure conservative investments. The investment then grows until the child reaches the age of 18, at which time the minor may apply for receipt of the funds upon proof that he or she has obtained the age of 18 years.

The Clerk is authorized to disburse the funds "at such time or times as in his judgment is in the best interest of the child...." N.C. Gen. Stat. § 7A-111(a) (2008). Before making a disbursement, the Clerk must determine that the parents or legal guardian(s) are financially unable to provide necessities and that the child is in need of maintenance and support or other necessities, such as education. *Id.*

This method eliminates the need to obtain a bond, to monitor the investments, and to complete an annual accounting. The Clerk will charge a fee for these services pursuant to N.C. Gen. Stat. § 7A-308.1 (2008).

b. Invested in an annuity pursuant to a structured settlement.

When the settlement contemplates the purchase of an annuity, there are no funds to be deposited. Instead, the attorney or parent of the minor will receive a copy of the annuity contract. Some superior court judges may not approve of a structured settlement unless they are satisfied that the insurance company which issued the annuity is sound, or that there is an additional surety behind the annuity contract. It is therefore recommended that if the insurance company issuing the annuity is not a well known company, counsel should be prepared to provide the credit rating from Standard and Poor's or other credit rating agencies.

c. To a guardian of the child's estate.

If a parent or a financial advisor is to be the guardian of a minor's estate for the purpose of investing settlement funds, that person must be appointed by the Clerk of Court and bonded under N.C. Gen. Stat. § 35A-1230 and § 35A-1231. When the funds are to be paid to a guardian, the judgment approving the settlement should reflect that the payment of the minor's funds should be made directly to the Clerk of Court and that the Clerk should hold the funds for payment to the guardian upon appointment. The judgment may also direct that the funds be paid directly to the guardian if the person has already been appointed.

You may then arrange to have the insurance company's agent appear with you and the guardian at the Clerk's office for the appointment of a guardian. At that time, the bond can be issued and all of the paperwork can be completed. The premium for the bond can be paid from the minor's funds. In the case of a small estate, the Clerk may waive the bond requirement.

Once the guardian of the minor's estate has been appointed, his or her powers are delineated in N.C. Gen. Stat. §35A-1252. Generally, this includes investing the assets of the ward in a reasonable and prudent manner. Also, this would include the payment on the ward's behalf of any necessary expenses incurred in handling the settlement funds. You must stress to the guardian of the estate that the child's funds may not be used to pay for the child's ongoing needs, because that is a parental obligation. In addition, court approval should always be obtained before expenditures are made from estate principal.

III. CONCLUSION

Settlements involving minors require a little extra work than the typical case. This manuscript was drafted in order to provide essential skills needed for obtaining judicial approval of a minor settlement. Please feel free to use the forms which have been included in the appendix.

INDEX TO APPENDIX

Materials for the Appointment of a Guardian Ad Litem App. 1-4

Sample Settlement Forms #1 App. 5-15

Sample Settlement Forms #2 App. 16-37

Receipt, Motion to Stay Bond Requirement, and Order App. 38-40

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

JOHN SMITH and _____)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

PETITION FOR APPOINTMENT
OF GUARDIAN *AD LITEM*

To: Archie L. Smith, III
Clerk of Superior Court
Durham County

NOW COMES, John Smith, pursuant to Rule 17(b) of the North Carolina Rules of Civil Procedure, and petitions the Court to appoint a guardian *ad litem* to appear on behalf of Julia Smith, a minor, in a civil action to be filed against the above-named Defendant. In support of this Petition, Mr. Smith shows unto the Court as follows:

1. I am the grandfather and legal custodian of Julia Smith. A copy of the Order appointing me her legal custodian is attached hereto as Exhibit #1.
2. Julia was born on January 1, 1995 and she is presently 14 years old.
3. Julia is a minor without a general or testamentary guardian. Under law, she can only file a civil action by and through a guardian *ad litem* appointed by this Court.
4. Julia has a cause of action against the Defendant for negligence which arises from a motor vehicle collision on June 1, 2007.
5. On said date, Julia was injured when Defendant's motorcycle collided with her as she was crossing a street in Durham, North Carolina.

6. Attorney Bill Johnson is a fit and proper person to serve as guardian *ad litem* for Julia. Mr. Johnson has consented to this appointment as noted on Exhibit #2 which is attached hereto.

WHEREFORE, John Smith prays the Court to issue an Order which appoints attorney Bill Johnson to serve as the guardian *ad litem* for Julia Smith for the purpose of filing a civil action on her behalf against the Defendant noted in the caption above.

This the ____ day of February, 2008.

John Smith, as Legal Custodian for
Julia Smith, a Minor
100 Main Street
Durham, NC 27701

Sworn to and subscribed before me,
on this the ____ day of February, 2008.

Notary

My Commission Expires: _____

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

JOHN SMITH and _____)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

CONSENT TO APPOINTMENT
OF GUARDIAN AD LITEM

I, Bill Johnson, hereby state as follows:

1. I am a duly licensed attorney in the State of North Carolina.
2. I have been asked to serve as the guardian *ad litem* for Julia Smith, a minor, in the prosecution of a civil action on her behalf.
3. I have no financial interest in this civil action and I am a fit and proper person to serve as the minor's guardian *ad litem*.
4. I am willing to serve as her guardian *ad litem* and consent to the entry of an order appointing me to this position.

This the ____ day of February, 2008.

Bill Johnson
Attorney at Law
100 Courthouse Drive
Durham, North Carolina 27701
(919) 555-5555

Sworn to and subscribed before me,
on this the ____ day of February, 2008.

Notary
My Commission Expires: _____

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

JOHN SMITH and BILL JOHNSON)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

**ORDER APPOINTING
GUARDIAN AD LITEM**

THIS CAUSE coming on for hearing before the undersigned Clerk of Superior Court upon Verified Petition by John Smith for the appointment of a guardian *ad litem* to represent Julia Smith, a minor, in the filing of a civil action;

And it appearing to the Court that Julia Smith is a minor, having been born on January 1, 1995; that she has no general or testamentary guardian; that she has suffered personal injuries from the alleged negligent acts of another, that she is entitled to the appointment of a guardian *ad litem*; that attorney Bill Johnson is a fit and proper person qualified to serve as guardian *ad litem* and has consented to serve as such; and that therefore, the Petition shall be allowed.

IT IS THEREFORE ORDERED that Bill Johnson is hereby appointed guardian *ad litem* for Julia Smith and is authorized and directed to prosecute this civil action on her behalf.

This the _____ day of February, 2008.

Clerk of Superior Court

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08 CVS 111

JOHN SMITH and BILL JOHNSON)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

PETITION FOR APPROVAL
OF THE SETTLEMENT OF
THE MINOR PLAINTIFF'S CLAIM

NOW COME Plaintiffs, by and through their undersigned counsel of record, and hereby move the Court to issue a Judgment approving the minor Plaintiff's settlement in this action. In support of this Motion, Plaintiffs show unto the Court as follows:

1. This action arises out of a motor vehicle accident which occurred on June 1, 2007 in Durham County, North Carolina.
2. On said date, the minor Plaintiff was struck by a motorcycle driven by Defendant as she was crossing a street.
3. The minor Plaintiff suffered injuries as a result of the collision including a deformity to her right elbow which has required multiple surgeries. The injury also includes scarring to her right forearm.
4. Plaintiffs have alleged that these injuries occurred as a result of Defendant's negligence in crossing the center-line of the roadway and failing to stop or otherwise slow his vehicle after seeing the minor Plaintiff. Defendant has denied that he was negligent and has asserted the defense of contributory negligence. Plaintiffs have also denied that the minor Plaintiff was contributorily negligent and have asserted that, if a jury or court determined that she was

negligent, then Defendant had the last clear chance to avoid the collision.

5. The parties agreed to a settlement, subject to court approval on March 1, 2009, a week before this matter was set for trial. The terms of the settlement are reflected in the Settlement Agreement which is attached hereto as Exhibit #1.

6. As reflected in the Settlement Agreement a portion of the settlement is being structured to provide payments to the minor child beginning at the age of 18 and ending at the age of 30.

7. Attached hereto as Exhibits #2-3 respectively are the affidavits of Plaintiff's grandfather and legal custodian, John Smith, and the independent guardian *ad litem*, Bill Johnson. Mr. Smith and Mr. Johnson both believe that this settlement is in the best interests of the minor Plaintiff.

8. Plaintiffs were represented by Carlos E. Mahoney of Glenn, Mills, Fisher & Mahoney, P.A. During the course of representing the Plaintiffs in this personal injury action in which liability was contested, the attorney performed legal services which included drafting and filing pleadings, interviewing witnesses, submitting and responding to discovery, deposing four lay witnesses and two expert witnesses, defending two depositions, appearing at two mediated settlement conferences, and preparing for a week-long trial.

9. The contingency fee pursuant to the contract entered into with Plaintiff John Smith, on behalf of the minor Plaintiff, established a contingency fee of 1/3 of the total amount recovered. The contingency fee represents a reasonable fee for the legal services performed in this action taking into account the experience of counsel, the skill and legal expertise required in handling a contested personal injury claim, the inherent risk involved in representing a client on a contingency basis, the result achieved on behalf of the minor child, and the amount of time which has been expended.

10. The law firm of Glenn, Mills & Fisher, P.A. has advanced expenses on behalf of the Plaintiffs in the amount of \$5,000 as noted on the invoice attached hereto as Exhibit #4.

11. All parties consent to the entry of a Judgment rendered in chambers without requiring the parties to appear in open court for a hearing.

WHEREFORE, Plaintiff respectfully requests that the Court issue a Judgment which approves the settlement of this action as reflected on the settlement documents tendered to the Court and which approves all disbursements reflected therein, including the attorney's fees, reimbursement of expenses, and division of settlement proceeds between the minor Plaintiff and the structured settlement.

This the ____ day of _____, 2009.

Carlos E. Mahoney
Glenn, Mills Fisher & Mahoney, P.A.
Post Office Drawer 3865
Durham, North Carolina 27702-3865
(919) 683-2135
Attorney for Plaintiffs

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08 CVS 111

JOHN SMITH and BILL JOHNSON)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

AFFIDAVIT OF
GUARDIAN AD LITEM

NOW COMES Bill Johnson, being duly sworn and states the following:

1. I am an attorney practicing in Durham, North Carolina since 1979. During the course of my career I have represented plaintiffs in personal injury actions. I agreed to serve as an independent guardian *ad litem* for the minor child in this action for the purpose of exercising an independent judgment about the child's claim.

2. I have discussed this case with Carlos E. Mahoney, Plaintiffs' counsel in this cause. I am familiar with the facts of the case and the terms of the settlement.

3. I am in agreement with terms of the settlement which was reached. I believe that the settlement is in the best interest of the minor child and that this Court should approve the settlement.

4. I have reviewed the Petition for approval of this settlement and agree that a contingency fee of 1/3 of the total amount recovered is a reasonable and appropriate fee for the legal services performed in connection with the prosecution of this contested personal injury claim. I have also reviewed the Invoice of Expenses and find them to be reasonable expenses.

5. I waive any right to appear in open court for a hearing on the settlement of this minor's claim.

This the ____ day of _____, 2009.

Bill Johnson

Sworn to and subscribed before me,
on this the ____ day of _____, 2009.

Notary

My Commission Expires: _____

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08 CVS 111

JOHN SMITH and BILL JOHNSON)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

AFFIDAVIT OF JOHN SMITH

NOW COMES John Smith being duly sworn, and provides the following information in support of the Petition for Approval of the Settlement of the Minor Plaintiff's Claim:

1. I am a Plaintiff in this action. I am the grandfather and legal custodian of Julia Smith who was born on January 1, 1995. At the time of this settlement, Julia is 14 years old. I reside in Durham, North Carolina with Julia and her sister.

2. I have followed the course of this litigation closely and been fully advised by my attorney, Carlos E. Mahoney of Glenn, Mills, Fisher & Mahoney, P.A., as to the status of the proceedings. I was present at the mediated settlement conference on December 1, 2008 at the offices of Glenn, Mills, Fisher & Mahoney, P.A. in Durham, North Carolina. The parties were not able to reach a settlement at that time.

3. Mr. Mahoney continued to prepare the case for trial and took depositions of lay and expert witnesses. This matter was then settled at a second mediation on March 1, 2009, subject to the court's approval, one week before the scheduled trial.

4. I have reviewed the Settlement Agreement attached hereto. I am satisfied with the settlement.

5. I am familiar with the terms of the following documents which are attached hereto. I have had the opportunity to review them with my attorney and I am satisfied that the execution of the documents and court approval of this settlement are in the best interests of my granddaughter, Julia Smith.

- a. Release and Settlement Agreement (Exhibit A);
- b. Judgment Approving Settlement (Exhibit B);
- c. Voluntary Dismissal with Prejudice (Exhibit C);

6. I, as the legal custodian of Julia, pursued a claim for the recovery of the medical expenses which I incurred as a result of the injuries that Julia suffered in the collision. I have chosen to waive and release my claims and I understand that I will recover nothing from this civil action.

7. I am familiar with the extraordinary efforts made by Mr. Mahoney. This case involved gathering evidence from lay and expert witnesses. I am pleased with the attention which he gave to me and to my child's claim and believe that the 1/3 contingency fee is reasonable and appropriate. I request that the court approve the settlement and award of attorney's fees.

8. I waive the right to make an appearance in open court for the purpose of holding a hearing on the settlement of the claim of my minor child. I appreciate the court's accommodation of our need to gain court approval of this claim without the necessity of appearing in court.

This the ____ day of _____, 2009.

John Smith

Sworn to and subscribed before me,
on this the ____ day of _____, 2009.

Notary
My Commission Expires: _____

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08 CVS 111

JOHN SMITH and BILL JOHNSON)
as Guardian Ad Litem for)
Julia Smith, a Minor,)
)
Plaintiffs,)
)
vs.)
)
CHRISTOPHER ADAMS,)
)
Defendant.)

JUDGMENT APPROVING
MINOR'S SETTLEMENT

THIS CAUSE coming on to be heard and being heard before the Senior Resident Judge presiding over the Durham Civil Superior Court. It appearing to the Court that all matters in controversy between the parties have been agreed upon and settled subject to the approval of the court because Julia Smith is a minor; it further appearing that the parties have agreed that the Court may consider this settlement based upon the Petition and exhibits attached thereto; and having considered the materials and the record proper, the Court finds the following facts:

1. This action arises out of a motor vehicle accident between Defendant's motorcycle and Julia Smith, a minor, on June 1, 2007.
2. The minor Plaintiff's injury from the accident includes a deformity to her right elbow which has required multiple surgeries. The injury also includes scarring to her right forearm.
3. Plaintiffs have alleged that the minor Plaintiff's injuries resulted from Defendant's negligence. Defendant has denied that he was negligent and asserted that the minor Plaintiff was contributorily negligent. Plaintiffs also denied that the minor Plaintiff was negligent and asserted the doctrine of last clear chance.

4. The parties agreed to a settlement, subject to court approval on March 1, 2009, a week before this matter was set for trial. The terms of the settlement are reflected in the Settlement Agreement attached hereto as Exhibit #1.

5. As reflected in the Settlement Agreement a portion of the settlement is being structured to provide payments to the minor child beginning at the age of 18 and ending at the age of 30.

6. This court has reviewed the Petition for Approval filed by attorney Carlos E. Mahoney, the Affidavit of John Smith, and the Affidavit of the independent guardian *ad litem*, Bill Johnson.

7. The Plaintiffs were represented by Carlos E. Mahoney of Glenn, Mills, Fisher & Mahoney, P.A. During the course of representing the Plaintiffs in this contested personal injury action, the attorney performed legal services, drafted pleadings, conducted extensive discovery, attended two mediated settlement conferences, and prepared for a week-long trial. The contingency fee pursuant to the contract entered into with the Plaintiff, John Smith, on behalf of the minor child establishes a 1/3 contingency fee. The contingency fee represents a reasonable fee for the legal services performed in this action taking into account the experience of Plaintiff's counsel, the skill and legal expertise required in handling this civil action, the inherent risk involved in representing a client on a contingency basis, the result achieved on behalf of the minor child, and the amount of time which has been expended.

8. The court finds as a fact that the expenses incurred and advanced by the Plaintiffs' attorneys are reasonable and the law firm of Glenn, Mills & Fisher, P.A. should be reimbursed in the amount of \$5,000.

9. The contingency fee contract entered into by Plaintiffs and Mr. Mahoney provided for the payment of 1/3 of the total amount recovered as attorney's fees. This Court finds

the contingency fee agreement to be reasonable and therefore approves the payment of that fee.

10. As indicated by the signatures below, all parties having an interest in this settlement have concurred in the settlement and consent to the entry of this Judgment. A portion of the settlement is being disbursed to the minor child pursuant to a structured settlement which provides that the first payment will be made when Julia Smith reaches the age of 18 and the last payment will be made when she reaches the age of 30. This Court finds the settlement to be in the best interest of the minor child.

Based upon the foregoing Findings of Fact, the court makes the following Conclusions of Law:

The settlement of this minor's claim has been consented to by all parties having an interest in this settlement. The reimbursement of the advanced expenses, the payment of attorney's fees and the amount of the settlement as set forth in the Settlement Agreement are fair and reasonable and this Court concludes that it is in the best interests of the minor Plaintiff that the settlement be approved.

Based upon the foregoing, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

1. The Settlement Agreement presented to this court as Exhibit #1 of the Petition for Approval is hereby approved.
2. All parties are directed to take such actions as necessary to consummate the Settlement Agreement by the purchase of the structured settlement and the payment of funds to Plaintiffs' counsel, pursuant to the terms of the Settlement Agreement.
3. It is FURTHER ORDERED that after the purchase of the necessary annuities to fund the structured portion of the settlement, that the defendants disburse the remaining settlement proceeds, in the amount of \$ 50,000 directly to Carlos E. Mahoney, counsel for Plaintiffs. Mr.

Mahoney is hereby ordered to disburse those funds from the trust account of Glenn, Mills, Fisher & Mahoney, P.A. as follows:

a. \$5,000 to Glenn, Mills, Fisher & Mahoney, P.A. as reimbursement of advanced costs.

b. \$45,000 to Glenn, Mills, Fisher & Mahoney, P.A. as payment of attorney's fees

4. Defendants shall purchase the necessary annuity and pay the remaining settlement proceeds to Mr. Mahoney within ten (10) business days of the entry of this Judgment.

This the _____ day of _____, 2009.

Senior Resident Superior Court Judge

WE CONSENT:

Carlos E. Mahoney,
Counsel for Plaintiffs

Ryan Wilson,
Counsel for Defendant

John Smith, Legal Custodian for
Julia Smith

Bill Johnson
Guardian *ad litem*

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 07 CVS 555

RICHARD JONES and BILL WILSON)
as Guardian Ad Litem for)
Alexa Jones, a Minor,)
)
Plaintiffs,)
)
vs.)
)
JOHN RICHARDSON,)
)
Defendant.)

PETITION TO APPROVE
THE MINOR PLAINTIFF'S
SETTLEMENT

NOW COME Plaintiffs, by and through their undersigned counsel of record, and hereby move the Court to issue a Judgment approving the minor Plaintiff's settlement in this action. In support of this Motion, Plaintiffs show unto the Court as follows:

1. This action arises out of a motor vehicle accident which occurred on April 1, 2006 in Durham County, North Carolina.
2. On said date, the minor Plaintiff was struck by a vehicle driven by Defendant as she was riding her bicycle along Roxboro Road.
3. As a result of the accident, the minor Plaintiff suffered serious personal injuries including but not limited to a fractured femur on her right and left legs and a closed head injury.
4. The minor Plaintiff has experienced significant pain and suffering, headaches and fatigue, and she has permanent scarring along her right and left legs.
5. On June 1, 2007, Plaintiffs filed a Complaint for negligence against Defendant.
6. In the Complaint, the minor Plaintiff asserted claims for pain and suffering, scarring, and permanent injury and her father, Plaintiff Jones, asserted a claim for medical expenses.

7. On or about August 1, 2007, Defendant filed an Answer which denied the allegations of negligence and asserted various affirmative defenses including contributory negligence and sudden emergency.

8. On August 15, 2007, Plaintiffs filed a Reply which denied that the minor Plaintiff was negligent and asserted the doctrine of last clear chance.

9. On September 8, 2008, the Honorable Samuel Williamson issued an Order allowing the State of North Carolina, Department of Health and Human Services, Division of Medical Assistance (hereinafter referred to as "DMA") to intervene in this action as a Plaintiff-Intervenor.

10. DMA intervened in this action for the purpose of pursuing its assigned claim for medical expenses against Defendant.

11. The parties have agreed to the following settlement subject to court approval:

- a. Defendant will pay Medicaid \$20,000.00 in full and final satisfaction of its lien and claim for medical expenses;
- b. Defendant will pay Plaintiff Bill Wilson, as guardian ad litem for the minor Plaintiff \$80,000.00 in full and final satisfaction of Alexa's personal injury claims which includes the purchase of an annuity in the amount of \$50,000.00 from Mutual Life Insurance Company;
- c. Plaintiff Jones will waive his claim for medical expenses; and,
- d. Plaintiffs and DMA will execute a general release in favor of Defendant and the parties will file a stipulation of dismissal with prejudice of this action.

12. Defendant's liability insurance carrier will contribute \$30,000.00 toward this settlement and Defendant will contribute \$70,000.00 from his personal assets.

13. All of the terms of the settlement are reflected in the Release and Settlement Agreement which is attached hereto as Exhibit #1.

14. The proposed settlement is fair and reasonable in light of the contested liability, the nature and extent of the minor Plaintiff's injuries, the amount of insurance coverage available, the Defendant's ability to satisfy an excess judgment, and the amount that the minor Plaintiff will receive as a result of the settlement.

15. If this settlement is approved, \$5,000.00 will be paid to Plaintiff Jones as Guardian of the minor Plaintiff's Estate. This sum will be deposited in a bank under a receipt and agreement issued by the Clerk of Superior Court in Durham County file #08-E-900.

16. Another portion of her settlement, an amount totaling \$50,000, will be structured to provide monthly payments to her beginning at the age of 18 and ending at the age of 38.

17. Plaintiff Jones and Plaintiff Wilson will appear before the Court in support of this Petition. Both individuals will testify that the settlement is fair, reasonable, and in the best interests of the minor Plaintiff.

18. Plaintiffs were represented in this case by Carlos E. Mahoney of the law firm Glenn, Mills, Fisher & Mahoney, P.A.

19. Mr. Mahoney has executed an Affidavit which sets forth his qualifications and describes the work which he performed in his representation of the Plaintiffs. This Affidavit is attached hereto as Exhibit #2.

20. Mr. Mahoney has spent 75.00 hours of time representing the Plaintiffs in this civil action. He has also expended 25.0 hours representing the minor Plaintiff in a Federal declaratory judgment action which challenges the legality of a Medicaid lien that was asserted on the minor Plaintiff's case. Mr. Mahoney's customary hourly fee for legal services is \$200.00, which is reasonable and consistent with the fees charged by other attorneys in Durham County with similar training and experience.

21. The contract of employment between Plaintiff Jones, as the father of the minor Plaintiff, and Glenn, Mills, Fisher & Mahoney, P.A. provided for a contingency fee of 1/3 of the total amount recovered in this action.

22. In light of the experience of counsel, the skill and legal expertise required in the handling of this claim, the inherent risk involved in representing a client on a contingency basis, the result achieved on behalf of the minor Plaintiff, and the amount of time which has been and will be expended, Mr. Mahoney requests \$20,000 for the attorney's fees, 1/4 of the minor Plaintiff's recovery.

23. The law firm of Glenn, Mills, Fisher & Mahoney, P.A. has advanced expenses on behalf of the Plaintiffs in the amount of \$3,000.00 as noted on the invoice attached hereto as Exhibit #3.

24. These expenses were reasonably necessary to prosecute the minor Plaintiff's claims for relief against Defendant and to file the Federal declaratory judgment action.

25. Plaintiff Wilson has expended ten hours of time in his service as guardian ad litem. Mr. Wilson's hourly rate for serving as guardian ad litem is \$200.00, which is reasonable and consistent with the guardianship fees charged by other attorneys in Durham County with similar training and experience. Mr. Kline requests a total fee in the amount of \$2,000.00.

WHEREFORE, Plaintiffs respectfully request that the Court issue a Judgment which approves the settlement of this action as reflected in the Release and Settlement Agreement, approves the disbursements recited above, allows the parties to file a Stipulation of Dismissal with Prejudice of this action, and grants such further relief as may be deemed just and proper

This the ____ day of March, 2009.

Carlos E. Mahoney
Glenn, Mills, Fisher & Mahoney, P.A.
Post Office Drawer 3865
Durham, North Carolina 27702-3865
(919) 683-2135
Counsel for Plaintiffs

STATE OF NORTH CAROLINA

DURHAM COUNTY

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (“Release”) is entered into by and between Bill Wilson in his capacity as Guardian ad Litem for Alexa Jones (hereinafter referred to as the “minor Plaintiff”), RICHARD JONES, individually and as father of Alexa (hereinafter referred to as “Plaintiff Jones”), JOHN RICHARDSON (hereinafter referred to as “Defendant”), ACME MUTUAL INSURANCE COMPANY (hereinafter referred to as “Acme”), and NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE (hereinafter referred to as “DMA”).

I. RECITALS:

- a. The minor Plaintiff was born on February 1, 1998 and she is presently eleven (11) years old. Plaintiff Jones is the father of the minor Plaintiff.
- b. The minor Plaintiff was injured on April 1, 2006 in an automobile accident with a vehicle owned and operated by Defendant on Roxboro Road in Durham County, North Carolina.
- c. The minor Plaintiff incurred personal injuries and Plaintiff Jones incurred medical expenses which were paid in part by DMA as a consequence of said automobile accident.
- d. On June 1, 2007, the minor Plaintiff (by and through Bill Wilson as her Guardian ad Litem) and Plaintiff Jones filed a Complaint for negligence against Defendant in Durham County file number 07 CVS 555 (hereinafter referred to as the “Pending Action”).
- e. On September 8, 2008, the Honorable Samuel Williamson allowed DMA to intervene in the Pending Action so that it could pursue its assigned cause of action for medical expenses against Defendant.

f. Acme, which provides insurance coverage for the vehicle owned and operated by Defendant, and Defendant have compromised and settled the claim of the minor Plaintiff for her personal injuries and pain and suffering, any claims by Plaintiff Jones for medical expenses, lost earnings and/or lost services arising from the injuries to the minor Plaintiff whether said claims were or could have been asserted in the Pending Action, and the assigned claim of DMA for medical expenses.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged by the undersigned parties, it is hereby agreed as follows:

II. RELEASE AND DISCHARGE:

a. In consideration of cash and future periodic payments having a combined present value of the sum of ONE HUNDRED FIVE THOUSAND AND 00/100 DOLLARS (\$105,000.00), comprised of a payment in the amount of THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00) by Acme and a payment of SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) by Defendant, in satisfaction of the minor Plaintiff's claims for personal injury and in satisfaction of DMA's assigned claim for medical expenses, the undersigned, Bill Wilson in his capacity as Guardian ad Litem for the minor Plaintiff and DMA fully discharge and release Defendant, Acme, their agents, representatives, assigns and successors of any and all past, present and future claims arising out of the accident which occurred on or about April 1, 2006, and on account of which the Pending Action was instituted in Durham County, North Carolina.

b. For good and valuable consideration, none of which is monetary compensation, Plaintiff Jones fully discharges and releases Defendant, Acme, their agents, representatives, assigns and successors of any and all past, present and future claims, including his claims for

medical expenses, arising out of the accident alleged in the Pending Action.

c. In addition, DMA fully discharges and releases Bill Wilson in his capacity as Guardian ad Litem for the minor Plaintiff, Plaintiff Jones, their agents, representatives, assigns and successors of any and all past, present and future claims for medical expenses arising out of the accident alleged in the Pending Action, whether said claim accrued by right of assignment, subrogation, reimbursement, lien, or otherwise.

d. This Release shall apply to all claims, damages, or injuries, whether known, disclosed or manifested presently or in the future on the part of Alexa Jones, Richard Jones, and DMA and shall be a full, binding and complete settlement between the parties and their heirs, successors, and assigns.

III. PAYMENTS:

a. In consideration of the release set forth above, the following payments will be made by Acme and Defendant within ten (10) days following court approval of this settlement:

\$55,000.00 payable to “Bill Wilson, Individually and as Guardian ad Litem for Alexa Jones” and “Glenn, Mills, Fisher & Mahoney, P.A.”

b. Upon receipt of the payment set forth in the preceding paragraph (IIIa.), Glenn, Mills, Fisher & Mahoney, P.A. will deposit the \$30,000 into the Glenn, Mills, Fisher & Mahoney, P.A. IOLTA trust account and will issue, within ten (10) days following deposit, the court-approved disbursements, including a check in the amount of \$25,000.00 payable to “North Carolina Department of Health and Human Services, Division of Medical Assistance.”

c. In consideration of the release set forth above, Defendant, through an assignment to Mutual Assignment Company (hereinafter referred to as the “Assignee”), also agrees to make the payments outlined below:

Periodic payments to Alexa Jones (Referred to below as either the “minor Plaintiff” or the “Payee”) beginning 2/1/2016, \$500.00 per month for 240 payments guaranteed through 1/1/2036.

d. The periodic payments set forth in the preceding paragraph (IIIc.) will be assigned to the Assignee and funded through the purchase of an annuity contract issued by Mutual Life Insurance Company which will be purchased for \$50,000 by Defendant on or before June 1, 2009.

e. All of the periodic payments, as set forth herein, constitute damages on account of personal, physical injuries, arising from an occurrence within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

f. Upon receipt of the payments and the purchase of the annuity noted in the preceding paragraphs, a Stipulation of Dismissal with Prejudice shall be filed by Plaintiffs in the Pending Action. The Stipulation shall be in the form attached hereto as Exhibit A.

IV. PERIODIC PAYMENTS (STRUCTURED SETTLEMENT):

a. The parties to this Release acknowledge and agree that Defendant may make a qualified assignment within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of Defendant’s liability to make the periodic payments required herein. Any such assignment, if made, shall be accepted by the minor Plaintiff without a right of rejection and shall completely release and discharge Defendant from such obligation hereunder as are assigned to the Assignee. The minor Plaintiff recognizes that, in the event of such an assignment, the Assignee shall be their sole obligor with respect to the obligations assigned, and that all other releases that pertain to the liability of Defendant shall thereupon become final, irrevocable, and absolute. If the liability to make the periodic payments is assigned by way of a Qualified Assignment:

(A) Periodic payments from the Assignee cannot be accelerated, deferred, increased, or decreased by the minor Plaintiff or any payee;

(B) The Assignee's obligation for payment of the periodic payments is no greater than the obligation of the person originally liable (whether by suit or agreement) for payment and from whom the obligation was assigned.

b. The periodic payments cannot be accelerated, deferred, increased, or decreased by the minor Plaintiff or any payee, nor shall the minor Plaintiff or any payee have the power to sell or mortgage or encumber the same, or any part thereof, nor anticipate the same, or any part hereof, by assignment or otherwise.

c. Defendant and/or Assignee reserve the right to fund its liability to make periodic payments through the purchase of an annuity policy from Mutual Life Insurance Company. Defendant and/or Assignee shall be the owner of the Annuity policy and shall have all the rights of ownership. Defendant and/or Assignee may have Mutual Life Insurance Company mail payments directly to the Payee. The minor Plaintiff shall be responsible for maintaining the currency of her proper mailing address and mortality information to Mutual Life Insurance Company.

d. Any payments to be made after the death of the Payee, pursuant to the terms of this Release, shall be made to such person or entity as shall be designated in writing by the Payee to the Defendant or Assignee. If no such person or entity is so designated by the Payee, then the payments shall be made to the Estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to Defendant or the Assignee. The designation must be in a form acceptable to Defendant or the Assignee.

e. The obligation of Defendant or the Assignee to make each installment payment shall be discharged upon the mailing by the payor of a valid check in the amount of the periodic payment to the address designated by the party to whom the payment is required to be made under

this Release.

f. All sums paid pursuant to this Structured Settlement constitute damages on account of personal injuries or sickness arising from physical injuries that resulted from the allegations made in the Pending Action and no portion of the proceeds paid under this Structured Settlement represent exemplary or punitive damages nor pre-judgment or post-judgment interest.

g. All parties to this Release agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Release and which are not inconsistent with its terms.

V. LIENS OR OTHER RIGHTS OF RECOVERY:

a. Upon receipt of the payment noted in paragraph IIIb. above, DMA's right of subrogation under G.S. §108A-57 and right of assignment under G.S. §108A-59 shall be satisfied in full and DMA shall not be entitled to assert or recover any further payments arising from the accident in the Pending Action.

b. Within five (5) days following DMA's receipt of the payment under this Release, a Stipulation of Dismissal with Prejudice shall be filed by Bill Wilson as Guardian ad Litem for the minor Plaintiff in Wilson as Guardian ad Litem for A.J., a Minor, vs. Carmen Hooker Odom, in her official capacity as Secretary of the North Carolina Department of Health and Human Services and John Richardson, Case No. 1:08CV700 (M.D.N.C.).

c. Plaintiffs warrant that there are no other existing liens or rights of recovery for medical, surgical, hospital, physical therapy, mental or emotional therapy, occupational therapy, prescription and non-prescription drugs, and any other expenses related to treatment for injuries and other consequences of the accident alleged in the Pending Action, and any alleged resulting personal injuries to the minor Plaintiff.

d. If however, it is determined at a later date that there are other existing liens or rights of recovery for medical, surgical, hospital, physical therapy, mental or emotional therapy, occupational therapy, prescription and non-prescription drugs, and any other expenses related to treatment for injuries and other consequences of the accident alleged in the Pending Action, Bill Wilson and Plaintiff Jones will direct the attorneys acting on behalf of minor Plaintiff to satisfy from the payment recited above, all such claims or liens; and further, Bill Wilson and Plaintiff Jones will indemnify and hold Defendant, Acme, their heirs, successors, and assigns harmless of and from any and all such claims and liens or actions to enforce said claims and liens.

VI. NO ADMISSION OF LIABILITY:

The payments made pursuant to this Release are not an admission of liability and are made solely for the purpose of terminating the dispute and litigation between the parties.

VII. ENTIRE AGREEMENT:

This Release contains the entire agreement between the parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, heirs, successors and assigns of the parties hereto.

VIII. NO FURTHER REPRESENTATIONS:

It is expressly warranted that no further representations, promises, or inducements have been offered except as herein set forth; that this Release is executed without reliance upon any settlement or representation of the person or parties released or their representatives concerning the nature and extent of the injuries, damages and/or legal liability therefore, and that acceptance of the consideration set forth herein is in full accord and satisfaction of a disputed claim for which liability is expressly denied.

IX. GOVERNING LAW:

This Release shall be construed and interpreted in accordance with the laws of the State of North Carolina.

X. UNDERSTANDING OF TERMS:

By signing this Release, each party acknowledges that they have read this Release carefully before signing, and are signing the Release voluntarily and with full knowledge and understanding of the terms and contents.

Signed, sealed and effective this _____ day of _____, 2009.

Bill Wilson, as Guardian ad Litem for
Alexa Jones, a Minor

Richard Jones, Individually and as the
Father of Alexa Jones, a Minor

John Richardson

Acme Mutual Insurance Company

By: _____
Name and Title

North Carolina Department of Health and
Human Services, Division of Medical
Assistance

By: _____
Name and Title

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 07 CVS 555

RICHARD JONES and BILL WILSON)
as Guardian Ad Litem for)
Alexa Jones, a Minor,)
)
Plaintiffs,)
)
vs.)
)
JOHN RICHARDSON,)
)
Defendant.)

AFFIDAVIT OF
CARLOS E. MAHONEY

NOW COMES Carlos E. Mahoney, being first duly sworn, and deposes and says as follows:

1. I am over the age of 18. I am a citizen and resident of Durham County, North Carolina.
2. I am competent to give this affidavit and I do so based upon my own personal knowledge.
3. I have represented the Plaintiffs in this action.
4. I am an attorney licensed to practice law in North Carolina and have been so licensed since 1999.
5. Following my admission to the State Bar, I have practiced law with Glenn, Mills, Fisher & Mahoney, P.A. in Durham, North Carolina. I was an associate from September 1999 through the end of 2003 and have been a partner at the firm since January, 2004.
6. Since my admission to the North Carolina Bar, I have devoted nearly 100% of my legal practice to civil litigation. I have tried eighteen civil actions before a jury as either solo, lead or second counsel and I have taken testimony in approximately 85 contested civil cases.

7. I have represented the Plaintiffs since November, 2006.

8. In the course of my legal representation, I have provided legal advice to the Plaintiffs, interviewed witnesses, drafted legal pleadings, drafted and reviewed discovery requests and responses, deposed the Defendant, defended Alexa's deposition, conducted legal research, and attended two mediated settlement conferences.

9. I have also prepared and filed on Alexa's behalf a Federal lawsuit against the North Carolina Department of Health and Human Services in order to determine the validity of the Department's alleged Medicaid lien on Julia's settlement proceeds.

10. I have spent 75.0 hours of time representing the Plaintiffs in this civil action. I have also expended 25.0 hours representing the minor Plaintiff in the Federal lawsuit. My time sheet is attached hereto.

11. My customary hourly rate for legal services is \$200.00. My legal rate is reasonable and consistent with the fees charged by other attorneys in Durham County with similar training and experience.

12. The contract of employment between Alexa's father, Richard Jones, and my law firm provided for a contingency fee of 1/3 of the total amount recovered in this action.

13. In light of my legal experience, the skill and legal expertise involved in the handling of this case as well as the Federal action, the inherent risk involved in representing a client on a contingency basis, the result which I achieved on behalf of the minor Plaintiff, and the amount of time which has been and will be expended, I request a contingency fee of 1/4 of the total amount recovered by Alexa, a sum totaling \$20,000.00.

14. My law firm has advanced expenses on behalf of the Plaintiffs in the amount of \$3,000.00. These expenses were for filing fees, deposition expenses, the second mediation, copying charges, medical records, and CourtSearch records.

15. These expenses were reasonably necessary to properly represent the Plaintiffs.

IN TESTIMONY WHEREOF, the Affiant does hereunto set his hand and seal.

Carlos E. Mahoney
N.C. State Bar No. 26509

Sworn to and subscribed before me
this ____ day of March, 2009.

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 07 CVS 555

RICHARD JONES and BILL WILSON)
as Guardian Ad Litem for)
Alexa Jones, a Minor,)
)
Plaintiffs,)
)
vs.)
)
JOHN RICHARDSON,)
)
Defendant.)

JUDGMENT APPROVING
MINOR'S SETTLEMENT

THIS MATTER coming on for hearing before the undersigned Superior Court Judge Presiding upon petition by Plaintiffs to approve the minor Plaintiff's settlement.

It appearing to the Court that all matters in controversy between the parties have been agreed upon and settled subject to the approval of the Court because Alexa Jones (hereinafter referred to as the "minor Plaintiff") is a minor, and having considered Plaintiffs' Petition to Approve the Minor Plaintiff's Settlement and all exhibits attached thereto, the arguments of counsel, and the record proper, the Court finds as follows:

1. This action arises out of a motor vehicle accident between Defendant and the minor Plaintiff on April 1, 2006.
2. As a result of the accident, the minor Plaintiff suffered serious personal injuries including but not limited to a fractured femur on her right and left legs and a closed head injury.
3. The minor Plaintiff has experienced significant pain and suffering, headaches and fatigue, and she has permanent scarring along her right and left legs.
4. On June 1, 2007, Plaintiffs filed a Complaint for negligence against Defendant.

5. In the Complaint, the minor Plaintiff asserted claims for pain and suffering, scarring, and permanent injury and her father, Plaintiff Richard Jones (hereinafter referred to as "Plaintiff Jones"), asserted a claim for medical expenses.

6. On or about August 1, 2007, Defendant filed an Answer which denied the allegations of negligence and asserted various affirmative defenses including contributory negligence and sudden emergency.

7. On August 15, 2007, Plaintiffs filed a Reply which denied that the minor Plaintiff was negligent and asserted the doctrine of last clear chance.

8. On September 8, 2008, the Honorable Samuel Williamson issued an Order allowing the State of North Carolina, Department of Health and Human Services, Division of Medical Assistance (hereinafter referred to as "DMA") to intervene in this action as a Plaintiff-Intervenor.

9. The parties have agreed to a settlement of all matters in controversy between them subject to court approval. The terms of the settlement are reflected in the Release and Settlement Agreement which is attached hereto as Exhibit #1.

10. Pursuant to the settlement, Defendant will pay the minor Plaintiff \$30,000.00, will pay \$50,000.00 to Mutual Assignment Company to fund an annuity issued by Mutual Life Insurance Company which will provide future periodic payments to the minor Plaintiff, and will pay DMA \$25,000.00. The total settlement consists of a payment by Defendant's liability insurer of the limits of its coverage in the amount of \$30,000.00 and a payment by Defendant of an additional \$75,000.00 from his personal assets.

11. The minor Plaintiff's settlement is fair and reasonable in light of the contested liability, the nature and extent of the minor Plaintiff's injuries, the amount of insurance coverage available, the Defendant's ability to satisfy an excess judgment, and the amount that the minor

Plaintiff will receive as a result of the settlement.

12. The minor Plaintiff's settlement is for her pain and suffering, scarring, and permanent injury due to the accident.

13. None of the settlement compensates Plaintiff Jones for his claim for medical expenses.

14. The settlement satisfies DMA's assigned claim for medical expenses against Defendant and extinguishes any claim for subrogation that it may have against the minor Plaintiff's settlement.

15. A portion of the minor Plaintiff's settlement, an amount totaling \$50,000.00, will be structured to provide monthly payments to the minor Plaintiff beginning at the age of 18 and ending at the age of 38. The annuity for the structured settlement will be purchased by the Defendant from Mutual Life Insurance Company.

16. The minor Plaintiff's remaining settlement funds, an amount totaling \$5,000.00, will be given to the Guardian of the minor Plaintiff's Estate for deposit with a bank under a receipt and agreement issued by the Clerk of Superior Court.

17. The total amount of the settlement reasonably compensates the minor Plaintiff for her personal injuries due to the accident with Defendant.

18. Plaintiffs were represented in this action by Carlos E. Mahoney of the law firm Glenn, Mills, Fisher & Mahoney, P.A. During the course of his representation, Mr. Mahoney performed necessary legal services such as providing legal advice to the Plaintiffs, interviewing witnesses, drafting legal pleadings, drafting and reviewing discovery requests and responses, deposing the Defendant, defending the minor Plaintiff's deposition, conducting legal research, and attending two mediated settlement conferences. Mr. Mahoney has also prepared and filed, on the minor Plaintiff's behalf, a Federal declaratory judgment action against DMA concerning a

disputed Medicaid lien.

19. Plaintiffs' counsel has requested a contingency fee in the amount of 1/4 of the minor Plaintiff's recovery for his legal representation in this case, an amount totaling \$20,000.

20. The contingency fee represents a fair and reasonable fee for the legal services performed on behalf of the minor Plaintiff taking into account the experience of counsel, the skill and legal expertise involved in the handling of this case and the Federal action, the inherent risk involved in representing a client on a contingency basis, the result achieved on behalf of the minor Plaintiff, and the amount of time which has been expended.

21. Plaintiffs' counsel has also requested reimbursement of the expenses which were incurred and advanced by his law firm, an amount totaling \$3,000.00.

22. The expenses which were incurred and advanced by Plaintiffs' counsel are reasonable.

23. Bill Wilson has expended ten hours of time representing the minor Plaintiff as her Guardian ad litem. Mr. Kline is seeking compensation in the amount of \$2,000.00 for his guardianship.

24. The compensation sought by the minor Plaintiff's Guardian ad litem is fair and reasonable.

25. The settlement and the proposed disbursements are fair, reasonable, and in the best interests of the minor Plaintiff.

26. The minor Plaintiff's settlement will be approved.

27. The proposed disbursements from the settlement, including the payment of attorney's fees, legal expenses, and a Guardian ad litem's fee, will be approved.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Petition to Approve the Minor Plaintiff's Settlement is hereby APPROVED. The parties are permitted to execute the Release and Settlement Agreement and to make the following payments:

1. Purchase of an annuity from Mutual Life Insurance Company in the amount of \$50,000.00 on behalf of the minor Plaintiff;
2. Payment to Plaintiff Jones, as Guardian of the minor Plaintiff's Estate, in the amount of \$5,000.00;
3. Payment to DMA in the amount of \$25,000.00;
4. Payment to Glenn, Mills, Fisher & Mahoney, P.A. an attorney's fee in the amount of \$20,000.00 and reimbursed legal expenses in the amount of \$3,000.00; and,
5. Payment to Bill Wilson of a Guardian ad litem's fee in the amount of \$2,000.00.

Upon purchase of the necessary annuity and receipt of the payments, the parties shall execute and file a Stipulation of Voluntary Dismissal with Prejudice of all claims that have been asserted in this civil action.

This the ____ day of March, 2009.

Superior Court Judge Presiding

WE CONSENT:

Carlos E. Mahoney,
Counsel for Plaintiffs

Stella Ferguson
Counsel for Defendant

Ray Shelby
Counsel for DMA

Richard Jones, Individually and as
Legal Custodian for the minor Plaintiff

Bill Wilson as Guardian ad litem for the
minor Plaintiff

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
FILE NO. 08-E-900

IN THE MATTER OF THE
ESTATE OF ALEXA JONES,
a Minor.

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RECEIPT

I, Richard Jones, acknowledge that I am the duly-appointed Guardian of the Estate of Alexa Jones (hereinafter referred to as "Alexa"); that today I received from Glenn, Mills, Fisher & Mahoney, P.A. a check in the amount of \$5,000.00 payable to me as Alexa's Guardian; and that I will promptly deposit this check with an FDIC insured bank pursuant to a Receipt and Agreement.

I further acknowledge and understand that within thirty (30) days after I deposit the check, the balance in the bank will need to be \$3,000 or less so as to maintain Alexa's Medicaid eligibility; that in order to reduce the bank balance, I will need to receive permission from the Clerk of Superior Court; and that I will be unable to withdraw any principal from the bank without the Court's written authorization.

Richard Jones

Sworn to and subscribed before me,
on this the ____ day of March, 2009.

Notary
My Commission Expires: _____

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
FILE NO. 08-E-900

IN THE MATTER OF THE
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MOTION TO STAY
BOND REQUIREMENT

NOW COMES Richard Jones, the duly qualified Guardian of the Estate of Alexa Jones, a Minor, and hereby moves the Clerk of Superior Court to issue an Order staying the requirement of posting a bond in this Estate. In support of this Motion, the Guardian shows as follows:

1. The Guardian does not have custody or possession of any funds or property belonging to the Minor and the present value of the minor's Estate is \$0.00.
2. The minimum bond required by law (\$10,000) will cost the Guardian approximately \$650 to secure.
3. The amount of the bond will cause undue financial hardship to the Guardian and his family (including the Minor) who are North Carolina Work First recipients.
4. The Guardian will not accept any funds or property on behalf of the Minor without first posting an appropriate bond.
5. Good cause exists to stay the bond requirement until the Guardian receives funds or property on behalf of the minor.

WHEREFORE, Richard Jones moves the Clerk of Superior Court for an Order staying the bond requirement in the Minor's Estate.

This the ____ day of March, 2009.

Carlos E. Mahoney
Glenn, Mills, Fisher & Mahoney, P.A.
Post Office Drawer 3865
Durham, NC 27702-3865
(919) 683-2135
N.C. State Bar No. 26509

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
FILE NO. 08-E-900

IN THE MATTER OF THE
ESTATE OF ALEXA JONES,
a Minor.

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ORDER

THIS MATTER having come before the Honorable Archie L. Smith, III, Clerk of Superior Court, upon Motion by the Guardian of the Estate of Alexa Jones for the entry of an Order staying the requirement of posting a bond in this Estate.

After consideration of the Guardian's Motion and having reviewed the official court file, the Court finds and concludes as follows:

1. This Court has jurisdiction over the subject matter raised by the Guardian's Motion.
2. The Minor's Estate presently contains no funds or property and has a zero balance.
3. The Guardian and his family, which includes the Minor, will suffer an undue financial hardship if required to post the minimum bond of \$10,000.
4. There is no risk of defalcation or misappropriation of the Minor's Estate which would require that a bond be posted at this time.
5. The Guardian shall post an appropriate bond before receiving or taking possession of any funds or property on behalf of the Minor
6. Good cause exists to stay the requirement of a bond until the Minor's Estate contains funds or property.

IT IS THEREFORE ordered that the Guardian's Motion to Stay the Bond Requirement is GRANTED and the bond requirement is hereby STAYED until such time as the Guardian has received or taken possession of funds or property on behalf of the Minor.

This the ___ day of March, 2009.

The Honorable Archie L. Smith, III
Clerk of Superior Court