

Minor Settlements

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Settlements in district court

- Minors
- Incompetents
- Wrongful Death

Legal Guidance

- Dated (*i.e.*, old)
- Vague regarding procedure
- Complicated regarding medical payments

General Rule



- ▶ Minor settlement is a 'nullity' if judgment does not show that court investigated settlement and found it to be just and reasonable



General Rule

- ▶ Court approval required for accrued claims as well as waiver of future liability



Parent or
GAL
approval is
NOT
sufficient

What we know about procedure

- ▶ You need a case (a complaint, summons, etc.)
- ▶ Child needs a Rule 17 GAL
- ▶ Proceedings other than trials can be conducted in chambers
 - GS 7A-191
 - Is that a good idea?

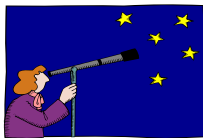


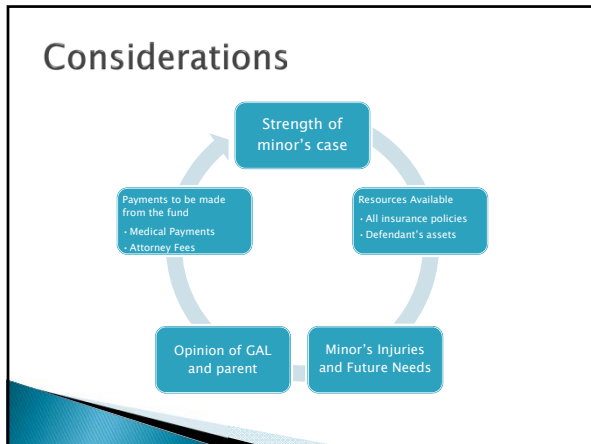
Role of the Judge

- ▶ “Where the proceedings are merely formal, and are instituted and carried on only to give an apparent sanction to the settlement, and there is no judicial investigation of the facts upon which the right or the extent of the recovery is based, a judgment entered in pursuance of the agreement and by consent merely is only colorable, and will be set aside in a proper proceeding, when its effect, if allowed to stand, would be to bar the infant’s substantial rights.”
 - ▶ *Rector v. Logging Co.*, 179 NC 59, 62 (1919).
 - ▶ *Cf. Oates v. Texas Co.*, 203 NC 474 (1932)


Considerations

- ▶ “[Infant’s] welfare is the guiding star in determining the reasonableness and validity of the settlement.”
 - *Redwine v. Clodfelter*, 226 NC 366 (1946)






Medical Expenses




- ▶ Child's claim generally **DOES NOT** include recovery of past medical expenses
 - Claim belongs to parents

Exceptions:


- Emancipated minor
- Waiver of rights by parents



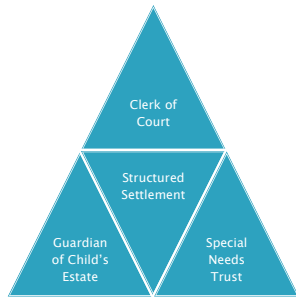
Third Party Recovery



- ▶ No hospital or physician liens attach to minor's settlement
- ▶ But – Medicaid does recover
 - Up to 1/3rd total settlement without regard to attorney fees
- ▶ ERISA insurance plan also may recover
 - Only self-insured ERISA plans
 - Probably – maybe – only if insurance policy provides
 - Right to subrogation, not a lien



Disbursement Options



GS 7A-109(a)

“except as prohibited by law, records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained.”

Virmani v. Presbyterian Health

- ▶ Court has inherent authority to seal file when necessary for the “fair administration of justice” or when open file will be “more harmful than beneficial.”
- ▶ Order must contain findings to show necessity for closure and all alternative remedies considered.