

NEW MEXICO INJURY ATTORNEY BLOG

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Court Protections for Minors in New Mexico Personal Injury Settlements

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If a minor is injured in an automobile accident or other incident that gives rise to another person's liability, and a claim is brought before the child reaches age 18, the insurance company paying the settlement generally wants a judge to approve the settlement terms. The request is intended to protect the minor, but it also provides protection to the insurer.

The reason that the insurer is protected is because the minor has until one year past his 18th birthday to bring a lawsuit, assuming the statute of limitations period ran when he was a minor. If the minor's parents bring an action while he is a minor, and the court approves the settlement, the minor will have difficulty bringing an action himself after he is 18, because a court has already entered an order that states that the settlement amount is fair.

To obtain court approval, the insurance company, after reaching a settlement agreement with the minors' parents or the minor's attorney, will hire an attorney to seek approval. This involves filing a lawsuit with pleadings that are either a Petition for approval or an actual Complaint for Damages. The pleadings are agreed upon by the parties involved and are not of the usual adversarial nature of a lawsuit. There are many terms for the minor settlement proceedings depending upon the location of the action including "minor settlement", "infant compromise" or "friendly settlement."

The pleadings filed to initiate the lawsuit briefly set forth the facts of the accident, the parties involved and the amount of the settlement. A hearing is requested so that the attorneys may present the facts to the judge so that the judge can determine if the settlement is in the minor's best interest. In addition to the pleadings that petition the court for approval, generally the attorney for the insurer asks for the appointment of a guardian ad litem for the child.

The guardian ad litem (GAL) is an attorney who is retained to review the settlement and to advise the court of the settlement facts which include the minor's injuries, treatment, medical bill amount, whether further treatment is needed and, of special importance, where the money is to be placed until the minor reaches age 18 at which time the minor is legally entitled to receive the funds.

Obviously the judge wants to make sure that the money paid to the parents on behalf of the injured child is held for the child until he reaches age 18. The judge wants to know that if the money is invested, it is done so safely. Consequently, judges generally don't want the money invested in the stock market. They prefer safe, conservative investments such as certificates of deposit or annuities, both of which guarantee a return. Unfortunately, conservative investments with guaranteed returns do not offer a great deal of growth.

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Sometimes, if there is a particular need that the minor presently has, such as a computer for school, and the judge believes it is in the minor's best interest, the judge may allow use of a certain amount of the settlement funds immediately. However, the judge will want to make sure that the purchase or use of the funds solely benefits the minor, and is not a purchase for the rest of the family to enjoy. The judge will not allow use of the funds by the parents to satisfy any of the obligations they have as parents to provide care and support for the child such as food, shelter, clothing and basic necessities.

In short, the Courts are very protective of children in personal injury settlements. To insure the protection of the child, if the attorneys do not agree to and appoint a GAL for the child, the Court will make the decision for them appointing an experienced Guardian Ad Litem.

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