

3. Infant Compromises and other Ex Parte Applications

Ex Parte applications are to be submitted to the Motion Support Office. After review of Infant Compromise submissions, Counsel will be notified of the scheduled appearance date by phone.

All proposed infant compromise orders shall contain the following language:

It is further Ordered that the Guardian shall, within thirty days of the deposit of the funds due the infant herein in the above designated bank(s), submit to the Clerk's Office, Room 217, a copy of the Certificate of Deposit issued by said bank.

The attorney's supporting affirmation shall set forth the policy limits of all available insurance.

Special instruction for structured infant compromises:

In addition to the usual and customary items required pursuant to C.P.L.R. Article 12, §§1207, 1208 and Uniform Rules for the New York State Trial Courts, Part 202, §202.67, there shall be submitted a Certificate of Reliability and Assurances. Additionally, there shall be a detailed affidavit demonstrating compliance with GOL §5-1702. Furthermore, all outstanding medical and hospital bills and payment thereof must be accounted for. Any medical and hospital bills paid for by Medicaid must be accounted for.

Any transcript of settlement on the record should be attached.

In a structured infant compromise, the plaintiff's attorney should retain an independent structure consultant to evaluate the proposals and protect the interests of the plaintiff. Plaintiff's counsel should ask defendant's counsel to have the defendant's structure consultant and plaintiff's structure consultant split the consulting fee, both halves to be paid by the defense.

The internal rate of return of the structure should be disclosed and contrasted with both a taxable and tax free rate of return.

There should be a supporting affidavit that the financial strength rating of the annuity issuer is either A+ or A++ by A.M. Best.

If the amount to be structured is more than \$500,000.00, the annuity should be split between multiple issuers to keep the each annuity under \$500,000.00, the protection limit of the N.Y. Life Insurance Guaranty Fund.

The supporting affidavit should state the name of the assignment company, and the name of the financial rating company (if any) that is guaranteeing the obligations of the assignment company.