**Outline for Petitions to Compromise Doubtful Claims**

I. Definitions!

A. **Petition to Compromise a Doubtful Claim** – Petitions to Compromise Claims are filed in cases where a person who lacks capacity – whether due to age or disability – has a potential claim against another party which needs to be resolved. Since a child or person under a conservatorship lacks the capacity to negotiate a settlement with an at- fault party or insurance company, in some cases a party must seek the authority of a court to do so on their behalf.

B. **Conservator** – A conservator is a person appointed by a court to oversee the estate – i.e. stuff – of a person who is under some disability. O.C.G.A. §29-1-1(2)

C. **Natural guardian** – Each parent is a natural guardian but if the parents are divorced, the natural guardian is the one with sole custody (presumably legal custody) O.C.G.A. §29-1-1(12) and O.C.G.A. §29-2-3

D. **Gross settlement amount** – the total amount of recovery (generally from a tortfeasor or their insurance company) O.C.G.A. §29-3-3(a)

E. **Net settlement amount** – the amount of recovery that remains from the gross settlement amount after deducting attorney fees and costs, medical expenses, other expenses, and the present value of any structured settlement. O.C.G.A. §§29-3-3(f) and (g)

F. **Structured Settlements** – a means whereby funds to be received by a claimant can be placed with a company to invest for a determined period of time (such as when a child turns 18). Funds are not accessible and are not counted for purposes of determining net settlement unless some portion of the payoff happens prior to reaching majority. O.C.G.A. §29-3- 3(h)

II. When are petitions to compromise claims required to be filed?

A. The gross settlement amount is GREATER than 15k. If the amount if 15k or less, a natural guardian can compromise a claim without the necessity of petitioning the court to do so. O.C.G.A. §29-3-3(f)

B. Regardless of the amount of the gross settlement, when the party petitioning for the compromise claim is appointed as conservator O.C.G.A. §§29-3-3(b) and 29-3-3(g)

III. In which Court are these petitions filed?

A. If a lawsuit has not been filed, these petitions are filed in the probate court, typically where the minor resides; however, if the minor is not a resident of this state, it would be filed in the county where the asset or cause of action lies. O.C.G.A. §29-3-6

B. If a lawsuit has been filed, the settlement must be approved by the court where the matter is pending, although, with that court’s permission, the action can be dismissed and the compromise filed in the probate court O.C.G.A. §29-3-3(e)

IV. Who files the compromise?

A. If the gross settlement amount is greater than 15k but the net settlement amount is 15k or less, the natural guardian can file the compromise without the necessity of becoming a conservator for the ward O.C.G.A. §29-3-3(f)

B. If the gross settlement amount is greater than 15k and the net settlement amount is greater than 15k, there must be a conservator in place O.C.G.A. §29-3-3(g)

V. How does a court determine what a reasonable total settlement is?

A. What are the insurance policy limits?

B. Who is the defendant?

1. Relative of injured party

2. Solvency

C. What are injuries?

1. Severity

2. Duration

3. Future medical issues

VI. Deductions from settlements

A. Attorney fees

1. What is standard?

2. What may affect that fee?

3. Does the natural guardian’s agreement with the attorney matter?

B. Costs

1. Filing fees

2. Litigation expenses

a. Medical records

b. Depositions

c. Expert witnesses

C. Outstanding medical expenses

1. Stuff not otherwise covered by insurance

2. Subrogation issues

3. Negotiation of pay-off

D. Other

1. Reimbursement for co-pays

2. Parental expenses

a. Lost wages

b. Mileage/parking

3. Loss of services claims

VII. Structured Settlements

A. Why are these helpful?

1. Reduce the need for a conservator

2. Better earning potential

3. Less likelihood of waste

B. What courts look at?

1. Earning potential

2. Solvency of company holding structure (Ratings)

VI. Some red flags

A. Self-represented clients

B. Net settlements just under 15k

C. Hired compromise guns

D. Parent payments

E. Cases not really subject to a petition but it’s filed anyway