

**CLAIRE ROGERS, individually and on
behalf of her minor child SHANYCE
BROWN,**

Plaintiff,

v.

**PATRICK KODRAN and SILICONE
DISTRIBUTORS, INC. d/b/a
ROOFTOPS,**

Defendants.

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CASE NO. SX-09-CV-223

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

BEFORE THE COURT is Plaintiffs' Petition for Approval of Settlement, filed April 7, 2010. For the reasons stated below, the Court is unable to grant approval at this time.

Plaintiff Claire Rogers and Plaintiff Shanyce Brown commenced this action against Defendant Patrick Kodran and Defendant Silicone Distributors, Inc. for damages. (Compl., filed Apr. 27, 2009.) Plaintiffs alleged that Brown was injured in an automobile accident with Kodran, an employee of Silicone Distributors. As Brown is a minor, Rogers, her mother, appeared herein as next friend on her behalf. Both Defendants appeared and filed an Answer jointly. (Ans., filed June 4, 2009.)

In February 2010, the parties voluntarily participated in mediation. (Mediation Report, filed Mar. 1, 2010.) Mediation successfully resolved this matter. (Pl. Not. of Resolution 1, filed Mar. 3, 2010 (“the plaintiffs Claire Rogers *individually and on behalf of* her minor child Shanyce Brown . . . hereby give notice the instant matter was amicably resolved during . . . mediation.” (emphasis added)). Plaintiffs then petitioned for approval of the settlement of Brown’s claims in the amount of \$5,000.00. (Pet., filed Apr. 7, 2010.) In support, Plaintiffs submitted Brown’s medical records and other documentation. No mention was made, however, regarding the terms of settlement, if any, of Rogers’s individual claims.

Initially, Plaintiffs requested that “Court enter a sixty-day Order, allowing the parties to consummate the settlement.” (Notice of Resolution 1, filed Mar. 3, 2010.) Accordingly, the Court dismissed this matter with prejudice to become final in sixty days. (Order, entered Apr. 16, 2010.) Subsequently, Plaintiffs petitioned for approval of the settlement of the minor’s claims. The Court denied approval because of Plaintiffs’ failure to propose a guardian to administer Brown’s settlement until she reaches adulthood. (Order, entered July 26, 2010.) In response, Plaintiffs suggested Joan B. Rogers as the guardian. (Pl. Resp., filed July 27, 2010.) For the reasons stated below, however, the Court is unable to approve the settlement at this time.

II. SETTLEMENT OF MINOR’S CLAIMS

Minors lack capacity to sue or be sued and therefore must be represented in litigation by “a legally authorized person, either a parent, guardian, ‘next friend,’ or guardian ad litem.” 42 Am. Jur. 2d Infants § 148 (2010). Such persons may participate in settlement negotiations. *Id.* § 175 (“While a next friend, guardian ad litem, or other duly appointed person acting for an infant in a litigation may negotiate for a compromise or settlement of the litigation, a natural guardian, without a court appointment, cannot enter into a binding settlement of an infant’s claim absent court approval.”). But “parties may not compromise (settle) claims involving minors . . . without court approval.” 53 Am. Jur. Trials 1, § 311 (1995). When considering settlements involving minors, the court “must *independently investigate* and evaluate any compromise or settlement of a minor’s claims *to assure itself* that the minor’s interests are protected, even if the settlement has been recommended or negotiated by the minor’s parent or guardian ad litem.” *Rojas v. Two/Morrow Ideas Enters., Inc.*, 53 V.I. 684, 694 (2010) (internal quotation and citations omitted) (emphasis added). In reviewing materials submitted in support of settling a minor’s claim, courts must consider: (1) the minor’s injuries; (2) the tortfeasor’s funds; and (3) where multiple claimants are involved, the fairness of the minor’s portion. *Id.* at 694-95 (quoting 53 Am. Jur. Trials 1, § 313 (1995)). Each will be examined and discussed below.

a. The Minor's Injuries

First, the Court must consider the minor's injuries, as shown by supporting documentation.¹ Courts "look closely at the offer of settlement to determine if the amount is justified" *Id.* at 695 (quoting 53 Am. Jur. Trials 1, § 313 (1995)). "Settlement should be proportional to injuries sustained by the minor." *Id.* (quoting 53 Am. Jur. Trials 1, § 313 (1995)).

According to the Petition, Brown was born on October 2, 2008. (Pet. ¶ 1.) At the time of the automobile accident in February 2009, Brown was approximately five months old. According to the medical records, Brown suffered neck and chest pain from the accident. *See generally id.* at Ex. She was treated at the emergency room of the Juan F. Luis Hospital for injuries sustained in the automobile accident. Brown was released the same day and her condition was recorded as stable. *Id.* In March 2009, Brown sought treatment at the West End Chiropractic for neck and chest pain. *Id.* Five months later, the chiropractor reported that Brown had obtained maximum medical improvement. *Id.* The documentation before the Court does not indicate whether Brown's injuries were resolved or could be expected to continue. Plaintiffs did not speak to that factor as well. Considering the minor's injuries, the length of her treatment, her age at the time of the incident, and her subsequent improvement, settlement in the amount of five-thousand dollars appears proper.

¹ A petition for compromise of a minor's claim should show, *inter alia*, the following:

- Age and sex of the minor
- Nature and extent of the injury giving rise to the claim, with sufficient particularity to inform the court whether the injury is permanent or temporary
- Facts or events and circumstances out of which the claim or injury arose . . .
- Accident report, if applicable
- Medical reports showing diagnosis, treatment, and prognosis
- Medical bills evidencing cost of treatment
- Amount and terms of the settlement
- Amount of litigation costs and expenses
- Amount of attorney fees requested
- Amount and nature of other payments requested by petitioner to be ordered by the court from settlement proceeds (e.g., medical bills or liens, repayment of parent's expenses, etc.)
- Proposed disbursement amounts of the settlement, including attorney fees and costs, other expenses, and net proceeds to the minor
- Proposed disposition of funds to the minor . . .

b. The Tortfeasor's Funds

Next, the Court must consider the tortfeasor's funds. "Where defendant tortfeasor is adequately insured to cover plaintiff's claims, defendant's assets do not generally concern the court." *Rojas*, 53 V.I. at 695 (quoting 53 Am. Jur. Trials 1, § 313 (1995)). "However, if, for example, defendant in an automobile accident is insured for \$15,000 and settlement is proposed at policy limits, but the minor's claim could be reasonably valued at \$50,000, counsel must adequately explain to the court why the \$15,000 settlement is appropriate." *Id.* (quoting 53 Am. Jur. Trials 1, § 313 (1995)). "Reasonable explanations include (a) that defendant has few, if any, reachable assets, (b) that the minor was contributorily negligent, or (c) that an early settlement at \$15,000 is in the best interests of the minor." *Id.* (quoting 53 Am. Jur. Trials 1, § 313 (1995)).

Here, neither Plaintiffs nor Defendants have addressed Defendants' funds vis-à-vis the settlement offer. Thus, the Court is unable to compare the settlement amount with any insurance limits. Additionally, neither Plaintiffs nor Defendants indicated whether settlement reflects any offset for alleged contributory negligence. Defendants did raise that defense in their Answer. (Answer 2.) Therefore, additional documentation is necessary here.

c. Fairness of the Minor's Portion

Lastly, where other claimants are involved, the Court must consider the fairness of the portion of the minor's settlement. "In actions where there are multiple claimants, the court must ensure that the proportion of settlement proceeds awarded the petitioning minor is fair and representative." *Rojas*, 53 V.I. at 695 (quoting 53 Am. Jur. Trials 1, § 313 (1995)).

Here, neither Plaintiffs nor Defendant have referenced Rogers's individual claims. Rogers commenced this personal injury action individually and on behalf of her daughter Brown. (Compl. 1.) The Complaint alleges that "Claire Rogers and her minor daughter suffered injuries for which injuries defendant Kodran is liable." *Id.* ¶ 11. Both Plaintiffs sought "[c]ompensatory damages for *physical injuries to Claire Rogers and her minor daughter.*" *Id.* at 3 (emphasis added). To date, Rogers has not voluntarily discontinued her individual claims against either Defendant. Moreover, the Court notes that attorney's fees are requested from Brown's proposed settlement amount. (Pet. 2 ("The parties further request that the Court grant disbursement of the proceeds as follows . . . [p]ayment of attorney's fees to

Diane M. Russell, Esq.: \$1,666.50. The net amount payable to the minor is \$3,333.50.”.) That may be proper if Rogers voluntarily dismissed her individual claims against Defendants. But without knowing the status of Rogers’s individual claims, the Court is unable to compare and evaluate the fairness of the proposed settlement as to the minor.

d. Conclusion

Having reviewed the pleadings and papers filed to date here, the Court finds it is unable at this time to approve the proposed settlement. The proposed settlement amount to Brown appears fair and reasonable and proportionate to her injuries. However, Plaintiffs have not informed the Court as to the status of Rogers’s individual claims nor what amount, if any, she may be receiving in settlement. Accordingly, the Court cannot determine whether the settlement to the minor is proper. Plaintiffs will be granted leave to submit additional materials in support of their petition.

III. APPOINTMENT OF GUARDIAN

Plaintiffs also submitted a proposed trustee to monitor the minor’s settlement funds. (Pl. Resp. 1.) As Rogers is “legally responsible for the support of the minor,” she is ineligible to administer the proceeds of any settlement Brown might receive. V.I. Code Ann. tit. 15, § 823 (1996).² Therefore, a guardian is required. While this Court has the authority to appoint a guardian, the type of guardian Plaintiffs seek is not a guardian to defend the minors interests in this litigation, but rather a guardian who would invest, safeguard, and administer the proceeds the minor receives from the settlement. That guardian will take possession of and have

² The Court notes that Plaintiffs’ petitioned for approval of the settlement in April 2010. Subsequently, the law governing guardianship appointments changed. In 2009, the Legislature of the Virgin Islands repealed Chapter 51 “Guardians and Wards” of Title 15 in its entirety. Act No. 7150, 2009 V.I. Sess. L. p. 420, 421 (“Title 15 Virgin Islands Code chapters 1 through 51; and chapter and 63 [sic] are repealed . . .”). In its place, the Legislature enacted the “Virgin Islands Uniform Guardianship and Protective Proceedings Act” (“UGA”). V.I. Code Ann. tit. 15, § 5-101 (Supp. 2011). The UGA was slated to take effect on May 1, 2010. 2009 V.I. Sess. L. at 724. In May 2010, the Legislature stayed implementation until January 1, 2011. Act No. 7174 (approved May 17, 2010), available at <http://www.governordejongh.com/news/legislation/signed/Act-7174.pdf> (last visited Dec. 7, 2011). In November 2010, the Legislature further stayed implementation until July 1, 2011. Act No. 7241, § 6(b) (approved Nov. 24, 2010), available at <http://www.legvi.org/vilegsearch/ShowPDF.aspx?num=7241&type=Act> (last visited December 7, 2011). In April 2011, the Legislature “re-enact[ed] title 15 Virgin Islands Code, Part I Decedents Estates, chapters 1-5, and Part II Administration of Estates, chapters 11-29 as they existed prior to December 21, 2009.” See Act. No. 7254 (approved Apr. 9, 2011), available at <http://www.legvi.org/vilegsearch/ShowPDF.aspx?num=7254&type=Act> (last visited Dec. 7, 2011). However, the Legislature did not re-enact Part III Fiduciary Relations, including Chapter 51 governing guardians and wards. Accordingly, the UGA is now in effect. Because Plaintiffs petitioned for approval prior to the UGA taking effect, the Court will proceed under the law in effect at the time approval was sought.

responsibility over the funds until Brown reaches adulthood. Petition for appointment of guardians are properly before the Family Division of the Superior Court, particularly as that Division retains jurisdiction over the guardianship proceeding to monitor the guardian's accounting until adulthood. Accordingly, Plaintiffs should file a petition with the Family Division for appointment of a guardian to administer the proceeds of Brown's settlement once this Court approves it.

IV. CONCLUSION

Accordingly, for the reasons stated above, additional documentation is required before the Court can independently evaluate Brown's settlement to determine whether it is proper. An appropriate Order follows.

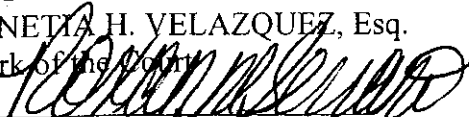
DONE AND SO ORDERED this 1st day of February, 2012.



DARRYL DEAN DONOHUE, SR.
Presiding Judge of the Superior Court

ATTEST:

VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 2/2/12