What is an “infant compromise”?

The N.Y.S. Unified Court System, in its on-line *Glossary of Legal Terms* – http://www.courts.state.ny.us/lawlibraries/glossary.shtml#I – has the following definition:

> **infant's compromise:** a civil proceeding or motion for obtaining court approval of the settlement of an infant's claim

Legally, an “infant” is a person under age eighteen. In New York State, an infant’s case can not be settled without the approval of a judge, not even if the parent wants to accept the settlement. This situation typically arises when the infant has a claim or lawsuit for personal injury arising out of an accident. The reason is simple: to protect the infant and tie up his or her money at least until the age of eighteen.

New York State’s Civil Practice Law and Rules provides at Sections 1206 and 1207 for the authority of the Court in these matters. A judge plays several roles. First, the settlement can be refused, if for some reason the judge feels that it is inadequate, in other words, not enough money. Second and equally important, the judge can direct where the money is held or invested for the infant. Usually, the attorney recommends a proposed course of action for the investment.

The judge also approves the attorney’s fee. If the judge feels that the attorney is seeking too large a fee for too little work, then the lawyer’s fee may be reduced.

If the sum of money involved is not large, and the infant is not suffering from any kind of mental disability that would prevent him or her from managing the money at age eighteen, the money is usually ordered to be deposited into a bank account and held jointly with the bank, for the ultimate benefit of and use by the infant. Large settlement amounts or infants who may be receiving government benefits (such as Medicaid or SSI) present a special challenge.

In those circumstances, special trusts, designed to give the child some use of the money while preserving government benefits, may be in order. Sometimes the lawyer may call on a consultant to devise a “structured settlement.” A structured settlement is designed to invest the infant’s money profitably, while ensuring that the money is paid out over time, and not all available to the infant at age eighteen. Structured settlements can span years, with payments made monthly or quarterly, and with larger payments timed to coincide with anticipated college tuition or the purchase of a home, or anything that the infant, parents and attorney can anticipate.

Under certain rare, emergency circumstances an infant’s money can be withdrawn early – before the eighteenth birthday. But this requires a judge to approve the request, and judges are careful to ensure that the money is not being used for the family’s regular living expenses.

Some terminology:

An infant or infant’s “compromise order” is the paper signed by a judge approving the settlement of the infant’s claim, authorizing payment to the attorney, and empowering the infant’s parent to sign a release settling the claim.

An infant or infant's "compromise hearing" is the courthouse meeting where the judge considers the settlement. Present are the judge, attorney, parent and infant. Typically, the judge makes sure that the terms of the settlement are fair and understood by the parent and, if he or she is old enough, by the child. Also, that they know that the case or claim is being settled and disposed of forever; there is no going back for more money, at any time. The judge may also ask the infant some questions about his or her physical condition, to try to see if any injuries have healed, or look at any scars the infant may have suffered, as part of the process of evaluating the fairness of the proposed settlement.

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