NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

NAMIC Statement in Support of NCOIL model "Statutory Settlement Thresholds involving Minors"

Among other parties, liability settlement sometimes includes those alleged or purported injuries to minors. Many are amicably resolved by settlement especially in the low severity range as an equitable and expeditious agreement between the parties. Because a minor is under the age of majority which is generally 18 years of age in most states, they do not have the legal capacity to enter into a contractual arrangement for settlement.

Consequently, states have incorporated systems either through their probate or other processes to allow court approvals for settlements which would allow an amount to be paid to a minor's estate and legally remove the insurers continuing obligation or liability for the claim. Most states require legal custodians of the child be appointed as well as a *Guardian Ad Litem* or Friend of the Court, usually an attorney, to independently review settlements and approve of the same while not directly representing the minor but looking out for its best interests. The parents may have retained counsel to negotiate the settlement as well. Legal custodians may be required to obtain bonding or other surety to protect their fiduciary duty to look out for the child's best interests.

All of the costs associated with these proceedings are usually if not always submitted to the insurer including the *Guardian Ad Litem* fees which can run in the thousands of dollars even for a routine small dollar settlement. While it is stipulated that in certain circumstances, either party to a settlement may deem it necessary and prudent for a court to review a settlement involving a minor, it does not follow logic that ALL settlements of that nature must achieve such judicial scrutiny. When both the insurer and the policyholders agree, there ought be a system by which settlements may be expedited without further delay and unnecessary intervention by the courts.

Some states have allowed for threshold dollar amounts that preclude or do not require court approval if not surpassed in a settlement. These may range from $2,500 to $25,000 with $10,000 being a common amount. This usually means the threshold amount after attorney fees, costs and medical expenses are deducted. State determinations vary as to threshold amounts, level of court involvement and process for obtaining releases regardless of amount.

However, many if not most of these statutes have not kept pace with inflation and the realities and value or usage of the funds. The corpus of these low severity settlements is routinely utilized even with court approval for the benefit and welfare of the child as it is being reared. Consequently, for these amounts, there is an inordinate cost for procuring only to have the court on its own *sua sponte* allow the funds to be utilized and

spent for the child. Due to both the unnecessary mandatory court action and increasing costs, a legislative remedy to allow flexibility to both insurers and their policyholders is warranted.

It is NAMIC's position that model legislation on settlements involving minors may serve to:

1) Expedite settlement dollars to policyholders of all ages
2) Remove legal and administrative costs and delays in the settlement of claims involving minors
3) Maintain requirements for parties' duty to the minor regarding truthful statements via affidavit or verified statement