

Settlement Approval Hearings
before
Sherri A. Lydon, USDJ

The following guidance is provided to counsel seeking judicial approval of settlements (*e.g.*, on behalf of minors, incapacitated persons, or estates).

1. **First determine whether to seek approval from the federal court.** It is often more appropriate to obtain approval of the settlement from a state court of competent jurisdiction, particularly if there is an open estate or related state court action(s). If approval will be obtained from a state court, the federal action may be ended by a conditional order of dismissal (“Rubin order”) which notes the requirement for state approval within a specified time.
2. **If you decide to seek approval from the federal court, Judge Lydon requires prior submission of the following supporting materials.**
 - (a) **A verified petition for approval of the settlement signed by the Representative Plaintiff** (*e.g.*, personal representative or guardian ad litem). The petition shall:
 - (1) provide the legal and factual basis of the movant’s authority to seek settlement approval (attach documentation establishing the Representative Plaintiff’s authority);
 - (2) summarize --
 - the nature of the action,
 - the stage of the proceedings at the time of settlement (including a summary of completed discovery),
 - the nature and extent of injuries (including a summary of medical expenses),
 - factors influencing the decision to settle the claim,
 - the amounts and nature of any insurance coverage relevant to the action,
 - the names of any creditors and amounts of their claims,
 - the amount and terms of the settlement and detailed explanation of how proceeds will be distributed (*see* ¶ 5 below regarding confidentiality),
 - the nature of the release to be given, and
 - the status of any other actions arising out of the same incident which have been or may be filed (and the impact on the fairness of any settlement in this action);

- (3) state whether there are any known, anticipated, or potential disputes as to distribution of proceeds, or approval of the settlement and, if so, provide a full explanation;
 - (4) set forth the amount of attorneys' fees and costs (supporting documentation including any fee or fee splitting agreements shall be attached);
 - (5) include petitioner's statements that the amount and terms of the settlement as well as costs and fees are fair and reasonable;
 - (6) In addition:
 - in **wrongful death actions**, the Plaintiff Representative should list all persons known to have a right to proceeds under the wrongful death statute and indicate whether they have been informed of the action and the planned settlement;
 - in **settlements for minors and incapacitated persons**, address the payment requirements found in S.C. Code Ann. § 62-5-433 (requiring payment to a conservator under certain circumstances) and provide information regarding the care plan and how proceeds will be managed.
- (b) **A declaration of counsel.** The declaration of counsel may be made part of the verification, shall affirm agreement with the content of the verification and shall join in the request for settlement approval. Counsel shall disclose any known disputes as to settlement approval, distribution of proceeds, or competing claims.
3. **A proposed order approving the settlement shall also be submitted pursuant to the court's CM/ECF preferences.** As noted above, the court will not incorporate the terms of an unfiled agreement into the order approving the settlement, although it may make findings that the settlement set forth in an unfiled agreement is fair and reasonable. Further, the court will not include a confidentiality requirement in any order approving a settlement.
 4. **Deadline and Appearances.** The above materials should be submitted at least three business days prior to the settlement approval hearing. Absent prior approval from the court, the Plaintiff-representative should be present for the hearing as should at least one attorney for the Plaintiff-representative who has been directly involved in the representation and is fully familiar with the litigation.
 5. **Confidentiality.** Filed settlement agreements may not be sealed. *See* Local Civil Rule 5.03(c). Other filed documents may be sealed (or the courtroom closed) only with court approval and after satisfying the requirements of Local Civil Rule 5.03. Any motion or request to file any settlement-related document under seal or, alternatively, to submit specific settlement-related documents for *in camera* review, should be made prior to filing the document to which the request would apply.