

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE GENERAL RULES OF PRACTICE**

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on October 29, 2002 at 3:00 p.m., to consider the recommendations of the Supreme Court Advisory Committee on General Rules of Practice to amend the rules. A copy of the committee's report and proposed amendments is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 14 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before October 15, 2002, and
2. All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the Clerk of the Appellate Courts together with 14 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before October 15, 2002.

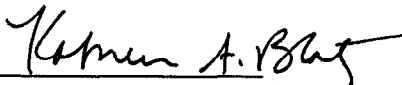
Dated: August 28, 2002

BY THE COURT:

OFFICE OF
APPELLATE COURTS

AUG 29 2002

FILED


Kathleen A. Blatz
Chief Justice

CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT

In re:

**Supreme Court Advisory Committee
on General Rules of Practice**

**Recommendations of Minnesota Supreme Court
Advisory Committee on General Rules of Practice**

Final Report

August 19, 2002

Hon. Edward C. Stringer, Chair

Hon. G. Barry Anderson, Saint Paul
Steven J. Cahill, Moorhead
Hon. Lawrence T. Collins, Winona
Lawrence K. Dease, Saint Paul
Joan M. Hackel, Saint Paul
Sally Holewa, Crookston
Scott V. Kelly, Mankato
Phillip A. Kohl, Albert Lea

Hon. Gary Larson, Minneapolis
Hon. Ellen L. Maas, Anoka
Hon. Margaret M. Marrinan, Saint Paul
Janie S. Mayeron, Minneapolis
Brian Melendez, Minneapolis
Hon. Gary J. Pagliaccetti, Virginia
Hon. Randall J. Slieter, Olivia
Leon A. Trawick, Minneapolis

David F. Herr, Minneapolis
Reporter

Michael B. Johnson, Saint Paul
Staff Attorney

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

The Court's Advisory Committee on General Rules of Practice met four times in 2001 and 2002 to discuss various issues relating to the operation of the rules. This report contains three recommendations: two for rule changes and one significant recommendation that a rule change not be made.

These amendments are briefly summarized:

1. The committee spent a substantial amount of time considering a recommendation from the Minnesota Tribal Court State Court Forum that a rule be adopted to provide for recognition of tribal court judgments, orders, or other actions by Minnesota trial courts. The committee held public hearings on the question presented by this proposal and after study determined that it does not recommend adoption of this rule.

2. The committee recommends that Rule 145, relating to minor settlements, be amended in two important respects: to modernize its language to provide for handling of minor accounts in the post-passbook banking world and to add a new requirement that at least two proposals be obtained for structured settlements where one of the proposals is from an annuity issuer that is related to a party or its insurer.

3. The committee recommends that Rule 522, governing pleadings in conciliation court matters removed to district court for trial de novo, be amended to make it clear that the court retains the authority to allow amendment of pleadings upon a showing of cause as in other district court actions, notwithstanding the provision for amendment as a matter of right allowed for a limited period of time by the existing rule.

Other Matters

The committee also considered issues relating to the asking of questions by jurors and the nature of required notice in bail forfeiture proceedings. Because those matters have been addressed by court decisions, it does not appear necessary or desirable to amend the rules as to these matters. *See State v. Costello*, 646 N.W.2d 204 (Minn. 2002) (rejecting juror questions in

criminal matter); *State v. Rosillo*, 645 N.W.2d 735 (Minn. Ct. App. 2002) (interpreting and enforcing an existing provision of Minn. R. Gen. Prac. 702(e)).

The committee also reviewed portions of the Final Report of the Minnesota Supreme Court Jury Task Force (Dec. 20, 2001), and previously provided comments to the Court as to four of the recommendations in that report that relate directly to the Minnesota General Rules of Practice.

Effective Date

The committee believes that its recommended changes to the rules can be effected by order later this year, with an effective date of January 1, 2003. The committee continues to believe that amendments taking place with a January 1 effective date are most readily communicated and published to the bench and bar. Neither of these recommended amendments should require significant lead-time. Because of the amount of interest in the rule relating to tribal court judgments, the committee believes a Court hearing on the recommendations in this report would be appropriate.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON GENERAL RULES OF
PRACTICE

Recommendation 1:

There is not clear support for implementation of a rule-based process for determining the effect to be given judgments and orders of tribal courts by the Minnesota trial courts.

Introduction

The advisory committee was asked to look at a proposal for adoption of a rule to give full recognition—the equivalent of extending faith and credit—to judgments, orders, and other actions of tribal courts. After extensive consideration, including three meetings where interested members of the public were allowed to address the committee, we reached the conclusion that it is not appropriate to address the question of the authority of such tribal court decisions by means of a rule at this time. This conclusion is not clear-cut, nor was it readily reached by the advisory committee. On balance, however, the committee concluded that the proposed rule is largely substantive in nature, and recommends that this subject be left to consideration on a case-by-case basis or for consideration by the legislative branch to the extent the issues properly legislative.

One of the first conclusions reached by this committee is that if a court rule is to be used to address the question of recognition of tribal court orders and judgments, then the Minnesota General Rules of Practice would appear to be the appropriate place for the rule. Recognition of tribal court adjudications relates to civil and criminal proceedings, and any rule should address the various possible proceedings in a consistent way.

The Proposed Rule. The rule proposed by the Minnesota Tribal Court State Court Forum was drafted to accomplish a number of purposes, and would largely serve those goals. First, it would create a presumption that any judgment or order rendered by a tribal court of a tribe recognized by federal statute is valid and enforceable in state court as though it had been rendered by a court of a sister state. Second, it contains specific and limited criteria under which the tribal court order would not be given effect. Third, it creates an expedited process for implementing tribal court orders on an “emergency” basis. Fourth, it includes a specific provision carving out judgments or orders where existing federal law provides for full faith and credit; in those circumstances, the procedures of the federal law would govern.

In the committee’s meetings, petitioners described the proposed rule as encompassing elements of both “full faith and credit” and “comity.” The nature of these legal concepts is important to understanding the advisory committee’s recommendations.

Full Faith and Credit. “Full faith and credit” is a term of art, with a meaning defined by the requirement of Article IV of the U. S. Constitution, which provides:

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

By its terms, full faith and credit is mandatory—a state does not exercise discretion in giving effect to the proper judgments of a sister state. *See Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943)(foreign judgment must be enforced even though action barred by limitations in the jurisdiction). Through full faith and credit, a sister state’s judgment is given res judicata effect in all other states. *See, e.g., id.; Hansberry v. Lee*, 311 U.S. 32 (1940).

Comity. In contrast, comity is fundamentally a discretionary doctrine. There is no requirement under constitutional or statutory authority, or generally even by common law, that requires comity be accorded a judgment from the court of a foreign country. *See Aetna Life Insurance Co. v. Tremblay*, 223 U.S. 185 (1912) (no right, privilege or immunity conferred by Constitution to judgments of foreign states and nations); *Hilton v. Guyot*, 159 U.S. 113, 234 (1895).

Comity is also an inherently flexible doctrine. A court asked to decide whether to recognize a foreign order can consider whatever aspects of the foreign court proceedings it deems relevant. The proposed rule here contains a presumption of validity and a list of specified (and apparently exclusive) grounds where the presumption of validity can be overcome. Because other grounds would not permit the presumption to be overcome, the rule significantly limits the reach of the comity doctrine.

The result of blending these doctrines in the proposed rule is to make aspects of comity either mandatory or, at least, presumptively mandatory, in contrast to the traditionally discretionary nature of comity. The committee believes this change is one that should be approached cautiously. The “emergency” provisions of the proposed rule are also troublesome. The very importance of the situations governed by these expedited provisions—“non-criminal orders for protection or apprehension . . . and other emergency orders” are situations where

judicial scrutiny of the validity of the order and the circumstances by which it was obtained may be particularly appropriate.

Legislation in Area. The fact that Congress and the Minnesota Legislature have chosen to legislate some aspects of the enforcement of tribal court orders and judgments in particular, and those of foreign jurisdictions more generally, also militates against adoption of the rule proposed here. Important federal statutes include:

- ▶ Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (2000).
- ▶ Violence against Women Act, 18 U.S.C. § 2265 (2000).
- ▶ Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B (2000).

The Minnesota Legislature has addressed enforcement of orders and judgments in two important places. The Minnesota Uniform Enforcement of Foreign Judgments Act, MINN. STAT. §§ 548.26-.33 (2000), establishes procedures for enforcement of judgments rendered by sister states; the Minnesota Uniform Foreign Country Money-Judgments Act, MINN. STAT. § 548.35 (2000), creates a procedure for filing and enforcing judgments rendered by courts in other countries. Because the latter class of judgments is not entitled to full faith and credit under the Constitution, the court is allowed a more expansive and discretionary role in deciding what effect they have.

Testimony. The committee heard testimony and argument from representatives of the Tribal Court Forum as well as other parties. Numerous parties provided the committee written materials. These presentations provided cogent analysis of reasons why recognition of tribal court judgments and orders would advance the interests of tribal court litigants. Unfortunately, they also provided testimony about troublesome proceedings in tribal courts where recognition of the results would be inconsistent with commonly-held notions of fair play and sound judicial administration. Ultimately, the committee came to no conclusion about the quality of justice in tribal courts generally or in any particular proceedings. The committee does believe, however, that it would be inadvisable to adopt a rule that decides these questions for all cases based on any collection of anecdotal evidence about tribal court proceedings generally. Instead, the current procedure, allowing parties and courts to address the question of whether a particular order or

judgment should be given effect on a case-by-case basis, should be carried forward, although rule making on procedural aspects of these issues may be appropriate in the future.

The committee also received recommendations from the Minnesota Sheriffs' Association and The Minnesota County Attorneys Association. Both of these reports identified additional issues relating to the burdens that a rule recognizing all tribal court judgments would impose on limited resources in the counties, and concluded that consideration of the petition should be delayed pending further inquiry or a rule should not be adopted and that these matters should be left to the legislative process or development through the judicial case-by-case process. A letter from a Co-Chair of the MSBA Court Rules and Administration Committee recommended a combination of rule and statutory amendments, and concluded that further study should be undertaken.

Consideration of Alternatives. The committee did consider whether the proposed rule might warrant adoption if it were modified to address particular concerns expressed to the committee about tribal court proceedings. These possible modifications include provisions that would:

- ▶ apply the rule only to orders and judgments from tribal courts if they are “courts of record.” (relying on WIS. STAT. § 806.245(1)(c) & (3) addressing requirements for determining whether court is “of record”).
- ▶ provide that recognition of tribal court orders and judgments would be not greater than those of courts of sister states. (using a provision from OKLA. ST. DIST. Ct. R. 30(B)).
- ▶ create an express preponderance-of-the-evidence burden of proof for the party seeking to enforce a tribal court order or judgment,
- ▶ permit a Minnesota court to consider whether the tribal court proceedings provided the parties fundamental due-process rights, including a right to appear, a right to compel attendance of witnesses, and the right to have the matter heard before an independent magistrate; and
- ▶ permit the court not to enforce an order or judgment that contravenes the public policy of the State of Minnesota. (derived from MICH. R. CIV. P. 2.615 (C)(2)(c); N.D. R. CT. 7.2 (b)(4). This standard is also a factor for not applying a foreign nation money

judgment under the Minnesota Uniform Foreign Country Money-Judgments Act, MINN. STAT. § 548.35, subd. 4, (b)(3)).

The committee concluded that these changes, while possibly helpful, did not address the main issue relating to the rule—the substantive nature of it and the undesirability of making these changes by court rule. During the committee’s consideration, and as a result of discussions with the Conference of Chief Judges, the petitioner’s proposed rule was amended to include a reciprocity provision. The committee believes this would be a desirable change if a rule is to be adopted. This change also does not resolve the committee’s more fundamental questions about this rule.

Specific Recommendation

The committee believes that the petitioners have made a prima facie case of a need to address the issue of enforcement of tribal court orders and judgments in state court, but the proposed rule is fundamentally substantive in nature and should not be adopted at this time. To the extent the proposed rule presents substantive issues, some might be better addressed in a forum designed for policy determination with broad-based public participation, i.e., the Minnesota Legislature or by the judiciary on a case-by-case basis. To the extent the proposed rule addresses procedural questions ancillary to the substantive issues, the procedural issues would probably be better addressed after the substantive guidelines are established. Because court procedure is a matter within the primary and exclusive authority of the court, constitutional separation of powers should prevent legislative action in some aspects of this proposal.

Recommendation 2:

Rule 145 relating to minor settlements should be amended to modernize the provisions for implementing minor settlements involving bank accounts and to create a new requirement for providing the court a second proposal for a structured settlement in certain circumstances.

Introduction

The committee has been aware of issues concerning the mechanics of administering minor settlements and the use of structured settlements in the minor-settlement context for some time. *See, e.g.*, Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice, No. CX-89-1863, at 15-16 (Final Report, Oct. 6, 2000). The current rule is based on a long-abandoned relic of the banking world—the passbook. The proposed changes modernize the rule to provide for use of accounts based on periodic statements as are now used by banks and to require affirmative acknowledgment of the financial institution that funds will not be disbursed without court order. Simply put, the rule has not kept up with changes in the banking world.

The proposed rule also addresses a problem relating to structured settlements where the annuity is issued by an entity related to the defending insurer. Although this situation is not inherently inappropriate, it may create either the risk or appearance of the annuity being less favorable to the minor. Accordingly, the committee recommends that in this situation the rules should require the proponent of the settlement to obtain at least one additional bid for an annuity.

Specific Recommendation

Rule 145 should be amended as follows:

RULE 145. ACTIONS ON BEHALF OF MINORS AND INCOMPETENT PERSONS

* * *

Rule 145.05. Terms of the Order

The court's order shall:

(a) Approve, modify or disapprove the proposed settlement or disposition and specify the persons to whom the proceeds are to be paid.

(b) State the reason or reasons why the proposed disposition is approved if the court is approving a settlement for an amount which it feels is less than what the injuries and expenses,

9 might seem to call for, e.g., limited insurance coverage, dubious liability, comparative fault or
10 other similar considerations.

11 (c) Determine what expenses may be paid from the proceeds of any recovery by action or
12 settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in
13 excess of one-third of the recovery, except on a showing that: (1) an appeal to an appellate court
14 has been perfected and a brief by the plaintiff's lawyer has been printed therein and (2) there has
15 been an expenditure of time and effort throughout the proceeding which is substantially
16 disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to
17 reimburse any expense incurred in paying an investigator for services and mileage, except in
18 those circumstances where the attorney's fee is not fully compensatory or where the investigation
19 must be conducted in any area so distant from the principal offices of the lawyer so employed
20 that expense of travel and related expense would be substantially equal to, or in excess of, usual
21 investigating expenses.

22 (d) Specify what disposition shall be made of the balance of the proceeds of any recovery
23 after payment of the expenses authorized by the court.

24 (1) The court may authorize investment of all or part of such balance
25 of the proceeds in securities of the United States, or in an annuity or other form of
26 structured settlement, including a medical assurance agreement, but otherwise
27 shall order the balance of the proceeds deposited in one or more banks, savings
28 and loan associations or trust companies where the deposits will be fully covered
29 by Federal deposit insurance.

30 (2) In lieu of such disposition of the proceeds, the order may provide
31 for the filing by the petitioner of a surety bond approved by the court conditioned
32 for payment to the ward in a manner therein to be specified of such moneys as the
33 ward is entitled to receive, including interest which would be earned if the
34 proceeds were invested.

35 (e) If part or all of the balance of the proceeds is ordered deposited in one or more
36 financial institutions, the court's order shall direct:

37 (1) that the defendant pay the sum to be deposited directly to the
38 financial institution;

39 (2) that the ~~deposit book or other~~ account be opened in the name of the
40 minor or incompetent person and that any deposit document be issued in the name
41 of the minor or incompetent person;

42 (3) that the petitioner shall, at the time of depositing, supply the
43 financial institution with a tax identification number or a social security number
44 for the minor and a copy of the order approving settlement; and

45 (3 4) that the ~~deposit book (or other deposit document)~~ be transmitted by
46 the financial institution forthwith acknowledge to the court receipt of the order
47 approving settlement and the sum and that no disbursement of the funds will
48 occur unless the court so orders, using the form substantially equivalent to Form
49 145.1; to the court administrator for safekeeping within 5 days after its receipt of
50 the deposit;

51 (4 5) that the financial institution shall not make any disbursement from
52 the deposit except upon order of the court; and

53 (5 6) that a copy of the court's order shall be delivered to said financial
54 institution by the petitioner with the remittance for deposit. The financial
55 institution(s) and the type of investment therein shall be as specified in MINN.
56 STAT. § 540.08, as amended. Two or more institutions shall be used if necessary
57 to have full Federal deposit insurance coverage of the proceeds plus future
58 interest; and time deposits shall be established with a maturity date on or before
59 the minor's age of majority. If automatically renewing instruments of deposit are
60 used, the final renewal period shall be limited to the date of the age of majority.

61 ~~In every case, minor settlement orders shall include a provision~~
62 ~~substantially as follows:~~

63 ~~IT IS FURTHER ORDERED that the deposit shall remain~~
64 ~~with the designated financial institution until date at which time the~~
65 ~~minor shall reach the age of majority. Time deposits shall be~~
66 ~~established with a maturity date on or before that date the minor's~~
67 ~~age of majority. If automatically renewing instruments of deposit~~
68 ~~are used, the final renewal period shall be limited to the date of the~~
69 ~~age of majority. On the date of majority the financial institution is~~

hereby authorized to the funds (name of beneficiary) upon presentation of the deposit book or other deposit document that has been obtained from the court administrator, without further order of this Court;

(6) — that the petitioner shall, at the time of depositing, supply the financial institution with a tax identification number or a social security number for the minor; and

(7) that the petitioner shall be ordered to file or cause to be filed timely state and federal income tax returns on behalf of the minor.

(f) Authorize or direct the investment of proceeds of the recovery in securities of the United States only if practicable means are devised comparable to the provisions of paragraphs (d) and (e) above, to insure that funds so invested will be preserved for the benefit of the minor or incompetent person, and the original security instrument be deposited with the court administrator consistent with paragraph (e) above.

(g) Provide that applications for release of funds, either before or upon the age of majority may be made using the form substantially similar to Form 145.2.

Rule 145.06. Structured Settlements

If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

(a) Determine the cost of the annuity or structured settlement to the tortfeasor by examining the proposal of the annuity company or other generating entity;

(b) Require that the company issuing the annuity or structured settlement:

(1) Be licensed to do business in Minnesota;

(2) Have a financial rating equivalent to A. M. Best Co. A+, Class VIII or better; and

(3) Has complied with the applicable provisions of MINN. STAT. § 549.30 to § 549.34;

or that a trust making periodic payments be funded by United States Government obligations; and

(4) If the company issuing the proposed annuity or structured settlement is related to either the settling party or its insurer, that the proposed annuity or structured settlement is at least as favorable to the minor or incompetent person as at least one other competitively-offered annuity obtained from an issuer qualified under this rule and not related to the party or its insurer. This additional proposal should be for an annuity with the same terms as to cost and due dates of payments.

(c) Order that the original annuity policy be deposited with the court administrator, without affecting ownership, and the policy be returned to the owner of the policy when:

- (1) The minor reaches majority;
- (2) The terms of the policy have been fully performed; or
- (3) The minor dies, whichever occurs first.

(d) In its discretion, permit a “qualified assignment” within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code;

(e) In its discretion, order the tortfeasor or its insurer, or both of them, to guarantee the payments contracted for in the annuity or other form of structured settlement; and

(f) Provide that:

- (1) The person receiving periodic payments is entitled to each periodic payment only when the payment becomes due;
- (2) That the person shall have no rights to the funding source; and
- (3) That the person cannot designate the owner of the annuity nor have any right to control or designate the method of investment of the funding medium; and

(g) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

Advisory Committee Comment—2002 Amendment

Rule 145.05 is revamped to create a new procedure for handling the deposit of funds resulting from minor settlements. The new rule removes provisions calling for deposit of funds in “passbook” savings accounts, largely because this form of account is no longer widely available from financial institutions. The revised rule allows use of statement accounts, but requires that the financial institution acknowledge receipt of the funds at the inception of the account. A form for this purpose is included as Form 145.1. Additionally, the rule is redrafted to remove inconsistent provisions. Under the revised rule, release of funds is not automatic when the minor reaches majority; a separate order is required. A form

135 to implement the final release of funds, as well as any permitted interim release of funds, is
136 included as Form 145.2.

137 Rule 145.06(b)(4) is a new provision to require at least two competitive proposals for
138 a structured settlement. This requirement applies only when one of the proposals is for an
139 annuity issued by the settling party, its liability insurer, or by an insurer related to either of
140 them. The rule requires that the competitive bids be issued by annuity companies that would
141 be qualified to issue an annuity that complies with the requirements of Rule 145.06. In order
142 to permit the trial court to determine that the proposed settlement adequately provides for
143 the interests of the minor, the competitive bids must be for annuities with comparable terms.
144 The rule requires only a second proposal, but permits the court to require additional
145 proposals or analysis of available proposals in its discretion. The rule, as revised, does not
146 direct how the trial court should exercise its discretion in approving or disapproving the
147 proposed structure settlement. It is intended, however, to provide the court some information
148 upon which it can base the decision.

1 **FORM 145.1**

2 **RECEIPT OF MINOR SETTLEMENT ORDER AND FUNDS**

3 (Gen. R. Prac. 145.05)

4
5 **State of Minnesota**

District Court

6
7 **County of** _____

_____ **Judicial District**

8
9 **Case Type:** _____

10 _____
11 Plaintiff/Petitioner

Case No. _____

12 and

13 **RECEIPT OF MINOR SETTLEMENT**
14 **ORDER AND FUNDS**

15 (Provided Pursuant to Rule 145 of the
16 Minnesota General Rules of Practice)

17 _____
18 Defendant/Respondent

19 1. _____ (“**Financial Institution**”) acknowledges receipt of
20 the sum of \$ _____ on behalf of _____ in this action.

21 2. **Financial Institution** acknowledges receipt of the Order Approving Settlement and
22 For Deposit Into Restricted Account dated _____ in this action, and that the funds
23 delivered remain subject to that order in the account specified below:

24 Name of Depository: _____

25 Branch Name: _____

26 Branch Address: _____

27 _____
28 Account Number: _____

29 Date Account Opened: _____

30 Current Balance: \$ _____

31 3. This account is a federally insured, restricted account, and no withdrawal of either
32 principal or interest shall be allowed by **Financial Institution** without a signed court order in
33 this case.

34 Dated: _____ Type or Print Name _____

35 Signature: _____

Title: _____

1 **FORM 145.2**

2 **COMBINED MOTION AND ORDER FOR RELEASE OF MINOR**
3 **SETTLEMENT FUNDS**
4 (Gen. R. Prac. 145.05)

5
6 **State of Minnesota**

District Court

7
8 **County of _____**

_____ **Judicial District**

9
10 **Case Type:** _____

11
12
13 _____
14 **Plaintiff/Petitioner**

Case No. _____

15
16 **and**

17 **COMBINED MOTION AND ORDER**
18 **FOR RELEASE OF**
19 **MINOR SETTLEMENT FUNDS**

20 _____
21 **Defendant/Respondent**

(Pursuant to Rule 145 of the
Minnesota General Rules of Practice)

22 1. _____ (“Movant”) requests an order of permitting withdrawal of funds
23 now held in a restricted account pursuant to a minor settlement approved in this action on
24 _____. Movant brings this Motion as the

25 _____ (Minor, now past the age of majority—Date of Birth _____)

26 or

27 _____ to minor. (Specify whether trustee,
28 custodian, parent, legal guardian, conservator, or other specified role).

29 2. Funds are now held on behalf of _____ in the following account:

30 Name of Depository: _____

31 Branch Name: _____

32 Branch Address: _____

33
34 Account Number: _____

35 Date Account Opened: _____

36 Current Balance: \$ _____

37 3. Previous withdrawals from the account, each of which was approved by the Court, are
38 as follows:

39 _____ None.

40 *or*

41 _____ \$ _____ on _____ for the purpose of _____

42 \$ _____ on _____ for the purpose of _____

43 \$ _____ on _____ for the purpose of _____



Check if additional space is necessary, and attach a separate

45 sheet with

46 that information.

47 4. Movant seeks the release of funds in the amount of \$ _____ for the
48 following reason:

49 _____ Minor has reached the age of 18 and this is a final distribution

50 *or*

51 _____ The funds will be used for the benefit of the minor in the following way:

52 _____

53 _____

54 _____.



Check if additional space is necessary, and attach a separate

56 sheet with

57 that information.

58 5. Funds should be disbursed as follows:

59 \$ _____ to _____

60 \$ _____ to _____

61 \$ _____ to _____



Check if additional space is necessary, and attach a separate

63 sheet with that information.

64 I declare under penalty of perjury under the laws of the State of Minnesota that the
65 foregoing is true and correct and that any funds released pursuant to this request will be used for
66 the benefit of the minor and in the way stated.

67 Dated: _____.

Type or Print Name _____

Signature: _____

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ORDER APPROVING RELEASE OF FUNDS

Pursuant to the foregoing Motion,
IT IS HEREBY ORDERED that

1. Movant is authorized to withdraw funds to be made payable as follows:

\$ _____ to _____
\$ _____ to _____

2. _____ This is a final distribution of funds from this account and the account may accordingly may be closed following this final distribution
or

_____ This is not a final distribution of funds and this account must be maintained as to the remaining funds and subject to all restrictions on distribution previous ordered.

3. Other provisions: _____

Dated: _____.

Judge of District Court

1 **Recommendation 3:** **Rule 522 relating to proceedings in district court after decision**
2 **by a conciliation court should be amended to make it clear that**
3 **the pleadings may be amended in accordance with the rules**
4 **governing district court actions.**
5

6 **Introduction**

7 Rule 522 allows a party to serve amended pleadings within 30 days after removing an
8 action from conciliation court to district court. The rule is not intended to limit the ability of the
9 court to allow further amendment, but its silence on that subject has occasionally been
10 misinterpreted by trial courts. Given the policy allowing liberal amendment of pleadings and the
11 fact the conciliation court rules are often used by unrepresented parties, the committee believes it
12 would be useful to have the rule deal explicitly for further amendment in district court where
13 appropriate under the district court rules.
14
15

16 **Specific Recommendation**

17 Rule 522 should be amended as follows:
18

19 **RULE 522. PLEADINGS IN DISTRICT COURT**

20 The pleadings in conciliation court shall constitute the pleadings in district court. Any
21 party may amend its statement of claim or counterclaim if, within 30 days after removal is
22 perfected, the party seeking the amendment serves on the opposing party and files with the court
23 a formal complaint conforming to the Minnesota Rules of Civil Procedure. If the opposing party
24 fails to serve and file an answer within the time permitted by the Minnesota Rules of Civil
25 Procedure, the allegations of the formal complaint are deemed denied. Amendment of the
26 pleadings at any other time shall be allowed in accordance with the rules of civil procedure. On
27 the motion of any party or on its own initiative, the court may order either or both parties to
28 prepare, serve and file formal pleadings.
29

30 **Advisory Committee Comment—2002 Amendment**

31 Rule 522 establishes a streamlined procedure for amendment of pleadings as a matter
32 of right during the first 30 days after an action is removed to district court. The 2002
33 amendment adds a sentence before the last sentence to make it clear that the parties may
34 move for leave to amend at other times, and the court can allow amendment on its own
35 initiative. In these situations, the standards for amendment and supplementation of pleadings
36 contained in Rule 15 of the Minnesota Rules of Civil Procedure and the case law

interpreting that rule should guide the court in deciding whether to allow amendment.

STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

OFFICE APPELLATE COURTS

OCT 15 2002

In Re Proposed Amendments to
Minnesota General Rule of Practice 145

FILED

To: The Supreme Court of the State of Minnesota

The undersigned respectfully requests the opportunity to make an oral presentation at the Hearing to Consider Proposed Amendments to the General Rules of Practice, scheduled at 3:00 p.m., October 29, 2002. The oral presentation shall be based upon the attached materials to be presented.

Fourteen copies of this request and supporting documents are being filed with the Clerk of Appellate Courts.

Respectfully submitted,

10/14/02
Dated

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STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

In Re Proposed Amendments to
Minnesota General Rule of Practice 145

I.	INTRODUCTION	2
II.	ISSUE.....	2
III.	ARGUMENT	4
IV.	BACKGROUND.....	5
	A. Structured Settlements	5
	B. Minn. Gen. R. Prac. 145.06	8
V.	ANALYSIS	9
VI.	RESULTS.....	11
VII.	CONCLUSION AND PROPOSALS	16
	A. Matching by the Owned/Affiliated Life Company	16
	B. Court-Ordered Structured Settlement: The Court as Assignor.....	17
	C. Proposed Amendment to Minn. Gen. R. Prac. 145.06.....	18
Appendix I:		
Liability Companies Doing Business in the State of Minnesota With an Owned or Affiliated Life Insurance Company		21
Appendix II:		
▪	Geico Ins. Co. & Metropolitan Life Ins. Co.....	23A-H
▪	State Farm Mutual Automobile Ins. & State Farm Life Ins. Co.....	23I-K
▪	American Family Insurance Group & American Family Life.....	23L-N
Appendix III:		
▪	Life Insurance Companies Accepting a Court-Ordered Structured Settlement With the Court as Assignor	24
Appendix IV:		
▪	Minor Personal Injury Cases Involving Court Ordered Structured Settlement With the Court as Assignor	25

I. INTRODUCTION

When the personal injury case of a minor or incompetent plaintiff is settled using a structured settlement, the settlement must meet the provisions of Minn.R.Gen.Prac. 145.06 ("Rule 145.06"). Generally, Rule 145.06 requires court approval of the structured settlement. In addition, the Rule requires that the life insurance company issuing the annuity meet certain financial rating requirements.

Many liability insurance companies currently doing business in Minnesota also own or are affiliated with a life insurance companies that issue annuities.¹ The vast majority of these owned or affiliated life companies meet the financial rating requirement of Rule 145.06. Under current Rule 145.06, therefore, these life companies can issue annuities in structured settlements for minor and incompetent plaintiffs.

II. ISSUE

During the past several years, a disturbing issue has developed with regards to the structured settlement of a minor plaintiff's personal injury case. A number of liability insurance companies have mandated that the annuity for a structured settlement be purchased from the liability company's owned or affiliated life company. Such practices can have severe, direct consequences on the minor or incompetent plaintiff with whom it is settling. The reason is that, while the owned or affiliated life company may meet the financial rating requirement of Minn. Gen. R. Prac. 145.06, its annuity proposal may not be competitive in the marketplace. In other words, the benefit payments from the owned/affiliated life company may be significantly less than payments from other annuity companies.

In one case involving a young boy who suffered head injuries in an automobile accident in 1998, Geico Insurance Company was the liability carrier. After attorney's fees of \$5,000 and a large medical assistance lien, \$53,535 was available to structure on behalf of the young boy. Geico Insurance Company insisted that the only annuity carrier they could use was Metropolitan Life Insurance Company (MetLife). MetLife, an A.M. Best A+ Class XV company, provided quotes for four structured settlement options. The exact same options were independently quoted with First Colony Life Insurance Company, an A.M. Best A++ Class XII company. Depending on the option used, the difference in the final payment between the two companies was approximately 5% to 15% greater with First Colony.²

In another case, a young girl who suffered significant facial lacerations in an automobile accident in 1996. State Farm Insurance was the liability carrier. The parties agreed to a structured settlement of \$35,000. State Farm insisted that the annuity be purchased from State Farm Life Insurance Company, which is A++ Class XV A.M. Best rated company.³ The total guaranteed benefits from State Farm, however, was over \$14,000 less than the total guaranteed benefits from First Colony Life Insurance Company.⁴

The most significant difference in annuity proposals involved a case where a young girl was injured in 1996 at the home of her grandfather when she put her hand into an operating fan. The liability insurance carrier was American Family Insurance

¹ See Appendix I.

² See Appendix II – pp. 23A-23H (Each option quoted by MetLife is immediately followed by a quote from First Colony Life Insurance Company, eg. Page 23A is the quote from MetLife on option 1, Page 23B is the quote from First Colony on option 1.

Group. American Family agreed to settle the case. After fees and expenses, approximately \$94,000 was available to place in a structured settlement for the young girl. The home office of American Family Insurance Group insisted that the annuity be purchased from their life insurance company, American Family Life (A.M. Best A+ Class VIII). The total guaranteed benefits from American Family Life, however, was only \$269,916, whereas the total guaranteed benefits from another active annuity company was almost \$433,990 – a difference of almost \$165,000 in benefits for the minor.⁵

Under current Minnesota law, these structured settlements take place even though they are not in the best interest of the minor or incompetent plaintiff. Many liability companies have continued to require that the annuities be purchased from their owned or affiliated life companies despite the discrepancy in benefit payments. Furthermore, a court can still approve the proposed structured settlement because it is not aware of or has not been shown annuity proposals from other life companies or because it is simply unwilling to order the liability company to purchase the most competitive annuity.

III. ARGUMENT

The practice of a liability company in requiring that the annuity in a structured settlement be purchased from its owned or affiliated life company can result in significant losses to a minor or incompetent plaintiff in the amount of benefits the plaintiff can receive from the annuity.

³ "Purchase of an annuity through another carrier and not guaranteed through State Farm Insurance would not be an option." Letter from Danny Suggs, Claims Representative, *State Farm Mut. Auto. Ins. Co.* to Robert J. Hauer, Jr., *Hauer, Fargione & Love, P.A.*, March 26, 1999. See Appendix II – p. 231

⁴ Appendix II – pp. 23J-K.

IV. BACKGROUND

Before the consequences of the liability company's mandate on the minor or incompetent plaintiff can be analyzed, it is important to understand what a minor structured settlement involves. It is equally important to understand the rules and laws regulating structured settlements for minor and incompetent plaintiffs.

A. Structured Settlements

Personal injury cases involving minor or incompetent plaintiffs present unique issues. Because these plaintiffs are unable to make judgments on their own behalf, they are vulnerable to coercion and manipulation. Even parents who want to act in their minor child's best interest can present a conflict if they feel they deserve a portion of the proceeds from their child's personal injury case or if they lack the intellectual ability to serve as their child's representative.⁶ In addition, the minor or incompetent plaintiff's inability to plan for their future becomes particularly important if their injuries require continuing assisted living, long-term medical care, or other future needs.

Minnesota law for the most part has addressed these issues. For example, a person, other than a parent or natural guardian, can be appointed guardian ad litem to represent the minor or incompetent plaintiff. In practice, it is recommended that the guardian ad litem be a professional such as a law professor or executive of a legal services corporation, who has no connection to the minor or incompetent plaintiff, to the firm representing the plaintiff, or the personal injury community in general and who can

⁵ Appendix II – pp. 23L-23N

⁶ Robin Sharpe Landy, *Representing Minor or Incompetent Clients* 3 (1998).

exercise his/her independent judgment on behalf of the plaintiff, in the plaintiff's best interests.⁷ The guardian ad litem approves the settlement amount on behalf of the minor or incompetent plaintiff but then must also have it formally approved by the court under Minn.Gen.R.Prac. 145.

Once a settlement is reached and approved by the Court, the guardian ad litem has only three options under Minn.Gen.R.Prac. 145.05 to dispose of the proceeds. The guardian ad litem may have the court order the defendant to directly deposit the entire settlement proceeds into a bank, savings and loan or trust account that is FDIC insured and where funds cannot be withdrawn without a court order.⁸ Another option allows the entire proceeds to be used to purchase U.S. Savings Bonds.⁹ Or, the guardian ad litem may enter into a structured settlement on behalf of the minor or incompetent plaintiff.¹⁰

In a structured settlement, the plaintiff receives payments according to an exact negotiated schedule over a number of years, instead of in a single lump sum at the time of settlement.¹¹ The defendant purchases an annuity, typically from a life insurance company, to fund the scheduled payments to the plaintiff. Essentially, the defendant pays the life company the entire lump sum of the settlement (the cost of the annuity) and the insurance company becomes responsible for the future payments.¹²

Structured settlements can greatly benefit minor or incompetent plaintiffs because they address many of the issues that arise with the settlement of the minor or

⁷ *Id.*

⁸ Minn.Gen.R.Prac. 145.05(d)(1).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Thomas J. Faulhauber and Robert J. Hauer, Jr., "Chapter 11, Structured Settlements" *Minnesota Defense Lawyers Release Deskbook* (1999).

incompetent plaintiff personal injury cases, particularly those involving serious injuries or large settlement proceeds. In fact, it has been suggested that attorneys representing minor or incompetent plaintiffs have an ethical obligation to explore settlements for their clients.¹³ In addition, Minn. Stat. § 549.25 requires that structured settlements be explored when the net proceeds exceed \$100,000.

The primary advantage of a structured settlement in the case of a minor or incompetent plaintiff is the ability to schedule payments to fit the plaintiff's special needs.¹⁴ For example, payments are often scheduled to pay out during the plaintiff's early 20s to pay for college or during the plaintiff's late 20s when he/she is typically going to buy a home.¹⁵ For minor or incompetent plaintiffs who have ongoing medical needs, the payments can be scheduled to pay for certain medical treatments when they are needed.¹⁶

Another advantage involves the permanency of the structured settlement. When settlement proceeds are deposited into a savings account or money market, the total proceeds become available to the plaintiff upon reaching majority age. In a structured settlement, once the proceeds and scheduled payments are accepted and approved, the timing and amount of the future payments cannot be altered.¹⁷ The permanency of a scheduled payments protects minor or incompetent plaintiffs from coercion, manipulation, imprudent investment schemes or unwise spending. It also relieves the

¹² *Id.*

¹³ Landy, *Representing Minor or Incompetent Clients* at 5.

¹⁴ Faulhauber, *Structured Settlements* at 237.

¹⁵ *Id.*

¹⁶ *Id.* at 238.

¹⁷ Jerry C. Lothrop, *Principal Advantages to the Enclosed [Structured Settlement] Proposal* (2000).

minor or incompetent plaintiff's guardian of their duty to invest the settlement proceeds until the plaintiff is 18 years old.¹⁸ However, the permanency of a structure also has disadvantages as it does not allow an injured plaintiff to gain early access to the funds in the case of an unexpected emergency or the scheduled payment occurs before there is a necessity for the money.

A final advantage for the minor or incompetent plaintiff in a structured settlement is the ability to receive payments from a tax-free investment. When a plaintiff settles for a lump sum settlement, the lump sum is received tax free but if the proceeds are invested, the interest earned from the investment is taxable.¹⁹ Under I.R.C. § 104, however, the plaintiff can receive a tax-free future payment when he/she settles the case for *the right* to receive that future payment.²⁰ The plaintiff must not have constructively received and controlled the settlement proceeds in order to qualify for the tax-free investment opportunity.^{21 22}

B. Minn.Gen.R.Prac. 145.06

Structured settlements on behalf of minor or incompetent plaintiffs must meet the requirements of Minn.Gen.R.Prac. 145.06. Under Minn.Gen.R.Prac. 145.06(b), the company issuing the annuity must have a financial rating equivalent to A.M. Best Co. A+ Class 8 or better. In other words, the company issuing the annuity must be superior in

¹⁸ Faulhauber, *Structured Settlements* at 237.

¹⁹ *Id.* at 236.

²⁰ *Id.*

²¹ *Id.*

²² Income is deemed to be constructively received by the plaintiff when it is credited to his account, set apart for him, or otherwise made available to him to withdraw from. 26 C.F.R. § 1.451-2(a).

financial strength, operating performance and market profile and be in a financial size category of \$100 to \$250 million or better.²³ Minn.Gen.R.Prac. 145.06(e) allows the court in its discretion to order the tortfeasor or insurer to guarantee the payments contracted for in the annuity. Subdivisions (b) and (e) address the concern of the possibility of default or bankruptcy by the annuity company. Subdivision (f) of the Rule further protects the minor or incompetent plaintiff by providing for the permanency of the structured settlement in terms of the timing and amount of benefits paid.

Minn.Gen.R.Prac. 145.06(a) allows the court to determine the cost of the annuity and to examine the proposal of the annuity company. The Rule, however, does not require that there be more than one proposal for comparison purposes or that the annuity company be competitive in the marketplace.

V. ANALYSIS

A survey was performed of settled minor personal injury cases (219) from the law firm of Hauer, Fargione & Love, P.A., that have pending future payments. Of the 219 cases, 33 involved injuries that occurred within the past five years (1995 to present). Settlement proceeds in 11 of the 33 settled cases were deposited in a savings account, money market, certificate of deposit or trust account. Twenty-two cases involved a structured settlement. Of the 22, 13 of the cases involved an annuity that was purchased from a life company which was independent of the liability carrier or from the liability carrier's owned/affiliated life company but no comparison was made or could be made with an independent life company.

²³ 1999 Best's Key Rating Guide.

In the remaining nine structured settlements, annuity proposals had been submitted both by the liability companies' owned/affiliated life companies and by independent life companies.²⁴ The annuity proposals in each case were based on the same purchase date, same present cash value and same payment schedule (date and amount of payment), with the exception of the last payment amount. The terms of the structured settlements varied from case to case between five and 25 years. Annuity costs and periodic payments also varied from case to case. To account for these variances in term and payment schedule, a normalization rate was calculated based upon the initial cost, the total payout benefits and the number of years in the term, according to the following equation:

$$r = [(A_t / A_0)^{1/t}] - 1$$

where r is the normalization rate, A_t is the total benefit payout, A_0 is the cost of the annuity, and t is the number of years in the term.²⁵ The use of this equation is justified because the structured settlements in each case involved the same annuity cost and same payment schedule and amounts except for the last payment. It should be noted that because of the periodic payments, the normalized rate is different from the actual annual percentage rate. In addition, the internal rate of return was not used as it is the rate of return for a series of cash flows that must occur at regular intervals, such as monthly or annually.²⁶

Statistical analysis was performed to determine the significance of the difference between the normalized rates of owned/affiliated life company annuities and

²⁴ See Appendix I for the actual proposals.

²⁵ George B. Thomas, Jr. and Ross L. Finney, *Calculus and Analytic Geometry* 429 (1988).

²⁶ "IRR" Help Topic, Microsoft Excel 97, Microsoft Corporation.

independent life company annuities. Because the difference in the normalized rates of the owned/affiliated life companies and independent life companies were not normally distributed, the analysis of the difference was performed using the Wilcoxon Signed Rank Test (paired, non-parametric analysis).²⁷ Significance was assumed at $p < 0.05$.

In Cases 1 and 8, multiple annuity proposals based on different scheduled payments were presented by both the owned/affiliated and independent life companies. Only one structured settlement from each case was arbitrarily selected to be included in the statistical analysis.

VI. Results

Tables 1A and 1B summarize the data collected from the nine structured settlements, where annuity proposals that were based on the same present cash value had been submitted both by the liability companies' owned/affiliated life companies and by independent life companies. The data in Table 1A is based on annuity proposals from owned/affiliated life companies while the data in Table 1B shows the corresponding annuity proposals from independent life companies. In Cases 1 and 8, multiple proposals were submitted based on different structures. These proposals are listed individually in both tables. The proposals for the minor structured settlements, which included details regarding the payment schedule, are found in Appendix I.

²⁷ StatView 512+, version 1.1, Abacus Concepts, Inc.

Table 1: Summary of Data Collected From Structured Settlements

A: Owned or Affiliated Life Company

	Cost of Annuity (Ao)	Total Benefits (At)	Number of Years (t)	Normalized Rate
Case 1A	\$53,535	\$111,456	17	4.41%
Case 1B	\$53,535	\$104,779	12	5.76%
Case 1C	\$53,535	\$144,945	17	6.03%
Case 1D	\$53,535	\$134,771	17	5.58%
Case 2	\$94,164	\$269,916	25	4.30%
Case 3	\$25,681	\$64,099	20	4.68%
Case 4	\$50,000	\$74,786	10	4.11%
Case 5	\$16,800	\$21,878	10	2.68%
Case 6	\$24,000	\$86,659	23	5.74%
Case 7	\$90,000	\$285,800	21	5.66%
Case 8A	\$19,671	\$36,444	12	5.27%
Case 8B	\$19,671	\$37,061	13	4.99%
Case 8C	\$19,671	\$41,723	16	4.81%
Case 8D	\$19,671	\$45,914	21	4.12%
Case 8E	\$19,671	\$47,016	21	4.24%
Case 8F	\$19,671	\$36,444	12	5.27%
Case 8G	\$19,671	\$37,061	13	4.99%
Case 8H	\$19,671	\$41,723	16	4.81%
Case 8I	\$19,671	\$45,914	21	4.12%
Case 8J	\$19,671	\$47,016	21	4.24%
Case 9	\$18,000	\$19,458	5	1.57%

B: Independent Life Company

	Cost of Annuity (Ao)	Total Benefits (At)	Number of Years (t)	Normalized Rate
Case 1A	\$53,535	\$119,923	17	4.86%
Case 1B	\$53,535	\$110,286	12	6.21%
Case 1C	\$53,535	\$156,019	17	6.49%
Case 1D	\$53,535	\$145,023	17	6.04%
Case 2	\$94,164	\$433,990	25	6.30%
Case 3	\$25,681	\$78,130	20	5.72%
Case 4	\$50,000	\$78,403	10	4.60%
Case 5	\$16,800	\$22,093	10	2.78%
Case 6	\$24,000	\$86,245	23	5.72%
Case 7	\$90,000	\$285,800	21	5.66%
Case 8A	\$19,671	\$37,845	12	5.60%
Case 8B	\$19,671	\$38,476	13	5.30%
Case 8C	\$19,671	\$43,909	16	5.15%
Case 8D	\$19,671	\$49,331	21	4.48%
Case 8E	\$19,671	\$50,093	21	4.55%
Case 8F	\$19,671	\$36,490	12	5.28%
Case 8G	\$19,671	\$37,033	13	4.99%
Case 8H	\$19,671	\$41,610	16	4.79%
Case 8I	\$19,671	\$45,685	21	4.09%
Case 8J	\$19,671	\$46,650	21	4.20%
Case 9	\$18,000	\$19,500	5	1.61%

Tables 2A and 2B show the data used in the statistical analysis. The proposals from the owned/affiliated life companies are shown in Table 2A while Table 2B contains the proposals from the independent life companies. For Cases 1 and 8, one structure proposal was arbitrarily selected from each case to be used in the analysis.

Table 2: Summary of Cases Used in Statistical Analysis

A: Owned or Affiliated Life Company

	Cost of Annuity (Ao)	Total Benefits (At)	Number of Years (t)	Normalized Rate
Case 1	\$53,535	\$111,456	17	4.41%
Case 2	\$94,164	\$269,916	25	4.30%
Case 3	\$25,681	\$64,099	20	4.68%
Case 4	\$50,000	\$74,786	10	4.11%
Case 5	\$16,800	\$21,878	10	2.68%
Case 6	\$24,000	\$86,659	23	5.74%
Case 7	\$90,000	\$285,800	21	5.66%
Case 8	\$19,671	\$36,444	12	5.27%
Case 9	\$18,000	\$19,458	5	1.57%

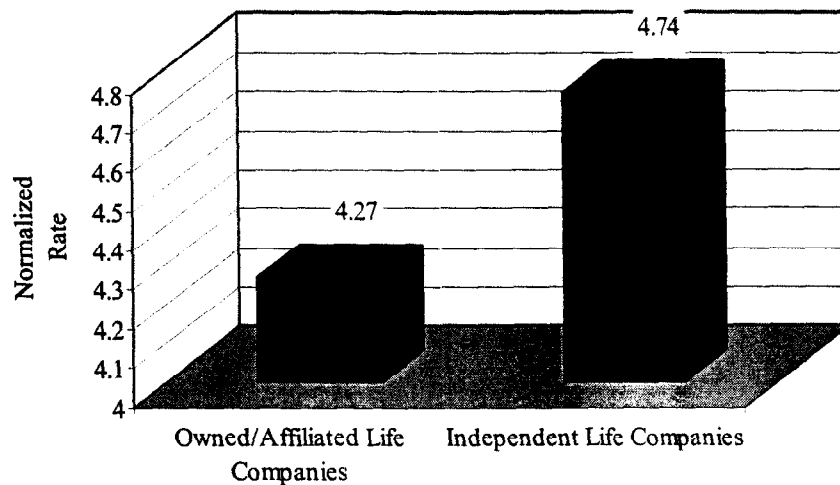
B: Independent Life Company

	Cost of Annuity (Ao)	Total Benefits (At)	Number of Years (t)	Normalized Rate
Case 1	\$53,535	\$119,923	17	4.86%
Case 2	\$94,164	\$433,990	25	6.30%
Case 3	\$25,681	\$78,130	20	5.72%
Case 4	\$50,000	\$78,403	10	4.60%
Case 5	\$16,800	\$22,093	10	2.78%
Case 6	\$24,000	\$86,245	23	5.72%
Case 7	\$90,000	\$285,800	21	5.66%
Case 8	\$19,671	\$37,168	12	5.45%
Case 9	\$18,000	\$19,500	5	1.61%

As shown in Figure 1, the average normalized rate of the annuities from the owned/affiliated life companies was 4.27% compared to the 4.75% average normalized rate of the annuities from the independent life companies.

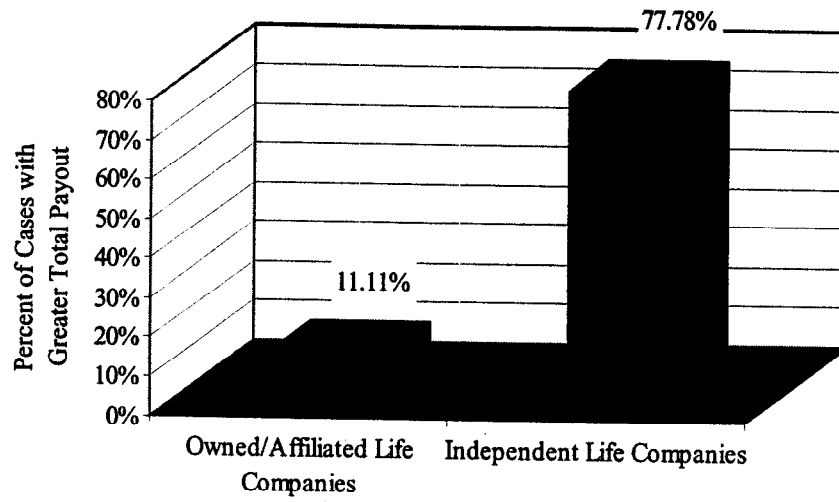
According to the Wilcoxon signed rank test, benefit payments from independent life insurance companies gave significantly greater payouts ($z = -2.38$; $p < 0.017$).

Figure 1: Independent Life Companies Offer a Higher Normalized Rate Than Owned/Affiliated Life Companies



In almost 78% (seven out of nine) of the cases surveyed, the guaranteed benefit payout from the independent life company was higher than the benefit payout from the owned/affiliated life company (See Figure 2). In one of the cases, the guaranteed benefit payout from the independent life company was the same as the benefit payout from the owned/affiliated life company.

Figure 2: Independent Life Companies More Frequently Offer a Greater Payout Than Owned/Affiliated Life Companies



VII. Conclusion and Proposals

The data supports the argument that the practice of a liability company in requiring that the annuity in a structured settlement be purchased from its owned or affiliated life company can result in significant losses to a minor or incompetent plaintiff in the amount of benefits the plaintiff can receive from the annuity. In seven of the nine cases surveyed, proposed benefit payouts from the independent life company was greater than the benefit payouts from the owned/affiliated life company's annuity proposal. The significance of the data collected demonstrates that current practice or law must be changed to protect minor or incompetent plaintiffs in a structured settlement. Several options are available to prevent minor or incompetent plaintiffs from being forced into a structured settlement with a non-competitive annuity.

A. Matching by the Owned/Affiliated Life Company

One option is to maintain the status quo and leave the liability carrier with the discretion to decide whether to match the best annuity proposal or not. Travelers Group and Farmers Insurance Group have expressed willingness to match the best annuity quote when their owned/affiliated life insurance companies' own quotes are not competitive. If their life insurance companies cannot match the best quote, these liability carriers will place the annuity with the best quote.

This option, however, is totally dependent on the discretion of the liability insurance company. As discussed previously, many liability insurance companies have been unwilling to allow such an option. In addition, this option would not protect

unrepresented plaintiffs or plaintiffs whose attorneys did not realize a competitive quote should or could be obtained.

B. Court-Ordered Structured Settlement: The Court as the Assignor

Some liability and life insurance companies have been amenable to accepting a court-ordered structured settlement where the court serves as the assignor.²⁸ The liability insurance company pays the settlement amount to the court and the court purchases the annuity from the most competitive life insurance company.

Normally, when the annuity is purchased by the liability company as the assignor, the plaintiff is deemed to have not constructively received the structured settlement payments until he or she receives the money and can thus, receive structured settlement payments tax free. Constructive receipt issues, however, have been raised in court-ordered structured settlements. Many life insurance companies may be unwilling to participate in such court-ordered structured settlements and guarantee tax-free payments, because they are concerned that this type of settlement might constitute constructive receipt of the settlement monies by the plaintiff and result in adverse tax consequences to the plaintiff.

However, it should be noted that under a court ordered structured settlement, the money never passes through the plaintiff or the plaintiff's attorney and goes directly from the liability carrier to the court and then to the annuity company. Under 26 C.F.R. § 1.451-2(a), income is not constructively received if the plaintiff's control of its receipt is

²⁸ Appendix III.

“subject to substantial limitations or restrictions.”²⁹ It is hard to imagine a case where the plaintiff’s control of the receipt of income is any harder than when the proceeds are held and controlled by the court.

Another argument that has been raised with regard to court-ordered structured settlements is that the court cannot logically serve as the assignor. Only the defendant-tortfeasor, as the obligor, can assign its liability to make periodic payments. The court is not an obligor or party to the suit and therefore, cannot assign any liability. The response to this argument has been that under Minn.Gen.R.Prac. 145.06, it is within the discretion of the court in approving the structured settlement to *order* the liability carrier to assign its liability to make periodic payments to the most competitive life insurance company. At least six personal injury cases have successfully involved court-ordered structured settlements.³⁰

C. Proposed Amendment to Minn.Gen.R.Prac. 145.06

To protect the interests of these vulnerable plaintiffs, it has been proposed that the following language be added to Minn.Gen.R.Prac. 145.06:

[The Court may a]pprove the settlement if it is in the best interests of the minor or incompetent person after the proponent submits proof of at least two other structured settlement quotes using different annuity issuers acceptable to all parties.

All quotes shall:

²⁹ Dirk Yandell, “Advantages and Disadvantages of Structured Settlements” *Journal of Legal Economics* 73 (Fall 1995).

- (A) Be based upon the same purchase date and same benefit schedule (same payment amount and payment date);
- (B) Show the cost of the annuity;
- (C) Be either obtained from annuity issuers that are unrelated to each other or obtained by an independent structured settlement consultant licensed to do business in Minnesota;
- (D) Represent the quotations obtained that are most favorable to the minor or incompetent;
- (E) Provide all of the information required in Minn. Stat. § 549.31, subds. 3(1)-3(6) (1999);
- (F) Be from a life insurance company with an A.M. Best rating of A+, Class VIII or better and is licensed to do business in Minnesota.³¹

Under the proposed rule amendment, the liability carrier must assure the court that the annuity is competitive in the marketplace and of high quality in order to gain court approval for any structured settlement annuity.

An amendment to Rule 145.06 requiring two additional annuity quotes, independent of the life insurance company associated with the settling liability insurance carrier, would force these carriers to either be competitive in the marketplace or see the

³⁰ See Appendix IV.

³¹ See Letter from Lawrence Rocheford, esq., *Jardine, Logan & O'Brien, PLLP*, to Michael Unger, *Rider Bennett Egan & Arundel LLP*, Robert J. Hauer, Jr., esq., *Hauer Fargione & Love, P.A.*, and Willard L. Wentzel, *WL Wentzel Jr. & Assoc.*, Feb. 21, 2000 with modifications from David C. Brackett, President, *National Structured Settlement Trade Assoc.* and Robert J. Hauer, Jr., esq., *Hauer Fargione & Love, P.A.*

settlement monies go to another life insurance company not owned or controlled by them.

Respectfully submitted,

10/14/02
Dated

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Appendix I
Liability Companies Doing Business in the State of Minnesota
With an Owned or Affiliated Life Insurance Company

Liability Company	Life Insurance Company	A.M. Best Rating
1. American Family Ins. Group	American Family Life Ins. Co.	A+ (VIII)
2. American International Group	AIG Life Ins. Co.	A++ (IX)
3. Allstate Group	Allstate Life Ins. Co.	A+ (XV)
4. Auto-Owners Ins. Group	Auto-Owners Life Ins. Co.	A+ (VIII)
5. Cincinnati Financial Group	The Cincinnati Life Ins. Co.	A+ (IX)
6. Farmers Ins. Group	Farmers New World Life Ins. Co.	A+ (XI)
7. Geico Ins. Company	Metropolitan Life Ins. Co.	A+ (XV)
8. Liberty Mutual Group	Liberty Life Assur. Of Boston	A (VIII)
9. Safeco Group	Safeco Life Ins. Co.	A+ (X)
10. St. Paul Group	Fidelity and Guarantee Life Ins.	A (IX)
11. State Farm Group	State Farm Life Ins. Co.	A++ (XV)
12. Travelers Group	Travelers Life and Annuity	A+ (IX)

Appendix II Case Examples

- Geico Insurance Company & Metropolitan
Life Insurance Company page 23A-H
- State Farm Mutual Automobile Insurance &
State Farm Life Insurance Companypage 23I-K
- American Family Insurance Group & American Family Life.....page 23L-N

Metropolitan Life Insurance Company
200 Park Avenue, New York, NY 10166-0188
Tel 800 633-0051 Fax 212 578-7014

MetLife

option 1

Case Name: [REDACTED] 3
Purchase Date: 05/27/1999
Effective Date: 03/15/1999

Benefits For: [REDACTED] 3
Date of Birth: [REDACTED]

	COST	GUARANTEED BENEFITS
A \$5,000 Lump Sum is payable on 11/05/04.	3,913	5,000
A \$5,000 Lump Sum is payable on 11/05/07.	3,240	5,000
A \$15,000 Lump Sum is payable on 11/05/11.	7,459	15,000
Beginning on 11/05/04, \$300 is payable monthly for 12 years certain. The last guaranteed payment is due 10/05/16.	23,585	43,200
A \$43,256 Lump Sum is payable on 11/05/16.	15,338	43,256
Subtotal	53,535	111,456
Annuity totals	53,535	111,456
Policy Fee	0	
Assignment Fee	0	
Included State Tax [0]	
TOTAL	\$ 53,535	\$ 111,456

Settlement Annuity Quotation

First Colony Life Insurance Company
30 Main Street
Richburg, VA. 24504
Tel. (888) 325-5433

Quote Date: 05/10/1999
Deposit Date: 06/01/1999

1 Page Total \$53,535.00

Presented By:

Presented for:

Age 0 Male
Date of Birth not specified

State of Ownership: Virginia

Summary of Benefits

\$5,000.00 lump sum due on 11/05/04.	\$3,776.10
\$5,000.00 lump sum due on 11/05/07.	\$3,123.53
\$15,000.00 lump sum due on 11/05/11.	\$7,089.11
\$300.00 monthly for 12 years 0 months (certain only) . . .	\$22,503.88
Benefits commence on 11/ 5/04	
\$51,723.87 lump sum due on 11/05/16.	\$17,042.38

Total Premium for Annuity Benefits:

\$53,535.00

RATES ARE SUBJECT TO CHANGE WITHOUT NOTICE. PLEASE VERIFY WITH THE HOME OFFICE THAT THIS RATE SCALE AND RATE BASIS ARE CURRENT. A COPY OF THIS PRINTOUT MUST ACCOMPANY ANY PREMIUM.

This quote assumes the following conditions are met:

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2. Each payment stream must be approved by First Colony.
3. No surrenders or modifications to this contract will be allowed after issue.

Rate scale: FCL-115 effective 04/19/1999

Rates: SHESSM SHEHSA SBCUSR SBHCSC SLBLSE SLMSMC SBUHMS SCLBSE SRCAME SHESEE

Case Name: [REDACTED]
Purchase Date: 05/27/1999
Effective Date: 03/15/1999

option 2

Benefits For: Date of Birth:	COST	GUARANTEED BENEFITS
A \$5,000 Lump Sum is payable on 11/05/04.	3,913	5,000
A \$99,779 Lump Sum is payable on 11/05/11.	49,622	99,779
Subtotal	53,535	104,779
Annuity totals	53,535	104,779
Policy Fee	0	
Assignment Fee	0	
Included State Tax [0]	
TOTAL	\$ 53,535	\$ 104,779

First Colony Life Insurance Company
100 Main Street
Richburg, VA. 24504
Tel. (888) 325-5433

Quote Date: 05/10/1999
Deposit Date: 06/01/1999

1 Page Total \$53,535.00

Presented By:

Presented for:

Age 0 Male

Date of Birth not specified

State of Ownership: Virginia

Summary of Benefits

\$5,000.00 lump sum due on 11/05/04.	\$3,776.10
\$105,285.95 lump sum due on 11/05/11.	\$49,758.90

Total Premium for Annuity Benefits:

\$53,535.00

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2. Each payment stream must be approved by First Colony.
3. No surrenders or modifications to this contract will be allowed after issue.

Rate scale: FCL-115 effective 04/19/1999

Rates: SHESSM SHEHSA SBCUSR SBHCSC SLBLSE SLSMSC SBUEMS SCLBSE SRCAMB SHESEE

MetLife

option 3

Case Name: [REDACTED] 1
Purchase Date: 05/27/1999
Effective Date: 03/15/1999

Benefits For: [REDACTED] 1
Date of Birth: [REDACTED]

COST	GUARANTEED BENEFITS
------	------------------------

A \$5,000 Lump Sum is payable on 11/05/04.	3,913	5,000
A \$139,945 Lump Sum is payable on 11/05/16.	49,622	139,945
Subtotal	53,535	144,945
Annuity totals	53,535	144,945
Policy Fee	0	
Assignment Fee	0	
Included State Tax	[0]	
TOTAL	\$ 53,535	\$ 144,945

Settlement Annuity Quotation

First Colony Life Insurance Company
10 Main Street
Richburg, VA. 24504
Tel. (888) 325-5433

Quote Date: 05/10/1999
Deposit Date: 06/01/1999

1 Page Total \$53,535.00

Presented By:

Presented for:

Age 0 Male
Date of Birth not specified

State of Ownership: Virginia

Summary of Benefits

\$5,000.00 lump sum due on 11/05/04.	\$3,776.20
\$151,019.02 lump sum due on 11/05/16.	\$49,758.90

Total Premium for Annuity Benefits:

\$53,535.00

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2. Each payment stream must be approved by First Colony.
3. No surrenders or modifications to this contract will be allowed after issue.

Rate scale: FCL-115 effective 04/19/1999

Rates: SHESSM SHEHSA SBCUSR SBHCSC SLBLSB SLSMSC SBUHMS SCLBSE SRCAMB SHESEE

MetLife

Case Name: [REDACTED] 2
Purchase Date: 05/27/1999
Effective Date: 03/15/1999

Option 4

Benefits For: [REDACTED] 2
Date of Birth: [REDACTED]

	COST	GUARANTEED BENEFITS
A \$5,000 Lump Sum is payable on 11/05/04.	3,913	5,000
A \$5,000 Lump Sum is payable on 11/05/07.	3,240	5,000
A \$15,000 Lump Sum is payable on 11/05/11.	7,459	15,000
A \$109,771 Lump Sum is payable on 11/05/16.	38,923	109,771
Subtotal	53,535	134,771
Annuity totals	53,535	134,771
Policy Fee	0	
Assignment Fee	0	
Included State Tax [0]	
TOTAL	\$ 53,535	\$ 134,771

Settlement Annuity Quotation

First Colony Life Insurance Company
700 Main Street
Richburg, VA. 24504
Tel. (888) 325-5433

Quote Date: 05/10/1999
Deposit Date: 06/01/1999

1 Page Total \$53,535.00

Presented By:

Presented for:

Age 0 Male

Date of Birth not specified

State of Ownership: Virginia

Summary of Benefits

\$5,000.00 lump sum due on 11/05/04.	\$3,776.10
\$5,000.00 lump sum due on 11/05/07.	\$3,123.53
\$15,000.00 lump sum due on 11/05/11.	\$7,089.11
\$120,023.48 lump sum due on 11/05/16.	\$39,546.26

Total Premium for Annuity Benefits:

\$53,535.00

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3. No surrenders or modifications to this contract will be allowed after issue.

Rate scale: FCL-115 effective 04/19/1999

Rates: SHESSM SHEHSA SBCUSR SBHCSC SLBLSB SLSMSC SBUHMS SCLBSE SRCAMB SHESEE

State Farm Insurance Companies



March 26, 1999

RECEIVED

APR 19 1999

STATE FARM INSURANCE
Roseville Auto Claims
2194 State Farm Road
Roseville, MN 55113-0005

Robert J. Hauer, Jr.
Hauer, Fargione & Love, P.A.
Parkdale Plaza
1660 South Highway 100, Suite 526
Minneapolis, MN 55416-1549

HAUER, FARGIONE & LOVE

RE: Your Client: [REDACTED] a minor
Our Insureds: [REDACTED]
Our Claim Number: 23-7562-852
Date of Loss: July 9, 1996

Dear Mr. Hauer:

This letter is just a follow-up to our conversation pertaining to an annuity and evaluation of the claim of your client, [REDACTED].

As per our conversation, the evaluation and agreement of your client's injury claim was \$35,000. State Farm Insurance will make this check payable to your client and yourself.

If you are interested in a structured settlement, we would purchase a structured annuity settlement through State Farm, less your customary expenses, with the remaining amount.

Purchase of an annuity through another carrier and not guaranteed through State Farm Insurance would not be an option.

Under the circumstances, these are the only options we can make available to you in resolving this claim.

Sincerely,

Danny Suggs
Claim Representative
State Farm Mutual Automobile Insurance Company
(651) 631-6769

DS/024/0326027

page 231

Prepared for: [REDACTED]
Claim number: 23-7562-852
Proposal number: 01

Requested by: DSUGGS
Office name: ROSEVILL
Date prepared: 03-08-99

PROPOSAL NOT VALID AFTER 04-30-99

Schedule of Annuity Payments	Total Payments	Cost
Payment 1		
SINGLE PAYMENT OF \$1,500.00 AUGUST 1, 2011.	\$1,500.00	\$781.83
Payment 2		
PAYMENTS OF \$300.00 PAYABLE MONTHLY WITH THE FIRST PAYMENT ON AUGUST 1, 2011, AND THE FINAL PAYMENT ON JULY 1, 2016.	\$18,000.00	\$8,249.09
Payment 3		
SINGLE PAYMENT OF \$25,000.00 JUNE 1, 2016.	\$25,000.00	\$10,059.09
Payment 4		
SINGLE PAYMENT OF \$19,599.18 OCTOBER 23, 2019.	\$19,599.18	\$6,590.99
Annuity Total	\$64,099.18	\$25,681.00
Previous Amount Paid	\$0.00	\$0.00
Grand Total	\$64,099.18	\$25,681.00

page 23 J

Settlement Annuity Quotation

First Colony Life Insurance Company
700 Main Street
Aynchburg, VA. 24504
Tel. (888) 325-5433

Quote Date: 03/23/1999
Deposit Date: 04/15/1999

1 Page Total \$25,681.29

Presented By:

Jerry C. Lothrop
Capital Planning, Inc.
1660 South Highway 100
Suite 535
St. Louis Park, MN 55416
Tel. (612) 541-9464

Presented for:

Age 6 Female
Born: 10/23/1992

State of Ownership: Virginia

Summary of Benefits

\$1,500.00 lump sum due on 08/01/11.	\$733.60
\$300.00 monthly for 5 years 0 months (certain only). Benefits commence on 8/ 1/11	\$7,391.74
\$25,000.00 lump sum due on 06/01/16.	\$8,562.30
\$33,630.00 lump sum due on 10/23/19.	\$8,993.65

Total Premium for Annuity Benefits: \$25,681.29

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2. Each payment stream must be approved by First Colony.
3. No surrenders or modifications to this contract will be allowed after issue.

Rate scale: FCL-114 effective 03/16/1999

Rates: SHRSSM SHLHSA SBAUSR SBRCSL SLCMSR SLBESL SBUHMS SCLBSE SRCAMB SHHSEE

PLAN DESCRIPTION OF BENEFITS

CLAIM NUMBER 231-200979

(This illustration is valid through 2/10/1999)

Measuring Life	-	Female, DOB: 9/16/1994
Illustration Date	-	January 27, 1999

The following economic benefits are proposed:

A. Singular payments made as follows:

August 1, 2012 =	\$2,000.00
July 1, 2017 =	\$20,000.00
Age 25 =	\$25,000.00
Age 27 =	\$50,000.00
February 16, 2024 =	\$154,916.57

B. Commencing on August 1, 2012, monthly payments for 5 years certain. The initial monthly payment will be \$300.00.

C. Total guaranteed benefit:

\$269,916.57

D. Total projected benefit:

\$269,916.57

COST FACTOR INFORMATION

Claim Number 231-200979

Our File Number 231-200979

Illustration date - 1/27/1999

(These cost factors are valid through 2/10/1999)

COST FACTOR

\$94,164.06

**FOR PLAN WITH
TOTAL GUARANTEED BENEFIT OF:**

\$269,916.57

**CONFIDENTIAL
FOR INTERNAL USE ONLY**

page 23M

Settlement Annuity Quotation

First Colony Life Insurance Company
100 Main Street
Richmond, VA. 24504
Tel. (888) 325-5433

Quote Date: 03/22/1999
Deposit Date: 04/12/1999

1 Page Total \$94,164.87

Presented By:
Terry C. Lothrop
Capital Planning, Inc.
660 South Highway 100
Suite 535
St. Louis Park, MN 55416
Tel. (612) 541-9464

Presented for:
Valued Client
Age 5 Female
Born: 09/16/1994

State of Ownership: Virginia

Summary of Benefits

\$2,000.00 lump sum due on 09/16/12.	\$901.01
\$300.00 monthly for 5 years 0 months (certain only). Benefits commence on 9/16/12	\$6,797.58
\$20,000.00 lump sum due on 07/01/17.	\$6,317.65
\$25,000.00 lump sum due on 09/16/19.	\$6,727.70
\$50,000.00 lump sum due on 09/16/21.	\$11,785.48
\$318,990.00 lump sum due on 09/16/24.	\$61,635.45

Total Premium for Annuity Benefits: \$94,164.87

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3. No surrenders or modifications to this contract will be allowed after issue.

Rate scale: FCL-114 effective 03/16/1999
Rates: SHRSSM SHLHSA SBAUSR SBRCSL SLCMSR SLBESL SBUHMS SCLBSE SRCAMB SHHSEE

GP: 433,990

page 23N

Appendix III
Life Insurance Companies Accepting a Court-Ordered
Structured Settlement With the Court as Assignor

Life Insurance Company	A.M. Best Rating
1. American General Annuity Ins.	A+ (XI)
2. Berkshire-Hathaway Life of NE	A++ (IX)
3. Commercial Union Life Co. Amer.	A+ (VIII)
4. Monumental Life Ins. Co.	A+ (XII)
5. Security Life of Denver	A+ (IX)

**Appendix IV
Minor Personal Injury Cases Involving
Court Ordered Structured Settlement
With the Court as Assignor**

Claimant: M.R.
Court: Ramsey County, MN
Case No. C9-93-882
Judge: John S. Connolley
Date: 06/07/94

Claimant: C.L. and K.L.
Court: Ramsey County, MN
Case No. C2-95-1280
Referee: Manuel Cervantes
Date: 07/15/96

Claimant: J.S.
Court: Anoka County, MN
Case No. C2-96-1001
Judge: Edward W. Bearse
Date: 09/19/96

Claimant: C.P.
Court: Milwaukee County, WI
Case No. 96-CV-005188
Judge: Arlene D. Connors (retired)
Date: 10/29/97

Claimant: M.P.
Court: Milwaukee County, WI
Case No. 98-CV-007351
Judge: Lee E. Wells
Date: 10/22/98

Claimant: S.D.
Court: Hennepin County, MN
Case No. MS 99-017348
Judge: Thomas H. Carey
Date: 02/08/00