

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA**

KATHY NICKERSON, EUGENE
NICKERSON, KATHY NICKERSON, NEXT
FRIEND OF COURTNEY NICKERSON, A
MINOR,

Plaintiffs,

vs.

CARL D. BRUNETTA AND MARY ANN
BRUNETTA,

Defendants.

U.S. DISTRICT COURT
FILED AT WHEELING, WV

JAN 10 2008

NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

CASE NO.: 5:06-CV-143

ORDER APPROVING COMPROMISE AND SETTLEMENT

On this 10th day of January, 2008, came the plaintiff, Kathy Nickerson, the natural Parent of Courtney Nickerson, a minor, having previously tendered a verified Petition to Compromise a Claim, who appeared in person, and by counsel, Jacob Robinson, Esq., and came the defendants, Carl D. Brunetta and Mary Ann Brunetta, by counsel, April J. Wheeler, Esq., and the law firm of Bailey & Wyant, P.L.L.C. and came the Guardian *Ad Litem*, Gerald E. Lofstead, Esq.

The Court having appointed Gerald E. Lofstead, Esq., a competent attorney, practicing before this Court, to act as Guardian *Ad Litem* for the minor, Courtney Nickerson, directed the Guardian *Ad Litem* to file an Answer to the Petition stating his opinion as to whether or not the proposed settlement and release and the proposed distribution of proceeds are in the best interests of the minor. Thereupon, came Gerald E. Lofstead, Esq., as Guardian *Ad Litem* for Courtney Nickerson, a minor, and tendered to the Court his Answer on behalf of the minor, and the Court, inspecting the Answer and finding it proper, ORDERS the same FILED.

Whereupon, the Court heard evidence concerning the proposed compromise and settlement, as described in the Petition hereto filed, and having fully considered the evidence and testimony of the plaintiff, Kathy Nickerson, the natural Parent of Courtney Nickerson, a minor, regarding the scope of the compromise and settlement of the claim of Courtney Nickerson, a minor, as to claims made against the respondent, as more fully described in the Petition, and

found:

1. Travelers Indemnity Company, on behalf of Carl D. Brunetta and Mary Ann Brunetta, has offered to pay Kathy Nickerson, the natural Parent of Courtney Nickerson, a minor, the sum of One Thousand Dollars and 00/100 (\$1,000.00), in compromise and settlement of the claims of the minor brought in Civil Action No. 5:06-CV-143, currently pending before this Court.

2. The total value of this compromise and settlement is One Thousand Dollars and 00/100 (\$1,000.00) which shall be distributed by Travelers Indemnity Company, to Jacob Robinson, Esq. and Kathy Nickerson, the natural Parent of Courtney Nickerson, a minor. The total aforementioned settlement shall be distributed as follows:

- a. Mr. Jacob Robinson, Esq., counsel for the plaintiff, shall waive reasonable attorney fees, expenses and costs.
- b. Kathy Nickerson shall deposit the remaining “net settlement trust proceeds” in the amount of \$1,000.00 into an interest bearing account at a local, federally insured lending institution in West Virginia for the benefit of Courtney Nickerson, a minor.
- c. The remaining amount of \$1,000.00 shall be paid to the plaintiff at this time.
- d. To the extent there are any subrogation claims, said subrogation claims shall be paid from the net settlement trust proceeds.
- e. No disbursement shall be made from the net settlement trust proceeds to Courtney Nickerson, a minor, until she reaches the age of eighteen (18) years, or until this Court so Orders.

4. Gerald E. Lofstead, Esquire, a discrete and competent attorney at law practicing before this Court duly appointed by this Court as *Guardian Ad Litem* for the minor, Courtney Nickerson, has recommended to the Court that the best interests of the aforesaid minor will be

served by the approval of the compromise and settlement by this Court.

5. Upon payment of the aforesaid One Thousand Dollars and 00/100 (\$1,000.00), to Kathy Nickerson, as Natural Parent of Courtney Nickerson, a minor, Kathy Nickerson shall be authorized to execute and deliver a release of any and all claims in Civil Action No. 5:06-CV-143, on behalf of Courtney Nickerson, a minor.

6. That the approval of this compromise and settlement by this Court is in the best interest of the minor, Courtney Nickerson, and all other interested persons.

It is therefore **ADJUDGED, ORDERED and DECREED:**

1. Kathy Nickerson, as Natural Parent of Courtney Nickerson, a minor, be and is hereby **GRANTED** the permission sought in the Petition to enter into a full and complete settlement of the aforementioned claims of her minor child against the respondent, including all claims that were or could have been brought in Civil Action No. 5:06-CV-143, on behalf of the aforementioned minor, in exchange for payment of the sum of One Thousand Dollars and 00/100 (\$1,000.00);

2. That the proposed settlement, release and distribution of settlement proceeds are found to be in the best interest of the minor and are hereby **APPROVED;**

3. The settlement proceeds shall be distributed as follows:

- a. Mr. Jacob Robinson, Esq., counsel for the plaintiff, shall waive reasonable attorney fees, expenses and costs.
- b. Kathy Nickerson shall deposit the remaining “net settlement trust proceeds” in the amount of \$1,000.00 into an interest bearing account at a local, federally insured lending institution in West Virginia for the benefit of Courtney Nickerson, a minor.
- c. To the extent there are any subrogation claims, said subrogation claims shall be paid from the net settlement trust proceeds.
- d. No disbursement shall be made from the net settlement trust proceeds to

Courtney Nickerson, a minor, until she reaches the age of eighteen (18) years, or until this Court so Orders.

4. The settlement of the claim of Courtney Nickerson, a minor, against the respondent in Civil Action No. 5:06-CV-143, in the amount of One Thousand Dollars and 00/100 (\$1,000.00) under the terms of the settlement is a fair, reasonable and just settlement and in the best interest of the minor, Courtney Nickerson;

5. Kathy Nickerson, as natural parent of Courtney Nickerson, a minor, be and is hereby authorized and empowered to execute and deliver a release of any and all aforementioned claims of Courtney Nickerson, against the defendants, Carl D. Brunetta and Mary Ann Brunetta, Travelers Indemnity Company as a result of the events which occurred on or about October 30, 2004, as more fully detailed in the Petition heretofore filed;

6. Kathy Nickerson, as natural parent of Courtney Nickerson, a minor, shall negotiate, satisfy and pay initial expense payments from settlement proceeds, the costs and fees incurred for settlement and any bond required therefor, expenses for treatments of the minor related to the injury at issue, payments to satisfy any liens on settlement proceeds, if any, and such other directives as the Court finds appropriate to complete the settlement and secure the proceeds for the minor;

7. Kathy Nickerson, as natural parent of Courtney Nickerson, a minor, shall deposit the "net settlement trust proceeds" as fully described in paragraph 2 of this Order in interest bearing accounts in the name of and for the benefit of Courtney Nickerson, a minor, payable to Courtney Nickerson, after she reaches the age of majority. Further, to the extent any provider has any subrogation rights, said subrogation shall be paid from this "net settlement trust proceeds";

8. Gerald E. Lofstead, Esquire, an attorney duly licensed to practice before the Court, having duly served as Guardian *Ad Litem* for the minor, Courtney Nickerson, be hereby DISCHARGED and that he be awarded a fee of FIVE Hundred and 00/100
DOLLARS to be paid by Travelers Indemnity Company;

9. Surety on Kathy Nickerson's bond is waived;

10. Reference to the fiduciary commissioner, and the requirement of filing a report or statement of account with the fiduciary commissioner, is waived;

11. The Clerk be directed to send a Certified Copy of this Order to all counsel of record.

Entered this 10th day of January, 2008.


Honorable Judge Frederick P. Stamp

Prepared by:



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