

## **Specific language to be included in the Settlement Agreement**

### Payments

In consideration of the release set forth herein and with the understanding by all parties that all sums set forth below constitute damages on account of personal physical injuries or physical sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended, and that no portion thereof constitutes exemplary or punitive damages, **[defendant or defendant's insurer to be named here]**, (hereinafter referred to as "X"), hereby agrees to pay the following sums in the following manner:

#### A. Lump Sum Payments

Upon execution of this agreement by all parties, "X" agrees to pay to **[insert Payee(s) for upfront cash]** the sum of \$**[insert upfront cash amount(s); DO NOT INCLUDE PREMIUM AMOUNT AS PART OF UPFRONT CASH]**. The Plaintiffs agree to pay from said sum, all of their attorney's fees and all other costs and expenses resulting to them or incurred by or on their behalf in connection with the settlement set forth herein.

#### B. Periodic Payments

Subject to the other terms and conditions of this agreement, the following periodic payments will be payable directly to **[insert Payee's name here]**, (hereinafter referred to as "Payee"):

**[periodic payments to be inserted here once known]**

#### Payee's Rights to Payments

The periodic payments cannot be accelerated, deferred, increased or decreased by the Plaintiffs or Payee. In addition, said periodic payments described above are fixed and determinable as to the amount and time of payments and may not be varied by any party. The Plaintiffs and Payee shall not have the power to sell or mortgage or encumber said periodic payments, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise. In addition, all periodic payments must be mailed to the residence address or mailing address of the Payee, or deposited in an account in the name of the Payee.

#### Qualified Assignment

With the mutual understanding of the parties, "X" may make a "qualified assignment" within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of "X"'s liability to make the periodic payments required herein to **[Assignee's name to be inserted here once known]**, (hereinafter referred to as "Assignee"). If "X"'s obligation is assigned to the Assignee:

- A. The periodic payments from the Assignee will not be accelerated, deferred, increased or decreased by the Plaintiffs or Payee.
- B. The Assignee's obligation on account of the personal physical injuries or physical sickness of the Plaintiffs or Payee will be no greater than the obligation of the person or any other person originally liable (whether by suit or agreement) for payment of such damages and from whom the obligation was assigned.
- C. The parties acknowledge that the periodic payments from Assignee will be fixed and determinable and may not be varied by any party.
- D. Plaintiffs and Payee shall accept such assignment without right of rejection.
- E. Such assignment shall completely and absolutely relieve "X" of any further obligation to the Plaintiffs and Payee as regards the periodic payments, and the Plaintiffs and Payee shall have no further rights against "X" as regards the periodic payments after the assignment.
- F. Upon assignment, all of the duties and obligations otherwise imposed on "X" as regards the periodic payments by this settlement agreement shall forever be the sole responsibility of the Assignee.

#### Right to Purchase an Annuity

"X", or its designated Assignee, reserves the right to fund its liability to make the periodic payments through the purchase of an annuity policy from *[life insurance company's name to be inserted here once known]*. "X", or its designated Assignee, shall be the owner of the annuity policy, and shall have all rights of ownership. "X", or its designated Assignee, may have the annuity carrier, *[life insurance company's name to be inserted here once known]*, make payments directly to the Payee. The Plaintiffs and Payee shall be responsible for maintaining the current status of the proper mailing address and mortality information to *[life insurance company's name to be inserted here once known]*.

#### Beneficiary

Any remaining guaranteed periodic payments to be made after the death of *[insert Payee's name here]* shall continue to be made on the due dates to such person or entity as shall be designated in writing by *[insert Payee's name here]* to "X" or its designated Assignee. If no such person or entity is so designated by *[insert Payee's name here]*, such payments shall be made to the Estate of *[insert Payee's name here]*. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to "X" or its designated Assignee. The designation must be in a form acceptable

to “X” or its designated Assignee before such payments are made, but in no event shall the request be unreasonably withheld or denied.

**[OR]**

**Beneficiary**

Any remaining guaranteed periodic payments to be made after the death of [insert Payee’s name here] shall continue to be made on the due dates to the Estate of [insert Payee’s name here]. Once reaching age of majority, [insert Payee’s name here] may request in writing, directed to “X” or its designated Assignee, a change in the beneficiary designation. The designation must be in a form acceptable to “X” or its designated Assignee before such payments are made, but in no event shall the request be unreasonably withheld or denied.

**Discharge of Obligation**

The obligation of “X”, or its designated Assignee, to make each periodic payment described herein shall be discharged upon the mailing of a valid check in the amount of such payment to the address designated by the party to whom the payment is required to be made under this agreement; or, if payment is made by electronic funds transfer, discharge will occur upon the electronic transferring of funds into the Payee’s bank account.

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**Additional Comments:**

*Please note, the language in the Lump Sum Payments Section above should be worded to fit your particular case. We simply include it to ensure that the upfront cash amounts are included in the agreement along with the future periodic payments.*

*Also, if your agreement does not use the terms such as “Defendant” and “Plaintiff” or “Insurer” and “Claimant”, you may continue to use the terms used in your agreement; (e.g., “Released Parties” and “Releasers”). The rest of the language should be followed as closely as possible.*

*While it is not required, we recommend that the Settlement Agreement not only be executed by the Plaintiff, but also by the defendant (if self-insured) or its insurer.*

*Please also avoid stating the actual cost of the single premium in the Settlement Agreement. The words “valuable consideration” or similar wording should be used in place of the actual dollar amount.*

**Language to include in the Order approving minor's settlement**

IT IS ORDERED by the Court that the Plaintiffs do have and recover the sum of \$*insert cash to be paid at time of settlement; do NOT include premium in this amount* to be paid in cash at the time of settlement, and in addition, the following future periodic payments payable to *insert Payee's name here*, as provided by, and in accordance with, the terms and conditions of the Settlement Agreement, *use exact title of your agreement here if it is not entitled "Settlement Agreement"*, attached hereto as Exhibit A and made a part of this Order for all purposes:

*periodic payments to be inserted here once known*