

39-2206. Procedure for Approval of Settlements of Death Cases.

39-2206.1. *Situs of the Filing of the Petition.* Petitions for approval of settlements of death cases, including actions for wrongful death only in which a minor or incapacitated person has an interest, survival actions, and combined wrongful death and survival actions, shall be filed with the Prothonotary if an action is pending. In cases in which an action is not already pending, such petitions may be styled as Orphans' Court matters and filed with the Clerk of Courts.

39-2206.2. *Additional Considerations.* It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for Court approval of settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as whether or not a structured settlement is proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.

39-2206.3. *Contents of Petition.* The petition for Court approval shall comply with Pa.R.C.P. 2206 and shall set forth the following:

- (a) The salient facts which form the basis of the cause of action;
- (b) The decedent's date of death, the name of the personal representative of the estate and county of appointment with copy of the Decree of the Register attached, proposed allocation as between wrongful death and survival actions, given the proposed allocation, whether there are sufficient assets in the estate to satisfy all debts, pay all creditors, and pay inheritance taxes, identity of the wrongful death beneficiaries and the amount each is to receive, statement of compliance with Pa.R.C.P. 2205, certification that notice has been given to all parties entitled to share in the proceeds of the proposed settlement, identity of any other parties who may have an interest in the decedent's estate with a description of such interest, and written approval of the Pennsylvania Department of Revenue for allocation between wrongful death and survival actions if such approval has been sought.
- (c) Terms of the settlement, including the specific provisions of any annuity or structured settlement, the credit rating of any entity which assumes responsibility for future

payments and the present cost of the annuity or structure, periodic and lump sum payments;

- (d) Whether a lien or claim has been raised on behalf of any medical supplier, Medicare, the Department of Public Welfare, ERISA plan, or other entity;
- (e) A copy of the agreement supporting a claim for attorney fees;
- (f) An itemized accounting of all attorney expenses which counsel requests that the Court approve for reimbursement as part of the settlement;
- (g) Certification of policy limits or copy of the declaration page supporting any allegation that limits of insurance coverage are being offered; and
- (h) A proposed Order.

39-2206.4. *Proof of Deposit and Compliance with Court Order.* As soon as possible and within sixty (60) days of entry of a final order, the petitioner shall file with the Prothonotary or Clerk of Courts, as appropriate, a certification of compliance with the court order and proof of deposit.

39-2206.5. *Hearing.* In a petition for Court approval of settlement or by separate affidavit, a petitioner shall set forth reasons why a hearing may be required on the petition. Such reasons shall include, but are not limited to, information as to whether or not the available limit of insurance coverage is being offered in settlement. On consideration of the petition, the Court shall determine whether or not a hearing is required. In the event that a hearing is required, the petitioner or counsel for the petitioner shall be so advised. In such event, the petitioner or counsel for the petitioner shall secure a date and time for the hearing and shall provide the Court with a proposed order scheduling hearing.

Local Rules Committee Notes:

- (1) If an action only raises a wrongful death claim, Court approval of settlement is required only where a minor or incapacitated person has an interest. If the complaint raised wrongful death and survival claims, Court approval is required as to allocation between the categories notwithstanding the absence of minors or incapacitated persons with an interest even if the Plaintiff requests that the entire

allocation be to the wrongful death claim. It is anticipated that, in virtually all death cases settled prior to the filing of suit, Court approval will be sought in order to protect the interest of the parties.

- (2) It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for court approval of a settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as whether or not a structured settlement is proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.