IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
ORPHANS' COURT DIVISION

Kathryn Krzaczek, a minor, by her Parents and Natural Guardians, MaryLouise Krzaczek and Christopher Krzaczek, in their own rights	:	October 1996 No. 1758
	:	December 1997 No. 2383
v.		
Stewart Cooler, M.D., Patrick Ronan, P.C. Michael Slanina, and Police and Fire Medical Association, a/k/a Police and Fire Clinic	:	Control No. 102417 Control No. 111496

O P I N I O N

Introduction

The issue presently before this court is whether a high/low settlement agreement in a medical malpractice case involving a minor should be set aside for failure to conform with the requirements of Pa.R.C.P. 2039 and Philadelphia Rule of Civil Procedure *2039.1. It is undisputed that such an agreement requires court approval. Plaintiffs, Kathryn Krzaczek, a minor, by her parents, MaryLouise and Christopher Krzaczek ("plaintiffs") have filed a motion to set aside the high/low agreement[1] they entered into prior to the return of a jury verdict. Under this agreement, plaintiff was assured a recovery of $250,000 as a minimum but her total recovery could not exceed $950,000. This agreement was placed on the record on April 14, 2000 while the jury deliberated. Shortly thereafter, the jury returned with a plaintiff's verdict in the amount of $15,000,000. For the reasons set forth below, plaintiffs' motion to set aside the high/low agreement and reinstate the jury

[1] Although this motion essentially seeks a reconsideration of the ruling by the Honorable C. Darnell, Jones, it was assigned to the Orphans' Court for disposition. In the interest of judicial economy, Judge Jones has reviewed this opinion and concurs with its result.

verdict of $15,000,000 is denied.

Factual Background

By complaints filed in October 1996 and December 1997, plaintiffs initiated a medical malpractice action against various defendants alleging, inter alia, that defendants' delayed diagnosis of retinoblastoma resulted in plaintiff's loss of her right eye. During the trial of this case, plaintiffs acknowledge, "the parents of the minor and counsel for all parties entered into a High/Low Agreement and the court was advised of same."[2] The terms of this high/low agreement were recorded on the the transcript during a sidebar conference with the trial judge, the Honorable C. Darnell Jones[3] and counsel. At that point, the trial had been in progress for nearly 2 weeks.[4] Defense counsel, at the request of plaintiffs' attorney, placed the terms of the high/low agreement on the record:

Ms. Plakins: Okay. The agreement that we've entered into as I understand it, and Mr. Kuritz

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[2] Plaintiffs' 11/18/2002 Motion at ¶ 2.

[3] See generally 4/14/2000 Transcript for Kathryn Krzaczek, a minor v. Stewart Cooler, M.D. et al., December 1997, No. 2383; October 1996, No. 1758 (hereinafter "N.T."), Ex. A to Plaintiff's 11/18/2002 Motion.

[4] According to plaintiff, the trial began on Friday March 31, 2000 with jury selection and ended on Friday, April 14, 2000. See Plaintiff's Petition for Distribution of Proceeds of Jury Verdict in Minor's Action filed July 24, 2000 at ¶6E, Ex. D to Defendant Patrick Ronan's 12/17/2002 Response.

will correct me if I'm wrong, is the following: That it is a high/low agreement with a low of $250,000 and a high of $950,000. This would be inclusive of any Rule 238 damages, post-judgment interest, pre-judgment interest of any kind whatsoever. Those would be the limits. Of course, if a verdict should come out anywhere in between, then the verdict amount is whatever it is in between.

As a further example to show what this means, if there is a defense verdict, the plaintiff would still be paid $250,000. As a further example, if the plaintiff is awarded $10 million, the plaintiff would still get only $950,000 under this agreement.

There is further agreement as I understand it that under no circumstances would any health care provider under this agreement be liable beyond the limits of any applicable coverage. The carriers have made separate side agreements as to how to allocate funds in the event that there is a defense verdict and that jury has by definition not allocated, however, to the extent there is a plaintiff's verdict, the allocation that will be used will be the allocation that the jury assigns up to but not exceeding the cap of $950,000. 4/14/2000 N.T. at 3-4.

Counsel for the plaintiffs expressed his agreement with these terms:

Mr. Kuritz: Yes, I agree with all the terms that Ms. Plakins has placed on the record. My one question is with respect to any issues of joint and several liability should there be an apportionment between defendants, whatever that apportionment might be. What is your understanding with the respect to the collecting of a verdict in that situation? 4/14/2000 N.T. at 4-5.

After a discussion of the effect on the potential liability of the individual defendants, and in particular defendant Ronan, if a potential jury verdict exceeded a particular defendant's policy limit, plaintiff's counsel requested an opportunity to speak with his clients and then stated that they were ready "to put it on the record." Plaintiffs' counsel thereafter stated:

Mr. Kuritz: Your Honor, as you know from our sidebar, there has been an agreement to a high/low agreement with respect to the verdict that we're about to take. Counsel for the defendants have requested and I have agreed to allow my clients to indicate their agreement on the record in that regard. As I understand it, we've agreed. Do you want me to go into the terms of the agreement?

Ms. Plakins: I think it would be appropriate.

Mr. Kuritz: As I understand it, we have agreed to a high/low agreement with a low of $250,000 and a high of $950,000 <u>regardless of the verdict</u> with any allocation to be made by the jury to be applied to any verdict that might come in should there be a defense verdict, the minimum my clients would recover would be the $250,000 low with that allocation being

handled by the defendants between themselves.

As I understand it, any verdict in between $250,000 and $950,000 will stand on its merits as whatever number that might be. And with respect to each individual defendant, while plaintiffs have agreed to limit any recovery from an individual defendant to the available insurance proceeds, it's plaintiff's understanding that based on the Court's finding as a matter of law of the agency relationship between Dr. Cooler and Mr. Ronan that any verdict against either of those defendants would inure to Dr. Slanina as well. I understand that counsel for Dr. Cooler does not have specific authority in that regard and that issue may have to be revisited as some later time depending on what the verdict may be.

The Court: All right. Yes.

Ms. Plakins: I just wish to interject my understanding that the high/low agreement encompasses all sums that could be attributable to Rule 238 damages, post-judgment interest, et cetera, that those are inclusive of those amounts. These are final numbers to which there will be no interest, costs, expenses or other sums to be added 4/14/2000 N.T.at 11-13 (emphasis added).

After outlining the terms of the parties' agreement, plaintiffs' counsel--at the suggestion of defense counsel--sought permission to put the consent of the minor's parents to agreement on the record:

Mr. Kuritz: Your Honor, may I question my clients briefly for the record?

The Court: Yes, sir.

Mr. Kuritz: Mr. Krzaczek, you've heard the terms of the high/low agreement?

Mr. Krzaczek: Yes, I have.

Mr. Kuritz: And are you in agreement therewith?

Mr. Krzaczek: I'm in agreement.

Mr. Kuritz: Mrs. Krzaczek, you've heard the terms of the high/low agreement?

Mrs. Krzaczek: Yes, I have.

Mr. Kuritz: And do you agree with those terms?

Mrs. Krzaczek: I agree. 4/14/2000 N.T. at 13-14.

After this agreement was placed on the record, the jury returned with a verdict in favor of the plaintiffs for $15 million dollars. Judge Jones thereafter executed a trial worksheet that was docketed May 19, 2000 setting forth the terms of this high/low agreement.[5] The docket entry reads: "Jury verdict in favor of Plaintiff. Pursuant to an agreement between Plaintiff, Kathryn Krzazek, and all defendants, the maximum amount recoverable by Plaintiff is $950,000 (Nine Hundred Fifty Thousand Dollars). The minimum amount recoverable is $250,000 (Two Hundred Fifty Thousand Dollars) by the court: C. Darnell Jones, II, J."

On July 24, 2000, the plaintiffs filed a Petition for Distribution of Proceeds of Verdict in Minor's Action or a Petition to Settle a Minor's Action.[6] This petition outlined the facts of the case as well as the plaintiffs' theories of liability. The petition acknowledged that the parties had reached a high/low agreement after the jury was excused for deliberations but before they returned:

> After the jury was excused to deliberate, counsel for defendants approached counsel for plaintiff with an offer of a "high/low" agreement that would guarantee minor-plaintiff a recovery even in the event of a defense verdict. After several hours of negotiations, an agreement was reached that would guarantee minor-plaintiff a settlement of $250,000 even if there were a defense verdict or a plaintiff's verdict for less then (sic.) that amount in exchange for capping the defendants' exposure at a maximum of $950,000 regardless of the amount of any verdict in excess of that amount. This high/low agreement was orally acknowledged by all counsel and the parent plaintiffs on the record. Shortly after the high/low agreement was reached, the jury returned a verdict in the amount of $15,000,000, finding defendant Slanina 60% responsible, defendant Ronan 30% responsible and defendant Cooler 10% responsible as well as finding that all three individual defendants were the ostensible agents of the defendant Police and Fire Medical Association.

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[5] See Defendant Michael Slanina's 12/16/2002 Memorandum of Law, Ex. D. The trial work sheet stated "Jury verdict in favor of plaintiff. Pursuant to an agreement between Plaintiff, Kathryn Krzaczek, and all Defendants, the maximum amount recoverable by Plaintiff is $950,000 (Nine Hundred Fifty Thousand Dollars). The minimum amount recoverable is $250,000 (Two Hundred Fifty Thousand Dollars).

[6] The proposed order attached to this motion stated that the gross amount of the settlement due to plaintiffs was $950,000.

Plaintiffs' Petition for Distribution of Proceeds of Verdict in Minor's Action filed July 24, 2000 at ¶ 6E, (hereinafter "Plaintiffs' 7/24/2000 Petition"), set forth as Ex. D to Defendant Patrick Ronan's 12/17/2002 Response .

In their petition to distribute funds, the plaintiffs noted that they would receive $400,000 in primary coverage at this time and $550,000 in CAT Fund monies payable on December 31, 2000. Id. at ¶ 7. Both of the parents of Kathryn Krzaczek submitted verifications in support of the petition in which they stated: "I fully approve of the 'high/low' agreement and the distribution of the proceeds of said agreement as proposed in the attached Order." Id., Verifications by MaryLouise and Christopher Krzaczek.

Finally, on September 7, 2000, the Honorable Alex Bonavitacola, then serving in the Orphans' Court, issued an order approving plaintiffs' settlement with the defendants and distribution of the gross sum of $950,000 to Kathryn Krzaczek. There was no appeal or motion for reconsideration filed regarding any of these orders or settlements.

Legal Analysis

A. Coordinate Jurisdiction Rule

A threshold issue is whether this court is precluded by the coordinate jurisdiction rule from considering a motion to set aside a settlement approved by two co-equal judges. The coordinate jurisdiction rule "stands for the proposition that 'judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions.'" Zane v. Friends Hospital, 770 A.2d 339, 340 (Pa. Super. 2001), app. granted in part, 566 Pa. 322, 781 A.2d 93 (2001)(coordinate jurisdiction rule was violated where second judge failed to enforce discovery order of predecessor judge in the same case). One purpose of this rule is to prevent forum shopping by allowing the same issue to be repeatedly raised before different judges of the same court. Baysmore v. Brownstein, 771 A.2d 54,

58 (Pa. Super. 2001). The rule of coordinate jurisdiction has been characterized as a rule of "sound jurisprudence based on a policy of fostering the finality of pre-trial applications in an effort to maintain judicial economy and efficiency." Commonwealth v. Starr, 541 Pa. 564, 573, 577, 664 A.2d 1326, 1331, 1333 (1995). The Starr court also concluded that the rule falls within the generalized ambit of the "law of the case" doctrine. Id.

There are, however, exceptions to this rule when, for instance, there has been a change in the controlling law, a substantial change in the facts or evidence, or where the prior ruling was so clearly erroneous that it could result in "manifest injustice." Starr, 541 Pa. at 575-76, 664 A.2d at 1332. See National Railroad Passenger Corp. v. Fowler, 788 A.2d 1053, 1061 (Pa. Cmwlth. 2001)(second judge could revisit previously decided issue despite law of the case doctrine to avoid manifest injustice). The procedural context of a particular motion can also affect whether the coordinate jurisdiction rule is triggered. See, e.g.. Riccio v. American Republic Ins. Co., 550 Pa. 254, 261, 705 A.2d 422, 425 (1997). A post-trial motion focusing on alleged errors during trial, for instance, is distinct from the rendering of a verdict after a nonjury trial since they arise in different procedural contexts. Hence, a judge considering a post-trial motion would not be precluded from reaching a different result from the judge who issued the verdict. Riccio, 550 Pa. at 262-63, 705 A.2d at 425-26. Similarly, courts have held the coordinate jurisdiction rule inapplicable where two different motions raise different legal issues. Kroptavich v. Pennsylvania Power & Light Co., 2002 Pa. Super. 87, 795 A.2d 1048, 1054 (2002).

Plaintiffs' motion to set aside the high/low agreement falls into a grey zone. While the initial motions to approve the high/low agreement necessarily focused on the substantive terms of the agreement, the present motion to set aside the agreement focuses more on the procedures followed in

obtaining the initial approval. On the other hand, the motion to set aside the high/low agreement requests a direct reversal of the orders of two co-equal judges. It is, however, unnecessary to reach this issue since an analysis of the specific issues raised by plaintiffs leads to the conclusion that there is no basis for setting aside the high/low agreement or for reversing co-equal judges for failure to comply with the requirements of Pa.R.C.P. 2039 and Philadelphia R. C.P. *2039.1.[7]

B. The Parties Complied with the Requirements of Pa.R.C.P. 2039 and Philadelphia Rule *2039.1 in Presenting Their High/Low Agreement For Approval To the Trial and Orphans' Court

The central issue raised in plaintiffs' petition to set aside the high/low settlement agreement is whether the parties and court complied with the procedures set forth in Pennsylvania Rule of Civil Procedure 2039 and Philadelphia Rule of Procedure *2039.1.[8] According to plaintiffs, the agreement should be set aside due to the failure of the defendants and the court to comply fully with the requirements of those rules requiring the filing of a written or oral petition and/or an evidentiary hearing.

[7] In Commonwealth v. Starr, 541 Pa. 564, 580-91 ,664 A.2d 1326, 1334-40 (1995), the court addressed the substantive constitutional issue of a criminal defendant's right to represent himself despite its threshold conclusion that the second trial court had violated the coordinate jurisdiction rule when it overruled the first court's decision to allow the criminal defendant to waive his right to counsel and thereafter represent himself in a first degree murder case.

[8] See Plaintiffs' 11/18/2002 Motion at ¶¶ 6-7.

It is undisputed that court approval was necessary for the high/low agreement. The Pennsylvania Superior Court has concluded that high/low agreements establishing upper and lower limits for recovery constitute a "settlement." In Power v. Tomarchio, 701 A.2d 1371, *1373-75 (Pa. Super. 1997), for instance, the Pennsylvania Superior court specifically concluded that a high/low agreement constituted a compromise or settlement of a minor's action requiring court approval under Pennsylvania Rule of Civil Procedure 2039.[9] None of the defendants dispute that the high/low agreement constituted a settlement of a minor's action that required court approval pursuant to Pa.R.C.P. 2039. Rather, the dispute centers on whether the requirements of the applicable rules were met.

Rule 2039 provides that "[n]o action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor." Pa.R.C.P. 2039(a). The rule further provides:

> When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such other order as it deems proper fixing counsel fees and other proper expenses. Pa.R.C.P. 2039 (b).

A fundamental purpose of Rule 2039 is "to ensure that the interests of minor litigants are protected above all other conflicting interests." Estate of Georgia Murray v. Love, 411 Pa. Super.

[9] In reaching this conclusion, the Power court noted that the Pennsylvania Supreme Court had defined "compromise" as "the settlement of differences by mutual concessions; **an adjustment of conflicting claims.**" Power, 701 A.2d at *1374 (citing Rochester Mach. Corp. v. Mulach Steel Corp., 498 Pa. 545, 549, 449 A.2d 1366, 1369 (1982)). As the court observed, "[t]he parties mutually agreed to restrict the amount of money that the minor was entitled to receive; this can only be characterized as a compromise or settlement of his claim." Power, 701 A.2d at 1374 (citations omitted).

618, *625, 602 A.2d 366, *369 (1992)(citations omitted). This rule gives courts the authority to prevent settlements that are unfair to the interests of a minor. Fancsali v. University Health Center of Pittsburgh, 563 Pa. 439, *446, 761 A.2d 1159, *1162 (2000). As the Superior Court emphasized in Klein v. Cissone, 297 Pa. Super. 207, 213, 443 A.2d 799, 802 (1982), "[a]t the outset, it must be pointed out that in all actions involving a minor, the best interests of that child are of paramount and controlling importance to this court. The minor litigant's interest must be protected above all other conflicting interests." Courts have emphasized, moreover, that under Rule 2039 they are mandated to "supervise all aspects of settlements in which a minor is a party in interest." Power, 701 A.2d at 1374.

Plaintiffs argue first that the high/low agreement did not conform to Rule 2039 because the defendants failed to present a written petition for court approval of the high/low agreement. This contention was explicitly rejected by the Superior Court in Klein v. Cissone, 297 Pa. Super. 207, 443 A.2d 799 (1982). Admittedly, Rule 2039(a) provides that no minor's action shall be settled "except after approval by the court pursuant to a petition presented by the guardian of the minor." The Klein court concluded, however, that this rule did not require a written petition to settle a minor's action. In Klein, the minor plaintiff and her parents asserted that an oral settlement agreement reached after the testimony of a single witness was defective because "no written petition was submitted to the court to compromise the minor's claim." Klein, 297 Pa. Super. at 213, 443 A.2d at 802. The plaintiffs argued that a written petition was necessary to afford the minor as well as the court time to reasonably consider whether the proposed settlement was in the minor's best interest. In rejecting this argument, the Klein court explained:

> We have reviewed all cases referred to by appellants as well as undertaking our own independent research to determine whether a written petition is a non-waivable condition

> precedent to a Pa.R.C.P. 2039(a) compromise settlement. We conclude that it is not. Id., 297 Pa. Super. at *213, 443 A.2d at *802 (emphasis added).

The Klein court explained that a petition for the purposes of Rule 2039 means "an application to the court, requesting an exercise of judicial discretion" and may be "written or oral and still satisfy the dictates of Pa.R.C.P. 2039." Id., 297 Pa. Super. at *214, 443 A.2d at *802-03.

Plaintiffs also assert that the high/low agreement is invalid because the court failed to hold an evidentiary hearing. It should be noted, first of all, the Pa.R.C.P. 2039 does not require an evidentiary hearing prior to the approval of a petition for a minor's compromise. Plaintiffs appear to rely on Klein to support their argument that an oral petition to settle a minor's action must be approved after a hearing on the proposed settlement. It is true that the Klein court held a "hearing" on the proposed settlement, but that hearing focused on essentially the same issues raised on the record in the instant case. In Klein, the trial had just begun and only one witness had testified when the settlement was proposed. The judge therefore incorporated into the record the plaintiff's theory of liability as well as an itemization of expenses. In the instant case, in contrast, the record consisted of nearly two weeks of testimony, providing the trial judge with a detailed overview of the facts of the case. In addition to incorporating the record of the case, the Klein court asked the mother of the minor to testify as to her acceptance of the settlement offer and whether the amount proffered was sufficient. Although the mother stated that she consented "reluctantly," the settlement was nonetheless approved. Moreover, the trial court relied on plaintiff's counsel' s statement that the minor's father, who was not in court, approved the settlement amount. Klein, 297 Pa. Super. at *211-212, 443 A.2d at *801. In the instant case, in contrast, both parents of Kathryn Krzaczek stated unconditionally that they agreed to the settlement amount. In fact, they subsequently filed a written petition to obtain the approval of an Orphans' Court judge for this settlement, in contrast to the

plaintiffs in Klein who subsequently refused to go through with the settlement. Significantly, despite that refusal, the Klein court held the settlement to be binding.

The cases plaintiffs cite to support their argument that the high/low agreement should be set aside are factually distinguishable. The plaintiffs rely, for instance, on Power v. Tomarchio, which set aside a the high/low agreement in a case involving a minor and reinstated a higher arbitration award in favor of the minor. The plaintiff in Power had been injured by defendants' three Rottweiler dogs. At the pre-trial settlement conference, the judge estimated the value of the case as $15,000 and then remanded the case to binding arbitration. Before initiating the arbitration, the parties entered into a high/low agreement, but they failed either to inform the court of this agreement or to seek its approval. The arbitrators subsequently returned an award of $35,000 for the plaintiff. The parties thereafter submitted a petition to the judge to accept the high end of the settlement amount which was $20,000. The court refused to accept this settlement for less than the arbitration award and that decision was affirmed by the Superior Court.[10] The facts of the instant case, however, are clearly distinguishable since the terms of the settlement agreement as well as the parents' consent to it were not only communicated to the court but placed on the record prior to the jury award.

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[10] The Superior Court made it clear that the failure to obtain prior court approval of this high low agreement was the fatal defect:

> In this case, the court was informed of the parties high/low agreement only after the arbitrators had awarded appellee $35,000. Thus, when appellee's counsel brought the petition for a minor's compromise requesting only $20,000, the Court was faced with two alternatives: (1) give effect to the parties' agreement (which did not have judicial approval), thereby giving the minor a lesser award than an independent panel found that the claim was worth; or (2) enter judgment for the arbitration award which had become final by the expiration of the appeal period. Faced with these two options, it was clearly in the minor's best interest to enter judgment on the arbitration panel's award. Thus the court was compelled to deny appellee's petition for a minor's compromise for the lesser amount." Power, 701 A.2d at 1374-75 (emphasis added).

The other case cited by plaintiffs, Jones v. Pocono's Magic Valley, Inc., 47 Pa. D & C 3d 561 (Monroe Cty. 1987) likewise does not support plaintiffs' argument that the high/low agreement should be set aside. In Jones, the Monroe County Court of Common Pleas refused to enforce a settlement order in an action involving a minor where that petition for court approval was withdrawn before the court had an opportunity to consider it. Obviously, these facts differ from those in the instant case where the high/low agreement was presented not only the trial judge but subsequently to Judge Bonavitacola, an Orphans' Court judge.

A somewhat more ambiguous, recent precedent is Blitzer v. Trustees of University of Pennsylvania, August 1998 No. 2610, slip op. (Phila. Common Pleas 7/19/2001) where the trial court enforced a high low agreement as to the CAT fund but not as to the physician defendant. The high/low agreement was reached during the trial and placed on the record. The court, however, interpreted this agreement as encompassing only the CAT fund. Id., slip op. at 8 ("It was the Court's understanding that the purpose of the stipulation was to limit the CAT Fund's liability only"). This opinion was affirmed with an unpublished opinion. See Blitzer v. Board of Trustees of the Hosp. of the Univ. of Pa., 809 A.2d 950 (Pa. Super. July 19, 2002).[11] The trial court's opinion in Blitzer would thus support the conclusion that an oral minor's compromise/settlement agreement that is

[11] The note to this 809 A.2d 950 citation cautions that while the unpublished memorandum opinions may be available at the clerk's office, these "memorandum opinions cannot be considered as precedent, nor can they be cited for any purpose, except when relevant under the doctrine of law of the case, res judicata or collateral estoppel and the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding." In the unpublished opinion, the Superior Court quotes the record to show that the terms of the settlement were presented orally for the record and were limited to the CAT Fund. It then concluded that the trial court's conclusions of law were not erroneous. In a concurring opinion, in contrast, Judge Joyce would have found such an oral stipulation defective under Rule 2039 for failure to file a petition. These analyses, however, are without precedential effect according to the explanatory note at 809 A.2d 950.

placed on the record and approved by the trial judge is valid as to the parties to that agreement.

Finally, plaintiffs invoke Philadelphia Rule 2039.1(B) to support their argument that the high/low agreement should be set aside. Plaintiffs cite the following provision of this local rule:

> Which Judge to Rule on Petition. When a minor's or incompetent's settlement has been obtained before a Settlement Conference or a Trial Judge, that Judge shall have exclusive jurisdiction to approve the reasonableness of the amount of such settlement. The Trial or Settlement Judge shall also make an initial determination of the distribution of the settlement proceeds within 30 days after the filing of a formal petition. After such determination, the Petition shall be forwarded to the Orphans' Court Division for final approval and signature, and the same shall be ruled on within 30 days. Phila. R. C.P. 2039.1(B), as quoted by Plaintiffs' 11/18/2002 Memorandum at 3.[12]

The parties to this action, however, complied with this local rule first, by presenting the high/low agreement to the trial judge and then subsequently filing a petition to obtain the approval of an Orphans' Court Judge. In fact, the plaintiffs themselves filed the petition for Orphans' Court approval with both parents specifically consenting to the terms of the high/low agreement.

In seeking to protect the interests of a minor, the potential benefits of high/low agreements should not be underestimated. Negotiating a high/low agreement gives the parties an opportunity to exert some control--and rationality--on the otherwise unpredictable outcomes possible in submitting

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[12] Pa. R.C.P. 2039(A) requires "court" approval of a minor's action without specifying approval by Orphans' Court. Indeed, courts of common pleas routinely approve these settlements. See, e.g., Power v Tomarchio, 701 A.2d 1371 (Pa. Super. 1997)(petition to approve minors' compromise submitted to Court of Common Pleas). The Philadelphia Court of Common Pleas is a court of "unlimited original jurisdiction in all cases except as may be otherwise provided by law." Pa. Const.Art. 5, §5; In re Hennessy, 343 Pa. Super. 293, 296, 494 A.2d 853, 854 (1985).The exclusive jurisdiction of the Orphans' Court is outlined in 20 Pa.C.S.A. §711. Among the areas of mandatory jurisdiction is "[t]he administration and distribution of the real and personal property of minors' estates." 20 Pa.C.S.A. § 711(4). Philadelphia Rule *2039.1 directs petitions to settle minor's actions to the Orphans' Court to assure uniform interpretation and procedures. To achieve this objective, standard petition forms have been devised to aid both practitioners and the court in achieving fair settlement of minors' claims. See generally Joint Court Reg., Trial Div. and Orphans' Court Division, No. 97-1; Phila. Orphans' Court Rules 2001, Orphans' Court Forms; Phila. R.C.P. *2039.1(D)(contents of petition).

a case to a jury. Such an agreement when properly approved by a court under Pa.R.C.P. 2039 and Philadelphia Rule *2039.1 can serve as a valuable tool for safeguarding the interests of a minor. As the plaintiffs in the instant case noted in their July 24, 2000 petition seeking approval of their high/low agreement:

> After several hours of negotiations, an agreement was reached that would guarantee minor-plaintiff a settlement of $250,000 even if there were a defense verdict or a plaintiff's verdict for less than that amount in exchange for capping the defendant's exposure at a maximum of $950,000 regardless of the amount of any verdict in excess of that amount.[13]

This assurance that Kathryn Krzaczek would receive a quarter million dollars even if the jury returned a defense verdict must be weighed against the possibility of no recovery whatsoever. In fact, she received nearly a million dollars under the high/low agreement. Here the minor's parents--as well as two courts--concluded that the assurance provided by the high/low agreement was in the child's best interest. That high/low agreement should stand.

Conclusion

For the reasons set forth above, plaintiffs' petition to set aside the high/low settlement agreement is denied.

BY THE COURT:

Date: _____

John W. Herron, J.

[13] Plaintiff's Petition for Distribution of Proceeds of Verdict in Minor's Action filed July 24, 2000 at ¶ 6, set forth as Ex. D to 12/17/2002 Defendant Patrick Ronan's Response.