

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HONORABLE KENNETH A. DAVIS
Justice

TRIAL/IAS, PART 12
NASSAU COUNTY

JOYCE BASSUK, an infant under the age
of 14 years, by her mother, HILDA CLAROS;
CAROL BASSUK, an infant under the age
of 14 years, by her mother HILDA CLAROS,
and HILDA CLAROS, individually,

Plaintiff(s),

INDEX No. 20735/98

-against-

ANTONE C. SOUZA,

Defendant(s).

The following papers read on this motion:
Notice of Motion/ Order to Show Cause
Answering Affidavits
Replying Affidavits
Briefs: Plaintiff's/Petitioner's
Defendant's/Respondent's

The ex parte application of the infant plaintiffs Joyce Bassuk and Carol Bassuk, by their mother and natural guardian, Hilda Claros, for an order approving a proposed compromise of the claims of the infant plaintiffs is considered under CPLR 1207, 1208 and rule 22 NYCRR 202.67 is decided as follows.

This personal injury action was commenced following a motor vehicle accident in which the infant plaintiffs and their mother were injured. The mother claims to have sustained Cervical herniations at C2-3, C3-4 and C4-5; Left mid cervical radiculopathy confirmed by EMG; Lumbrosacral herniation at L5-S1; Post traumatic cervical and lumbrosacral radiculopathy; Internal derangement acromioclavicular compression of the right shoulder; Post traumatic stress disorder with mixed anxiety and depressed mood. Joyce Bassuk claims to have sustained Cervical and lumbrosacral derangement, sprain and strain; Post concussion syndrome with persistent post concussive complaints and Adjustment Disorder with mixed anxiety and depressed mood. Carol Bassuk claims to have sustained Cervical sprain and strain; Lumbrosacral herniations L1-2, L2-3, L3-4, L4-5, L5-S1 and lumbrosacral radiculopathy; and Adjustment Disorder with mixed anxiety and depressed mood. The matter was arbitrated and the arbiter rendered a decision awarding

Hilda Claros, \$17,500, Carol Bassuk, \$8,500.00 and Joyce Bassuk, \$6,500.00. The court was presented with an ex parte application to confirm the arbitration award and to approve the infant compromise order. The court during the hearing found numerous inconsistencies among the papers including an affirmation from Dr. Goldman attesting that one of the infants has not recovered, while counsel states in his affirmation that they have recovered. In addition, the infants stated to the court that they both continue to experience pain as a result of the accident. Notwithstanding the fact that plaintiffs' law firm represented the infants' mother, individually and received a fee, counsel's affirmation contains the statement that "Neither I, nor any member of my law firm, became concerned in the settlement at the instance of a party or person opposing, or with interests adverse to, the infant directly or indirectly; nor received nor will receive any compensation from such party; nor represented and do not now represent any other person asserting a claim arising from the same occurrence." The court finds that the plaintiffs' firm by representing the guardian as well has not acted in accordance with the foregoing statement. See, Alfonso v. Villafuerte, NYLJ page 21 (November 27, 2001). Therefore, the court finds that in the best interests of the infant plaintiffs, that this matter is decided as follows:

IT IS HEREBY ORDERED that the instant applications for approval of the proposed infant compromise order in the amounts of \$8500.00 and \$6500.00 is denied; and

IT IS FURTHER ORDERED that Hilda Claros, the mother and natural guardian of the infant plaintiffs is removed as the CPLR Article 12 representative of the infant plaintiffs for cause as contemplated by CPLR 1201; and

IT IS FURTHER ORDERED that the attorneys of record who have appeared herein on behalf of the infant plaintiffs, through their mother, are relieved of such representation; and

IT IS FURTHER ORDERED that the attorneys of record shall place any and all legal fees that were collected on behalf of Hilda Claros, individually, in a separate escrow account and that all fees due the guardians ad litem shall be paid from said monies, and

IT IS FURTHER ORDERED that plaintiffs' attorney of record shall order a copy of a transcript of this proceeding and shall incur the costs of said transcript and that the attorneys of record shall perform an updated asset search pertaining to the defendant; and

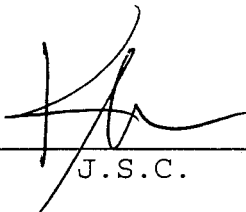
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IT IS FURTHER ORDERED that pursuant to CPLR 1202, the court hereby appoints JOHN RYAN, ESQ., of the Law Firm of John Ryan and Associates, with offices at 100 Quentin Roosevelt Boulevard, Garden City, New York 11530 (516) 542-1220, as guardian ad litem of the infant plaintiff, CAROL BASSUK and WILLIAM COURTIER, JR., ESQ. of Hamill, O'Brien, Croutier and Dempsey, with offices at 138 Mineola Blvd. Mineola, New York 11501 (516) 746-0707 (516) 746-0707 as guardian ad litem of the infant plaintiff, JOYCE BASSUK upon the condition that they accept said appointment by qualifying in accordance with the provisions of CPLR 1202(c) within 20 days of the date of this order. Said appointment is made pursuant to 22 NYCRR 36.1, as the court perceives that both attorneys expertise and experience as litigators in personal injury law makes them uniquely qualified for the fiduciary office to which they are appointed. The guardian ad litem shall not retain independent counsel except upon leave granted by order of this court, and

IT IS FURTHER ORDERED that the former attorneys of record for the infant plaintiffs shall provide copies of any and all documents in their possession which relate to the claims of the infants within 10 days to the guardians ad litem appointed on behalf of the infant plaintiffs; and

IT IS FURTHER ORDERED that a pretrial conference of this matter shall be held on December 10, 2001 at 10:00 am in the courtroom of Justice Davis. All counsel are directed to appear at said conference.

Dated: DEC 3 2001



J.S.C.

ENTERED

DEC 05 2001

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**