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Seventh Circuit Applies the Erie Doctrine to Minor Settlements

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For the purposes of the *Erie* doctrine, which directs federal courts sitting in diversity to apply state substantive law and federal procedural rules, “damages law is substantive law,” and that includes the law that governs judicial approval of settlements with minors, according to *In re Williams, Bax & Saltzman, P.C.*, No. 13-2434 (Nov. 5, 2015), a recent decision from the *Seventh* Circuit written by Judge Diane S. Sykes.

In so holding, the Seventh Circuit joined a handful of other federal courts that have reached the same conclusion.

Williams, Bax represented the plaintiff in a personal-injury case, and the firm appealed from a decision of the U.S. District Court for the Northern District of Illinois that had restructured the calculation of the firm’s contingency fee based on the district court’s concern that the law firm had received too much of a proposed settlement and the minor plaintiff too little. Williams, Bax insisted that its fee ought to be calculated, as provided for in its engagement agreement, as one-third of the total recovery. The district court thought that “fairness and right reason” required otherwise, so it reduced the fee by calculating it as one-third of the settlement after costs.

The district court’s incantation of “fairness and right reason” was insufficient under Illinois law, the Seventh Circuit determined, to justify modifying a freely negotiated contract (and so it reversed and remanded), but the antecedent question was whether the federal court could look to Illinois law in the first place.

Northern District Local Rule 17.1 requires “written approval by the court” before a settlement with a minor can “become final,” and it allows the district court to have some say in the “payment of reasonable attorney’s fees and expenses from the amount realized in such an action.”

But the existence of a local federal rule shouldn’t lead one to think that the matter is procedural under Erie. The Seventh Circuit explained that this rule is “silent as to the substantive criteria governing the reasonableness inquiry,” and, since a contingency fee “is calculated as a proportion of the damages to which successful plaintiffs are entitled,” and since damages law has long been a substantive matter under Erie, the court saw “no reason” why the law governing the approval of minor settlements should not be substantive and thus governed by state law.

The court noted that this result promoted “the twin aims” of *Erie* first articulated in *Hanna v. Plumer*, 380 U.S. 460, 468 (1965): “the discouragement of forum-shopping and avoidance of inequitable administration of the laws.”

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