

amount is over \$10,000.00. Idaho Code § 15-5-103 governs minor's matters where the amount involved is \$10,000.00 or less.

The Court requested Bornitz' attorney to submit time records for amounts spent. Such was provided by Affidavit Re: Fees and Costs filed January 30, 2007. That affidavit shows Bornitz' attorney spent 31.3 hours on this action. That would amount to an hourly rate of \$878.60 per hour, given the \$27,500.00 attorney fee requested. If this were attorney fees on a contingency basis for damages to an adult, there would be no reason to question such an award of attorney fees. The contract would be with an adult with the capacity to contract, and there is no court oversight in that situation. However, when a minor child is involved, Idaho Code § 68-1402 requires this Court to analyze whether the attorney fees charged are reasonable. "As part of the order approving a compromise...pursuant to this chapter, the court shall also order that the reasonable and necessary expenses of the minor...including attorney's fees and costs approved by the court, shall be paid from the money or property to be paid or delivered for the benefit of the minor...person." Idaho Code § 68-1402(1). This Court does so with I.R.C.P. 54(e)(3) in mind.

The I.R.C.P. 54(e)(3) factors applicable and considered by the Court in this case are: (A), the time and labor involved (31.3 hours); (B) the novelty and difficulty of the questions (not novel or difficult); (C) the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law (a neutral factor in this case, and one that is taken into account with the prevailing rate of \$150.00/hour); (D) the prevailing charges for like work (this Court finds the prevailing hourly rate in the area to be \$150.00/hour); (E) whether the fee is fixed or contingent (presumed contingent); (G) the amount involved and the results obtained (\$100,000.00). This Court has considered the

following I.R.C.P.54(e)(3) criteria, and finds them to be non-factors in this case: (F) the time limitations imposed by the client and or the circumstances of the case, (H) the undesireability of the case, (I) the nature and length of the professional relationship with the client, (J) awards in similar cases (K) the reasonable cost of automated legal research and (L) any other factor. The fact within five months of the accident the matter was resolved for policy limits with 31.3 hours expended, demonstrates the straightforward nature of the underlying claim.

The \$100,000.00 amount involved the assumed contingent fee indicate that from a contractual standpoint, the requested fee of \$27,500.00 is justified. However, the Court must balance the amount of time spent (31.3 hours) and the straightforward nature of this case from a liability and damage standpoint with the prevailing charges in the area for like work on an hourly basis. While an adult might enter into a contingency contract in a clear liability and policy limits case, the minor does not have that ability. The law requires the Court to oversee that situation.

Balancing all factors, giving weight to the contingency fee agreement and the amount claimed, as well as the amount of hours spent on the case, the Court determines that the rate of \$450.00 per hour is a reasonable fee under Idaho Code § 68-1402(1). This results in an approved attorney fee in the amount of \$14,085.00, given the 31.3 hours expended. The hourly rate of \$450.00 is more than half of the \$848.60 per hour claimed and three times more than the reasonable hourly rate in this area. This \$450.00 amount balances the amount of hours actually expended, the amount recovered and the subrogated interest discounted (the benefits to the minor child) on one hand, with the actual hours spent on this straightforward case on the other.

Entered this 2nd day of February, 2007.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of February, 2007, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer

Fax #

| Lawyer

Fax #

Secretary