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Attorney Fees Awarded to Plaintiff Over Improper Removal of Fraternity Suit

BY P.J. D'ANNUNZIO

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pdannunzio@alm.com

Finding that there was "no objectively reasonable basis for removal," a federal judge has awarded \$11,000 in attorney fees to the plaintiff in a wrongful death lawsuit against a Bloomsburg University fraternity.

U.S. District Judge Matthew Brann of the Middle District of Pennsylvania granted plaintiff Carol King's motion for attorney fees over defendant Alpha Sigma Tau National Foundation's removal of the lawsuit from Columbia County court. The ruling wades into an unsettled issue yet to be addressed by the U.S. Court of Appeals for the Third Circuit.

King filed the lawsuit against the fraternity after the death of her son, Justin King,

who was a freshman at Bloomsburg when he died during a fraternity rush party at the age of 18.

The defendants had argued that, under the federal statute saying parties can be forced to pay costs for wrongfully removing a suit, King was only entitled to recover "actual expenses" and not attorney fees, since the case was taken on contingency. To support their claim, the defendants contended that Congress could have used the word "reasonable" in the statute, but their use of the words "actual expenses" meant recovery was limited only to fees that were billed and charged to the client.

Looking to precedent from the Ninth and the Seventh circuits, Brann disagreed.

"The purpose of Section 1447(c) is to deter defendants from improperly removing cases to federal court, thus wasting the opposing party's, as well as the judiciary's,

resources. It would undermine the statute's purpose to exclude recovery for parties represented on contingency simply because their attorneys do not use a traditional billing model," Brann said. "Moreover, King's attorneys have actually incurred costs because they have spent time and effort working on King's case that they could have expended on other matters."

To calculate the amount defendants "could have charged but-for their work contesting removal," Brann used the lodestar formula.

Additionally, Brann awarded \$450 to King to cover the cost of an economist's report.

"Here, King was actually charged \$450 for the economist's report written in support of the present motion. Because this fee was incurred as a result of defendant's removal, King shall be reimbursed for that expense," Brann said.

Shanin Specter and David Williams of Kline & Specter, who represented King, said the money will be donated to the Timothy J. Piazza Memorial Foundation, named for the Penn State sophomore who died in a 2017 hazing incident at the Beta Theta Pi fraternity. The firm represented the Piazza family in the related lawsuit.

"This donation to the Timothy J. Piazza Memorial Foundation goes to highlight fraternity safety and makes a positive impact from the needless tragedy forever linking the Piazza and King families. We are gratified that these families are devoted in so many meaningful ways to fraternity safety," Specter and Williams said in a joint statement.

The defendant's attorney, John Delany, did not respond to a request for comment.

P.J. D'Annunzio can be contacted at 215-557-2315 or pdannunzio@alm.com. Follow him on Twitter @PJDannunzioTLI. •