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MARGO KRAMER et al.,	:	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY LAW DIVISION
Plaintiffs,	:	CIVIL ACTION DOCKET NO. MID-L-2521-01
vs.	:	CASE CODE 248
CIBA-GEIGY CORPORATION, et al.,	:	**OPINION**
Defendants.	:	

Decided: October 29, 2002

David W. Field (Lowenstein Sandler PC) for Defendant Ciba-Geigy Corporation

Henry F. Furst (The Law Offices of Henry F. Furst) for Defendant William P. Bobsein
Micheal E. Wilbert (Wilbert, Montenegro & Thompson) for Defendant James A. McPherson

CORODEMUS, J.S.C.

I. INTRODUCTION

Presently before this court are the remaining issues of counsel fees and indemnification as between defendant, Ciba-Geigy Corporation ("Ciba") and their former employees, co-defendants, William P. Bobsein ("Bobsein") and James A. McPherson ("McPherson"). Messrs. Bobsein and McPherson's dispute with Ciba arises from the Consulting Agreements entered into by Messrs. Bobsein and McPherson with Ciba on December 31, 1991 and February 12, 1992, respectively. The Consulting Agreements in pertinent state:

> 11. Except for occurrences of your willful misconduct, CIBA-GEIGY will defend and indemnify you in connection with any claims asserted or litigation commenced after the date hereof and based on your prior employment by CIBA-GEIGY or this consultancy, provided that you give prompt notice to CIBA-GEIGY of such

> claim or litigation. In such instance, CIBA-GEIGY shall have the right to assume the defense thereof with counsel of its choice. You agree to cooperate with CIBA-GEIGY in the defense of any asserted liability and, in any event, shall have the right to participate at your own expense in the defense of the asserted liability.

The parties jointly agreed to see if Mediator Philip H. Gruccio, J.A.D. (retired) could resolve these issues. Unable to come to a mediated solution, Judge Gruccio filed a recommendation to this court. Since there was no agreement between the parties, the parties submitted the matter to this court. Prior to this court taking up this matter, all parties agreed to attend a second mediation session on August 21, 2002 with the Honorable William A. Dreier (retired) but unfortunately no final agreement was reached. The matter now comes to this court de novo.

The matter of Kramer, et. al. v. Ciba-Geigy Corp., et. al. was originally filed on May 18, 2000 in Ocean County under the previous caption of Breen v. Ciba Geigy Corporation, Ciba Specialty Chemicals Corporation, Novartis Corporation and others. The matter later captioned Kramer involves law suits brought by over six hundred plaintiffs alleging exposure to toxic chemicals within their residential area from the Ciba-Geigy plant in Toms River, New Jersey.

On January 12, 2001, Chief Justice Deborah Poritz ordered that all claims against Ciba-Geigy be venued in Middlesex County before this court. As a result, the Ciba case developed into three parts. The first grouping of cases includes over 400 minors alleging illness and wrongful death cases under the general caption of Arent v. Ciba-Geigy Corp., et. al.. The third part of the Ciba cases, yet pending, involve claims for a putative class action involving property damage and natural resource claims.

Pursuant to this court's Order dated March 2, 2001 in In Re Toms River Litigation Case, the Hon. Phillip A. Gruccio was appointed to act as a mediator. Pursuant to Case Management

Order 1, which incorporated all the provisions of the March 2, 2001 Order, the court with counsel agreement appointed the Hon. Philip A. Gruccio as a mediator to assist in resolving various claims. Over the course of the year and a half the court dealt with all three parts of the Ciba case. In January 2002, all minor cases were settled through private negotiations and this court held hundreds of friendly hearing proceedings over the course of December 2001 and January 2002.

This court held customary monthly case management conferences to facilitate discovery requests by the parties without the need of an extensive motion practice. This is a common management tool utilized by this court and many courts handling mass torts. The parties increasingly agreed to meet with Judge Gruccio on a voluntary basis to mediate various issues. Any issues not consented to were forthwith addressed by this court.

The issue of counsel, counsel fees and indemnification as between co-defendants, Bobsein and McPherson was one such issue agreed to by all co-defendants for mediation with Judge Gruccio. As with all prior involvement of Judge Gruccio, if agreement was not reached, this court would hear the motion de novo.

From the period of January 2001 to June 2002, the court worked with the Kramer and Janes (third part of the Ciba matter) on a monthly basis. In May-June 2002, the parties entered formal mediation in earnest with a second mediator selected by the parties to resolve the liability and damages. The plaintiffs in Kramer, Ciba entities and the United Water Management & Services, Inc., a/k/a United Water Toms River resolved all issues of liability and damages. The Kramer plaintiffs voluntarily dismissed claims as against Messrs. Bobsein and McPherson.

While the court was finalizing the dismissals of over 400 dockets and 600 individual cases, the court again inquired as to whether the parties were willing to mediate the outstanding

issues of counsel fees and costs. Three potential mediators were discussed as between the parties, who jointly selected Judge William A. Dreier (Retired). Unfortunately, no agreement was reached by the parties. Accordingly, the matter is now before the court de novo for resolution of counsel fees and costs or whether individual defendants, Messrs. Bobsein and McPherson waived their right to counsel provided by Ciba.

II. PROCEDURAL HISTORY

The original action is brought by three individuals who are the named lead plaintiffs for over six hundred individual claims seeking personal injury damage and medical monitoring relief arising out of toxic contamination allegedly caused by defendants CIBA-GEIGY Corporation, Ciba Specialty Chemicals Corporation and Novartis Corporation. Plaintiffs claim that their health was damaged by chemical contamination between 1960 and 1996 in the vicinity of the former plant operated by defendant CIBA-GEIGY Corporation in Dover Township, New Jersey.

The Original Complaint was filed on May 18, 2000 in Superior Court, Ocean County Chancery Division Ocean County, under what is now captioned the Kramer, et. al. v. Ciba-Geigy Corp., et. al., Docket No. MID-L-002093-01[1]. It contained eight common law counts against the CIBA defendants and four individual defendants, including Messrs. Bobsein and McPherson, all of whom were past employees of the Ciba-Geigy Corporation.

On May 26, 2000, the First Amended Complaint asserted the same claims as the original complaint but voluntarily dismissed two of the four individual defendants. Messrs. Bobsein and McPherson remained individual defendants. A prior ruling made by the trial judge in Ocean County dismissed plaintiffs' jury demand. (See Order dated November 17, 2000.)

[1] The Breen case was the first case filed against CIBA-GEIGY Corporation, Ciba Specialty Chemicals Corporation, Novartis Corporation and others. All the various tort actions against CIBA-GEIGY Corp., et al., were consolidated in Middlesex County as Mass Tort Code 248 and are now known as Kramer vs. CIBA-GEIGY Corp., et al., litigation.

On September 6, 2000, the plaintiffs filed their Second Amended Complaint in retort to Ciba defendants' Motion to Dismiss the Complaint and the First Amended Complaint. The Second Amended Complaint (1) replaced the initial captioned plaintiffs with the present plaintiffs, (2) joined defendant United Water Management & Services, Inc. and (3) asserted claims for concert of action against all defendants. The Second Amended Complaint also dismissed plaintiffs' claims nuisance, trespass, battery, absolute liability and exemplary/punitive damages.

On November 14, 2000, Messrs. Bobsein and McPherson filed an Answer to the Plaintiffs' then Second Amended Complaint which included cross-claims against the Ciba defendants asserting theories of common law and contractual indemnification, contribution and declaratory judgment. Ciba filed its Answer to the Second Amended Complaint on December 1, 2000 but did not assert any cross-claims against Messrs. Bobsein and McPherson.

On January 12, 2001, Chief Justice Poritz ordered that all claims against Ciba-Geigy, presently in Ocean County, be venued to Middlesex County before Judge Corodemus, J.S.C.

On May 29, 2001, Messrs. Furst and Wilbert filed the motions to dismiss which were provided by Lowenstein Sandler on behalf of Messrs. Bobsein and McPherson. On August 31, 2001, the motions to dismiss were denied without prejudice by this court.

III. RECENT LITIGATION HISTORY

On June 2, 2000, after the First Amended Complaint was filed, James Stewart, Esq., partner at the law firm of Lowenstein Sandler, wrote to the co-defendants, Messrs. Bobsein and McPherson, individually. Mr. Stewart advised them that Ciba had requested Lowenstein Sandler represent Messrs. Bobsein and McPherson, at Ciba's expense, in connection with the Breen

litigation (now Kramer litigation). Mr. Stewart's letter of June 2, 2000, requested that Messrs. Bobsein and McPherson confirm/acknowledge the following in writing:

- That no conflict existed between the interest of Bobsein and McPherson and those of Ciba which, if disclosed, could preclude joint representation.
- The understanding that, in the unlikely event such a conflict should develop during the course of the joint representation or that if Lowenstein Sandler determined that continued joint representation was not appropriate, that Lowenstein Sadler would resign representation of Bobsein and McPherson and continue to represent Ciba.
- That they had been given an opportunity to review the June 2, 2000 letter with separate counsel of their own choosing and did not rely on advice provided by Lowenstein and Sandler in agreeing to the terms of the letter.

On June 22, 2000, Mr. Stewart wrote to Mr. McPherson advising him that his client, Ciba needed a response to its offer of representation and indemnification by June 28, 2000. Mr. Bobsein informed Mr. Stewart on July 19, 2000 of his decision not to agree to representation by Lowenstein Sandler. On July 26, 2000, Mr. Stewart advised Mr. Bobsein, in writing, that Ciba would not reconsider its choice of Lowenstein Sandler to represent Messrs. Bobsein and McPherson in the Breen litigation.

On October 13, 2000, Douglas Hefferin, Vice President, Site Remediation for Ciba, wrote to Messrs. Bobsein and McPherson regarding the representation of Messrs. Bobsein and McPherson's interests in the various Toms River lawsuits. In that letter, Mr. Hefferin acknowledges Ciba's obligation to indemnify Messrs. Bobsein and McPherson and reiterates Ciba's willingness to pay the cost of defense for Messrs. Bobsein and McPherson but only with counsel of Ciba's choosing. Mr. Hefferin in his letter of Oct. 13, 2000, wrote "[S]ince these claims are based on your employment with Ciba and, in one form or another seek money, our agreement provides that Ciba will indemnify you if any liability is found. Ciba remains willing to pay for the cost of your defense, but only with counsel of its choice, since it will bear all the

expense." (Certification of Henry Furst dated December 21, 2001, Exhibit 1, Letter from Hefferin to Bobsein and McPherson, Oct. 13, 2000) (hereinafter "Furst Cert. , Ex. ").

On November 9, 2000, Mr. Hefferin wrote to Messrs. Bobsein and McPherson and withdrew Ciba's selection of Lowenstein Sandler. Ciba instead offered representation by Joseph A. Hayden, Jr., Esq. if acceptable. Mr. Hefferin also informed Messrs. Bobsein and McPherson that based "on the facts and circumstances known to us (Ciba) ... you are to be fully indemnified from any adverse judgment or settlement in the pending suits." (Certification of David Field dated October 22, 2001 submitted in support of the Ciba Defendants' Motion for Summary Judgment, Ex. I) (hereinafter "Field Cert. , Ex. ").

On November 10, 2000, Messrs. Bobsein and McPherson rejected Ciba's offer of representation by Mr. Hayden on the basis of a conflict of interest.

On March 9, 2001, a preliminary case management meeting as between all counsel occurred at the Law Firm of Wilentz, Goldman & Spitzer, which included plaintiffs' counsel, David W. Field, Esq. of the law firm of Lowenstein Sandler for Ciba, Henry F. Furst, Esq., attorney for Mr. Bobsein, and Michael E. Wilbert, Esq., attorney for Mr. McPherson, to discuss issues regarding the representation of Messrs. Bobsein and McPherson. At this meeting, there was a "misunderstanding" as to what Ciba committed to do. Messrs. Furst and Wilbert believed that Mr. Field agreed to reimburse Messrs. Furst and Wilbert for representation of Messrs. Bobsein and McPherson, at least until this court decided on the motions to dismiss Messrs. Bobsein and McPherson from the cases. Messrs. Furst and Wilbert agreed to represent Messrs. Bobsein and McPherson and discuss the matter again if the motions were denied. (Furst Cert. ¶20; Wilbert Cert. ¶3-4).

Mr. Field states, that he never agreed to such a condition of payment. Instead, Mr. Field states that he attempted to convince counsel for Messrs. Bobsein and McPherson to turn over the defense of their clients to Lowenstein Sandler. Mr. Field also recalls that the Ciba defendants tried to convince Messrs. Furst and Wilbert to file a motion to dismiss all of plaintiffs' claims and offered to share a copy of the motion which Lowenstein Sandler had drafted in anticipation of serving as counsel for Messrs. Bobsein and McPherson. (Field Cert. ¶ 15). On May 2, 2001 Mr. Field wrote to Messrs. Furst and Wilbert and stated "...we do not believe it is necessary for Messrs. Bobsein and McPherson to assert another cross-claim against the corporate defendants for indemnification." Mr. Field went on to note that cross-claims for indemnification had already been filed in Kramer and that Messrs. Bobsein and McPherson had that forum in which to proceed if they were unable to resolve the issue amicably or through a private mediator. (Field Cert. ¶ 4(a), Ex. N).

On May 7, 2001, Mr. Field again wrote to Messrs. Furst and Wilbert requesting that they file the motions to dismiss on behalf of Messrs. Bobsein and McPherson. Mr. Field advised them of the costs Ciba had incurred in filing Answers to the 519 Complaints and urged that they file the motion for dismissal. On August 21, 2001, Mr. Furst wrote to Mr. Field stating that he and his client are "still waiting for a complete commitment from Ciba for indemnification and counsel fees." On September 12, 2001, Mr. Field wrote to Messrs. Furst and Wilbert in response to the e-mail from Mr. Furst and expressed that the Company's position has not changed on paying his clients' defense costs. He also asserted that Ciba is not inclined to pay for an unknown and unlimited amount of counsel fees for defendants which it believes should be represented by Lowenstein Sandler. (Field Cert. ¶16d).

On October 2, 2001, Mr. Furst wrote to Mr. Field stating that the dispute as to counsel fees must be resolved promptly and finally if Ciba persistently refuses to pay. Mr. Furst also restated his position in regard to the March 9, 2001 meeting in which he believed that Ciba committed to payment of their fees until the decision on the motions to dismiss. However on October 4, 2001, Mr. Field responded to Mr. Furst and informed him that there must be a significant misunderstanding being that Ciba never committed to paying their fees. He asserted that it has always been Ciba's position that they will not pay for Messrs. Bobsein and McPherson's personal counsel. (Field Cert. ¶ 16f).

On May 10, 2002, Mr. Field, Mr. Furst and Mr. Wilbert appeared before this court and informed the court that they would rest on their papers.

IV. HISTORY OF INDIVIDUAL DEFENDANTS, MESSRS. BOBSIEN AND MCPHERSON AND THE IR EMPLOYMENT HISTORY WITH CIBA

Messrs. Bobsein and McPherson were both employees of Ciba. Mr. Bobsein was employed by Ciba from 1965 until 1991. From 1971 to January 1985, Mr. Bobsein was assigned to the department called Environmental Technology ("ETD"). He was Assistant Manager in 1971, then the Manager of the ETD from June 1972 to January 1985. Mr. McPherson was employed by Ciba from 1961 until December 31, 1992. Mr. McPherson was assigned to the Department of Environmental Technology for a portion of that period. He was Supervisor of solid waste in the Environmental Technology Department until January 1985.

Messrs. Bobsein and McPherson are defendants in complaints with broad allegations of serious wrongdoing against them, Ciba, unidentified individuals and corporations, in which plaintiffs seek damages for personal injuries or environmental harm. Messrs. Bobsein and McPherson claim that other Ciba employees and corporate policies are responsible for the contamination that caused the harm for which the plaintiffs seek redress; and that they did not on

their own perform any act that caused or threatened harm to any individual. (Bobsein Cert. dated October 18, 2001 ¶ 17; McPherson Cert. dated December 17, 2001 ¶ 13). The entire indictment was dismissed by the Honorable Judith A. Yaskin, J.S.C, which was later appealed, reversed and remanded by the Appellate Division (State v. CIBA-GEIGY Corp., 222 N.J. Super. 343 (App. Div. 1998)).

There were state criminal charges filed against Messrs. Bobsein and McPherson. State Grand Jury No. 147-85-2 involved a 20-day period of presentment that spanned from March 21, 1985 until October 24, 1985. On October 24, 1985, a grand jury returned an indictment No. SGJ 147-85-2, which charged, among others, defendants William Bobsein, James A. McPherson and the CIBA-GEIGY Corporation, with certain unlawful conduct concerning the disposal of waste at the Toms River plant. Subsequently, the defendants filed motions to dismiss the indictment on several grounds. The entire indictment was dismissed by the Honorable Judith A. Yaskin, J.S.C, which was later appealed, reversed and remanded by the Appellate Division (State v. CIBA-GEIGY Corp., 222 N.J. Super. 343 (App. Div. 1998)).

The State of New Jersey chose to pursue a more streamlined indictment by way of a second grand jury after the appeal, which focused only on waste disposal into double-lined landfill (See State Grand Jury Indictment No. 195-87-4). On February 28, 1992, Messrs. Bobsein and McPherson pled guilty to one fourth degree criminal offenses contained in Indictment SGJ 195-87-4 and were each sentenced to pay a fine of $25,000. The conduct involved the placement, by other Ciba employees, of cans or jars containing liquids into enclosed, steel barrels which were sent to secure, double lined landfill which did not have either a New Jersey or a National Pollutant Discharge Elimination System permit for such liquid wastes while Mr. Bobsein was the Manager of the Environmental Technology Department and Mr. McPherson was the Supervisor

of the Environmental Technology Department. On March 23, 1992, a judgment of conviction was entered against defendant CIBA-GEIGY Corporation and the corporation was sentenced to pay a criminal penalty of $3.5 million.

III. CONTENTIONS

The parties' perceptions as to the law and facts are diverse. The Ciba defendants believe that they satisfied their obligation to defend former employees, Messrs. Bobsein and McPherson, by offering the legal services of Lowenstein Sandler and/or Mr. Hayden. The Consulting Agreements gave the Ciba defendants the exclusive right to select counsel on behalf of the individual defendants. The Consulting Agreements also gave the individual defendants "the right to participate at your own expense in the defense of the asserted liability." (Consulting Agreement ¶ 11.) The Ciba defendants contend that the individual defendants, Messrs. Bobsein and McPherson chose to reject the Ciba defendants' offer of counsel and hire their own personal counsel. The Ciba defendants argue that the individual defendants, Messrs. Bobsein and McPherson, cannot now require the Ciba defendants to pay for counsel of their own choosing.

The co-defendants, Messrs. Bobsein and McPherson, believe that Ciba did not fulfill its obligation under the Consulting Agreement. They believe Ciba failed to provide conflict-free counsel by offering representation by Lowenstein Sandler and Mr. Hayden. Messrs. Bobsein and McPherson contend that they had no alternative but to seek personal counsel as Ciba did not provide independent counsel. Therefore, the divergence of opinion arises as to (1) whether a conflict of interest exists in Ciba's and the individual defendants, Messrs. Bobsein and McPherson's choice of counsel and (2) to what extent, if any, is Ciba responsible for the individual defendants' counsel fees and costs?

Ciba believes that it sustained its duty to defend under the Consulting Agreement by offering representation of Messrs. Bobsein and McPherson by Lowenstein Sandler and Mr. Hayden. Ciba believes there exists no conflict of interest in such joint representation being that Ciba had agreed to indemnify Messrs. Bobsein and McPherson completely, including for acts which arose from willful conduct. Ciba asserts that Messrs. Bobsein and McPherson were free to attain personal counsel at their own expense and exercised this right. Ciba contends that Messrs. Bobsein and McPherson cannot require Ciba to pay their attorney costs when the Consulting Agreements gave Ciba the right to select counsel for Messrs. Bobsein and McPherson and required cooperation on their part, which they failed to do. Ciba declares that it had the right to select counsel under the indemnification provision of the Consulting Agreements and therefore executed its responsibility by providing Lowenstein Sandler and Mr. Hayden. Ciba contends that it cannot be held liable for services provided by personal counsel chosen by Messrs. Bobsein and McPherson. Neither co-defendant, Mr. Bobsein or Mr. McPherson, took issue with Ciba defendants providing one defense attorney for both of them.

Messrs. Bobsein and McPherson believe that Ciba did not fulfill its obligation pursuant to the Indemnity Clause in the Consulting Agreements as they failed to provide conflict-free counsel. Messrs. Bobsein and McPherson state that Ciba never intended to indemnify them for acts which arose from willful conduct as can be exhibited by the language of the Consulting Agreements. They aver that assuming arguendo, that they were fully indemnified, such indemnification would not eradicate the obligations of a conflict free attorney under the Rules of Professional Conduct. See DR 5-105(B). They state that financial indemnification would not allow Ciba to violate professional ethics by allowing simultaneous representation, by Lowenstein and Sandler, of parties whose interest in litigation may be in conflict. They believe that

representation by Joseph A. Hayden presented a conflict of interest. Mr. Hayden had represented Ciba in an earlier insurance coverage case, Ciba Geigy Corp. v. Liberty Mut. Ins. Co., (In Re Environmental Ins. Declaratory Judgment Actions, 149 N.J. 278 (1997). Mr. Hayden also represented former co-defendant, Dr. David Willis, another Ciba employee in the criminal case, State v. Ciba-Geigy, 222 N.J. Super. 343 (App. Div. 1998). After the first indictment was dismissed, Mr. Hayden negotiated immunity for Dr. Ellis. After receiving immunity, Dr. Ellis testified against Messrs. Bobsein and McPherson at the second grand jury. Due to these reasons, Messrs. Bobsein and McPherson believe there was a direct conflict of interest if Mr. Hayden represented them.

Messrs. Bobsein and McPherson claim that they entered guilty pleas in the criminal proceedings because they believed that Ciba would indemnify them and provide them with independent counsel in any future litigation arising from their work with Ciba. (Bobsein Cert. dated Oct. 18, 2001 ¶ 8); (McPherson Cert. dated December 17, 2001 ¶ 7). Mr. McPherson states in his Certification of December 17, 2001, that he would not have entered the guilty charge had he known Ciba would provide him with conflict-laden counsel. Mr. McPherson states, "[h]ad I been aware that the corporation would renege on its promise to provide indemnification and provide counsel who represented a co-defendant against me, I would not have considered entering a plea of guilty to that charge." (McPherson Certification dated December 17, 2001, ¶ 8).

Messrs. Bobsein and McPherson blame Ciba corporate policies and other employees for the harm that has come to the plaintiffs. Messrs. Bobsein and McPherson believe that any actions taken by them, even if found to be illegal, were at the direct command of Ciba and under Ciba's

umbrella of employment. Therefore, they state that the positions necessary to represent them effectively, were clearly adverse to Ciba and created many areas of potential and actual conflict.

Messrs. Bobsein and McPherson in their certifications provided several examples of how joint representation could create a conflict of interest. Mr. Bobsein's Certification dated October 18, 2001, included these examples:

1. The production facility known as Ciba-Geigy Facilities at Toms-River ("CGFTR") utilized a procedure to clean railroad tank cars that involved dumping huge amounts of the solvent TCE, a known carcinogen, onto the ground. I only learned of this practice after I left my position as Manager of Environmental Technology. Any of the plaintiff's health problems may be associated with this carcinogen and not attributable to any exposure to an alleged toxic waste in my area of responsibility. I want my attorney to prove that I was not aware of this practice, which, I believe, continued for many years, by showing which Ciba employees were responsible for this practice. A joint attorney cannot exculpate me by inculpating another client.

2. Piles of leaking drums containing "unknown" products or waste were routinely stored by CGFTR against my explicit instructions. Some of these waste barrels leaked onto the ground. I want my attorney to show the jury that I was not responsible for this practice and my efforts to correct it were ignored for years. I want my attorney to vigorously pursue this failing of CGFTR in order to show that any harmful effects this practice may have caused the plaintiffs is not attributable to me. A joint attorney cannot pursue other corporate employees who were responsible for this conduct while also representing my interests.

3. Solvents were routinely burned in "smudge" pots for years before I had any responsibility for environmental affairs. The solvents routinely leaked onto the ground. I want to instruct my attorney to develop the history of solvent burning in smudge pots and show that any contamination related to this practice was not my fault but the responsibility of other Ciba employees. A joint attorney cannot develop the history of this possible contamination because it may show another pathway of exposure which Ciba may not wish to expose but which helps me.

4. Drums of waste were routinely crushed in an unlined landfill, spilling the contents onto the ground before I had any responsibility for environmental affairs at Ciba. I want my lawyer to show that these waste may have contributed to an exposure pathway for which I bear no responsibility. A joint attorney cannot develop facts for my defense which implicate other Ciba employees in causing environmental harm while simultaneously representing Ciba's interests in showing no harm was caused by these practices.

5. Ciba failed to determine whether underground solvent storage tanks were secure until forced by New Jersey regulations to test the tanks. Leaking tanks may have caused the contamination of which the plaintiffs complain. I want my attorney to snow that the leaks occurred before I had any responsibility for environmental affairs. A joint attorney cannot expose this conduct that Ciba may well wish to obscure.

6. The refusal of Ciba to provide sufficient personnel to the Environmental Technology Department as well as several staff reductions, or failure to approve requests for increased staffing by high-level corporate employees, made it unnecessarily difficult and at times impossible for me to do my job. I want my attorney to show that the manpower reductions and allocations prevented me form fulfilling all of my responsibilities and possibly led to the problems of which the plaintiffs complain. One attorney cannot prove that I was handicapped in my job performance due to manpower shortages while proving that Ciba always provide sufficient manpower.

7. Some of the improvements and initiatives planned and promulgated by Environmental Technology were overwhelmed by the production departments, whose sole concern was output. I want my lawyer to prove that the corporate pressures on the production staff resulted in some of the contamination alleged in the lawsuits. The same lawyer cannot simultaneously seek to prove that I an not responsible for contamination by blaming other Ciba employees who were following mandates regarding product output.

In his Certification dated December 17, 2001, Mr. McPherson provided these examples:

1. I want my lawyer to be able to pick a jury by exercising peremptory challenges during jury selection in coordination with other counsel, but only with my best interests paramount.

2. I want my lawyer to be free to assert cross claims against other CIBA employees who may have been responsible for polluting the environment, or who, if the evidence shows, failed to follow the directives of the Environmental Technology Department.

3. ...Ciba-Geigy Facility, Toms River engaged in the practice of burning solvents in a DOW-THERM furnace. Due to our efforts, that practice was stopped; however, there were many occasions when instead of transferring the material to Rollins Environmental Services for disposal, members of Ciba-Geigy Facility, Toms River, against instruction, apparently continued to dispose of the solvents in the furnace. Any release caused by this conduct was contrary to our knowledge and desire to dispose these solvents properly off-site.

4. I want my lawyer to protect my reputation at all times, including in the press. The false statements already disseminated in the media have tarnished my reputation

and caused unneeded emotional stress to me and my family. Despite the assertion that CIBA's attorneys are acting to protect my interests, no statement was made on my behalf. CIBA will act to preserve its image, as it should, and spend huge sums of public relations, just as it did during the criminal case. This shows that this case means more than who wins and who loses. My reputation is as important to me as CIBA's image is to is corporate decision makers. CIBA is justifiably concerned about how it will continue to do business in New Jersey and the impact of these lawsuits. I want someone to be concerned as much about mine and my family's future and reputation. I am equally concerned that the failure of CIBA to respond on my behalf in the media may be a prelude to a legal defense of blaming me for the harm alleged in the Complaints.

5. It is possible, depending on what is developed in discovery, that my defense in this matter might include efforts to demonstrate that certain CIBA employees, or CIBA corporate policies, were responsible for the contamination that caused the harm for which the plaintiffs seek redress; that other exposure pathways of the contaminants that did not involve me could have caused the harm of which the plaintiffs complain; and that I did not perform any act that caused or threatened harm to any individual. I want my lawyer to be free to pursue the investigation of these possibilities in my defense.

Mr. McPherson also adopted those aspects of Mr. Bobsein's Certification, which were not individual only to him.

Messrs. Bobsein and McPherson state that they were entitled to conflict-free, independent counsel. Messrs. Bobsein and McPherson state that they were left with no option but to seek personal counsel as Ciba was unable to provide them with conflict-free counsel for one and a half years of this litigation. Messrs. Bobsein and McPherson chose Messrs. Furst and Wilbert to be their personal counsel because they represented them in the criminal proceedings and are familiar with the issues and individuals involved in the litigation. Messrs. Furst and Wilbert also represented their interests in related matters and were paid by CIBA for their services, after the conclusion of the criminal proceedings (Bobsein Cert. dated October 18, 2001); (McPherson Cert. dated December 17, 2001).

Messrs. Bobsein and McPherson state that Ciba should be equitably estopped from enforcing the counsel selection provision a year and half into litigation. Messrs. Bobsein and

McPherson declare that Ciba is obligated by the terms of Consulting Agreement from any judgment or settlement in the pending matters and must reimburse Messrs. Bobsein and McPherson for counsel fees and costs incurred to this date.

IV. DISCUSSION

A. Conflict of Interest

Joint representation of Messrs. Bobsein and McPherson and Ciba would create a conflict of interest since Messrs. Bobsein and McPherson interests are not coextensive with Ciba's. Under the New Jersey Rules of Professional Conduct 1.7 states:

> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless:
>
> (1) the lawyer reasonably believes that representation will not adversely affect the relationship with the other client; and
>
> (2) each client consents after a full disclosure of the circumstances and consultation with the client...
>
> ***(b)*** ***A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client...unless:***
>
> ***(1)*** ***the lawyer reasonably believes the representation will not be adversely affected;***
>
> (2) ***the client consents after full disclosure of the circumstances and consultation with the client...When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.*** (emphasis added).

Attorney owes their clients unswerving allegiance, and fact that attorney is assigned by insurance company does not alter basic lawyer-client relationship, or duty owed by lawyer to client, and if attorney finds that discharge of his duty to named insured brings him into conflict with duty owed to insurance company which engaged him, he cannot and should not continue to represent both. Bartels v. Romano, 171 N.J. Super. 23, 29, 407 A.2d 1248 (N.J. Super. 1979); Code of Professional Responsibility, See DR 5-105(B), Disciplinary Rules of the Code of Professional Responsibility.

Here, the joint representation of co-defendants, Messrs. Bobsein and McPherson, and Ciba had the possibility of creating a situation where Messrs. Bobsein and McPherson would be prejudiced by the representation of Ciba and themselves. Lowenstein Sandler's obligation to Ciba would have required taking a position which would have been adverse to the effective defense of Messrs. Bobsein and McPherson. Messrs. Bobsein and McPherson blame Ciba for any harm which has come to plaintiffs in the underlying action. Messrs. Bobsein and McPherson state that even if their actions are found culpable, they were taken at the direction of Ciba and within their scope of employment. Messrs. Bobsein and McPherson in their certifications attested to Ciba ignoring their explicit instructions and allowing toxic contaminants to leak onto the ground. Clearly, the law firm of Lowenstein Sandler could not represent both positions with "unswerving allegiance" as they are in direct discord. Ciba counsel could not effectively represent Ciba's interests and Bobsein and McPherson's interests completely and effectively. Joint representation of all parties would result in compromising one party's defense.

The attorney-client relationship must rest upon principle that "an attorney owes complete and undivided loyalty to client who has retained him; attorney should be able to advise client so as to protect client's interests, utilizing his professional training, ability and judgment to the utmost." See In the Matter of Education Law Center, 86 N.J. 124, 133, 429 A.2d 105 (1981) Cf. DR 5-105 (lawyers must avoid conflicts of interest in representation); DR 5-107 (lawyers must avoid being influenced by others than their clients.

Joint representation of multiple parties with dissimilar interests is permitted only if, "there is a substantial identity of interests between them in terms of defending the claims that have been brought against defendants. The elements of mutuality must preponderate over the elements of incompatibility." Hill v. New Jersey Department of Corrections Commissioner

William Fauver, 342 N.J. Super. 273, 309, 773 A.2d 828 (App. Div. 2001) (quoting Petition for Review of Opinion 552, 102 N.J. 194, 201, 507 A.2d 233 (1986)).

In the case at bar, the elements of mutuality do not preponderate over the elements of incompatibility being that Messrs. Bobsein and McPherson want their counsel to be free to assert cross-claims against other Ciba employees and corporate policies which they believe are responsible for polluting the environment. Lowenstein Sandler as counsel for Ciba must do everything in their power to protect Ciba's reputation which would entail establishing that Ciba corporate policies were not to blame for the pollution. Messrs. Bobsein and McPherson want their attorney to protect their reputation at all times, establish that they were not responsible and prove that Ciba failed to take adequate measures to prevent the environmental contamination. Joint counsel could not prove that Messrs. Bobsein and McPherson are innocent at Ciba's expense. Lowenstein Sandler would be unable to assert claims against Ciba in favor of Messrs. Bobsein and McPherson. It would be impossible for an attorney to represent and uphold both view points as they are inherently inconsistent. Discovery in the Kramer case did not end Messrs. Bobsein and McPherson's liability because they are also named by plaintiffs in the Janes matter.

The possibility also existed that Bobsein and McPherson could be held liable for intentional acts for which they were not indemnified. There existed a likelihood that Bobsein and McPherson could later be named as defendants in another suit in which they would not be indemnified for willful conduct, where the results of this case could likely prejudice them. It is in Ciba's favor to find Bobsein and McPherson actions to arise from willful conduct so Ciba would not be liable for costs. Clearly, the results or evidence required to prove that Bobsein and McPherson are not culpable would be incompatible for the effective defense of Ciba. Hartford

Accident & Indemnity v. Aetna Life & Casualty Insurance Co., 98 N.J. 18, 24, 483 A.2d 402 (1984).

Thereafter, Ciba had a duty to undertake Bobsein and McPherson's defense by providing conflict-free counsel. Ciba was ethically obliged to provide **independent** counsel (emphasis added). So on November 9, 2000 Ciba withdrew the selection of Lowenstein Sandler and instead offered Joseph A. Hayden, Jr., if "acceptable" to Messrs. Bobsein and McPherson. This offer was rejected the next day on Nov. 10, 2000 by Messrs. Bobsein and McPherson. No further effort was ever made by Ciba to select an alternate attorney. No further counsel was sought by Ciba or offered to Messrs. Bobsein and McPherson. At no time did Ciba clearly declare their intention of representation coupled with counsel fee reimbursement, costs and/or indemnification rates.

Representation by Mr. Hayden was laced with inherent conflict. Mr. Hayden represented former co-defendant, Dr. David Ellis, another Ciba employee in the criminal case, State v. Ciba-Geigy, 222 N.J. Super. 343 (App. Div. 1988). My. Hayden negotiated immunity for Dr. Ellis. Dr. Ellis then testified with immunity against Messrs. Bobsein and McPherson before the second grand jury in 1992. Messrs. Bobsein and McPherson were indicted. Mr. Hayden also represented Ciba as trial counsel in the insurance coverage litigation, Ciba Geigy Corp. v. Liberty Mut. Ins. Co., (In Re Environmental Ins. Declaratory Judgment Actions, 149 N.J. 278 (1997). Bobsein and McPherson's Brief at 10. Clearly, Mr. Hayden's representation of Dr. Ellis was in direct conflict with Bobsein and McPherson's interest in the prior litigation. Mr. Hayden's representation of Bobsein and McPherson in this matter would be adverse to the interests of Dr. Ellis and Ciba, his former clients. The court wishes to make it clear that the competency of Mr. Hayden is not in

question. But the confidence of Messrs. Bobsein and McPherson in Mr. Hayden was not without worry of loyalties.

In essence, Ciba asked Messrs. Bobsein and McPherson to take responsibility for the corporation's conduct in the criminal cases. They are convicted felons that did so in consideration of protection by Ciba and were aided in their conviction by Mr. Hayden's representation of Dr. Ellis. Now when that protection is requested, Ciba is evasive, not committal and provides the very counsel that helped represent another employee who testified against them. The co-defendants were abandoned by Ciba and Ciba must now pay.

After November 10, 2000, when Bobsein and McPherson declined representation by Mr. Hayden, Ciba should have presented them with independent counsel. Ciba was well aware that Bobsein and McPherson had to answer the Kramer complaint and without counsel would be unable to do so. Ciba had an obligation to deal in good faith with Bobsein and McPherson and promptly provide conflict-free counsel.

Ciba was aware that representation of Bobsein and McPherson by either Lowenstein Sander or Mr. Hayden was unacceptable to them because of the potential conflict of interest. Messrs. Bobsein and McPherson were at the mercy of Ciba as to representation of their interests and needed to file an answer to the Kramer complaint. They decided to seek the services of Henry F. Furst, Esq. and Michael E. Wilbert, Esq. being that they had advised and represented them on prior Ciba matters. Ciba still has not provided Messrs. Bobsein and McPherson with adequate representation from when the complaint was filed on May 18, 2002 to the present and therefore is estopped from disclaiming coverage. This situation could have been readily remedied by Ciba providing conflict free counsel over the last 22 months.

After March 9, 2001, Ciba reinstated its offer of Lowenstein Sandler to represent Messrs. Bobsein and McPherson. Ciba again offered counsel which they knew was unacceptable to Messrs. Bobsein and McPherson. When the issue of fidelity and conflict arises as to the joint representation of clients, it is best to avoid the possible conflict of interest. "Conflict on part of attorney need not be obvious or actual; mere possibility of conflict at beginning of attorney-client relationship is enough to establish ethical breach." RPC 1.7, Matter of Trust for Benefit of Duke, 305 N.J. Super. 408, 444, 702 A.2d 1008 (N.J. Super. Ch. 1995). Here, the conflict of interest was obvious and therefore joint representation should have been avoided.

The Consulting Agreements create a relationship where Ciba as the indemnitor is placed in the position parallel to the insurer to the insured, Messrs. Bobsein and McPherson. The Appellate Division in Aquino v. State Farm Insurance Co. affirmed an insurer's obligation to the insured to reimburse for attorneys fees when the insurer is under a duty to defend and provides conflict-laden counsel. 349 N.J. Super. 402, 793 A.2d 824 (App. Div. 2002).

In Aquino v. State Farm Insurance Co., supra, an insured's attorney brought suit for attorney fees incurred in a suit against liability insurers on coverage and in tort against the insured. The insurer, Travelers, contended that it cannot be found liable for counsel fees in the context of a declaratory judgment being that it never denied coverage to the insured. The Appellate Division concluded that:

> While this argument is facially correct, it overlooks the clear conflict of interest that infected the counsel selected by Travelers to defend Aquino (insured) on all four counts of the complaint in which he was named. Faced with conflicting assertions of intentional conduct for which Travelers would afford no coverage, and negligent conduct, for which Travelers would afford coverage, that firm could not proceed with undivided loyalty to defend all four counts. We consider the declaratory judgment action an appropriate vehicle for presenting the question of the carrier's defense of its insured to the court for resolution. The same

> principles which underlie those cases awarding counsel fees to a successful claimant in a declaratory judgment action seeking to uphold an insured's right to coverage are equally applicable here.

[Id. at 419. Sears Mtge. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74 (1993); R. 4:42-9(a)(6).]

Moreover, in Dunne v. Fireman's Fund, the Supreme Court upheld that an insurer is required to reimburse the insured for alternate counsel when joint representation by counsel of the insurer and insured would create a conflict of interest. 69 N.J. 244, 353 A.2d 508 (1976).

In Dunne v. Fireman's Fund, supra, county detectives were sued for negligence based on an illegal search obtained through the preparation of an erroneous affidavit. In Dunne the Supreme Court was faced with how to enforce the insurer's previously acknowledged duty to provide a defense for its insured, in view of a possible conflict raised by the circumstance that the insured would not enjoy coverage if liability were imposed on some basis other than negligence. The Supreme Court ruled:

> Under the terms of the policy Fireman's Fund (insurer) is under a duty to defend the suit against its insured since the allegations in the complaint include some subject matter, negligence, which clearly falls within the coverage. ***We envision possible conflicts in this defense*** because coverage may not exist if liability is fixed on some other predicate, such as violation of right of privacy. ***Therefore, in the first instance the insured should select their own counsel, subject to the carrier's approval.*** In the event such approval is not forthcoming the selection should be made by the assignment judge. ***Reasonable counsel fees and costs of defenses are to be paid by Fireman's Fund***. (emphasis added).

[Dunne, supra, 69 N.J. at 252, 353 A.2d 508.]

Similarly, in the case at bar, Ciba had a duty to defend Messrs. Bobsein and McPherson on all liability and judgments incurred with the exception of those acts which arose from willful conduct. Any counsel chosen by Ciba to defend itself, as well as Messrs. Bobsein and McPherson collectively would be placed in a position of conflict being that Messrs. Bobsein and

McPherson blame Ciba corporate policies and employees for the alleged contamination. Messrs. Bobsein and McPherson contend that their actions were taken at the direction of Ciba and that their conduct was the direct result of executing Ciba policies. This court believes that any attorney chosen to jointly represent Messrs. Bobsein and McPherson and Ciba would be unable to prove this to any jury as this would be in direct conflict with Ciba's effective representation and adverse to Ciba's position. Lowenstein Sandler would be unable to be completely devoted to Ciba, other Ciba employees, Messrs. Bobsein and McPherson.

By offering conflict-laden choices such as Lowenstein Sandler or Mr. Hayden to represent them, Messrs. Bobsein and McPherson had no other alternative but to seek their own personal counsel. Messrs. Bobsein and McPherson were left to fend for themselves after November 10, 2000, when Ciba offered no acceptable alternative. Messrs. Bobsein and McPherson chose counsel that represented them previously and were familiar with the litigation. Ciba is not absolved from its duty to defend Messrs. Bobsein and McPherson by providing conflict-laden counsel. Instead Ciba is required to reimburse Messrs. Bobsein and McPherson for reasonable attorneys' fees incurred in the Kramer litigation. Aquino v. State Farm Insurance Co., 349 N.J. Super. at 415, Dunne v. Fireman's Fund, 69 N.J. 244, 353 A.2d 508 (1976).

B. Does New Jersey Law Govern?

The next issue is to determine what law governs the Consulting Agreements entered into by Messrs. Bobsein and McPherson. The Consulting Agreements, executed on December 31, 1991 and February 12, 1992, respectively, contained the following indemnification and choice-of-law provisions:

> 11. Except for occurrences of your willful misconduct, CIBA-GEIGY will defend and indemnify you in connection with any claims asserted or litigation commenced after the date hereof and based on your prior employment by CIBA-GEIGY or this consultancy, provided that you give prompt notice to

> CIBA-GEIGY of such claim or litigation. In such instance, CIBA-GEIGY shall have the right to assume the defense thereof with counsel of its choice. You agree to cooperate with CIBA-GEIGY in the defense of any asserted liability and, in any event, shall have the right to participate at your own expense in the defense of the asserted liability.
>
> ***16.*** This Agreement shall be construed and interpreted ***in accordance with the laws of the State of New York*** applicable to contracts to be performed entirely within that State. (emphasis added).

According to Paragraph 16 of the Consulting Agreements and the Ciba defendants, New York law governs the Consulting Agreements.

New Jersey courts have rejected the traditional approach that the law of the place where the contract was entered determines the rights and duties of the parties. Instead, "New Jersey courts have adopted a flexible approach that focuses on the state that has the most significant connections with the parties and the transaction." Pfizer, Inc. v. Employers Insurance of Wausau, 154 N.J. 187, 712 A.2d 634 (1998) (quoting Gilbert Co. v. Pennsylvania Manufacturers' Ass'n Insurance Co., 134 N.J. 96, 102, 629 A.2d 885 (1993)). New Jersey applies the governmental interest analysis to choice of law decisions, which requires application of the law of the state with the greatest interest in resolving the particular issue that is raised in the underlying litigation. Gantes v. Kason Corp., 145 N.J. 484, 679 A.2d 106 (1996). This analysis focuses on the relationship between the parties with the respective states and the nature of the events at issue that have taken place within each state. Also, the character of each state's policy preferences is relevant to the particular litigation. State Farm Mut. Auto Ins. Co. v. Estate of Simmons, 84 N.J. 28, 417 A.2d 488 (1980).

A similar choice of law issue was raised in Bedwell and Sons, Inc. v. Geppert Brothers, Inc., 280 N.J. Super. 391, 655 A.2d 483 (App. Div. 1995). The New Jersey Appellate Division in Bedwell and Sons, Inc. v. Geppert Brothers, Inc., affirmed the Law Division's ruling that New

Jersey law should apply to an indemnity agreement rather than the state in which the agreement had been entered and in which the parties to the agreement were located, in light of New Jersey's dominant interest in remediation of its waste sites and urgent concern for health and safety of its citizen. 280 N.J. Super. 391, 395 655 A.2d 483 (App. Div. 1995). The Appellate Division went on to note that although there was nothing presented to it or the Law Division which indicated that the laws of Pennsylvania and New Jersey diverge, New Jersey was still the appropriate law to apply to the controversy being that it had a dominant interest. Id. at 396.

Similarly, in the case at bar, New Jersey law is appropriate to apply to the Consulting Agreements even though the locale of the creation of the Consulting Agreements was New York. The litigation of Kramer, et. al. v. Ciba-Geigy Corp., et. al was originally filed in Ocean County, New Jersey and transferred to Middlesex County, New Jersey. The risks of litigation that Messrs. Bobsein and McPherson face, resulted from activities that occurred at the Ciba-Geigy plant in Toms River, New Jersey. New Jersey has a clear interest in applying its laws to provide compensation for New Jersey residents and remedying environmental contamination within New Jersey borders.

If there were activity within a State either in the making or in the performance of the contract, the State could exercise its governmental powers to further its undoubted interest in insurable risks within its borders. Howell v. Rosecliff Realty Co. Inc., 52 N.J. 313, 325, 245 A.2d 318 (1968). Since New Jersey has a compelling interest in the remediation of environmental contamination, "its urgent concern for the health and safety of its citizens extends to assuring that indemnification agreements allocating financial responsibility are effectively enforced." Bedwell and Sons, Inc. v. Geppert Brothers, Inc., 280 N.J. Super. 391, 396, 655 A.2d 483 (App. Div. 1995). Although, an examination of the laws of New Jersey and New York

reveals that there exists no conflict, this court finds it appropriate to apply New Jersey law to the Indemnification Clause in the Consulting Agreement as it concerns legitimate New Jersey activities, public policy and interests. Id.

C. What Duties Did Ciba Owe To The Individual Defendants?

The Consulting Agreements elucidate that CIBA-GEIGY will indemnify all claims of the individual defendants ***with the exception of those claims which arise from willful conduct*** (emphasis added). Ciba had a duty to indemnify Messrs. Bobsein and McPherson for any claims which were asserted against them, with the exception of ones which arose from willful conduct after the Consulting Agreements were executed.

> Upon receipt from its insured if claim or notification of incident that may give rise to claim, insurer is entitled to reasonable period of time in which to investigate whether particular incident involves risk covered by terms of policy, but once insurer has had reasonable opportunity to investigate or has learned of grounds for questioning coverage, it is then under duty promptly to inform its insured of its intention to disclaim coverage or of possibility that coverage will be denied or questioned. Griggs v. Bertham and Bd. Of Ed. Of Monroe v. The Franklin Mutual Insurance, 88 N.J. 347, 443 A.2d 163 (1982) (hereinafter "Griggs.")

Ciba was placed on notice when the original complaint was filed on May 18, 2000 in the Kramer litigation alleging eight common law counts, which included exemplary/punitive damages,[2] and named Messrs. Bobsein and McPherson as individual defendants. Ciba as the indemnitor had a duty to provide independent counsel of their choice.

On June 2, 2000, James Stewart, Esq. of the law firm of Lowenstein Sandler wrote to Mesrrs. Bobsein and McPherson. Mr. Stewart's letter indicated that Lowenstein Sandler would represent their interests in the Kramer litigation provided that they sign a document, which among other things, states that no conflict exists between the interests of Mr. Bobsein, Mr.

[2] On September 6, 2000 the Second Amended Complaint dismissed plaintiffs' claims for nuisance, trespass, battery, absolute liability and exemplary/punitive damages.

McPherson and Ciba. Messrs. Bobsein and McPherson sought the advice of separate counsel, as advised in the letter, to determine what steps to take. On July 19, 2000, Mr. Bobsein informed Mr. Stewart that he would not sign the waiver. In July 2000, Mr. McPherson accepted Lowenstein Sandler as counsel provided that they do not dispose of him in the event of a conflict. "Classic case of conflict of interest is when the same attorney or partnership represents both parties to an action or two defendants in a criminal case and no waiver is obtained; in such cases, a per se conflict of interest arises and prejudice will be presumed absent a valid waiver." U.S.C.A. Const. Amend. 6. State v. Murray, 345 N.J. Super. 158, 158, 784 A.2d 91 (App. Div. 2001). Here, no waiver was obtained and therefore representation of Ciba, Messrs. Bobsein and McPherson collectively by Lowenstein Sandler would create a per se conflict of interest.

Ciba counsel incorrectly believe that joint representation of Mr. Bobsein, Mr. McPherson and Ciba by Lowenstein Sandler would not present any conflict of interest being that Messrs. Bobsein and McPherson are fully indemnified under the Consulting Agreement. Ciba finds that it notified Messrs. Bobsein and McPherson on several occasions that it would indemnify them fully including coverage for punitive damages arising from willful conduct. Ciba counsel highlight a letter dated November 9, 2000, in which Douglas Hefferin stated to Messrs. Bobsein and McPherson that "on the basis of the facts and circumstances known to us (Ciba), ... you are to be fully indemnified from any adverse judgment or settlement in the pending suits." (Field Cert., Ex.I, October 22, 2001).

"As a matter of well-settled legal doctrine, it is clear that an indemnity provision is to be construed in accordance with the rules for construction of contracts generally, and hence that the judicial task is to ascertain the intention of the parties...." Mantilla v. New Port Centre Mall Associates, 167 N.J. 262, 271, 770 A.2d 1144, (2001) quoting Doloughty v. Blachard Constru.

Co., 139 N.J. Super. 110, 116, 352 A.2d 613 (Law Div. 1976); see also Cozzi v. Owens Corning Fiber Glass Corp., 63 N.J. Super. 117, 121, 164 A.2d 69 (App. Div. 1960) (stating "[a] contract of indemnity is to be interpreted in accordance with the rules governing the construction of contracts generally"). "When the meaning of the clause is ambiguous, however, the clause should be strictly construed against the indemnitee." Ramos v. Browning Ferris Indus. of S.Jersey, Inc., 103 N.J. 177, 191, 510 A.2d 1152 (1986). "Thus, a contract will not be construed to indemnify the indemnitee against losses resulting from its own negligence unless such an intention is expressed in unequivocal terms." Ibid.

Any representations made by Ciba after the execution of the Consulting Agreements were negated by Paragraphs 16 and 17 which explicitly state that,

> **16.** ***Except for occurrences of your willful misconduct***, CIBA-GEIGY will defend and indemnify you in connection with any claims asserted or litigation commenced after the date hereof and based on your prior employment by CIBA-GEIGY or this consultancy, provided that you give prompt notice to CIBA-GEIGY of such claim or litigation.
>
> **17.** This Agreement constitutes the entire agreement between us with respect to the consulting arrangement described herein and supercedes all previous negotiations, comments and writings by us with respect to the subject matter hereof. ***This Agreement may be changed only by a written agreement signed by us, provided, that the provisions of this Agreement shall prevail over any inconsistent preprinted terms that appear in a purchase order, work order, invoice or other form.*** No oral agreement or conversation with any officer, agent or employee of Ciba-Geigy, either before or after the execution of this Agreement, shall affect, alter or modify our obligations hereunder. (emphasis added).

Thus when the court scrutinizes the indemnity agreement, the court must first examine the clear and unambiguous language of the contract which can only be construed to indicate that Ciba did not intend to indemnify Messrs. Bobsein and McPherson in connection with punitive damages arising from willful conduct. Similarly, Messrs. Bobsein and McPherson reasonably expected that they were not indemnified for such.

Moreover, New Jersey and New York courts agree that an insurer should not be allowed to indemnify the insured for punitive damages as such serve as a deterrent. Indemnification for punitive damages would violate public policy. Such damages are, as the name implies, a punishment for intentional wrongdoing. "As we have only recently noted, to allow insurance coverage for such damages 'is totally to defeat the purpose of punitive damages.'" Public Serv. Mut. Ins. Co. v. Goldfaarb, 53 N.Y.2d 392, 401, 442 N.Y.S.2d 422, 425 N.E.2d 810; quoting (Hartford Acc. & Ind. Co. v. Village of Hempstead, 48 N.Y.2d 218, 228, 422 N.Y.2d 47, 397 N.E.2d 737). Nor should such indemnity be allowed because the insurer specifically agreed to provide such coverage and charged a premium for such coverage. An agreement between two private parties, no matter how explicit, cannot change the public policy of this State. Id. See also City of Newark v. Hartford Acc. & Ind. Co., 134 N.J. Super. 537, 547, 342 A.2d 513, 518; City Council of City of Elizabeth v. Fumero, 143 N.J. Super. 275, 362 A.2d 1279.

There was no written agreement drafted altering the unequivocal language in the Consulting Agreement to indemnify Messrs. Bobsein and McPherson for punitive damages, as required by Paragraph 17. It also violates public policy to indemnify individuals against punitive damages for willful conduct. However, even if counsel were provided, a conflict-free attorney pursuant to the agreement, Messrs. Bobsein and McPherson may have an argument that they were entitled to counsel to defend them on punitive damages at the cost of Ciba. Therefore, this court holds that Ciba was obligated to defend and indemnify Messrs. Bobsein and McPherson in connection with any claims asserted or litigation commenced against them with the exception of those claims which arose from willful conduct. Any inconsistent representations made after the fact are void.

D. Counsel Fees and Costs

The Law Offices of Henry F. Furst, Esq. have claimed a total of $335,201.21 in fees for 1294.8 hours, at the following hourly rates: Henry F. Furst, $275; and paralegals, $90, for services rendered on June 5, 2000 through October 10, 2002. Wilbert, Montenegro & Thompson have claimed a total of $311,774.16 in fees for 1425.55 hours, at the following hourly rates: Michael E. Wilbert, $295; Ben A. Montenegro, $180; Gena M. Koutsouris, $180; and Beth Ann Moor, $120, for services rendered on May 23, 2000 through September 9, 2002.

Ciba defendants believe that they are not liable for any of the bills incurred by Messrs. Wilbert and Furst because the individual defendants, Messrs. Bobsein and McPherson, elected to hire their personal counsel. Ciba further believes that if this court concludes that the individual defendants are entitled to fees, this court must do a line-by-line review of the bills. The Ciba defendants object to the bills for the following reasons: (1) the work done by Wilbert and Furst was a repetition of what was done by Lowenstein Sandler and should therefore not be recoverable; (2) the time charges were excessive; (3) some time entries do not make sense; (3) the abuse of ".01" charges; (4) the undocumented paralegal time; (5) the inappropriate use of staffing; and (6) the Ciba defendants believe that Mr. McPherson's personal bill is not recoverable. This court notes that the Ciba defendants' did not contest the reasonableness of the attorneys' hourly rates and therefore this court will not address this issue.

This court finds that Ciba is required to provide reasonable attorneys' fees and costs incurred by Messrs. Bobsein and McPherson. The determination of reasonableness is based on the factors set forth in RPC 1.5. Those factors include:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
(8) whether the fee is fixed or contingent.

[RPC 1.5; See Saffer v. Willoughby, 143 N.J. 256, 264, 670 A.2d 527 (1996)].

Ciba defendants contend that reasonable fees do not imply that the Ciba defendants must reimburse Messrs. Bobsein and McPherson for fees that are excessive and duplicative. A trial court must carefully review the affidavits of service to determine whether the quantum of time asserted for the particular services is reasonable. Aquino v. State Farm Insurance Co., 349 N.J. Super. 402, 417, 793 A.2d 824 (App. Div. 2002). Movants are responsible for submitting evidence of the hours worked at the rates claimed. Id. at 433.

This court finds that much of Messrs. Furst's and Wilbert's fee application in some instances resulted in the duplication of effort and an unreasonable number of hours expended. As neither Messrs. Furst nor Wilbert raised any conflict between representation of Messrs. Bobsein and McPherson collectively, attempts should have been made at coordination. Although both parties billed for conferences with one another, no effort was made by either party to mitigate against costs. These co-defendants were placed on notice by Ciba's letter of November 9, 2000 that Ciba would offer them representation by one attorney, Mr. Hayden. Messrs. Bobsein and McPherson rejected that offer because of the conflict of interest in representation by Mr. Hayden. However, neither co-defendant ever requested that each be represented by separate counsel. Messrs. Bobsein and McPherson never alleged that any conflict existed between themselves thereby eliminating the need for two attorneys. Messrs. Bobsein and McPherson hired separate counsel which resulted in both attorneys performing identical tasks for their clients. This court will not award the duplicative effort of counsel. Accordingly, this court will disallow 50% of the

hours expended reviewing correspondence, reviewing privilege logs and conferences with judges.

Below is the breakdown of fees:

	HENRY F. FURST, ESQ	MICHAEL E. WILBERT, ESQ.
REVIEW:	197.78 HRS	469.90 HRS
PRIVILEGE LOGS:	218.8 HRS	464.55 HRS
CONFERENCES:	147.9 HRS	138.85 HRS
CONFERENCES: W/JUDGES	62.62 HRS	60.1 HRS
MEDIATION:	9.0 HRS	9.0 HRS
DRAFTING:	173.8 HRS	140.2 HRS
RESEARCH:	73.8 HRS	59.9 HRS
TELEPHONE:	63.4 HRS	25.4 HRS
DISCUSSION W/: CO-COUNSEL	28.7 HRS	21.2 HRS
PARALEGALS	296.7 HRS	
JANES ENTRIES	22.3 HRS	36.45 HRS
TOTAL:	1294.80HRS	1425.55HRS

The following attorneys will be referred to by their initials: Michael E. Wilbert ("MEW"); Ben A. Montenegro ("BAM"); Gena M. Koutsouris ("GMK"); Beth Ann Moor ("bam"); and Henry F. Furst ("HFF").

The attorneys performed the following general categories of legal work: (1) review of various documents; (2) review, prepare and organize privilege logs and document inspection in Toms River; (3) attend conferences with Judge; depositions and meetings with clients; (4) draft briefs, certifications and letters; (5) research; (6) telephone conferences with Judge, client and counsel; (7) discussion with co-counsel; and (8) charges relating to Janes case.

(1) Services related to the review of various documents from other counsel.

The Law Offices of Wilbert Montenegro & Thompson and the Law Offices of Henry F. Furst exhausted a great deal of time reviewing correspondence, as can be evidenced by the

distribution of hours. The Law Offices of Henry F. Furst and the Law Offices of Wilbert Montenegro & Thompson expended about 15.27% and 32.96%, respectively, of their time reviewing correspondence from other counsel. This court notes its concern with some of the entries set forth below:

DATE	DESCRIPTION	TIME	AMOUNT	ATTY
6/13/00	Obtain and review of documents from criminal case including plea, joint defense agreement	4.2 hrs	1155.00	HFF
6/14/00	Review Public Health Assessment	2.5 hrs	687.50	HFF
10/12/00	Review letter from Field	.2 hrs	55.00	HFF
10/26/00	Review fax re: cases from Wilbert	.5 hrs	137.50	HFF
12/4/00	Review answer to cross claims filed by CIBA and CIBA's answer to second Amended complaint	.4 hrs	110.00	HFF
12/4/00	*Review Answer by Ciba-Geigy and compare to Complaint	.6 hrs	165.00	HFF
12/4/00	*Review Answer to Cross claim, compare to cross claim	.3	82.50	HFF
8/10/00	Copy of review of recent Complaints filed	1.8 hrs	216.00	bam
8/22/00	review of plaintiff's amended complaint (Breen)	.8 hrs	236.00	MEW
9/17/00	Review re: conflict, declaratory judgment	3.5 hrs	1032.50	MEW
10/6/00	Review of Certificate of Good Cause in support of plaintiff application for a change of initial track assignment, order changing initial track	.8 hrs	236.00	MEW
10/10/00	Review of pleadings form plaintiffs re: track assignment	1 hr	295.00	MEW
10/19/00	Review of letter from Gordon & Gordon	.3 hrs	88.50	MEW

	Notice of Motion to extend to and from			
10/26/00	Submit fax re: cases to Mr. Furst	.5 hrs	147.50	MEW
12/4/00	*Review of Answer by Ciba-Geigy and compare to Complaint	.6 hrs	177.00	MEW
12/4/00	Review of Answer to Crossclaim, compare to Crossclaim; Answer to second Complaint	6 hrs	1770.00	MEW
12/14/00	Review of Summons and checklist of docket's number's on Complaints	2.1 hrs	252.00	bam

Messrs. Furst and Wilbert in several of their entries charged 18 to 60 minutes to review correspondence which consisted of 1-2 pages. Messrs. Furst and Wilbert also billed at 12 minutes for each piece of correspondence read which should have only taken 5-10 minutes. There were several charges in which Messrs. Furst and Wilbert charged more to review the document than the firm of Lowenstein Sandler charged to draft such document that was being reviewed, as is indicated by an asterisk next to those entries.

Messrs. Furst and Wilbert did not participate in the questionnaire process prepared by the Ciba defendants and the United Water Company which led to the selection of the bellwether plaintiffs. However, Messrs. Furst and Wilbert spent an excessive amount of time reviewing the questionnaires. Mr. Wilbert spent 3.8 hours reviewing these questionnaires whereas Mr. Furst spent 11 hours reviewing these questionnaires on 7/11/01, 7/16//01 and 7/18/01. Therefore, the court will disallow these charges.

The above illustrations are only a few examples out of many to demonstrate this court's concern in regards to the hours expended by counsel for what seem to be reviewing routine correspondence. This court finds this practice to be excessive and therefore will reduce the

number of hours by 50%. Accordingly, the court will deduct 98.89 hours from Mr. Furst's bill totaling $27,194.75. [(197.78hrs/2)*$275)=$27194.75][(Hours Expended By HFF / 2) * Hourly Rate]. The court will disallow 234.95 hours from Mr. Wilbert's bills totaling $55182.75 [(264.3hrs/2)*$295=$38984.25) + ((117.25hrs/2)*$180=$10552.5) + ((11.5hrs/2)*$180=$1035) + ((76.85hrs/2)*$120=$4611) = $55182.75][Hours Expended By ((MEW);(GMK); (BAM); or (bam) / 2) * Hourly Rate].

(2) Services related to the review, preparation and organization of the privilege logs and document inspection in Toms River.

There also was the inappropriate use of staffing, as correctly highlighted by the Ciba defendants. Mr. Furst personally oversaw several document inspections conducted by plaintiffs' counsel which actually could have been monitored by an associate or paralegal. These document inspections by plaintiffs' counsel were overseen by Mr. Furst on 9/7/01; 9/11/01; 9/13/01; 9/14/01; 9/20/01; 9/21/01; 9/24/01; 9/25/01; 10/3/01; 10/5/01; 11/26/01; 12/5/01; 12/6/01; 12/7/01; 1/12/02; 1/22/02. Therefore, Mr. Furst will be allowed to recoup the 94.4. hours that would have been billed by a paralegal overseeing these inspections at $90 hourly rate; the remainder will be deducted from Mr. Furst's requested costs. Mr. Furst charged a total of $25,960 and will be allowed to recoup $8496. [(94.4hrs*$90)=$8496] [Hours Expended by HFF*Paralegal Hourly Rate].

This court is also disallowing 50% of the fees billed for reviewing privilege logs. Accordingly, the court will deduct 109.4 hours from Mr. Furst's bill totaling $21,353; 62.2 hours charged at Mr. Furst's hourly rate of $275 and 47.2 hours at the paralegal's hourly rate of $90. [(62.2*$275)+(47.2*$90)=(17105+4248)=21,353]. The court will disallow 232.275 hours from Mr.Wilbert's bills totaling $34,919.875. [(23.125hrs*$295) + (50hrs*$180) + (159.15*$120) = 34,919.875][Hours Expended By [((MEW); (GMK); or (bam) / 2) * Hourly Rate].

(3) Services related to attending conferences with Judge and clients.

Messrs. Furst and Wilbert spent 210.55 hours and 198.95 hours, respectively, in attending motions or case management conferences with Judge Gruccio, Judge Corodemus or their clients. Conferences with Judge Gruccio or Judge Corodemus comprised 62.65 hours of Mr. Furst's bills and 60.1 hours of Mr. Wilbert's bills. Conferences requested by the court are mandatory for counsel and required for progress in the litigation. However, it was unnecessary for both attorneys to be present at each conference with Judge Gruccio or Judge Corodemus. Therefore, only half the time will be allowed. This court will disallow 31.325 hours of Mr. Furst's time totaling $8614.375 [(31.325hrs*$275)=8614.375] and 30.05 hours of Mr. Wilbert's time totaling $8226.5 [(24.5 hrs*$295) + (5.55*$180)=$8226.5]. [(Hours Expended by MEW or BAM/2)*Hourly Rate].

(4) Services related to drafting briefs, certifications and letters; and
(5) Services related to research.

There was a claim for a significant amount of research and drafting done by Messrs. Wilbert and Furst that could have been easily performed by the associates at Wilbert Montenegro & Thompson. "The wasteful use of highly skilled and highly priced talent of matters easily delegable to nonprofessionals or less experienced associates" will not be accepted. Microsoft Corp. v. United Computer Resources of New Jersey, Inc., 2002 WL 1870416, *7 (D.N.J. 2002) (quoting Ursic v. Bethlehem Mines, 719 F.2d 670, 677, (3d Cir. 1983). The routine tasks of research and drafting should have been performed by the associates and not the partners. Below are a few examples:

DATE	DESCRIPTION	TIME	AMT	ALLOW	ATTY
9/1/00	Draft Certification	2.5 hrs	687.50	343.75	HFF
9/19/00	Draft brief (dj action)	4.5 hrs	1237.50	618.75	HFF

9/21/00	Revise brief based on Wilbert's comments and suggestions	2.5 hrs	687.50	343.75	HFF
10/16/00	Draft, review, revise, proofread file, motion extending time to file answer	.3 hrs	82.50	41.25	HFF
11/8/00	Draft Answer to Complaint; legal research	7.5 hrs	2062.5	1031.25	HFF
11/21/00	Draft change of venue motion	1.1 hrs	302.5	302.5	HFF
9/29/01	Draft Answer to Fourth Amended Complaint in Kramer	.6 hrs	165.00	82.50	HFF
12/16/01	Work on reply brief on indemnification issue	2 hrs	550.00	225.00	HFF
12/20/01	Continue work on reply brief	4.5 hrs	1237.50	618.75	HFF
5/20/01	Work on Doliner motion	5 hrs	1375	687.50	HFF
4/7/02	Work on reply to Ciba's motion to vacate Gruccio's recommendation	3.2 hrs	880.00	440.00	HFF
4/27/02	Work on Reply Brief on indemnification and counsel fees issue	8 hrs	2200.00	1100.00	HFF
4/28/02	Work on Reply Brief on counsel fees and indemnification issues	6 hrs	1650.00	825.00	HFF
4/29/02	Work on brief re: indemnification; review deposition testimony of Winkler and others, prepare exhibits for motion; respond to uncontested material facts; telcons with Wilbert	12 hrs	3300.00	1650.00	HFF
4/30/02	review, revise, proofread, shepardize brief	10 hrs	2750.00	1375.00	HFF
8/14/02	review Field mediation brief; draft reply, discussion with Wilbert's office; revise reply, proofread reply; letter to Judge Dreier	1.8 hrs	495.00	247.5	HFF

8/20/02	prepare for mediation, including reviewing relevant materials and telephone conference w/client	2.00 hrs	550.00	250.00	HFF
10/8/02	draft reply certifications of August 27 and 30, 2002, including review of files to determine work performed;	3.50 hrs	962.50	481.25	HFF
10/9/02	draft, proof, revise, file, and serve certification	4.2 hrs	1155.00	577.50	HFF
TOTAL:		81.20 HRS	22330.00	11165.00	

10/16/00	Preparation of Notice of Motion to extend time to answer	1 hr	$295.00	147.50	MEW
11/8/00	Draft Answers to Complaints; legal research	6 hrs	1770.00	885.00	MEW
11/12/00	Preparation of motion for change of venue and filed on 11/14/00; prepare certification in support of motion for change in venue	1.8 hrs	531.00	265.50	MEW
11/13/00	Prepare and file Answer with clerk; serve on other parties	2.5 hrs	737.50	368.50	MEW
11/29/00	Preparation of and send via fax filing of venue motion on behalf of James McPherson re: dismissal of threshold motion	.3 hrs	88.50	44.25	MEW
5/17/01	*Preparation of rough draft of Introduction re Brief	2.5 hrs	737.50	368.50	MEW
5/21/01	*Preparation of rough draft of Brief in support of Notice of Motion to Dismiss	5 hrs	1475.00	737.50	MEW
5/23/01	*Preparation of final draft of Brief	1.5 hrs	442.50	221.25	MEW
5/24/01	Preparation of Notice of Motion to Dismiss and Order…	4 hrs	1180.00	590.00	MEW

3/21/02	Preparation of Answers to First Amended Complaint…	2.5 hrs	737.50	368.50	MEW
4/16/02	Preparation of rough draft of opposition to Ciba's Notice of Motion to Vacate Judge Gruccio's recommendation	1.5 hrs	442.50	221.25	MEW
5/21/01	Preparation of rough draft in support of Notice of Motion to Dismiss	5 hrs	1475.00	737.50	MEW
TOTAL:		33.6 HRS	9912.00	4956.00	

DATE	DESCRIPTION	TIME	AMT	ALLOW	ATTY
8/11/00	Legal search re: indemnification agreement, obligation to defend, conflict	3.7 hrs	1017.50	508.75	HFF
9/12/00	Research re: dj complaint; review and revise Wilbert's draft dj; obtain information from file	4.5 hrs	1237.50	618.75	HFF
9/13/00	Research re: dj action	5 hrs	1375.00	687.50	HFF
11/7/00	Research re: Answer, Separate Defenses	4.3 hrs	1182.50	591.25	HFF
11/18/00	Legal research for change of venue motion	3.5 hrs	962.50	481.25	HFF
11/19/00	Factual research for change of venue motion…	6.5 hrs	1787.50	893.75	HFF
11/20/00	Factual research for venue motion…	4.5 hrs	1237.50	618.75	HFF
11/21/00	Research for venue motion…	2.2 hrs	605.00	302.50	HFF
11/30/00	Research re: expungement statute	.3 hrs	82.50	41.25	HFF
5/14/01	Research re: Doliner motion	1.1 hrs	302.50	151.25	HFF
7/24/01	Research re: privileges	2.6 hrs	715.00	357.50	HFF

TOTAL:		38.2 HRS	10505.00	5252.50	
8/11/00	Researched re: indemnification agreement, obligation to defend and conflict	4.25 hrs	1253.75	626.875	MEW
9/12/00	Researched re: Declaratory Judgment Complaint; review and revise Mr. Furst's draft dj; obtain information from file	2.5 hrs	737.50	368.75	MEW
9/13/00	Continue research of Declaratory Judgment	2 hrs	590.00	295.00	MEW
11/19/00	Researched change of motion venue	3.5 hrs	1032.50	516.25	MEW
11/21/00	Researched venue motion…	2.5 hrs	737.50	368.75	MEW
5/21/01	*Legal Research and preparation of Defendant's Brief of Dismissal of Complaint	1.2 hrs	354.00	177.00	MEW
TOTAL:		15.95 HRS	4705.25	2352.625	

Accordingly, all the excessive time spent on such routine tasks by Messrs. Wilbert and Furst will be charged at the rate of associate hours. The court is aware that the Law Offices of Henry F. Furst do not employ any associate attorneys. However, Henry F. Furst cannot expend 173.8 hours drafting and 73.8 hours researching at partner rates. This court finds that Furst's practice of doing the work himself for routine tasks such as drafting and researching to be excessive. Consequently, this court will reduce the number of hours for research and drafting by 50% to account for the excessive hours drafting and editing at partner rates. Mr. Furst's bills will be deducted by $11165.00 for drafting and $5252.50 for research. [((78.7hrs/2)*$275) + (38.2/2)*$275)=$16417.50]. Mr. Wilbert's bills will be deducted by $4956.00 for drafting and $2352.625 for research. [((33.6hrs/2)*$295) + ((15.95hrs/2)*$295) = $7308.625]. Such pleadings could have been shared between Messrs. Bobsein and McPherson counsel.

This court also finds that some entries for document drafting performed by Messrs. Furst and McPherson were actually documents that were provided by the law firm of Lowenstein Sandler to Messrs. Furst and Wilbert. For example, on 11/7/00 and 11/8/00, Mr. Furst states he expended 11.8 hours for researching and preparing answers to the Kramer complaint and yet the individual defendants' answers are almost identical to those provided by the Ciba defendants. Mr. Furst in his Certification dated October 9, 2002 indicated that it was necessary to research and review Ciba's answers to determine whether the defenses were equally applicable to his client. Mr. Wilbert on 5/11/01, stated that he expended 5 hours preparing a rough draft of the motion to dismiss, which was almost identical to the copy drafted by the law firm of Lowenstein Sandler. This court believes that 11.8 hours is excessive and will reduce the time consumed in drafting documents which were almost identical to the documents provided by the law firm of Lowenstein Sandler to Messrs. Furst and Wilbert by 50%.

(6) Services related to telephone conferences with Judge Gruccio/Judge Corodemus, client and counsel; and
(7) Services related to discussion with co-counsel.

Messrs. Furst and Wilbert spent 61.6 hours and 25.4 hours, respectively, in telephone conferences with opposing counsel, this court, Judge Gruccio and their clients. They also spent 28.7 hours and 21.2 hours, respectively, in communication with one another. Accordingly, these hours will be allowed. "Conferences between attorneys ... are necessary, valuable, and often result in greater efficiency and less duplication of effort, thus requiring fewer hours overall." Apple Corps Ltd., MPL v. Int'l Collectors Soc'y, 25 F. Supp.2d 480, 488 (D. N.J. 1998) (quoting Stacy v. B.Q. Stroud, 845 F. Supp. 1135, 1144 (S.D. W.Va. 1993). These conferences are essential for coordinating strategy and help in the efficiency and coordination of litigation. Accordingly, these hours will be allowed as billed.

(8) Janes Plaintiffs

All fees charged to the Janes' plaintiffs will be disallowed as this matter is not before this court currently in this motion. The total amount of $6132.50 will be disallowed for the Law Offices of Henry F. Furst. The total amount of $8112.75 will be disallowed for Wilbert, Montenegro & Thompson. See Appendix A.

This court finds that Messrs. Furst and Wilbert never submitted any affidavit as to their experience or regular billing rates or even those of their associates. There was also insufficient information to distinguish the disparity of the hourly rates of the associates in this action. Mr. Furst never submitted any affidavit as to the rate customarily charged for paralegals of similar education and experience or the description of the tasks performed by the paralegals.

However, counsel did manage to have plaintiffs dismiss their actions against their clients. Thus a satisfactory result was achieved.

(9) Prejudgment Interest

Mr. Furst billed a 12% prejudgment interest charge on the entire balance totaling $25321.76. "[T]he allowance of interest on surcharges, and the rate thereof, are discretionary matters." In re Estate of Lash, 169 N.J. 20, 776 A.2d 765, 774 (2001); Ditmars v. Camden Trust Co., 10 N.J. 471, 491-92, 92 A.2d 12 (1952); See Meshinsky v. Nichols Yacht Sales, Inc., 11 N.J. 464, 478, 541 A.2d 1063 (1988) ("Ordinarily, the trial court has the discretion to grant or deny prejudgment interest.").

Rule 4:42-11(b) allows a court in a tort action to suspend the payment of usual prejudgment interest in "exceptional cases." However R. 4:42-11(a) is limited to post-judgment interest in tort actions. This court finds no basis to award prejudgment interest in this case being that this is not the type of case where the awarding of reasonable attorneys' fee is a "traditional

element of damages in the specific cause of action such as occurs in a civil malicious prosecution or abuse of process case." North Bergen Rex Transport, Inc. v. Trailer Leasing Co., 158 N.J. 561, 576, 730 A.2d 843 (1999) (finding that prejudgment interest on reasonable attorneys' fee is unwarranted in the absence of a contractual or equitable basis, especially on an unliquidated demand for attorneys' fees).

Being that Mr. Furst never submitted any supporting documents in favor of granting a 12% prejudgment interest charge to his total balance and because this matter is an unliquidated demand for attorneys' fees, this court finds a prejudgment interest charge unwarranted. Accordingly, this court will disallow the prejudgment interest charge of $25321.76.

(10) McPherson's Personal Bill

This court will not reimburse McPherson's personal bill of $16,255.08. There was no explanation provided to this court as to how these costs were incurred. These time entries are not specific enough to enable this court to discern what Mr. McPherson was actually billing. Therefore these expenses will be disallowed.

(11) Costs

Wilbert, Montenegro & Thompson incurred costs of $9202.16, which were integrated into the total balance due and will be allowed. The Law Offices of Henry F. Furst incurred costs of $19532.25, which were integrated into the total balance due and will be allowed.

V. CONCLUSION

This court grants Messrs. Bobsein and McPherson's motion for summary judgment on their crossclaims for contractual indemnification and declaratory judgment. This court also declares that Ciba is obligated by the terms of the Consulting Agreement to reimburse Messrs. Bobsein and McPherson's counsel for all reasonable fees and costs incurred in the Kramer, et. al.

v. Ciba-Geigy Corp., et. al., Docket No. MID-L-002093-01 litigation. Upon review and consideration of the application of attorneys' fees and costs, and after accounting for hours expended for excessive, duplicative and unnecessary work, the court awards $212703.33 to the Law Offices of Henry F. Furst and $198023.66 to Wilbert, Montenegro & Thompson. Below is a breakdown of the amounts that were disallowed.

THE LAW OFFICES OF HENRY F. FURST
$335,607.70

DISALLOWANCES:

Review Documents:	27194.75
Review Privilege Logs:	21353.00
Document Inspection:	17464.00
Conferences w/Judge:	8614.375
Drafting:	11165.00
Research:	5252.50
Janes' Entries:	6132.50
PreJudgment Interest:	25321.76
TOTAL:	-122497.88
REIMBURSEMENT:	212703.33

WILBERT, MONTENEGRO & THOMPSON
$311,774.16

DISALLOWANCES:

Review Documents:	55182.75
Review Privilege Logs:	34919.875
Conferences w/Judge:	8226.5
Drafting:	4956.00
Research:	2352.625
Janes' Entries:	8112.75
TOTAL:	-113750.50
REIMBURSEMENT:	198023.66

This document will hereinafter be referred to as "APPENDIX A."

All fees charged to the Janes' plaintiffs will be disallowed as this matter is not before this court currently in this motion.

LAW OFFICES OF HENRY F. FURST

Jun-02-01	Review Field motion to dismiss certain counts of Janes complaint, read cases; letter to Court joining in Motion	3.70	1017.50	HFF
Nov-07-01	Review Janes Motion re: privilege log and response by Ciba; review reply memo; letter to Judge Gruccio	1.10	302.50	HFF
Mar-06-02	Review motion for default filed by Janes re: McPherson	.10	27.50	HFF
Mar-23-02	Review McPherson's answer to Janes' complaint	.20	55.00	HFF
Mar-27-02	Review Janes brief re: inadvertent discovery and read cases	.80	220.00	HFF
Apr-01-02	Read Janes Class Certification Motion cases and Exhibits	4.30	1182.50	HFF
Apr-02-02	Read Janes Class Certification Motion cases	4.50	1237.50	HFF
May-23-02	review letter from Janes counsel re: privilege issue	.10	27.50	HFF
May-27-02	read additional cases for Janes sj motion	2.50	687.50	HFF
Jun-03-02	Review letter from Field re: settlement and request to transfer indemnification issue to Janes	.10	27.50	HFF
Jun-03-02	review Wilbert draft of letter to Field moving indemnification issue to Janes case for disposition	.10	27.50	HFF
Jun-05-02	review Janes response to motion to compel Production and to close fact discovery	1.30	357.50	HFF
Jun-05-02	telephone conference with Wilbert concerning Ciba's request to transfer indemnify issues from Kramer to Janes	.10	27.50	HFF

Jul-01-02	document examination of old clippings at Lowenstein to prepare for Janes defendants Depositions	3.40	935.00	HFF
TOTAL:		22.3	$6132.50	
Jan-04-01	Review of fax of Janes Complaint.	0.20	59.00	MEW
Mar-27-01	Fax copy of Janes Complaint received from G.Clark, Esq.	0.20	59.00	MEW
Mar-27-01	Review of 1st Amended Janes Complaint.	1.20	144.00	bam
May-10-01	Receipt and review of letter from counsel for Janes plaintiffs re additional counsel;	0.10	29.50	MEW
Aug-20-01	Receipt and review of letter from Janes' plaintiffs re: identification of witnesses;	0.40	118.00	MEW
Sep-04-01	Review of letter by G. Clark to D. Field re: Janes Group selection of 10 categories of documents for review;	0.50	147.50	MEW
Oct-01-01	Receipt and review of Motions to Compel Responsive Privilege Logs from Janes plaintiffs; and preparation and filing of Certification in opposition thereto; copies to Judges Gruccio & Corodemus and all counsel;	2.00	590.00	MEW
Oct-02-01	Preparation of interrogatories propounded by Janes plaintiffs;review of Arent answer;	2.00	360.00	GMK
Oct-09-01	Correspondence from Cowen to D.Field confirming deposition cancelled on behalf of Janes for Oct 8, 2001;	0.10	18.00	GMK
Oct-09-01	Observed attorneys from Janes (Monet look through non-privilege documents);	7.00	1,260.00	GMK
Oct-10-01	Correspondence from Lowenstein to Clark re: changing deposition dates for Janes etc.;	0.10	18.00	GMK
Oct-12-01	Correspondence from Mr.Kanner to Mr. Field re: prioritization of the witnesses identified for deposition by Janes plaintiffs;	0.10	18.00	GMK
Oct-15-01	Correspondence from Lowenstein to Mr. Field re: only attorney to date wanting set of Sandoz CD's is counsel	0.10	18.00	GMK

	for Janes;			
Oct-17-01	Review of Motion to Compel responsive privilege log from Mr. McPherson and Mr. Bobsein issued by Janes;	0.20	36.00	GMK
Oct-17-01	Telephone call with Mr. Furst's office re: whereabouts of Motion to Dismiss Janes plaintiffs;	0.10	18.00	GMK
Oct-17-01	Review of documents by Janes plaintiffs; observed review process;	3.00	540.00	GMK
Oct-19-01	Review of correspondence from Lynch to Lowenstein re: deposition scheduling for Tomkovich's and Ms. Janes;	0.10	18.00	GMK
Nov-01-01	Correspondence from Mr. Kanner to Lowenstein re: pursuant to Case Management Order 3, Paragraph 3, Janes plaintiffs provided Mr. Field with list of deponents; wants dates for deponents;	0.10	18.00	GMK
Nov-05-01	Correspondence from Mr. Kanner to Lowenstein and Mandel re: Environ documents available for Janes review; when review want Ciba representative to be outside of room;	0.10	18.00	GMK
Nov-07-01	Review of correspondence and exhibits to Judge Gruccio from Mr. Kanner re: Mr. Mandel's presence in room during Janes discovery offensive;	0.10	18.00	GMK
Nov-07-01	Correspondence from Lowenstein to Lynch re: confirming deposition of Janes on November 8th;	0.10	18.00	GMK
Nov-13-01	Correspondence from Lowenstein to Judge Gruccio re: list of Janes agenda items;	0.10	18.00	GMK
Nov-13-01	Correspondence from Mr. Kanner to Lowenstein re: pursuant to Mr. Gordon's request forwarding Janes agenda items;	0.10	18.00	GMK
Nov-13-01	Correspondence from Lowenstein to Mr. Gruccio re: Mr. Clark's October 22, 2001 letter serving as Janes privilege log;	0.10	18.00	GMK
Nov-16-01	Review of correspondence from Mr. Kanner to Mr. Furst re: Mr. Bobsein's	0.10	18.00	GMK

	deposition dates for Janes plaintiffs' questioning;			
Nov-21-01	Review of correspondence from Mr. Kanner to Lowenstein re: Janes copying all grand jury exhibits on November 26th;	0.10	18.00	GMK
Nov-27-01	Review of correspondence from Mr. Furst to Judge Gruccio re: reply in support of motion to compel responsive privilege logs filed by Janes plaintiffs;	0.10	18.00	GMK
Nov-27-01	Review of correspondence from Lowenstein to Judge Gruccio re: application for recommendation to Compel completion of depositions of Janes and Sermarini;	0.20	36.00	GMK
Nov-27-01	Correspondence from Mr. Kanner to Mr. Furst re: by agreement Janes plaintiffs taking lead of questioning Mr. Bobsein on Nov27th and 28th;	0.10	18.00	GMK
Nov-28-01	Preparation of letter to Judge Gruccio re: filing of Certification in Opposition to plaintiffs Janes' Motion to Compel Responsive Privilege Logs; copies to counsel; (via fax & mail);	0.60	177.00	MEW
Nov-28-01	Review of correspondence from Mr. Fust to counsel re: Janes plaintiffs now refuse to depose Mr. Bobsein on November 27th and 28th;	0.10	18.00	GMK
Dec-04-01	Correspondence from Kanner to Mr.Furst re: Janes counsel to question Mr. Bobsein on December 12, 13 &14th;	0.10	18.00	GMK
Dec-11-01	Correspondence from Mr.Kanner to Judge Corodemus re: Janes plaintiffs have no objection to Underriner's proposed Order of Dismissal;	0.10	18.00	GMK
Dec-17-01	Correspondence from Lowenstein to Judge Gruccio re: letter substituting as reply to opposition based upon continuation of Janes deposition;	0.10	18.00	GMK
Dec-21-01	Correspondence from Lowenstein to Judge Gruccio re: compelling Janes to provide CD of documents copied by Janes;	0.10	18.00	GMK

Dec-26-01	Review of correspondence from Lowenstein to Judge Gruccio re: Janes withheld request until argument for CD was made;	0.10	18.00	GMK
Dec-26-01	Correspondence from Lowenstein to Judge Corodemus re: conversation with Reed re: return date for Notice of Motion by Janes seeking to remove 2 plaintiffs;	0.10	18.00	GMK
Dec-27-01	Review of correspondence from Lowenstein to Counsel re: set of requests for admissions re: Janes;	0.10	18.00	GMK
Jan-03-02	Correspondence from Lowenstein to Counsel re: enclosing half of Ciba answers to interrogatories from Janes;	0.20	36.00	GMK
Jan-09-02	Correspondence from Mr. Lynch to Mr. Gruccio re: Janes turn over their attorney work product; specifically a CD of documents attorney thought important from mass of non-responsive documents;	0.10	18.00	GMK
Jan-15-02	Correspondence from Lowenstein to Counsel re:Ciba defendants answers and objections to plaintiffs' (Janes) first, second and third set of interrogatories;	0.30	54.00	GMK
Jan-16-02	Correspondence from Mr.Lynch to Mr. Field re: Janes plaintiffs answer to the Ciba defendants December 17, 2001 requests for admissions;	0.10	18.00	GMK
Jan-18-02	Review of Ciba letter non-consent to adjourn pending cross motion for Summary Judgment in Janes case;	0.40	118.00	MEW
Jan-18-02	Correspondence from Lowenstein to Mr. Clark re: not in a position to adjourn motion re: summary judgment in Janes;	0.10	18.00	GMK
Jan-23-02	Correspondence from Lowenstein to Judge Gruccio re: recommendation compelling plaintiffs to provide Ciba with CD of documents produced by Ciba and copied by Janes;	0.10	18.00	GMK
Jan-23-02	Correspondence from Lowenstein to Judge Corodemus re: has not yet received any oppositon papers from Janes with respect to cross-motion re:	0.10	18.00	GMK

	Ciba's cross-motion for summary judgment as to Nides' claim due this Friday;			
Jan-24-02	Review of plaintiff, Alan Kanner's letter to counsel on scheduling Janes plaintiff's depositions;	0.20	59.00	MEW
Jan-24-02	Review of Ciba letter all pending Motions on Janes set for 2/8/02;	0.20	59.00	MEW
Jan-24-02	Correspondence from Mr. Kanner to Mr. Field re: are in receipt of letter listing dates for deposition; Janes provided availability of dates and times;	0.10	18.00	GMK
Jan-24-02	Correspondence from Mr. Kanner to Mr. Field re: Janes will attend deposition of Dr. Winkler on February 25 through March1, 2002 (will videotape deposition);	0.10	18.00	GMK
Jan-24-02	Correspondence from Lowenstein to Counsel re: confirmed with Judge Corodemus' law clerk that all pending motions in Janes to be heard on February 8, 2002;	0.10	18.00	GMK
Jan-29-02	Review of E. Cowen Certification in support of Janes plaintiff's appeal of special master 1/15/02 recommendation;	0.40	118.00	MEW
Jan-29-02	Correspondence from Pellettieri to Counsel re: motion appealing special Master's January 15, 2002 Recommendation returnable February 22,2002 (Janes should not have to provide Ciba with CDs on ongoing basis re: copies of documents made available by Ciba to Janes);	0.20	36.00	GMK
Jan-29-02	Correspondence from Mr. Kanner to Clerk of Middlesex County Court re: enclosing executed original Certification of Cowen in support of Janes Appeal of Special Master's 1/15/02 Recommendation;	0.10	18.00	GMK
Feb-18-02	Correspondence from Lowenstein to Judge Corodemus re: Janes plaintiffs moving to vacate the Recommendation of Gruccio re: obligation to produce a CD of all docs	0.20	36.00	GMK

	copied from productions of Ciba			
Feb-21-02	Correspondence from Lynch to Corodemus re: plaintiffs reply brief in support of plaintiff's motion with respect to the 1/15.02 recommendation of the Mediator that Janes be ordererd to turn over CDs of docs produced byCiba	0.20	36.00	GMK
Feb-25-02	Correspondence from Lowenstein to Judge Gruccio re: request for recommendation regarding completion of Janes and Sermarini deposition;	0.10	18.00	GMK
Mar-01-02	Correspondence from Lowenstein to Judge Corodemus re: Mr. Sullivan elected not to resolve Order re: Janes v. Ciba so submitted 5 day rule letter;	0.20	36.00	GMK
Mar-04-02	Correspondence from Lowenstein to Judge Corodemus re: confirm motion by Janes to vacate 1/15/02 recommendation of Judge Gruccio is adjourned until March 22, 2002;	0.10	18.00	GMK
Mar-06-02	Correspondence from Penn to Judge Corodemus re: motion by Janes for class certification was due no later than 3/8/02; Mr. Field consented to the request to adjourn the matter no later than one 3/15/02;	0.10	18.00	GMK
Mar-14-02	Review of letter from D. Field to J. DeCarlo 4/5/02 testifying to first set of request of admissions;	0.20	59.00	MEW
Mar-14-02	Correspondence from Mr. Kanner to Mr. Field re: please advise of the last known address and phone number for those individuals identified in the Janes plaintiffs' notices of January 11th;	0.20	36.00	GMK
Mar-15-02	Correspondence from Mr. Lynch to Mr. Field re: amend Case Management Order 9 to state that the Janes plaintiffs will depose Mr. Winkler for 2 days as we made clear at the 3/14/02 Case Management Order;	0.20	36.00	GMK
Mar-18-02	Review of Janes Reply Brief in Support of Motion to amend complaint;	0.20	59.00	MEW
Mar-18-02	Correspondence from Lynch to	0.30	54.00	GMK

	Corodemus re: Janes Plaintiffs' reply brief in support of plaintiffs' motion re: 1/15/02 recommendation of Gruccio (issue of CDs)			
Mar-18-02	Correspondence from Lowenstein to Clerk's Office re: letter brief and reply certification of Bennett dated 3/18/02 re: reply to Janes opposition to the motion to quash subpoenas served on certain public relations firms formerly retained by the Ciba defendants	0.30	54.00	GMK
Mar-20-02	Correspondence from Mr. Kanner to Mr. Field re: advising that Janes request deposition dates for Mr. McCormack in his personal capacity;	0.10	18.00	GMK
Mar-20-02	Correspondence from Mr. Kanner to Judge Corodemus re: Janes analysis of what needs to be done to get from here to trial by 7/02;	0.20	36.00	GMK
Mar-21-02	Preparation of Answer to First Amended Complaint and forwarding to Clerk of Court for filing; copies to all counsel; (Janes Answer); (170 photos); ($10.76 postage)	2.50	737.50	MEW
Mar-21-02	Correspondence from Lowenstein to Judge Corodemus re: Case Management Order 9 as well as noting objections by Janes;	0.20	36.00	GMK
Mar-26-02	Review of Ciba letter to D. Field re: status of Janes depositions;	0.20	59.00	MEW
Mar-26-02	Correspondence from Mr. Gordon to Mr. Field re: list of names we would like to depose the following individuals at the completion of Janes questioning;	0.10	18.00	GMK
Mar-28-02	Correspondence from Mr. Hobbie to Mr. Field re: with respect to dep of Dr. Winkler, Janes Plaintiffs, Kramer Plaintiffs and United Water will all be utilizing the same location;	0.10	18.00	GMK
Apr-12-02	Correspondence from Mr. Gordon to Counsel re: agenda for 4/17/02 at 2:00 pm. (Kramer converence will be conducted before Janes);	0.20	36.00	GMK
Apr-12-02	Correspondence from Lowenstein to Judge Gruccio re: submit letter with	0.20	36.00	GMK

	applicable law in response to Janes March 26, 2002 letter re: any amendment to Case Management Order 4 Paragraph 13 which pertains to an inadvertent production of documents;			
Apr-18-02	Correspondence from Mr. Kanner to Lowenstein re: Janes' acceptance of the May 1 and 2 deposition dates for the McCormack questioning; see no reason for a protective order;	0.10	18.00	GMK
Apr-19-02	Review of correspondence from Lowenstein to Judge Corodemus re: Protective Order with regard to Motions including Ciba's Notice of Motion to Quash a subpoena issued by the Janes to several third party contractors;	0.20	36.00	GMK
Apr-24-02	Correspondence from ReedSmith to Judge Corodemus re: proposed Case Management Order 11 executed by Counsel with exception of Janes;	0.20	36.00	GMK
Apr-27-02	Review of D. Field letter to Judge Corodemus as to recommendation to Compel Janes plaintiff's to Answer deposition questions;	0.20	59.00	MEW
Apr-27-02	Correspondence from Lowenstein to Judge Corodemus re: submitting proposed form of Order to memorialize recommendation to compel certain Janes to answer depositions previously precluded as attorney/client privilege;	0.20	36.00	GMK
Apr-29-02	Correspondence from Lowenstein to Art Penn re: disturbing that Janes continue to cause Case Management Order 11 to be untimely;	0.20	36.00	GMK
May-01-02	Correspondence from Mr. Kanner to Mr. Field and Mr. Hooker re: Janes acceptance of following deposition dates;	0.20	36.00	GMK
May-02-02	Review of Bellwether letter to Judge Corodemus on scheduling Janes trial;	0.20	59.00	MEW
May-02-02	Correspondence from Mr. Pellettieri to Judge Corodemus re: Janes have no objection should case be tried in	0.10	18.00	GMK

	October;			
May-13-02	Correspondence from Mr. Kanner to Mr. Furst re: confirmation of Janes that Mr. Bobsein depositions are on June 6, 7 and 10th;	0.10	18.00	GMK
May-13-02	Correspondence from Mr. Kanner to Mr. Wilbert re: Janes accepted dates of 5/23/24/30 and 31 for deposition of Mr. McPherson;	0.20	36.00	GMK
May-14-02	Review of G. Clark letter as to Janes agenda;	0.20	59.00	MEW
May-14-02	Correspondence from Lowenstein to Judge Corodemus re: agenda item of 5/16/02 cmc is entry of order adoping 4/16/02 recommendation of Judge Gruccio to which no objection by Janes was filed;	0.20	36.00	GMK
May-17-02	Correspondence from Mr. Kanner to Mr. Field re: Janes plaintiffs have identified a number of additional witnesses for deposition (enclosed list);	0.20	36.00	GMK
May-20-02	Review of Notice of Motion, Certification on Janes matter for Motion to Compel discovery;	0.50	147.50	MEW
May-22-02	Correspondence from Lynch Martin to Judge Gruccio re: Janes plaintiffs' brief in opposition to Ciba's request that the Janes be required to provide Ciba with free copies of deposition transcripts of non-party witnesses;	0.20	36.00	GMK
May-23-02	Correspondence from Lowenstein to Judge Gruccio re: Janes must, at their expense provide Ciba with copy of deposition transcript;	0.30	54.00	GMK
May-23-02	Correspondence from Mr. Kanner to Family Court Building re: plaintiffs' Motion for Summary Judgment on statute of limitations defense (Janes);	0.60	108.00	GMK
Jun-04-02	Preparation of draft of letter to Attorney Field re: transfer of Kramer to Janes etc. for review and review of changes; preparation of final letter and copy to Henry Furst;discussions with Henry Furst as to same;	1.80	531.00	MEW
Jun-05-02	Review of proposed schedule on Janes	0.20	59.00	MEW

	matter;			
Jun-05-02	Correspondence from Lowenstein to Mr.Wilbert re: proposal dated 6/3/02 to transfer the duty to defend/indemnify issue from Kramer caption to Janes caption;	0.20	36.00	GMK
Jun-06-02	Review of Ciba letter submitting proposed schedule for Janes discovery and trial;	0.25	73.75	MEW
Jun-11-02	Correspondence from Lowenstein to Judge Gruccio re: items submitted as agenda for 6/13/02 Case Management conference in Janes case;	0.20	36.00	GMK
Jun-12-02	Correspondence from Lowenstein to Mr. Wilbert re: Case Management conference and request from Janes re: box 325;	0.20	36.00	GMK
Jun-18-02	Correspondence from Lowenstein to Mr. Furst re: Case Management conference cancelled by Penn who neglected to contact Mr. Wilbert; video deposition dates for Janes subject to dispute;	0.20	36.00	GMK
Jun-21-02	Correspondence from Mr.Nelson to Mr. Bennett re: Janes would like to take deposition of Richard Beck with videographer on 6/14/02;	0.20	36.00	GMK
Jan-04-01	Review of fax of Janes Complaint.	0.20	59.00	MEW
Aug-05-02	Transcription fee – Doerner & Goldberg, Inc. Janes v. Ciba Geigy		242.00	
TOTAL:		36.45	8112.75	