

FILED

NOV 19 2015

**BRIAN R. MARTINOTTI
J.S.C.**

MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
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(973) 228-9898
Attorneys for Plaintiff

PAMELA WICKER and WILLIAM
WICKER,

Plaintiffs,

v.

ETHICON, INC., ETHICON WOMEN'S
HEALTH AND UROLOGY,
a Division of ETHICON, INC.;
GYNECARE, JOHNSON
& JOHNSON, and JOHN DOES 1-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-013702-14 MCL
MASTER CASE NO. BER-L-11575-14

CIVIL ACTION

**ORDER SETTING
ATTORNEYS' FEE**

THIS MATTER having come before the Court on the application of Mazie Slater Katz & Freeman, LLC, attorneys for plaintiffs, on motion to set reasonable fee pursuant to R. 1:21-7(c)(5), on notice to plaintiffs, and defense counsel, and the Court having considered the papers submitted, and for the reasons set forth ^{in the memorandum attached} ~~on the record~~, and for good cause shown;

IT IS on this 19 day of November, 2015,

ORDERED that a reasonable attorney's fee of 33 1/3% is set on the portion of the net recovery, that is governed by R. 1:21-7(c)(5); and it is further

ORDERED that a true copy of this Order be served within 5 days of receipt hereof.


HONORABLE BRIAN R. MARTINOTTI, J.S.C.

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**BRIAN R. MARTINOTTI
J.S.C.**

<p>PAMELA WICKER and WILLIAM WICKER,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>ETHICON, INC., EHTICON WOMEN'S HEALTH & UROLOGY, a Division of ETHICON, INC., GYNECARE, JOHNSON & JOHNSON, and JOHN DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY
DOCKET NO. L-13702-14
MEMORANDUM OPINION

MARTINOTTI, J.S.C.

Before this Court is Mazie Slater Katz & Freeman, LLC's ("Counsel") application to set a reasonable fee pursuant to Rule 1:21-7(f).¹ The application is unopposed by Plaintiffs Pamela and William Wicker ("Plaintiffs").

Pursuant to Rule 1:21-7(c), an attorney's contingent fee cannot exceed: 33 1/3% on the first \$500,000 recovered; 30% on the amount recovered from \$500,001 to \$1,000,000; 25% on the amount recovered from \$1,000,001 to \$2,000,000; and 20% on the amount recovered in excess of \$2,000,000.² R. 1:21- 7(c)(1)-(4). If an attorney considers the fee permitted by Rule 1:21-7(c) to be inadequate, he or she may move for a hearing to determine a reasonable fee in light of all the circumstances. R. 1:21-7(f).

¹ On November 4, 2015, the Honorable Bonnie J. Mizdol, A.J.S.C. designated the undersigned to hear this Motion.

² These figures reflect the fee schedule that was in place in August 2009, when Plaintiffs entered the retainer agreement with Mazie Slater Katz & Freeman, LLC. An updated schedule, which caps fees on awards over \$3,000,000 at 20%, took effect on September 1, 2014.

Courts determine the reasonableness of contingent fees according to the standards set forth in Rule of Professional Conduct 1.5(a)(1)-(8).

The Court finds, based on Counsel's certification as corroborated by Plaintiffs, that Counsel has satisfied the RPC factors for an increased contingent fee. The hours devoted to the case, as well as the complexity of the legal issues involved, were considerable. RPC 1.5(a)(1). Counsel cited several examples in which attorneys, including their firm, have received a 33 1/3% fee on an award exceeding \$2 million. RPC 1.5(a)(3). The settlement obtained was considerably larger than the per-case average in pelvic mesh settlements to date. RPC 1.5(a)(4). The case was only the second bellwether case in the pelvic mesh MCL, and Counsel was required to rigorously prepare. RPC 1.5(a)(5). Counsel's relationship with Plaintiffs lasted for over six years and required Counsel to be apprised of a great deal of personal information in Plaintiffs' lives. RPC 1.5(a)(6). This Court is well aware of Counsel's reputation for a willingness to try cases to a jury verdict, as well as the fact that the firm has obtained substantial verdicts and settlements, not only before this Court but statewide. RPC 1.5(a)(7). Finally, the fee was contingent, and Counsel bore the financial risk of bringing the case. RPC 1.5(a)(8).

Significantly, Plaintiffs support Counsel's request to set the fee at 33 1/3% on the award that exceeds \$2 million. (Cert. of Pamela Wicker, Cert. of William Wicker.) The Appellate Division has found that a client's support of an attorney's application for a reasonable fee weighs in favor of granting the application. Ehrlich v. Kids of North Jersey, 338 N.J. Super. 442, 446 (App. Div. 2001) (reversing the trial court's denial of

counsel's application for a higher fee when "the application was supported by the plaintiff who urged the judge to approve the fee application in full."). Plaintiffs' support of Counsel's Motion lends credence to Counsel's argument that they are entitled to a more substantial fee than Rule 1:21-7(c) allows.

In light of the foregoing, Plaintiff's Motion to Set a Fee of 33 1/3% of the net recovery is GRANTED.