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## Firm Wins \$2.3M in Fees in Suit Over Insurance Coverage of Eating Disorders

Nagel Rice is awarded \$2.3 million in fees and expenses for its work toward a \$1.18 million settlement over insurance coverage for eating-disorder treatments.

Charles Toutant

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A Roseland firm was awarded \$2.3 million in fees and expenses Tuesday for its work toward a \$1.18 million settlement over insurance coverage for eating-disorder treatments.

U.S. District Judge Faith Hochberg in Newark made the award to Nagel Rice based the recommendation of special master Douglas Wolfson, who arrived at an adjusted lodestar of \$1.57 million and an allowance of \$112,505 for expenses.

That sum was reached after the deduction of \$73,405 from records submitted by Nagel Rice for work that it admitted was excludable or that Wolfson found duplicative or related to its dispute with Mazie, Slater, Katz & Freeman.

Nagel Rice requested a lodestar multiplier of 1.4, citing the case's complexity and amount of relief obtained, and Hochberg granted it, bringing the fee award to \$2,196,580. With expenses, the total comes to \$2,309,086.

Wolfson praised Nagel Rice's efforts to pursue the litigation in an efficient manner, noting that of 32 depositions, only one was attended by two attorneys from the firm.

"Counsel's avoidance of an excessive presence at depositions is in keeping with the best interests of the profession," Wolfson said.

He said he gave careful attention to the many instances when the firm's attorneys conferred with each other.

But he concluded that such entries "simply reflected the fact that the suit was complicated, involving many complex issues, some of which might have been characterized by counsel as being of 'first impression' necessitating constant oversight by senior attorneys."

While the case was pending, hourly rates for the three attorneys on the case rose. Lead counsel Bruce Nagel's went from \$475 to \$575, Randee Matloff's from \$450 to \$475 and Elliot Pell's from \$475 to \$485.

The settlement, in *Drazin v. Horizon Blue Cross Blue Shield of New Jersey*, 06-6219, represents the spoils of a battle Nagel Rice waged with Mazie Slater, also of Roseland.

The firms are the remnants of the former Nagel, Rice & Mazie, which broke into two in a partnership dispute in 2006. Nagel Rice and Mazie Slater then each brought a series of nearly identical class actions against insurers over restrictions on eating-disorder coverage, and hostility between the firms prevented consolidation of the cases.

Mazie Slater filed the first case against Horizon, *Beye v. Horizon Blue Cross*, 06-5337, in November 2006. Nagel Rice filed *Drazin* a month later.

The suits claimed Horizon improperly limited coverage by categorizing the eating disorders as a nonbiologically based mental disorder.

The *Drazin* settlement, reached in November 2008, provides \$1.2 million in reimbursements for past denied claims, allows future claims to receive parity with treatment for biologically based mental disorders such as schizophrenia, and creates a dispute resolution mechanism for future denied claims.

After the settlement won final approval, Mazie dismissed *Beye* with prejudice.

Hochberg named Wolfson, of Schwartz, Simon, Edelstein & Celso in Whippany, as special master last Dec. 28 because of the considerable volume of time records in the case, compounded by the dispute between the two firms.

Hochberg instructed Wolfson to deduct time for fees or expenses that were incurred as part of the conflict between the firms and that did not confer a benefit on the class.

Mazie Slater sought 50 percent of the fees from the settlement, but on the same date Hochberg appointed Wolfson, she ruled that the firm was not entitled to fees. She said it played no role in the recovery obtained for the class. Mazie Slater has appealed that decision to the U.S. Court of Appeals for the Third Circuit.

Nagel, of Nagel Rice, says he is pleased with the opinion and "it's especially pleasing that another law firm that tried to take a piece of the fee for contributing nothing was denied any portion of the fee."

David Mazie, of Mazie Slater, says only that the fee award was "as expected."

The lawyer for Horizon Blue Cross Blue Shield, Philip Sellinger of Greenberg Traurig in Florham Park, declines to comment on the fee award.

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