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*2015 N.J. Super. Unpub. LEXIS 657, \**

**JAMES S. COHEN**, as Trustee of the Robert B. **Cohen** Living Trust, Plaintiff, v. **SAMANTHA O. PERELMAN**, Defendant. In the Matter of the Estate of **ROBERT B. COHEN**, Deceased.

DOCKET NO: BER-C-94-12, DOCKET NO: BER-P-211-12

SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, PROBATE PART, BERGEN COUNTY

2015 N.J. Super. Unpub. LEXIS 657

March 16, 2015, Decided

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**COUNSEL:** [\*1] Edward A. Friedman, Esq., Lance Gotko, Esq., Emily A. Stubbs, Esq., Jeffrey Fourmaux, Esq., Robert S. Landy, Esq., Yitzchak E. Soloveichik, Esq., Nora Bojar, Esq. (Friedman Kaplan Seiler & Adelman, LLP), Paul A. Rowe, Esq., Alan S. Naar, Esq., Mark H. Sobel, Esq., Darren Churchill Barreiro, Esq., Emily A. Kaller, Esq. (Greenbaum, Rowe, Smith & Davis, LLP), Richard H. Weiner, Esq. (Aronsohn, Weiner & Salerno, PC), appearing on behalf of Plaintiff, Samantha O. Perelman.

Benjamin Clarke, Esq., Jonathan O. Bauer, Esq., Russell J. Passamano, Esq., Eric Corrllett, Esq., Ranit Schiff, Esq. (DeCotiis, Fitzpatrick & Cole, LLP), Michael Stein, Esq., John Kim, Esq., Sean Mack, Esq. (Pashman Stein, PC), and Sanford Gold, Esq., Lauren Giovanniello, Esq., Laura Rogers, Esq. (Gordon & Silber, PC), appearing on behalf of Defendant, James S. Cohen.

**JUDGES:** HON. ESTELA M. DE LA CRUZ, J.S.C.

**OPINION BY:** ESTELA M. DE LA CRUZ

### OPINION

#### DECISION ON REASONABLE ALLOWANCE TO SAMANTHA PERELMAN

*De La Cruz, J.S.C.*

#### INTRODUCTION

**INTRODUCTION**

On June 24, 2014, this Court sided and decided in favor of James S. **Cohen**, as Executor of the Estate of Robert B. **Cohen** ("James"), and rejected the related relief sought by Samantha O. **Perelman** ("Samantha") concerning her claims [\*2] of wrongdoing by her uncle, James, regarding the Estate of her grandfather, Robert B. **Cohen** ("Robert"). As a result, this Court dismissed Samantha's Amended Verified Complaint filed on June 6, 2013 with prejudice. However, this Court found, in turn, that Samantha had reasonable cause to contest the validity of her grandfather's testamentary instruments and, as a consequence, James' frivolous litigation claims arising from litigation concerning the probate of his father's Last Will and Testament, which was deemed valid on June 24, 2014, were denied.

In contemplation of the reasonable cause found on Samantha's part to have filed her claims and as permitted by R. 4:42-9(a)(3), this Court granted Samantha an allowance that would include reasonable attorneys' fees and costs limited to this New Jersey litigation of the consolidated matters herein only, at prevailing New Jersey rates, to be paid out of the Estate.

Samantha was directed to submit her application for an allowance to the Special Discovery Master ("Discovery Master"), Joseph P. Castiglia, Esq. Her submission, along with James' opposition and Samantha's reply, rendered the Discovery Master's Report ("Report") on September 22, 2014, which lays [\*3] out recommendations for the calculation of attorneys' fees and costs to be awarded Samantha. The parties were subsequently presented with an opportunity to reply to the Report. Following all of this paper submission, oral argument was held on October 17, 2014. On that date, the oral presentation of litigating counsel was followed by comment from the Court-appointed Discovery Master. This Opinion is in satisfaction of R. 1:7-4(a).

**FACTUAL BACKGROUND**

The factual presentation supporting the June 24, 2014 decision, which is a fact pattern involving multiple decades, family genealogy and extraordinarily immense business ventures and wealth on the part of both parties, was distilled into approximately thirty pages of text. That factual background is adopted in this correlating decision and will not be repeated. The June 24, 2014 decision is incorporated as part of this decision as the basis for the ensuing award.

**THE DISCOVERY MASTER'S REPORT**

The Discovery Master in this matter has been involved with these litigating parties for several years, including the litigation that preceded the instant issues. Mr. Castiglia was originally appointed Discovery Master by the Honorable Ellen Koblitiz, J.S.C, now [\*4] J.A.D., with the approval and consent of Assignment Judge, the Honorable Peter E. Doyne, pursuant to R. 4:41. The parties' discord began at a time when Robert was still alive. The issues presented in this litigation surfaced upon Robert's passing on February 1, 2012 at the age of 86.

Charged to report on the reasonableness of the amount requested by Samantha, the Discovery Master issued his sixty-nine page Report on September 22, 2014. The Report relies on well-established principles underlying a reasonableness determination of an allowance award for fees and costs regarding a will contest. The Report is premised on controlling law and equitable doctrines, as well as the Discovery Master's own vast experience with this indefatigable litigation and his learned synthesis of the parties' positions.

As appropriate, the Discovery Master notes that the amount of a counsel fee award, generally speaking, depends on such factors as: 1) the amount of the estate and the amount in dispute; 2) the nature, extent and, perhaps, peculiarity of the issues presented; 3) the work actually performed; 4) the time expended; 5) counsel's skill, diligence, knowledge, experience, and judgment; 6) the results accomplished; [\*5] 7) the importance of the case; and 8) such special circumstances as may exist. *See New Jersey Practice, Wills and Administration* § 1905, at 1543 (Alfred C. Clapp) (rev. 3d ed. 1984); *see also In re Bloomer's Estate*, 37 N.J. Super. 85, 117 A.2d 17 (App. Div. 1955) and 43 N.J. Super. 414, 129 A.2d 35 (App. Div. 1957). The core principle is that in adversarial proceedings, the allowance is not designed to provide the client, in all cases, with complete indemnification. *See, e.g., Westinghouse Elec. Corp v. Local No. 449 of Int'l Union of Elec. & Radio Mach. Workers*, 23 N.J. 170, 128 A.2d 457 (1957) (citing *Clements v. Clements*, 129 N.J. Eq. 350, 19 A.2d 644 (E. & A. 1941)), and *Katz v. Farber*, 4 N.J. 333, 72 A.2d 862 (1950). "The amount of counsel fees awarded is essentially a matter resting in the

exercise of a sound discretion by the trial court...each case must be judged by its own overall

circumstances." *City of Englewood v. Veith Realty Company*, 50 N.J. Super. 369, 142 A.2d 663 (App. Div. 1958).

In preparation of his recommendations concerning the hourly rates to fairly be imposed in this evaluation, the Discovery Master canvassed a number of New Jersey law firms experienced in the area of probate litigation. The law firms consulted included McCarter & English, LLP, Archer & Greiner, P.C., Cole, Schotz, Meisel, Forman & Leonard, P.A., Orloff, Lowenbach, Stifelman & Siegel, P.A., Cohn, Lifland, Pearlman, Herrmann & Knopf, LLP, Franzblau Dratch, P.C., and Graham Curtin, P.A. After consulting these firms on hourly rates, the Discovery Master found that for lead counsel with experience, credentials, and skills comparable to Mr. [\*6] Friedman's, hourly rates range from \$400 to \$725, and less for the other attorneys involved.

The Discovery Master stressed that an attorneys' fee award under R. 4:42 is not an indemnification award. *See supra*. His calculus and ultimate award were, in the end, guided by the principle that "a reasonable award should accord with sound thinking within the bounds of common sense...it must reflect to some degree the efforts of the attorneys who performed the services, so long as those efforts were not duplicative, inflated, or obviously inconsistent with the legitimate litigation goals of the pleadings." *See Discovery Master's Report* at 15-16.

Throughout the litigation, Samantha employed the legal assistance of no less than four law firms: Friedman, Kaplan, Seiler & Adelman, LLP ▼("Friedman Kaplan") — of which Edward A. Friedman, Esq., served as the primary attorney; Greenbaum, Rowe, Smith & Davis, LLP. ▼("Greenbaum Rowe") — of which Paul A. Rowe, Esq., served as the primary attorney; Aronsohn, Weiner, Salerno & Bremer, P.C. ("Aronsohn Weiner") — of which Richard H. Weiner, Esq., served as the primary attorney; and Sills Cummis & Gross, P.C. ("Sills Cummis") — of which Richard Epstein, Esq., served [\*7] as the primary attorney. In sum, the Discovery Master made the following final recommendations, as set forth in more detail below: he first recommended that the total Lodestar fee award to Samantha, for the entire case, should be in the amount of \$11,924,533.00. The analysis continued and noted that the award should be adjusted downward by 20% due to the result in the case, as Samantha ultimately was not successful on the merits of her undue influence claims against James. That downward recommendation nets a recommended fee award of \$9,539,626.00. The recommended award for costs incurred for the entire case was set at \$1,038,475.00. As such, \$10,578,101.00 is the final molded total for attorneys' fees and costs for the entire case recommended by the Discovery Master.

The record presents the following numerous submissions that formed the basis for the Discovery Master's recommendations and the basis for this decision. At the core of this decision lie the affidavits from Samantha's four primary legal counsel to document and support her request for a reasonable allowance:

1. Affidavit of Services of Edward A. Friedman, Esq., of Friedman Kaplan Seiler & Adelman LLP ▼(Friedman Kaplan), with [\*8] Exhibits 1 — 90 attached;
2. Affidavit of Services of Paul A. Rowe, Esq., of Greenbaum Rowe Smith & Davis LLP ▼(Greenbaum Rowe), with Exhibits A — P attached;
3. Affidavit of Services of Richard Epstein, Esq., of Sills Cummis & Gross, P.C. (Sills Cummis), with Exhibits 1 — 35 attached; and
4. Affidavit of Services of Richard H. Weiner, Esq., of Aronsohn Weiner Salerno & Bremer, P.C. (Aronsohn Weiner), with Exhibits A and B attached.

Notwithstanding the sixty page submission limit and the twenty-five page reply limitations directed on June 24, 2014, the parties submitted the following attachments that are, candidly, a crafty and unilateral increase of the volume indicated by the Court. The adage that "less is more" is nowhere in either side's mental lexicon. Attached to the Friedman affidavit are the following exhibits in support:

- EXHIBITS 1 — 40 — biographies and resumes of the lawyers and other personnel at the Friedman Kaplan firm who worked on the case;
- EXHIBITS 41 — 64 — Friedman Kaplan invoices and summaries;
- EXHIBIT 65 — Summary Table of Reasonable Hours for Which Allowance is Sought;
- EXHIBIT 66 — Table of Reasonable New Jersey Rates for Friedman Kaplan Timekeepers;
- EXHIBIT 67 — Friedman [\*9] Kaplan Reasonable New Jersey Lodestar Calculation;
- EXHIBIT 68 — the expert report of Sanford I. Finkel, MD;

EXHIBIT 69 — a list of Dr. Finkel's invoices and payments, including his retention contract;  
 EXHIBIT 70 — an excerpt from the 12/18/2013 trial transcript;  
 EXHIBIT 71 — the expert report of Anita J. Siegel, Esq.;  
 EXHIBIT 72 — a list of Anita Siegel's invoices and payments, including her retainer letter;  
 EXHIBIT 73 — the expert report of Stephen B. Blum, CPA;  
 EXHIBIT 74 — the curriculum vitae of Christopher Novak, CFA;  
 EXHIBIT 75 — a list of Stephen Blum's invoices and payments, with various invoices and some photocopies of checks attached;  
 EXHIBIT 76 — a compilation of emails between opposing counsel in November 2013, regarding electronic discovery;  
 EXHIBIT 77 — two TransPerfect invoices;  
 EXHIBIT 78 — a compilation of AccessData invoices and a payment summary;  
 EXHIBIT 79 — identified as a summary of amounts from FTI Consulting invoices, with redacted invoices attached;  
 EXHIBIT 80 — a summary of Veritext invoices, with invoices attached;  
 EXHIBIT 81 — a Lexolution invoice;  
 EXHIBIT 82 — a summary of DTI and discovery invoices and payments, with invoices and some checks attached;  
 EXHIBIT 83 — a compilation [\*10] of the Special Discovery Master's invoices, a summary of payment history, and photocopies of some checks;  
 EXHIBIT 84 — a Lexis/Westlaw charge summary;  
 EXHIBIT 85 — the Friedman Kaplan June 2014 invoice and adjusted timekeeper summary;  
 EXHIBIT 86 — excerpts from the Certification of Robert Gold, Esq., in support of fee application, dated 4/6/10;  
 EXHIBIT 87 — an excerpt from the 6/9/10 transcript of the Bench Opinion by the Honorable Ellen L. Koblitz;  
 EXHIBIT 88 — the Discovery Master's Report to the Honorable Ellen L. Koblitz, dated 7/28/10;  
 EXHIBIT 89 — identified as an excerpt from the 8/20/10 Opinion of the Honorable Ellen L. Koblitz; and  
 EXHIBIT 90 — the 8/9/13 Opinion of the Honorable Menelaos W. Toskos.

The Exhibits to the Rowe affidavit are:

EXHIBITS A—K — Greenbaum Rowe invoices;  
 EXHIBIT L — Greenbaum Rowe summary of attorney time;  
 EXHIBIT M — Greenbaum Rowe expense statements;  
 EXHIBIT N — Greenbaum Rowe expense summary;  
 EXHIBIT O — Paul Rowe's biography; and  
 EXHIBIT P — additional Greenbaum Rowe firm biographies.

The Exhibits to the Epstein affidavit are:

EXHIBITS 1—19 — Sills Cummis invoices and adjusted timekeeper summaries; and  
 EXHIBITS 20—35 — biographies and resumes of the lawyers and [\*11] other personnel at the Sills Cummis firm who worked on the case.

The Exhibits to the Weiner affidavit are:

EXHIBIT A — Aronsohn Weiner invoices; and  
 EXHIBIT B — Biography/Resume of Richard H. Weiner.

#### A) *The Friedman Kaplan Component of the Calculation*

The Discovery Master considered legal services rendered by Friedman Kaplan between April, 2012 and March, 2014, consisting of billing from 38 timekeepers who seemingly worked round-the-clock on this matter prior and through the conclusion of trial. These 38 timekeepers include seven partners of the firm (Mr. Friedman, Robert D. Kaplan, Esq., Ms. Pringle, Lance J. Gotko, Esq., Emily A. Stubbs, Esq., Jeffrey C. Fourmaux, Esq., and Mr. Rubinstein), nine Associates (Robert S. Landy, Esq., Timothy M. Hagerty, Esq., Kenneth N. Ebie, Esq., Yitzchak Soloveichik, Esq., Emily L. Chang, Esq., Eric J. Finkelstein, Esq., Charles E. Enloe, Esq., Brett J. Hartman, Esq., and Nora Bojar, Esq.), one Staff Attorney (Bonnie Baker, Esq.), two Paralegal Supervisors (Douglas M. Chiappo and Carolyn Cornell), one

Attorney (Doraine Baker, Esq.), two Paralegal Supervisors (Douglas M. Chiario and Carolyn Corbett), one Librarian (Mary Nicolas), one Managing Clerk (Veronica Garvey), 12 Paralegals (S. Elaine Sullivan, Allison Decker, Kevin Ayala, Laura Spritzer, Christopher [\*12] Andrews, Andrew Linz, Sara Sqwierz, Brian Gilbert, Jenna Russell, Jarret Meskin, Andrew Grubin, and James McGann), one temporary Paralegal (Jeffrey Bolden), and four Litigation Support Managers (Adam Lew, Leon Carney, Matthew Navarro, and Alex Sacklowski).

Samantha's request for Friedman Kaplan's work, including the self-imposed discounts at various points in time of various hourly rates and the adjustment of the New York counsel's hourly rates to match New Jersey counsel's rates charged to Samantha, totals \$12,274,740.18. The Discovery Master noted that Edward A. Friedman, Esq.'s work, which was reflective of the work of his firm as well, was thorough and universally competent. As such, he and the work quality of the firm that he leads, does command the hourly rates charged. Being realistic with the standard for the assessment of an award in this New Jersey courtroom, Mr. Friedman voluntarily reduced his initial contracted hourly rate of \$990-\$1,050 to match Mr. Rowe's New Jersey hourly rate of \$750.

Given the definite skill, preparation and analytical acumen exhibited, the Discovery Master recommended "acquiescing" to assess Mr. Friedman's hourly rate at \$725, instead of his voluntarily-imposed [\*13] \$750 rate, and he recommended a further reduction of this hourly rate to \$580. He also suggested a similar reduction for the remaining six partners and the nine associates as well.

As to the remaining six partners who provided legal services to Samantha, the recommendations on reductions are as follows:

1. Mr. Kaplan — adjustment from \$625.00 per hour to \$500.00 per hour;
2. Ms. Pringle — adjustment from \$495.00 per hour (regarding April 2013 and June 2013 invoices) and \$387.50 per hour (regarding May 2013, July 2013, and August 2013 invoices), to an integrated rate of \$390.00 per hour;
3. Mr. Gotko — adjustment from \$625.00 per hour to \$500.00 per hour;
4. Ms. Stubbs — adjustment from \$495.00 per hour to \$400.00 per hour;
5. Mr. Fourmaux — adjustment from \$465.00 per hour to \$375.00 per hour; and
6. Mr. Rubinstein — adjustment from \$465.00 per hour (regarding April 2013 and June 2013 invoices) and \$275.00 per hour (regarding May 2013, July 2013, and August 2013 invoices), to an integrated rate of \$300.00 per hour.

With regard to the nine associates named in Mr. Friedman's Affidavit, and applying the same approach for adjustments as above for the partners, for whom hourly rates between \$275 [\*14] and \$295 are sought, the Discovery Master recommended adjustments of the hourly rates sought as follows:

1. Mr. Landry from \$280.00 per hour to \$260.00 per hour;
2. Mr. Hagerty from \$280.00 per hour to \$260.00 per hour;
3. Mr. Ebie from \$280.00 per hour to \$260.00 per hour;
4. Mr. Soloveichik from \$280.00 per hour to \$260.00 per hour;
5. Ms. Chang from \$280.00 per hour (see May 2013 invoice) and \$200.00 per hour (see June 2013 invoice), to an integrated rate of \$240.00 per hour;
6. Mr. Finkelstein from \$280.00 per hour (see July 2013 invoice) and \$187.50 per hour (see August 2013 invoice), to an integrated rate of \$210.00 per hour;
7. Mr. Enloe from \$280.00 per hour to \$260.00 per hour;
8. Mr. Hartman from \$275.00 per hour to \$225.00 per hour; and
9. Ms. Bojar from \$280.00 per hour to \$260.00 per hour.

As to the remaining timekeepers, such as Paralegals and other related legal support staff, Samantha seeks an allowance for their hourly rates between \$162 and \$250, for a total of \$2,036,349. The function of the various support personnel, such as paralegals, was recognized as essential, given the magnitude of issues and Court expectation of readiness, preparation and presentation.

Overall, a recommendation [\*15] was made to apply a weighted percentage reduction in the number of hours requested by all of the Friedman Kaplan attorneys, integrating in the case of the lawyers their pre-trial and trial time, to achieve a reasonable lodestar. The Report recommends the reductions as listed

above and also, as to the remaining timekeepers, an adjustment of their billed component from \$2,036,349 to \$916,357.

In this vein, the Discovery Master was discreet and diplomatic at several points in his Report that the reductions suggested in no way mean that the time billed was not believed or that the attorney or other staffer did not contribute, and instead emphasized by repetition that the lodestar award is not designed to make the compensated party whole for all of her expenses. In sum, the Discovery Master's final recommendation for the Friedman Kaplan component of the lodestar totaled \$7,383,842.00, before the final proposed, across-the-board, 20% reduction.

#### B) *The Greenbaum Rowe Component of the Calculation*

The Discovery Master initially considered legal services rendered by Greenbaum Rowe between June, 2013 and March, 2014. However, Samantha adjusted her requested fee downwards, eliminating work done by [\*16] Greenbaum Rowe and Aronsohn Weiner Salerno & Bremer, P.C. for the billing period between June, 2013 and August, 2013, to "eliminate any objection about duplication of effort." The billing from this time period for these two firms totaled \$968,447.50. As a result, the billing months considered for lodestar purposes for these two firms was from September, 2013 through March, 2014. Samantha's fee request for Greenbaum Rowe's legal work totaled \$3,994,717.00. The Discovery Master noted that almost half of the Greenbaum Rowe billings are for services rendered by Paul A. Rowe, Esq., and Alan S. Naar, Esq., and that Mr. Rowe alone accounts for 30% of the billing. It was Mr. Rowe who presented opening statements at the beginning of the trial and who successfully argued certain critically significant motions throughout the case, including the "burden-shifting" motion that shifted the burden of proof to James, requiring him to prove the absence of undue influence. Mr. Naar artfully prepared various written submissions which buoyed Mr. Rowe's efforts, argued several evidentiary issues very tactfully, and was constantly a source of trial support in the courtroom.

The Discovery Master suggests a [\*17] comparable 20% adjustment, similar to that applied to Mr. Friedman's hourly rate, to Mr. Rowe's contract billing rate of \$725 per hour down to \$580 per hour. For Greenbaum Rowe, the Report also recommends, as for Mr. Friedman's firm, an across-the-board reduction of 20% for each of the partner attorneys, including Mr. Naar, as well as a 25% cut in the hours claimed for all other Greenbaum Rowe attorneys. Finally, a 40% cut in the hours claimed for all Greenbaum Rowe support staff is also recommended for lodestar purposes only. That results in a decrease from \$2,940,112.00 requested to \$2,205,084.00.

Additionally, and consistent with what is recommended for Friedman Kaplan's support personnel, there is a recommended cut in the hours for Greenbaum Rowe's support personnel by 40%, with a 25% reduction in rate. The total amount of fees requested for Greenbaum Rowe support personnel is \$383,494.00, and the reduced formula results in a recommendation of \$140,000.00. This \$140,000 added to the lodestar for attorney time computes to a total lodestar recommendation for the Greenbaum Rowe firm of \$2,345,084.00. In sum, the Discovery Master's final recommendation for the Greenbaum Rowe component [\*18] of the lodestar totals \$2,345,084.00, before his final proposed, across-the-board 20% reduction is applied.

#### C) *The Aronsohn Weiner Component of the Calculation*

As mentioned previously, Samantha adjusted her requested fee downwards, eliminating the billing between June, 2013 and August, 2013. Thus, the months considered by the Discovery Master, for lodestar purposes, for the services of Aronsohn Weiner are September, 2013 through March, 2014. The Report also notes that the Discovery Master excluded from consideration Aronsohn Weiner's bill for April, 2014 for \$5,852.00. Samantha's fee request for Aronsohn Weiner's work totals \$448,868.75.

The Discovery Master indicates that it would be fair to view Aronsohn Weiner as working in tandem with Greenbaum Rowe, and to apply the same reductions to Samantha's request in connection with Aronsohn Weiner's fees as applied to the fees for Greenbaum Rowe. As such, for a lodestar recommended calculation only, the Discovery Master suggested a consistent reduction of 20% for the hourly rates of the Aronsohn Weiner attorneys and a 25% reduction of the hours billed by the attorneys, as well as a comparable 40% reduction in the hours claimed for the Aronsohn [\*19] Weiner support staff. In sum,

the Discovery Master's final recommendation for the Aronsohn Weiner component of the Lodestar totaled \$269,321.00, which figure includes costs associated with Aronsohn Weiner. This amount is before the final proposed across-the-board 20% reduction based on Samantha's relative success in the litigation.

#### D) *The Sills Cummis Component of the Calculation*

The Discovery Master considered legal services rendered by Sills Cummis between March, 2012 and September, 2013. Samantha's fee request for Sills Cummis' work totaled \$3,264,891.00. The Discovery Master noted that Sills Cummis, along with Friedman Kaplan, managed the entire pre-discovery and discovery phases of the litigation, and found Richard Epstein, Esq.'s work to be concise, comprehensive, and in keeping with the highest standards of the legal profession. The participation of Mr. Epstein and his firm in pre-trial discovery was essential and hard-fought, as the Discovery Master notes that he worked closely with Mr. Epstein, and to a lesser degree, with Theodora McCormick, Esq. as Samantha's principal representatives in all discovery-related matters. They both briefed the Discovery Master regularly on discovery-related [\*20] issues. This gave the Discovery Master the opportunity to have direct contact with and observe these counsels' work effort and product. Such exposure led the Discovery Master to extol high praise for the pre-trial efforts of Sills Cummis in this litigation. As such, he suggests that Samantha be granted an allowance for the cost of their participation, but with a comparable, overall reduction for lodestar calculation purposes, given the standards to be applied for such a fee award. The Report recommends an overall reduction of 41% in the amount billed by Sills Cummis in Samantha's fee request. In sum, the Discovery Master's recommendation for the Sills Cummis component of the lodestar totals \$1,926,286.00, before the final proposed across-the-board 20% reduction.

#### E) COSTS

Samantha requests an allowance award for costs incurred to present the matter to trial. Included in the fees sought is an allowance for the fees of the three experts she presented at trial: \$629,876.00 for Dr. Finkel; \$227,589.00 in expert fees for Anita Siegal, Esq.; and \$452,247.00 in expert fees for Stephen Blum. Samantha also seeks \$120,151.00 for electronic discovery costs; \$555,388.00 for trial tech operator costs; [\*21] \$230,649.00 for court reporter/videographer costs; costs for document review at \$49 per hour; \$112,700.00 for outsourced photocopying expenses; \$129,164.00 for transcript costs; and an amount in excess of \$60,000.00 for computerized research costs and a sundry of miscellaneous related expenses involving binding and labeling of documents, meals and travel, messengers, postage, filing and service fees, special secretarial assistance and the like.

Dr. Finkel's testimony concerned Robert's alleged susceptibility to James' undue influence. Dr. Finkel, who resides in Illinois, charged \$600 per hour pre-trial and a flat rate of \$6,000 per day for trial testimony. His billing indicates that he poured over this matter for almost 1,000 hours. The medical records he reviewed were lengthy and complex and spanned more than a decade. While his experience and background are notable, and his review of the written record is certain, Dr. Finkel's testimony, which was fundamental in the determination of undue influence by the Court, did not yield Samantha such a finding. The Court did not find undue influence existed, and thus rejected Dr. Finkel's opinion, which was based exclusively on paper review. [\*22] The Report recommends that Dr. Finkel's fees be reduced by more than half, to \$300,000.

Ms. Siegel was presented as an estate planning expert and she charged Samantha \$475 per hour for her services in this litigation. Her total billing for review of extensive documents, her expert report, deposition testimony and trial testimony totals \$227,589. The Discovery Master notes that she is a highly regarded estate planning attorney, and this Court had no reason to so doubt those excellent qualifications at trial. However, the Report notes that those qualifications and her testimony failed to persuade the Court to conclude favorably in Samantha's favor on the undue influence issue. As such, it is recommended that Ms. Siegel's fees be reduced by more than half as well, to \$100,000.

Samantha's financial expert, Stephen Blum, has billed her \$452,247 for his similar discovery, pre-trial preparation and trial expert testimony. The Discovery Master notes that his fee is significantly higher and his involvement also failed to persuade this Court to conclude in Samantha's favor on the issue of undue influence. The recommendation for this financial expert fee is, again, a more than half reduction, to [\*23] \$200,000.

The next favor in costs requested are the electronic discovery vendor costs, totaling \$120,151. While the Report notes that this expense was necessary and essential for the preparation of the litigation for trial, a recommendation of only 25% is made to ensure that Samantha carries the greater weight of that expense as an unsuccessful litigant. For the electronic discovery vendor costs the Discovery Master recommends an award of \$30,000.

The next component requested for costs incurred are the expenses for Samantha's trial tech operator. The Discovery Master observed that the trial technicians were competent, helpful to the Court in trying the case more efficiently, and were capable in their function. Given the Court's conclusion on the ultimate issue, the Report recommends an award of 25% of the trial tech operator fees, or \$138,847.

Outsourcing the photocopying expenses is another costs award component sought by Samantha in the amount of \$112,700. Some of these fees were advanced by Friedman Kaplan and Greenbaum Rowe and also were incurred in-house for copying by Sills Cummis and by Greenbaum Rowe. The excessive volume of documents involved in this litigation is obvious and [\*24] was necessary. As such, the Discovery Master recommends a reduction of more than half the amount sought, or \$50,000.

Samantha also seeks reimbursement for transcript costs, in the amount of \$129,164. This included the daily transcripts that were provided to the Court and that were also available electronically to the Court and all parties. The parties agreed that this transcription would serve as the "official record," and all parties had daily access to the transcripts for review. The Discovery Master recommends that this cost be reduced only by half, to \$64,582.

Samantha further seeks reimbursement for costs incurred for computerized research conducted by Friedman Kaplan, Greenbaum Rowe and Sills Cummis, totaling more than \$60,000, and also for costs involving a host of varying expenses including binding and labeling of documents, meals and travel, postage, filing and service fees, special secretarial assistance and other similar, miscellaneous expenses. The Discovery Master notes that these expenses, while seemingly necessary, can also be considered to be day-to-day office charges that may be separately billed by contract to a client, but do not "cry out for inclusion in a fee-shift," [\*25] and thus should be reduced by more than half, to a maximum cap of \$30,000 for all.

A final element of costs requested is Samantha's requested reimbursement for her actual share of the Discovery Master's fees. The Discovery Master rejects this request as an inappropriate element to shift onto the opponent for reimbursement, and thus does not include it at all in his recommendations for the award of costs.

In sum, the Discovery Master's recommendation for costs totals \$1,038,475.00, broken down as follows:

Dr. Finkel	\$300,000
Anita Siegel	\$100,000
Stephen Blum	\$200,000
ESI charges	\$30,000
Trial tech operator	\$138,847
Court reporters and videographers	\$115,000
Contract attorneys	\$10,046
Photocopying/duplication	\$50,000
Transcripts	\$64,582
Computerized research and miscellanies	\$30,000
TOTAL	\$1,038,475

In conclusion, the Discovery Master recommends that the total resulting lodestar fee award of \$11,924,533 be again adjusted downward by 20% due to the overall result of the trial, to \$9,539,626. When added to the total recommendation for costs of \$1,038,475, the final recommended lodestar amount is \$10,578,101.

#### *PARTIES' LEGAL ARGUMENTS*

##### *A) Samantha's Reply to the Discovery Master's Recommendations*

Samantha argues the [\*26] total lodestar for fees, for the entire case, should be \$13,414,084, an increase of \$1,489,551.00 above the Discovery Master's figure, and that costs for the entire case should be awarded in the amount recommended by the Discovery Master, \$1,038,475.00. Based on the change



in Samantha's proposed total lodestar, the fee award after the Discovery Master's recommended downward 20% adjustment for the result in the case should total \$10,731,267.00, an increase of \$1,191,641.00 over the Discovery Master's figure. Thus, based on the change in Samantha's proposed total lodestar and corresponding downward 20% adjustment, the combined fee and cost award for the entire case should be \$11,769,742.00, which is \$1,191,641.00 more than the Discovery Master's figure.

As to the Friedman Kaplan component of the lodestar, Samantha argues that the Discovery Master's hourly rates are inappropriately at the low end of the range of what may be deemed reasonable for such competent legal representation, and she challenges them in two instances. First, with regard to the hourly rates recommended, Samantha argues that Mr. Friedman's rate should be higher than \$580 per hour and his lodestar rate should be set [\*27] at the \$725 per hour contract rate requested. In any event, his fee should be no less than \$675 per hour. Samantha cites, *inter alia*, *Rendine v. Pantzer*, 141 N.J. 292, 337, 661 A.2d 1202 (1995) for the proposition that when calculating an appropriate lodestar amount, trial courts should look to rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. She also notes that the Court and Discovery Master assigned a lodestar rate of \$675 per hour to New York lawyer Robert Gold in 2010, and claims that Mr. Friedman's lodestar rate should now, years later, be no lower. Second, Samantha argues that by reducing the rates for Friedman Kaplan paraprofessionals by approximately 25%, the Discovery Master reduced the rates to, in some instances, below \$150 per hour, which was the minimum allowed rate pursuant to the Discovery Master's prior suggestion in prior litigation related to this case for the New York firm Wilson Sonsini Goodrich & Rosati, P.C.'s paralegals.

As to the Greenbaum Rowe component of the lodestar, Samantha argues that the 20% hourly rate reductions for Greenbaum Rowe attorneys and the hourly rate reduction of its paraprofessionals of 25% are not warranted, particularly [\*28] given that James did not object in prior submissions to the Discovery Master that Greenbaum Rowe's rates were too high. The exception to this is acknowledgement of prior objection to Mr. Rowe's rates. Samantha argues that none of the rates, other than Mr. Rowe's rates, are above the mid-range of prevailing New Jersey rates. Samantha cites *Rendine* for the proposition that Mr. Rowe's actual billing rates should be used for purposes of the fee allowance, since rates for lodestar purposes should be set based on lawyers "of reasonably comparable skill, experience, and reputation." *Id.* Samantha further claims that using Greenbaum Rowe's actual billing rates for both Mr. Rowe's rates and the other timekeepers' rates will not lead to complete indemnification, given the substantial recommended reductions of Greenbaum Rowe's allowable number of hours expended, which Samantha does not contest. Samantha thus argues that Greenbaum Rowe's total lodestar should be increased by \$594,179.25 for attorneys' fees, and \$18,150.10 for paraprofessional fees. Alternatively, should the Court reduce Mr. Rowe's lodestar rate to \$675 per hour, but use the other Greenbaum Rowe timekeepers' actual billing rates, [\*29] to which James did not object, then the Greenbaum Rowe Lodestar would be increased by \$556,866.75 for attorneys' fees, and by \$18,150.10 for paraprofessional fees, to a total of \$2,920,100.85.

As to the Aronsohn Weiner component of the Lodestar, Samantha does not object to the reduction of hours recommended by the Discovery Master, but does object to the reduction in Aronsohn Weiner's rates. She claims it is not warranted as James did not contend they are unreasonable, and also notes that the Discovery Master expressly found Aronsohn Weiner's contract rates to be reasonable. See Discovery Master's Report at 51, n. 31. Thus, Samantha claims the Aronsohn Weiner lodestar should be increased by \$67,330.56, to a total of \$336,651.56.

As to the Sills Cummis component of the lodestar, Samantha does not object to the approximate 25% reduction in hours implicit in the Discovery Master's calculation. However, she does object to the proposed rate as it applies to Richard Epstein, Esq., because during the majority of the months when Sills Cummis provided legal services to Samantha, Sill Cummis billed at an already discounted rate, having voluntarily taken 15% off the hourly rate. Therefore, a 20% [\*30] reduction for lodestar purposes yields a rate of \$425 per hour for Mr. Epstein, which is substantially below what would be reasonable for an attorney of comparable skill, experience, and reputation in the community. Samantha makes the same argument for other Sills Cummis lawyers who billed at a discount rate. Accordingly, Samantha claims the Court should allow the Sills Cummis attorneys rates set at 20% off their *standard*

rates, rather than 20% off their lower discounted rates actually billed in the majority of their invoices. She argues such reduction would bring Sills Cummis' rates, for fee allowance purposes, in line with the rates the Discovery Master set for comparable attorneys. In sum, Samantha seeks an increase to the Sills Cummis recommended Lodestar of \$189,446.88, to a total of \$2,115,732.88.

As to James' argument that the fee award should be limited to services rendered in connection with Samantha's efforts to set aside the series of wills and related testamentary instruments executed by Robert B. Cohen after May, 2004, and not on efforts to attack the inter vivos transactions, Samantha argues that because the work relating to the inter vivos transfers was significantly [\*31] intertwined with the issue of undue influence over the wills, there should be no reduction based on an apportionment. In essence, Samantha argues that all the work involved, and sought to be reimbursed here, is within the scope of R. 4:42-9(a)(3). She argues that all of the evidence adduced at trial was relevant to the probate claim because she charged that James' purported undue influence was pervasive of all the inter vivos transfers. Also, Samantha posits that Robert B. Cohen's wills and the actions taken during his lifetime in divesting his putative estate of various assets are inextricably connected. During the discovery phase of the case, extensive discovery was taken relating to events and transfers occurring during Robert B. Cohen's lifetime, as well as to the circumstances attending the execution of his testamentary documents, the history of his estate planning, the level of his mental acuity, and his purported increased susceptibility to undue influence.

Notably, Samantha does not object to the Discovery Master's proposed across-the-board 20% final reduction to the attorneys' fees award for the result in the case, nor to the recommendation for total allowable costs of \$1,038,475.00.

#### B) [\*32] *James' Reply to the Discovery Master's Recommendations*

James argues that the award should be zero. He argues the Court should entirely reject the Discovery Master's recommended lodestar and the "lack of success" 20% discount altogether. If the Court were to make any award at all, it should set the initial lodestar at a maximum range of \$5-6 million and then reduce that by at least 75% to account for Samantha's total lack of success and lack of benefit to the Estate of Robert B. Cohen. James argues that any award should then be further reduced by netting out any fees attributable to the *inter vivos* claims, which claims James argues are not lawfully subject to a fee-shift under R. 4:42-9(a)(3).

Furthermore, James argues that the Court should then impose a penalty of at least 50% for the gross excessiveness of Samantha's initial fee application, and for her continued demand for a gross unreasonable amount. James suggests a total award of \$250,000 or less be granted, if any award is to be granted at all, given the alleged excess, futility, and waste of Samantha's litigation, and the alleged gross excessiveness of the fee application. James argues that the Discovery Master failed to consider and impose [\*33] consequences for the alleged sheer outrageousness of Samantha's fee request. He cites *Fair Housing Council v. Landlow*, 999 F.2d 92, 98 (4th Cir. 1993) for the proposition that where a fee application is grossly excessive, the appropriate judicial response is rejection, not mere reduction. See *Brown v. Stackler*, 612 F.2d 1057 (7th Cir. 1980). He claims this Court should not set the precedent of awarding such a large sum for what he labels "utterly unsuccessful" litigation. James also contends that Samantha's attorneys failed to meet their burden of proving a reasonable fee and the Discovery Master did not hold them accountable for such failure.

Compounding the complexity of assessing fees in this instance, James alleges that Samantha's attorneys failed to follow the principle set forth in *Rendine v. Pantzer*, 141 N.J. 292, 661 A.2d 1202 (1995) that attorneys in fee shift cases are obligated to maintain billing time records in a manner that will enable a reviewing court to identify distinct claims. *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). James argues that *Hensley* also emphasized that the amount of time actually expended is not necessarily the amount of time reasonably expended, *id.* at 335; "where three attorneys are present at a hearing when one would suffice, compensation should be denied for the excess time." In contravention of *Hensley* and *Rendine*, Samantha's attorneys consistently — and James [\*34] maintains that it appears they did so intentionally — block-billed most of their time, using vague work descriptions that defy attempts to identify how much time was spent on specific tasks and claims. They then compounded that transgression by failing to make any substantial reductions for overstaffing, duplication of effort, non-productive ventures, excessive time entries, and unnecessary work. Additionally, James argues, Samantha's attorneys did not follow their clear obligation to keep their time records in a manner that identified with reasonable specificity which claims were being worked on, as regarding the will contest, the inter vivos claims or the tortious interference with insurance expectations claims. This was especially crucial, as James argues that the claims not directly involving the will contest are non-compensable under R. 4:42-9(a)(3).

James further argues that if the Court does not find the alleged deficiencies in Samantha's application to be fatal, it should nonetheless greatly reduce the Discovery Master's recommended lodestar as it

imposes millions of dollars of fees on Robert B. Cohen's Estate, which are the product of overstaffing, over-billing, duplication of effort, and [\*35] unproductive work. At oral argument, James' counsel made specific reference to various instances of alleged erroneous timekeeping, and argued that such entries were ubiquitous throughout Samantha's application. He claims that Samantha's case was grossly overstaffed, by a factor of at least 50%, and a corresponding reduction of at least that amount should be imposed for overstaffing alone. James argues that it would be grossly unfair to impose fees for unnecessary and duplicitous work. As such, the starting point for a reasonable lodestar should be approximately \$6 million, and then should be reduced downward.

Moreover, James contends that the complete lack of success and lack of benefit to Robert B. Cohen's Estate warrant a much steeper discount than the 20% recommended by the Discovery Master. As set forth in *In re Bloomer*, 37 N.J. Super. 85, 94, 117 A.2d 17 (App. Div. 1955), among the factors to consider in cases involving requests for payment of fees by an estate, particularly important are the results obtained and the benefits or advantages resulting to the estate and their importance. James argues the Discovery Master failed to address the *Bloomer* factors, of which, in total, there are eight. Even so, James argues that in similar cases, where [\*36] unsuccessful plaintiffs have sought a fee award under R. 4:42-9(a)(3), such lack of success has often resulted in a complete rejection of the fee application. And while 60-80% "lack of success" discounts are commonplace, here the Discovery Master recommended only a 20% reduction for the lack-of-success factor.

Finally, James argues that any award the Court allows pursuant to R. 4:42-9(a)(3) must be strictly limited to services rendered in connection with Samantha's will contest and her efforts to set aside the series of wills and related testamentary instruments executed by Robert B. Cohen after May, 2004. According to James, R. 4:42-9(a)(3) only allows a fee-shift for probate claims, and does not authorize a fee-shift for time spent on Samantha's unsuccessful attacks on Robert's inter vivos transactions, which are in the nature of tort claims. He argues further that the Court has already determined that between 70 and 80% of the trial was devoted to matters relating to things other than the probate of Robert's Will. James therefore seeks a reduction in the prospective fee award, suggesting between 70 and 80%, to eliminate fees for services that he believes are not within the ambit of the Rule.

#### APPLICABLE LAW ON STANDARD [\*37] FOR ALLOWANCE AWARD

The authority to allow an award of counsel fees is found exclusively in the rule so permitting in specified circumstances. *State v. Otis Elevator*, 12 N.J. 1, 95 A.2d 715 (1953) held "[f]rom the outset in New Jersey, following English precedents, the allowance of costs and counsel fees had been uniformly considered by the courts of this State to be a matter of procedure rather than of substantive law." *Ibid*, p. 5. The New Jersey Supreme Court in *In re Reisdorf*, 80 N.J. 319, 326, 403 A.2d 873 (1979) unanimously held "[e]xcept in a weak or meretricious case, courts will normally allow counsel fees to both proponent and contestant in a will dispute." Broad statutory power is lodged in the Court of Chancery to award counsel fees. *Katz v. Farber*, 4 N.J. 333, 339, 72 A.2d 862 (1950).

R. 4:42-9(a)(3) provides the authority to award fees and costs in this case type. The Rule provides in pertinent part as follows:

- (a) Actions in Which Fee Is Allowable. No fee for legal services shall be allowed in the taxed costs or otherwise, except
- (3) ...If probate is granted, and it shall appear that the contestant had reasonable cause for contesting the validity of the will or codicil, the court may make an allowance to the proponent and the contestant, to be paid out of the estate...

In the assessment of such a permissible award, several factors should be considered. [\*38] Among factors to consider in fixing the allowance for legal services rendered the estate are: 1) the amount of the estate and the amount thereof in dispute or jeopardy as to which professional services were made necessary; 2) the nature and extent of the jeopardy or risk involved or incurred; 3) the nature, extent and difficulty of the services rendered; 4) the experience and legal knowledge required, and the skill, diligence, ability and judgment shown; 5) the time necessarily spent by the attorney in the performance of his services; 6) the results obtained; 7) the benefits or advantages resulting to the estate, and their importance; 8) any special circumstances, including the standing of the attorney for integrity and skill; and 9) the overhead expense to which the attorney has been put. *See In Re Bloomer*, 37 N.J. Super. 85, 94, 117 A.2d 17 (App. Div. 1955). In any case, the counsel fee allowed should never exceed reasonable compensation for the services rendered the estate.

The standard for the calculation of a reasonable attorney's fee award payable under a fee-shifting

statute or rule has been plainly laid out in *Rendine v. Pantzer*, 141 N.J. 292, 661 A.2d 1202, (1995). The *Rendine* Court held "[u]nder the LAD and other state fee-shifting statutes, the first step in the fee-setting process is to determine [\*39] the lodestar: the number of hours reasonably expended multiplied by a reasonable hourly rate." *Id.* at 335. The Court also made clear that this assessment is the most significant element in the award of a reasonable fee because that function requires the trial court to evaluate carefully and critically the aggregate hours and specific hourly rates presented by counsel for the prevailing party to support the application. *Id.* The trial court must then determine whether the assigned hourly rates for the participating attorneys are reasonable. *Id.* at 337. The sensibility of this formula is highlighted in the Court's mention that "[t]hat determination need not be unnecessarily complex or protracted, but the trial court should satisfy itself that the assigned hourly rates are fair, realistic, and accurate, or should make appropriate adjustments." *Id.*

Further, it is well-recognized that the assessment of costs are necessarily expended in virtually every lawsuit, especially a hard-fought estate case such as this. Costs and related expenses go hand in hand with the professional time devoted by the attorneys, staff and third-party vendors who handle the case. As such, these types of costs and expenses have been submitted [\*40] by Samantha and are also to be appropriately considered for reasonableness in their inclusion in the total award.

Tempering the assessment of a reasonable award is the principle that this kind of award is not designed to achieve complete indemnification. *Westinghouse Elec. Corp v. Local No. 449 of Int'l Union of Elec. & Radio Mach. Workers*, 23 N.J. 170, 178, 128 A.2d 457 (1957) (citing *Clements v. Clements*, 129 N.J. Eq. 350, 19 A.2d 644 (E. & A. 1941)). In another helpful case, the Appellate Division has held that "[t]he aim is not to make the client whole, but to fix the amount of fees and costs at an amount which is reasonable in the circumstances. See, *City of Englewood v. Veith Realty Company*, 50 N.J. Super. 369, 142 A.2d 663 (App. Div. 1958). This Court understands that the charge is to identify a sensible, reasonable award not meant to completely indemnify. With the authority presented in R. 4:42-9(a)(3), and given the binding and sensible guidelines for this assessment, this Court makes the following findings and conclusions.

## DISCUSSION

Presiding over this bench trial was a tremendous challenge, given the enormous stakes that matched the intensive presentation. Prior to trial, the discovery phase appears to be consistent with the aggressive lawyering that I observed during trial. Absolutely no expense was spared in preparation and it appears that no stone was turned before or during trial. At page 13 of his Report, the Discovery Master observed that "[t]he discovery efforts undertaken [\*41] have few parallels in probate litigation." I cannot disagree.

The issues and difficulties confronting this Court in assessing the full and complete evaluation of legal services rendered on this sizable estate matter have long been recognized. This Court conducted the bench trial, which spanned six months, commencing on September 18, 2013 and finalizing on March 20, 2014. On June 24, 2014, I issued an Opinion which lays out a very complicated set of facts and my findings and conclusions. In that Opinion, I dismissed Samantha's Amended Verified Complaint filed on June 6, 2013 with prejudice and all of the related counts and claims made therein. This Court granted James' Complaint seeking Declaratory Judgment. Additionally, I found that Samantha had reasonable cause to contest the validity of her grandfather's testamentary instruments, and as a consequence, this Court denied James frivolous litigation related claims. Furthermore, this Court awarded Samantha an allowance, which includes reasonable attorneys' fees and costs limited to this New Jersey litigation of the consolidated matters filed herein only, at the prevailing New Jersey rates, to be paid out of the Estate as permitted by [\*42] R. 4:42-9(a)(3). This is the Decision on that allowance award afforded to Samantha in this litigation.

It has long been recognized that an award of counsel fees is essentially a matter resting in the exercise of the sound discretion of the trial court. Moreover, and understandably so, it is a matter of great

delicacy and difficulty. *Westinghouse Elec. Corp v. Local No. 449 of Int'l Union of Elec. & Radio Mach. Workers*, 23 N.J. 170, 177, 128 A.2d 457 (1957). The element of delicacy, however, is one that was never contemplated by either side in this litigation in their unusually vigorous promotion of their claims. The matter presented at trial was seemingly an all-out war with virtually no concession or stipulation. The parties knew no bounds in sparing any expense in the prosecution and defense of the claims. There was virtually not one single day of trial where each side had less than four attorneys in attendance, assisted by computer technicians, as well as a myriad of support staff.

It is therefore no surprise that Samantha's initial requested fee allowance exceeded \$22,000,000. After self-reflection on the enormity of the request, in this context — replying to James' opposition to the request — as well as temperance due to the Discovery Master's recommendations, Samantha's request whittled down to a total of \$11.8 million. [\*43] Oral argument on the allowance issue confirmed this reduction. James, on the other hand, after all was said and done regarding the Discovery Master's Report, insisted at oral argument that Samantha should be awarded nothing.

James points to overbilling, overstaffing, inaccuracies, and an absence of benefit to Robert's Estate, for the proposition that Samantha's award should be zero. James further opposes any award to Samantha based on the argument that it is not Samantha who incurred fees for litigation, but instead her very wealthy father, Ronald Perelman.

Taking this last point of objection first, this Court rules that Samantha can recover attorneys' fees pursuant to rule, as it is not unusual to have litigation funded by a relative or other close personal friend. I recognize Samantha's initial tender age when the string of suspicion began with the triggering event: the unfortunate loss of her mother, Claudia **Cohen**, in 2007. This occurred while Samantha was still a teenager and the emotional and financial assistance exclusively fell on her father, Ronald **Perelman**, to give. Further, while Samantha admitted in her live testimony to this Court that it was not she who paid for this litigation, [\*44] but rather her father, Ronald Perelman, he has maintained that this funding was not a gift to Samantha, notwithstanding the fact that there is no documentation of a loan, debt or otherwise. Under the circumstances, it is understandable that given Samantha's stage in life and her tender age when the apparent triggering event occurred — her mother's death — that she would have the support of her other parent in pursuing the claims that she rightfully perceived to have. Where a prevailing party is entitled to counsel fees by rule, courts have awarded fees against the losing side regardless of the manner in which the litigation was financed. See *Specialized Medical Sys., Inc. v. Lemmerling* 252 N.J. Super. 180, 599 A.2d 578 (App. Div. 1991). As a threshold issue, this Court rejects James' argument that Samantha should not be granted any allowance at all because her father funded this litigation.

Given the authority of the applicable rule, the Court moves to assess such permissible award payable under the fee-shifting rule as required by *Rendine v. Pantzer*, 141 N.J. 292, 335, 661 A.2d 1202 (1995). The first step is to determine the lodestar amount for the fee award. This is done by multiplying the number of hours reasonably expended by the reasonable hourly rate. *Id.* With the expectation that the fee submissions would be massive, the Discovery [\*45] Master's assistance was extended through this phase of the litigation. The four Affidavits of Service tendered by Edward A. Friedman, Esq., Paul A. Rowe, Esq., Richard Epstein, Esq., and Richard H. Weiner, Esq. buttress the exhaustive exhibits attached thereto in support of the requested fees. It should be noted that more than 50% of the attorneys' fees are attributable to Mr. Friedman's New York law firm.

The parties have had full opportunity to consider and comment on the Discovery Master's September 22, 2014 Report, both in writing and at oral argument. This Court has reviewed the parties' submissions — both before and after the issuance of the Report — and finds the Report to be comprehensive and thorough. It evinces a comprehensive and engaged familiarity both with counsel and with the numerous protracted issues involved. The Discovery Master had the opportunity to be fully engaged with the parties throughout the course of discovery, over the course of several years, and to be involved with at least three prior judges who previously handled this litigation. I have no doubt that the Discovery Master is conversant, as he declared, with the prior discovery proceedings that form the [\*46] basis for some of the requested fees. As he described in his Report, he presided over a vast sea of discovery disputes — some relatively simple, others more complex — all colored by the parties' intense and constant discord. Prior discovery events included disputes relating to "confidential" documents that were discovered pursuant to the terms of a Protective Order entered by the Honorable Harry Carroll (now J.A.D.); presiding over lengthy depositions and rulings subsequent to those depositions; issues involving discovery production and both the assertion and waiver of the attorney/client privilege; fees involved

with prior litigation; sensitive issues involving production of Claudia Cohen's medical records and Robert and Harriet Cohen's tax returns; sensitive issues relating to the production of information relating to business transactions of several entities owned by Robert and/or James prior to Robert's death; disputes over divorce documents between Claudia **Cohen** and Ronald **Perelman**; and "a raft of issues relating to experts' reports and depositions." This is just a synopsis of the disputes cited by the Discovery Master, but it is exhaustive enough to illustrate his familiarity [\*47] and involvement with the discovery that preceded this trial. As noted by the Discovery Master, almost every discovery issue that he confronted was extensively briefed and addressed by counsel, and in many instances included multiple submissions.

The Discovery Master also reviewed in camera sensitive documents regarding Claudia **Cohen** and Ronald **Perelman's** divorce in their matrimonial action, for the purpose of determining whether they contained any discoverable information pertaining to undue influence claims in this case.

Moreover, the Discovery Master took the productive step to collect empirical data on prevailing hourly rates in New Jersey for use in his lodestar computation and recommendation. He conducted informal consultations with several leading New Jersey law firms to obtain an idea of hourly rates charged in probate litigation matters. The Report specifies consultations with the law firms of McCarter & English, LLP Archer & Greiner, P.C., Cole, Schotz, Meisel, Forman & Leonard, P.A., Orloff, Lowenbach, Stifelman & Siegel, P.A., Cohn, Lifland, Pearlman, Herrmann & Knopf, LLP, Franzblau Dratch, P.C., and Graham Curtin, P.A.

Understanding this litigation thoroughly and having **[\*48]** issued the June 24, 2014 Decision, I am satisfied that the Discovery Master has a meticulous and comprehensive understanding of the billing involved, both before and during trial and, as such, I accept his Report and his recommendations. This Court sat through the entire bench trial, absorbing the evidence on a daily basis, and I am thoroughly acquainted with the subject discovery that preceded the trial. Acceptance of the Discovery Master's thorough, organized and thoughtful recommendations is reached after my own review of the parties' submissions, including their replies to the Discovery Master's Report, as well as my personal day-to-day six-month involvement with the case.

"No yardstick is available for the purpose, no standard percentages or per diem rates can be recognized which would be fair to both parties in all cases, precedents indicate that each case must be judged by its own overall circumstances. The best that can be said in the way of a general standard is that reasonable compensation should be allowed." See *City of Englewood v. Veith Realty Co., Inc.*, 50 N.J. Super. 369, 376, 142 A.2d 663 (App. Div. 1958).

While it is true perhaps that this six-month trial could have been presented in less time, the continuous contentious nature of the parties' arguments, coupled with **[\*49]** the immensity of presentation regarding the issue of undue influence both on a medical level as well as a financial level, caused the matter to be so protracted. The exhaustiveness of the trial mirrored the exhaustiveness of its preceding discovery. It is virtually impossible to reconcile every entry made by Samantha's legal team with reality. Given questions raised on Samantha's requested allowance and her related submissions, the option to reopen discovery to provide the Court with additional information in order to assess the amount of hours actually expended, does exist. This is because the task of ferreting Samantha's entire submission of hours expended over 40 timekeepers is daunting. I conclude that it would be of no service to the parties, nor would it serve judicial economy (a concept foreign to the parties in this litigation) to direct discovery regarding the hours actually expended by Samantha's counsel. This Court perceives that such an additional discovery opportunity on this fee application will only complicate the matter instead of elucidating the issues. Given the expansive and voluminous pre-trial discovery, coupled with the near historic range of trial time expended **[\*50]** on this matter to ensure fairness of presentation to both sides, this Court concludes that any additional discovery to explore the actual number of hours expended would be completely counterproductive. The thousands and thousands of hours already expended would probably beget thousands of additional hours in billing by all sorts of trial team participants. Enough is enough. Again, the goal is not exactitude, and the determination need not be unnecessarily complex or protracted, but I should satisfy myself that the assigned hourly rates and assessment is fair and realistic, after the appropriate adjustments. The record before the Court is well-developed for this assessment, without the need for additional submissions. Given my understanding of the case as the trial judge, and considering the Discovery Master's recommendations, I believe that a fair and compromised allowance can be reached on this record without any additional exploration or argument.

Counsel in New Jersey, with the experience, credentials and skills comparable to Mr. Friedman's, would range in hourly rates from \$400 to \$725. Based on the data obtained from consultation with the

numerous New Jersey law firms and the hourly **[\*51]** fee range identified, the Report recommends that a reasonable rate for Mr. Friedman's services be set at \$580 per hour. This is not unreasonable. This is a 20% reduction from the proposed rate for lodestar purposes of \$725. Mr. Friedman had wisely and voluntarily adjusted his hourly rate in this New Jersey courtroom to match his New Jersey co-lead counsel, Mr. Rowe, to the hourly rate of \$725. The "worth" of the contract rates and the quality of the work actually provided, both in and outside the courtroom, I acknowledge. By all accounts, the services provided by Mr. Friedman and his firm were exemplary, devoted, and thorough. The reduced hourly rate I assess is based on factors that include the lack of success on the ultimate issue of undue influence, the understanding that total indemnification is not the goal, and the fact that other highly competent counsel

...determining that total indemnification is not the goal, and the fact that other highly competent counsel could have been retained who would have billed at the lower end of the hourly rate range. An hourly rate of \$580 for lead counsel, under these circumstances, is a fair number to defray onto the estate, given both the worth of the services provided and the other factors enumerated.

I note that Mr. Rowe's prominent involvement [\*52] exhibited his preparation and professionalism, and his consistent simplicity and clarity in argument greatly complimented Mr. Friedman's focused lawyering approach. Mr. Naar's participation was also quite active; he engaged in several arguments, including those regarding video testimony presentation and disputes concerning permission of prior sworn testimony. Notably, Mr. Rowe presented opening statements at trial and also conducted a large part of Samantha's case, which won Samantha the burden shifting motion in December 2014. Mr. Rowe's hourly rate will thus be set at \$580, the same as Mr. Friedman.

Moreover, this Court is satisfied that Mr. Epstein, Mr. Naar and Mr. Weiner — as counsel for Samantha — performed the services for which they billed. Mr. Epstein was involved during pre-trial discovery, and I am satisfied that his billing illustrates the long and protracted pre-trial period documented by the Discovery Master. Mr. Naar and Mr. Weiner's involvement concerned the actual trial. The allowance award necessarily should include the trial support that Mr. Naar and Mr. Weiner were engaged in handling. While Mr. Weiner was not on his feet before this Court handling argument or the [\*53] examination of witnesses during the six months of trial — as were Mr. Friedman, Mr. Naar, Mr. Rowe, and others — the Court did observe Mr. Weiner, first hand, being present virtually almost every single trial day, actively engaging and conferring with Samantha's other counsel and with Samantha herself, taking notes, and conferring with opposing counsel. I am satisfied that the hourly rates for legal counsel, as recommended, are fair and reasonable, given all the previously noted circumstances that warrant a discount.

I also find that a similar approach for reduction should apply, as recommended, to the other attorneys' billings, partners and non-partners, from all the law firms handling Samantha's litigation. An evenhanded discount, differentiating only in lead counsel, partner and non-partner categories, I find to be the most appropriate, fair and sensible approach. This Court also notes that the Discovery Master recommended similar reductions of other partners at a 20% reduction and a 25% reduction for the other non-partnered attorneys.

However, as Samantha's failed to persuade this Court of any undue influence attributable to James, the award must reflect that result. Moreover, the [\*54] downward percentage adjustment, both in the hourly rates and the amount of hours billed, fairly reflect the recognition of failure to succeed on the ultimate issue in this case. However, as permitted under R. 4:42-9(a)(3), this Court has the authority to award Samantha an allowance, in some amount, for having reasonable cause to contest the validity of her grandfather's will. Given the complexity of the issues throughout the litigation, including the long-term allegations of undue influence as her grandfather's health unfortunately deteriorated, this Court finds that the final tally of the lodestar plus the costs and expenses, as recommended by the Discovery Master, are reasonable.

The Court will not excise the billing that James claims is related to the non-testamentary challenges Samantha presented regarding the *inter vivos* transactions that preceded Robert's death. I discern that the claims for undue influence would not have existed in substantial form but for the inclusion in this litigation of these *inter vivos* transactions that occurred before Robert's death. Moreover, the fundamental basis supporting Samantha's undue influence claim, to a large extent, were these non-testamentary transactions. [\*55] The movement of millions of dollars during the last years of Robert's life, that arguably — had the transactions not occurred — would have ended up in Robert's estate, was the bedrock of Samantha's charges for undue influence. These are fees and costs that were related to the ultimate question of undue influence. Finally, trying to peel off the welded layers of legal billing that specifically concern discovery and trial on the *inter vivos* transactions from the billing concerning the

testamentary-related events would be both virtually impossible and unnecessary. The fees and costs I award shall thus include litigation expenses and costs involving those non-testamentary instruments and issues that were presented in support of the undue influence claims, which were intricately intertwined throughout this bench trial.

As such, the total lodestar fee assessed is as follows:

Friedman	
Kaplan	\$7,383,842
component	

Greenbaum Rowe component	\$2,345,084
Aronsohn Weiner component	\$269,321
Sills Cummis component	\$1,926,286
Total Lodestar	\$11,924,533

But a downward adjustment to this total lodestar must be considered. Given all of the previously mentioned circumstances, and the fact that an allowance is not meant [\*56] to provide complete indemnification, I find that this lodestar amount of \$11,924,533 should be reduced by at least an additional 20% uniformly. This recognizes the points raised in opposition, including the ultimate outcome on the issue of undue influence, as well as calibrates the claim of ambiguity, error, duplication and/or overbilling in Samantha's presentation. A 20% uniform, additional reduction in the lodestar is fair and appropriate given the standard of review required. This results in a fee award of \$9,539,626.

A reasonable allowance should necessarily include an award for reasonable costs and expenses. These are costs and expenses that would routinely and ordinarily be relied upon in the preparation and progress of litigation; even more so in litigation of this magnitude. The uniform recommendation presented in the Report for reduction of the rates and hours billed by non-attorney time keepers is reasonable. The following are findings that I reach after reviewing the parties' submissions and the Report's recommendations regarding costs and expenses.

The expert fees, as well as the other non-expert and non-attorney staff assistance were essential for a proper and professional [\*57] presentation of this massive litigation. The expert fees sought for the three professionals that appeared on behalf of Samantha are essential expenses to her cause that rightly should be included in the allowance. In satisfaction of *N.J.R.E. 702*, Samantha presented her three experts in the areas of medical testimony, estate planning and financial planning. Without these experts, her case may have been deemed unsupported by competent evidence as the issues involved complicated presentations on all three subjects. The Report suggests that each of the expert fees be reduced by more than half. Given the outcome of the matter, this is not unreasonable.

The trial technician operator has billed in excess of half of a million dollars. The Report recommends that 25% of these charges be awarded, or approximately 75% be shaved off, netting an award of \$138,847. With respect to the Court reporting and videographer fees for discovery and trial, the recommendation of a 50% reduction to \$115,000 is also reasonable.

In distinction to the reductions that approximate or exceed half of the amounts requested, the Report recommends 100% of the billed amount for outside document review. This recommendation, in [\*58] this Court's view, is immensely reasonable, as this submission to an outside vendor for document review was billed at a lower rate of \$49.00 per hour, undoubtedly saving a tremendous amount of expense for the law firm, instead of having had those tasks done in-house at higher hourly billing rates. Therefore, this Court will allow the requested \$10,046 for outside document review. The outsourced photocopying and duplication vendors billed at \$112,700. These fees have been recommended to be reduced by more than half and to be set at \$50,000. Again, a reduction of more than 50% satisfies the import of the rule to compensate Samantha to some extent, but not wholly. The expense for daily

transcript costs was billed at \$129,164. These transcript productions assisted the Court tremendously and provided immediate reference and review of recent or not so recent testimony and trial presentation. I was immensely assisted by this and appreciative of its availability, and for this reason, this Court shall award a 50/50 split for these daily transcript costs. Therefore, Samantha will be awarded \$64,582 for transcript costs. Samantha further seeks reimbursement for charges incurred regarding computerized [\*59] research conducted by the firms of Friedman Kaplan, Greenbaum Rowe, and Sills Cummis. The amount billed exceeds \$60,000 and includes miscellaneous expenses as well, which include binding, document labeling, messengering, postage, filing and service fees, additional or special secretary assistance, meals and travel, and other similar expenses, presumably due to the long hours that the preparation required. I find that a flat 50% reduction is the reasonable assessment.



\$30,000 will be imposed to be paid out of the Estate for these miscellaneous expenses. The total amount of the award for costs and related miscellaneous expenses for the entire case is therefore \$1,038,475.

This Court will not shift any portion of Samantha's fees due the Discovery Master. Like their agreement to split the Discovery Master's fees in half during discovery, the parties agreed to continue to split the costs of the Discovery Masters' services evenly. His services, as his Report demonstrates, were immensely helpful both to them as litigants and to this Court. His availability provided all parties with a direct line to this Court and probably, if it can be believed, saved the parties on expenses by truncating [\*60] and quickly resolving issues without unnecessarily occupying the Court's time. The Discovery Master's fees shall continue to be borne by each side evenly, as each side had agreed.

### CONCLUSION

In conclusion, this Court finds a fair and reasonable award for attorneys' fees for this entire litigation at the New Jersey prevailing rates to be a net of \$9,539,626. The total amount for costs and expenses that this Court finds fair and reasonable, under all of the circumstances, is \$1,038,475. Therefore, the total amount of combined fees and costs is \$10,578,101.

After all has been said and done in this trial, the Court closes a most unfortunate chapter in this family's history. This award is not intended to fully indemnify Samantha, nor make her whole for the fees and expenses she incurred in contesting the validity of her grandfather's will. Instead, the award aims to provide a reasonable allowance for her efforts based on her reasonable cause for suspicion of undue influence. This Court's award recognizes only partial success in Samantha's efforts to prosecute her undue influence claims, including her successful defeat of James' two previous summary judgment applications presented to two different [\*61] judges, and her success in presenting her motion to shift the burden of persuasion to James regarding undue influence.

For the reasons stated herein, this Court awards a final total sum as an allowance to Samantha pursuant to R. 4:42-9(a)(3) in the amount of \$10,578,101. An Order entering Judgment on this entire litigation has been entered on even date by this Court without requiring any additional submission from counsel. The parties are guided accordingly.

HON. ESTELA M. DE LA CRUZ, J.S.C.







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