

Business & Law

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New Jersey Mergers & Acquisitions

NRG Buys GenOn for \$1.7B

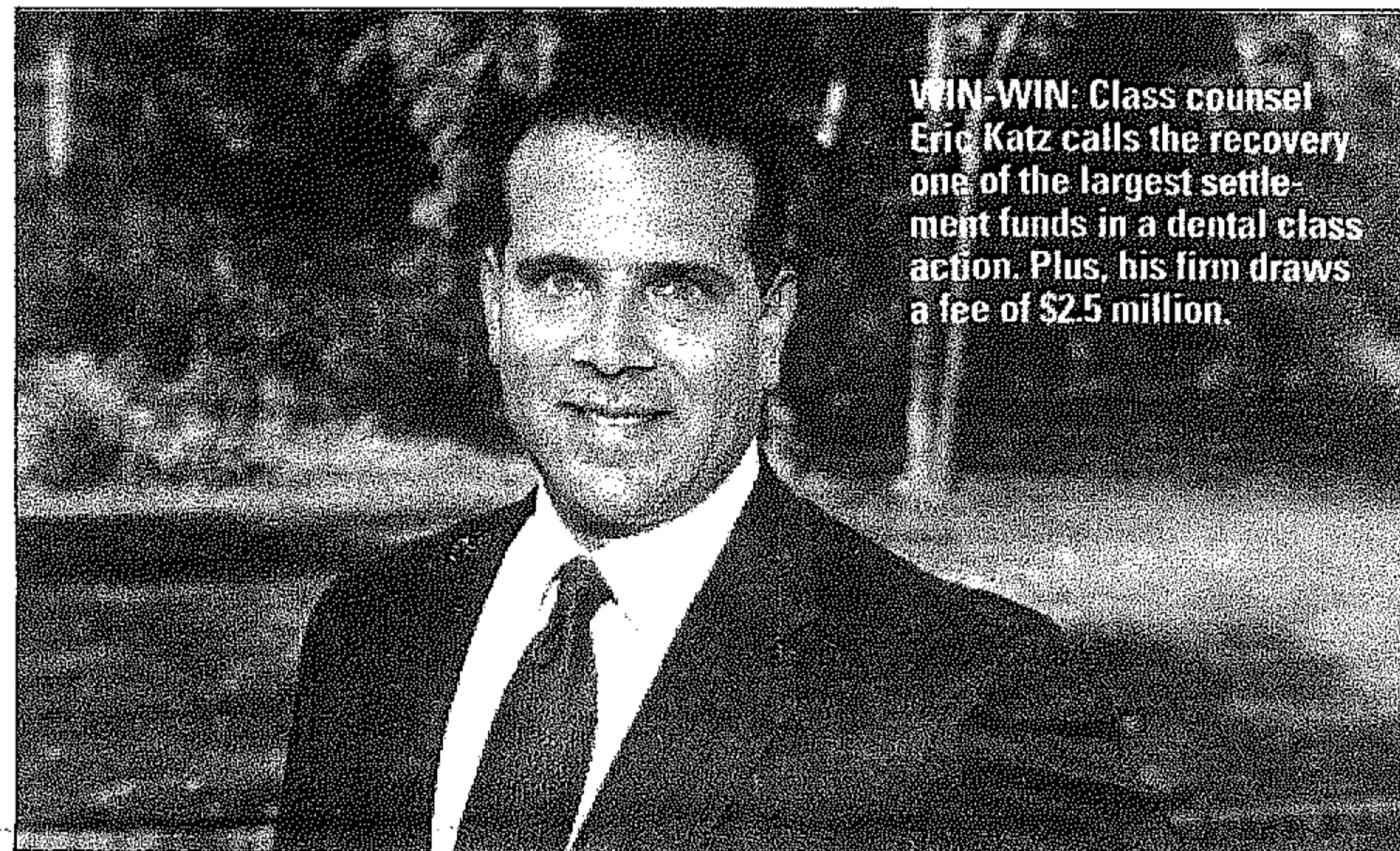
NRG Energy in Princeton announced on July 23 it paid about \$1.7 billion for GenOn Energy in Houston, Texas. Both provide power-generation services. NRG was advised by a team from Kirkland & Ellis in New York City, led by Thomas Christopher. GenOn was advised by a team in Washington, D.C., at Skadden, Arps, Slate, Meagher & Flom, including Michael Rogan, Frank Bayouth, Clifford "Mike" Naeve and John H. Lyons.

Cytec Makes \$439M Acquisition

Cytec Industries, a specialty chemical wholesaler in Woodland Park, on July 20 announced its \$439 million acquisition of Umeco Plc., a provider of advanced composite materials in Warwickshire, U.K.

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Suits Over Horizon's Handling of Dental Claims Settle for \$2.85M



WIN-WIN: Class counsel Eric Katz calls the recovery one of the largest settlement funds in a dental class action. Plus, his firm draws a fee of \$2.5 million.

By David Gialanella

A state court judge has approved a \$2.85 million settlement of class actions by dentists claiming that Horizon Blue Cross Blue Shield of New Jersey unduly delayed or skimmed on insurance reimbursements.

The recovery for the estimated 17,000 class members will be \$167.70 per person, which class counsel Eric Katz calls good money for a class action involving managed

Lawyers Disciplined for Failure To Fix Faulty Solicitation Letters

By David Gialanella

New Jersey attorney ethics officials issued a harsh message to two lawyers who sent improper solicitation letters and did not get the documents up to snuff after receiving repeated warnings.

The Disciplinary Review Board found on July 18 that William DiCiurcio II and John DiCiurcio deserved reprimands because "there are aggravating factors that call for the imposition of greater discipline, namely, respondents' repeated failure to correct the violations in the letters."

The lawyers, of DiCiurcio, DiCiurcio & DiCiurcio in Cherry Hill, sent out a letter on Nov. 5, 2007, to a motorist who got a summons for making an illegal U-turn in East Greenwich Township.

It offered to "help you Save Points and costly surcharges, avoid possible jail, and Save your drivers

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Suits Over Horizon's Handling of Dental Claims Settle for \$2.85M

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care.

His firm, Mazie Slater Katz & Freeman of Roseland, will draw a fee of \$2.5 million.

The litigation, *Kirsch v. Horizon Blue Cross Blue Shield of New Jersey*, ESX-L-4216-05/ESX-L-109-08, includes two suits filed by the same plaintiff, Caldwell oral surgeon Michael Kirsch.

A 2005 suit alleged "repeated improper, unfair and deceptive acts and

practices ... designed to delay, deny, impede and reduce compensation to the plaintiffs for the dental/medical services they provide to the defendant's plan members." A 2008 suit claimed Horizon engaged in "bundling" and "downcoding" — processing practices by which the insurer allegedly withheld or slashed payments for complex patient procedures that required multiple office visits.

Classes were certified in each case and the parties reached a preliminary agreement last November.

The final version, approved by Essex County Superior Court Judge Paul Vichness on Monday, requires Horizon to improve its business procedures.

The company must give dentists standard fee schedules in a format they request, improve the efficiency of its electronic claims-processing system, ensure that multiple Horizon representatives review certain claims for accuracy, and establish, with the New Jersey Dental Association's help, an advisory group of providers to make recommendations on Horizon policies and practices. The changes must remain in effect for at least four years.

Katz says the kind of advisory committee included in the settlement "has been very successful" in other cases. "I think it's very important that the

Dental Association is directly involved — they're not going to get involved if they didn't think it was worthwhile."

As for the compensatory relief, he says, "Based on our research, it's one of the largest settlement funds in a dental class action." He adds that the per-provider payment, too, "really trumps what we've seen in the managed-care arena."

The \$2.85 million settlement will be allotted to a common fund payable to class members, who include individual dentists and dental groups that submitted at least one claim for services provided from May 26, 1999, through April 13, 2012, to a Horizon plan participant. Claim forms must be filed by Aug. 13. Unclaimed funds will revert to Horizon.

As of Wednesday, about 4,000 forms had been filed, according to Katz.

Vichness awarded Mazie Slater \$2.01 million in fees, representing 3,035 billable hours at a blended rate of \$600 per hour, plus a 25 percent enhancement and \$488,713 in costs.

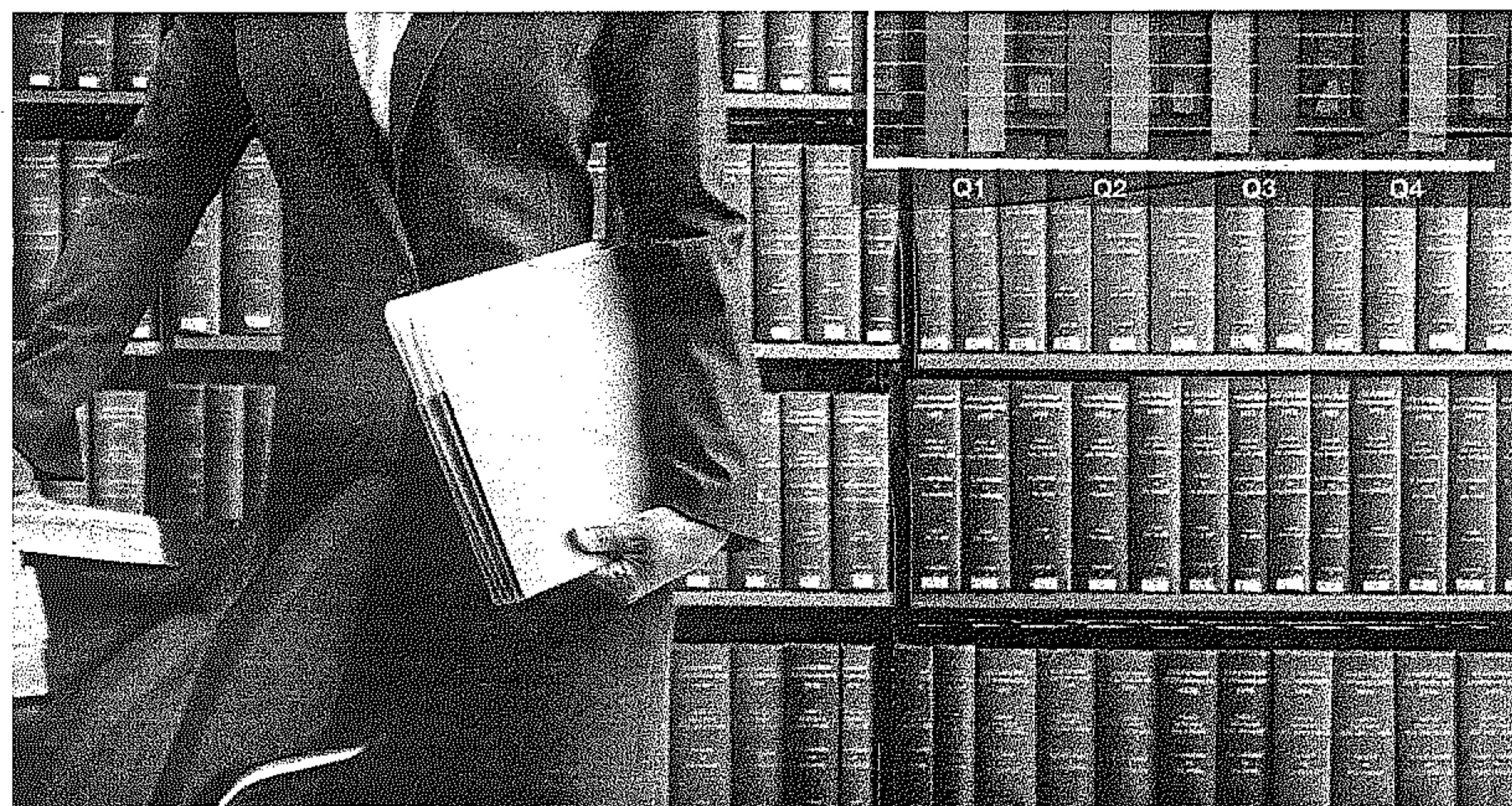
The settlement also included a \$17,500 incentive award for Kirsch.

Fourteen class members opted out. Two others objected, taking issue with the relief provided and the fee award. One of them, Newark dentist Gary Krugman, also is challenging the settlement in another suit by Kirsch and Katz, against Delta Dental.

Maxine Neuhauser of Epstein Becker Green in Newark, one of Horizon's lawyers, declines comment. Thomas Gentile of Lampf, Lipkind, Prupis & Petigrow in West Orange, who represents the objectors, did not return a call.

Vichness' ruling came less than two weeks after the Appellate Division upheld the settlement in *Sutter v. Horizon*, A-5725-09, a suit by doctors





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claiming the company denied legitimate claims or paid slowly, increasing administrative costs. That case originally settled in 2007 with Horizon agreeing to make reforms, but included no monetary element. Mazie Slater was awarded \$6.5 million in fees.

The Appellate Division remanded in 2009 after nine objecting medical groups appealed. On reconsideration, Essex County Superior Court Judge Stephen Bernstein upheld the deal but slashed the fee award to \$4.7 million, including \$600,000 in costs.

The objectors again appealed, claiming that Bernstein failed to consider a nationwide settlement in the Southern District of Florida. But the appeals panel on July 11 affirmed and upheld the \$4.7 million in fees.

In March, U.S. District Judge Stanley Chesler approved the settlement in another Kirsch suit handled by Katz, *Kirsch v. Delta Dental of New Jersey Inc.*, 07-cv-186. The settlement, like that in *Sutter v. Horizon*, included no monetary award but mandated reforms. Chesler awarded Mazie Slater \$575,000 in fees. Krugman has appealed Chesler's ruling.

Another suit, *Sutter v. Oxford Health Plans*, 11-1773, was the subject of a precedential ruling by the U.S. Court of Appeals for the Third Circuit in April, after the company appealed an arbitrator's decision to handle the matters on a class basis.

The Third Circuit said an arbitration agreement, like the one between Oxford and the providers, need not contain the exact phrase "class arbitration" for the matters to be handled aggregately.

The matter returned to class arbitration after the ruling and is in expert discovery, Katz says. ■