OFFICE OF SPECIAL MASTERS

No. 97-125V

Filed: December 22, 1999

(Reissued for Publication January 18, 2000)*

* *		
ELIZABETH CORDER, as Legal Representative of DILLON CORDER, a minor,	*	
Petitioner,	*	**NOT TO BE PUBLISHED**
v.	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	
* *		

Andrew W. Dodd, Torrance, California, for petitioner.

Glenn A. MacLeod, Department of Justice, Washington, D.C., for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS

GOLKIEWICZ, *Special Master*.

On February 27, 1997, petitioner filed a claim on behalf of her son, Dillon N. Corder, under the National Vaccine Injury Compensation Program. Petitioner alleged that Dillon suffered an encephalopathy, a residual seizure disorder, a shock collapse, a hyporesponsive/hypotensive event, and Acute Disseminated Encephalomyelitis (hereinafter "ADEM") as a result of DTP and OPV vaccinations he received on December 15, 1994. Petition at 2-3. On May 28, 1997, respondent filed her response, recommending that compensation be denied. On August 11, 1997, February 27, 1998, and June 17, 1998, petitioner filed expert reports. Respondent filed expert reports on August 21, 1997 and March 18, 1998. An evidentiary hearing was held on September 30, 1998. On May 28,

*This Decision was originally entered by the court on December 22, 1999, as an unpublished decision. This reissuance as a published decision follows in response to respondent's Motion to Publish, filed December 30, 1999. Respondent's motion is hereby granted.

1999, the court issued its decision and denied petitioner compensation, finding *inter alia,* that there is no definitive diagnostic test available to differentiate between vaccine-induced ADEM and ADEM caused by other factors. Thereafter, on June 17, 1999, petitioner's counsel filed a Petition for Attorney's Fees and Costs ("Fee Petition") in the amount of $49,109.34 which was amended August 9, 1999, for a final request of $51,989.59.[1] Respondent filed her objections ("Resp. Obj.") on July 30, 1999, protesting Mr. Dodd's hourly rate and hours expended, Ms. Nonisa's paralegal hourly rate and hours expended, Dr. Georgia R. Prentice's expert fees, copying costs, Mr. Dodd's use of an expedited mail service, Mr. Dodd's request to be compensated for office supplies, and petitioner's costs. In response to the objections presented by respondent's counsel, petitioner's counsel filed a reply ("Pet. Reply") on August 9, 1999, which raised several new arguments and amended petitioner's Fee Petition to include an additional $2,880.00 for attorney's fees incurred in this case since June 14, 1999. Respondent filed a response ("Resp. Response") to Petitioner's Reply on August 23, 1999. The court has reviewed the entire record and awards $35,080.34 for fees and costs for the following reasons.

I. DISCUSSION

A. Attorney Hourly Rate

Petitioner's counsel, Mr. Dodd, requests attorney's fees in the amount of $45,675. This total incudes the sum of $41,962.50 (186.5 hours billed at $225.00 per hour), $832.50 (7.4 hours of travel time billed at $112.50 per hour), and $2,880.00 (12.8 additional hours subsequent to June 14, 1999, billed at $225.00 per hour), for a total of 206.7 hours (199.3 hours billed at $225.00 and 7.4 hours billed at $112.50).

Relevant Case Law

The court uses the traditional lodestar method to determine reasonable attorneys fees and costs. See Beck v. Secretary of DHHS, 924 F.2d 1029, 1037-39 (Fed. Cir. 1991). Under this method, the lodestar is the product of the reasonable number of hours expended by counsel multiplied by the reasonable hourly rate. Blum v. Stenson, 465 U.S. 886, 888 (1984). A reasonable hourly rate is initially calculated by considering the "prevailing market rate in the relevant community" for similar services by lawyers of comparable skill, experience and reputation. Id. at 895. A reasonable number of hours may not exceed that which may have actually been documented, and hours that appear "excessive, redundant, [or] otherwise unnecessary" must be excluded. The resulting figure is an objective estimate, presumed to be a reasonable fee to which the petitioning attorney is entitled. See Hensley v. Eckerhart, 461 U.S. 424, 434 (1982); See also Zeagler v. Secretary of DHHS, 19 Cl. Ct. 151, 153 (1989) (The lodestar approach was designed to yield "a market-based value and therefore is presumed to be reasonable, it is, nevertheless, an initial estimate only--one which a court may adjust 'where the fee charged is out of line with the nature of the

[1]This figure includes $42,795.00 for attorney's fees, $1,357.75 for paralegal fees, $4,956.84 for costs incurred, and $2,880.00 for 12.8 hours Mr. Dodd expended subsequent to June 14, 1999.

services rendered'" (citing Pierce v. Underwood, 487 U.S. 552, 581 (1988) (Brennan, J., concurring)). The burden is on the fee applicant to demonstrate by competent and probative evidence all elements of the claimed fees. Monteverdi v. Secretary of DHHS, 19 Cl. Ct. 409, 418 (1990). To meet this burden, the applicant must submit evidence supporting the number of hours expended and the hourly rate claimed.

Petitioner's Position

As support for his requested hourly rate of $225.00 per hour, petitioner's counsel, Andrew Dodd, attached the Declarations of Anthony John Ward,[2] John R. Brydon,[3] and Jean A. Hobart,[4] all of whom practice law in California. Fee Petition at Exs. 5 & 7. The Declarations attest that an hourly rate of $250.00[5] is fair and reasonable considering Mr. Dodd's experience in the pharmaceutical products litigation area. Mr. Dodd also argues that certain factors used in the lodestar method to adjust an attorney's reasonable hourly rate, as set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), are particularly important in the analysis regarding his hourly rate in the present case. Specifically, Mr. Dodd argues that factors number 4 (the preclusion of other employment), number 9 (the experience, reputation, and ability of the attorney), and number 3 (the skill requisite to perform the legal service properly), are conducive to awarding Mr. Dodd $225.00 per hour. Fee Petition at 9-10. In addition, Mr. Dodd argues that although he functions as a sole practitioner, his "appropriate hourly rate should be commensurate with senior partners practicing in the Los Angeles, California greater Metropolitan area." Id. at Ex. 8. Lastly, Mr. Dodd cites a 1998 survey published in the National Law Journal as support for his contention that the average prevailing market rate for experienced partners in firms in Mr. Dodd's geographic area is $362.00 per hour.[6] Id.

---

[2]Mr. John Ward's Declaration, dated June 14, 1989, states that "an hourly rate for services rendered in the sum of $250.00 per hour is a fair, reasonable and typical charge for such services in the County of Los Angeles, State of California." Fee Petition at Ex. 5.

[3]Mr. John R. Brydon's Declaration, dated October 4, 1993, states that "[g]iven the realities of practice before the Vaccine Injury Compensation Program and the fact that such cases involve delays in payment and substantial investment in costs up front by the attorneys and firms that handle such files, I believe that the requested hourly rate for Andrew Dodd of $250.00 is a fair a [sic] reasonable rate." Fee Petition at Ex. 5.

[4]The Declaration of Jean A. Hobart, dated October 27, 1993, states "I have reviewed the declaration of John R. Brydon concerning hourly rates for Andrew W. Dodd and I concur with his opinions. My hourly rate has been $250 for the last 4 years." Fee Petition at Ex. 7.

[5]In the present case, Mr Dodd requests a reasonable hourly rate of $225.00 per hour, not $250.00 per hour. Fee Petition at 8.

[6]Mr. Dodd reaches this amount by adding the lowest billing rate ($225.00 per hour), as reported in the National Bar Journal survey, with the highest billing rate ($500.00 per hour) and

Respondent's Position

Respondent argues that Mr. Dodd's request to be compensated at a rate of $225.00 per hour is excessive in the context of the Vaccine Program and, instead, contends that an hourly rate of $165.00 per hour is fair and reasonable. Resp. Obj. at 10. Respondent argues that: (1) under the Program, $175.00 has generally been considered to be the premier hourly rate, reserved for the most experienced attorneys providing the best representation and practicing in high cost geographic areas; (2) Mr. Dodd has not proven that the claimed hourly rate is appropriate; (3) Mr. Dodd relies in part upon his own "sampling" of the National Law Journal's survey on hourly billing for attorneys and interprets "liberally in his favor the evidence that he proffers to support his claim";[7] (4) Mr. Dodd, as a sole practitioner, is not entitled to the same hourly rate as partners at large firms; (5) the affidavits from John Ward, John R. Brydon, and Jean A. Hobart deserve little weight because Mr. Ward was Mr. Dodd's former law partner, both Mr. Ward and Mr. Brydon base their opinion as to a reasonable hourly rate "in part upon their experience" working on complex pharmaceutical cases, and Ms. Hobart "simply concurs with Mr. Brydon's affidavit" and merely sates that she receives $250.00 per hour, "implying that this would be a reasonable rate for Mr. Dodd"; (6) the relevant community which should be used in determining Mr. Dodd's hourly rate is not Los Angeles, California, but rather Torrance, California (where Mr. Dodd's office is located), which respondent posits, based on Mr. Brydon's Declaration, is in the same geographical locale as Long Beach, California -- which respondent contends has a lower cost of living than Los Angeles, California; and (7) the Federal Circuit has encouraged the special masters' use of past experience in awarding attorneys' fees. Id. at 3-10.

Analysis of Attorney Hourly Rate

---

dividing the sum by 2. The court has serious doubts regarding the representativeness of this amount because of the fact that the average is based on only three (3) law firms.

[7]The court acknowledges that petitioner's counsel, in response to respondent's assertion, filed a copy of the December 21, 1998, National Law Journal survey. See Petitioner's Reply at Ex. A. Petitioner's counsel further responded by stating that "counsel did not 'pick and choose' or distort, the statistics at issue to reach a desired result. Exhibit 8 is a complete recitation of all the statistics available in the subject survey concerning the Los Angeles, California greater Metropolitan area - the undersigned counsel's office is located in the Los Angeles, California greater metropolitan area." Id. at 5-6. Respondent, quoting from some of the special masters, counters by stating that surveys like the National Law Journal survey have been routinely rejected by the Office of Special Masters because they bear no relevance whatsoever to establish reasonable attorney fees under the Program, lawyers representing clients in the Program should not expect to be compensated at the same rate as senior partners practicing in large law firms unless they fall into that category themselves, and the range of fees is so broad that the data shed little light on what is reasonable for petitioners' attorneys. Resp. Response at 6-7.

The reasonable hourly rate is "the prevailing market rate in the relevant community" for similar services by lawyers of comparable skill, experience, and reputation. Blum, 465 U.S. at 895. As the Supreme Court recognized in Blum, the determination of an appropriate market rate is "inherently difficult." Id., n. 11. In light of this difficulty, the court gave broad discretion to the lower courts to determine the prevailing market rate in the relevant community, given the individual circumstances of the case. Id. The prevailing market rate or reasonable hourly rate is a product of a number of considerations, including the quality of representation, the attorney's legal skills and experience, the novelty and difficulty of issues presented, the undesirability of the case, and the results obtained. Pierce v. Underwood, 487 U.S. 552, 573 (1988). The burden is on the fee applicant to demonstrate that the "requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Blum, 465 U.S. at 896, n. 11.

In order to determine a reasonable hourly rate, the court, in addition to examining the experience and reputation of the attorney, compares the attorney's performance and claimed hourly rates with other attorneys who practice in the Program. The court has recently addressed this issue at length in Erickson v. Secretary of HHS, No. 96-361V, slip op., 1999 WL __ (Fed. Cl. Spec. Mstr. Dec. 10, 1999)(to be published). As stated in Erickson, the lodestar analysis "should consider ... not only the prevailing market rate in the city or locale where the attorney practices, but [also] ... the market rate for attorneys practicing Program-wide." Id. at 9. "[T]he court reviews the locality rate evidence to define a range of reasonable hourly rates for the petitioner attorney and then "zeroes" in on a specific rate by comparing the attorney's abilities, efforts, and other relevant factors to other attorneys practicing before the court." Id. The court is "convinced that this dual approach ... provide[s] a more objective basis for ascertaining a reasonable hourly rate." Id.

After considering all of the evidence submitted by both petitioner's and respondent's counsel, as well as counsel's performance in the present case, the court agrees with respondent that Mr. Dodd has failed to prove he is entitled to the claimed hourly rate of $225.00. First, as stated in The Guidelines for Practice Under the National Vaccine Injury Compensation Program, the Office of Special Masters, U.S. Court of Federal Claims (September 1996)(hereinafter, Guidelines), petitioners, in order to support their claimed hourly rate, may include "[a]ffidavits of other attorneys who practice in the same community and in the same general field of practice." Id. at 32. These affidavits should state "what the affiant actually charges and receives on an hourly basis. Vague affidavits merely opining that the claimed rate is 'reasonable', without giving the factual basis for such opinion, are of no value." Id.

Neither Mr. Ward's nor Mr. Brydon's affidavits state what they actually charge and receive on an hourly basis. Only Ms. Hobart's states that her "hourly rate has been $250 for the last 4 years." Fee Petition at Ex. 7. Furthermore, in Meisner v. Secretary of HHS, No.90-1006V (Cl. Ct. Spec. Mstr. July 22, 1993), this court stated that "friendly" supporting affidavits, such as the ones submitted in the present case by Mr. Dodd, "fail to carry the burden of providing justification for counsel's hourly rate." In addition, all three affidavits submitted by Mr. Dodd are at least six (6) years old, with Mr. Brydon's and Ms. Hobart's having an execution date of 1993, while Mr. Ward's

has an execution date of 1989. It seems apparent, to the court at least, that more recent affidavits submitted on behalf of petitioner's counsel would generate a greater impact on this court, allowing it to more accurately determine Mr. Dodd's hourly rate.

Also, broad national surveys which list ranges of hourly rates of senior partners and associates at large law firms, such as the National Law Journal survey submitted in this case, are clearly not beneficial in assisting this court in determining the appropriate hourly rate of a solo practitioner, such as Mr. Dodd, who has extensive vaccine litigation experience. As this court explained in Edgar v. Secretary of HHS, No. 90-711V, 1994 WL 256609, at *2 (Fed. Cl. Spec. Mstr. May 27, 1994), aff'd 32 Fed. Cl. 506 (1994):

> No information was provided to allow the court to independently determine whether a comparison of petitioners' counsel to the surveyed firms was warranted. Petitioners' argument amounts to "they are charging these rates, therefore it is reasonable that we charge the same." However, what is missing in these broad ranges provided is specific information concerning the years of experience and types of services rendered. Thus, a corporate tax lawyer with 25 years is not a lawyer of "comparable skill, experience, and reputation" when compared to a personal injury attorney handling vaccine litigation. Different services are provided to different clients by attorneys with vastly different knowledge and skill requirements.

Id. Thus, in the instant case, the court questions the relevance of the survey submitted by Mr. Dodd because of the broad range of fees listed, as well as the fact that the law firms are substantially larger than Mr. Dodd's law firm. While the court recognizes Mr. Dodd's experience in vaccine litigation, it simply does not follow that Mr. Dodd is entitled to be compensated at an hourly rate commensurate with that of senior partners practicing in the Los Angeles, California greater Metropolitan area.

The court agrees with Mr. Dodd that an important factor to consider in determining a reasonable hourly rate is the experience, reputation, and ability of the attorney. See Fee Petition at 9. Mr. Dodd certainly has extensive experience in vaccine litigation. See id. at Ex. 6 (describing Mr. Dodd's experience in D.P.T. litigation). Experience alone, however, is not enough to substantiate an hourly rate of $225.00 per hour which Mr. Dodd agrees "may be near the high end of hourly rates requested in Vaccine Act cases." Id. at 9.

As discussed in Erickson, this court reviews the locality data under the lodestar method to determine a general range of reasonable rates for the attorney in question. With that range in mind, the court then determines a final reasonable rate by utilizing a comparative approach involving the universe of attorneys appearing before the court. As applied to the above-captioned matter, Mr. Dodd has consistently exhibited in this case and others argued before this court an above-average grasp of the subject matter. With that said, however, Mr. Dodd has not shown the same level of ability as those receiving the highest hourly rates and accordingly is not entitled to be compensated at the highest end of the hourly rate scale. Therefore, while Mr. Dodd has extensive experience in

vaccine litigation and practices in a high cost area, the court finds he does not deserve to be compensated at $225.00 per hour, after comparing his performance in the present case to other attorneys in the Program.

While the court agrees with respondent that Mr. Dodd has not proved that his appropriate hourly rate is $225.00, it also disagrees with respondent's contention that $165.00 per hour is a fair and reasonable rate of compensation for Mr. Dodd. See Resp. Obj. at 10. Respondent's position is premised upon a no longer valid assumption. In past years under the Program, as respondent correctly points out, $175.00 has generally been considered to be the premier attorney hourly rate, reserved for those attorneys who have provided top quality representation. See Belatch v. Secretary of HHS, No. 95-0003V, 1996 WL 749707, at *2 (Fed. Cl. Spec. Mstr. Dec. 17, 1996); Maloney v. Secretary of HHS, No. 90-1034V, 1992 WL 167257, at *6 (Cl. Ct. Spec. Mstr. June 30, 1992); Scheuer v. Secretary of HHS, No. 90-1639V, 1992 WL 13577, at *3 (Cl. Ct. Spec. Mstr. May 21, 1992); Vickery v. Secretary of HHS, No. 90-977V, 1992 WL 281073, at *3 (Cl. Ct. Spec. Mstr. Sept. 24, 1992); and Petrozelle v. Secretary of HHS, No. 90-2215, 1992 WL 249782, at *1 (Cl. Ct. Spec. Mstr. Sept. 16, 1992). However, in recent years the court has been increasingly more willing to deviate from the standard $175.00 premier rate, as evidenced by recent decisions awarding attorneys between $200.00 and $250.00 per hour. Furthermore, in previous Program cases, Mr. Dodd has been compensated for his time at rates ranging between $150.00 and $225.00 per hour. See Plott v. Secretary of HHS, No. 92-633V, 1997 WL 842543, at *2 (Fed. Cl. Spec. Mstr. April 23, 1997)(awarding Mr. Dodd $200.00 per hour); Anderson v. Secretary of HHS, No. 90-2332V unpub. slip op. at 2 (Fed. Cl. Spec. Mstr. July 15, 1994)(awarding Mr. Dodd $225.00 per hour); Strom v. Secretary of HHS, No. 90-1128V unpub. slip op. at 5 (Fed. Cl. Spec. Mstr. June 13, 1994)(awarding Mr. Dodd $175.00 per hour); Arquieta v. Secretary of HHS, No. 93-109V unpub. slip op. at 2 (Fed. Cl. Spec. Mstr. July 29, 1994)(awarding Mr. Dodd $150.00 per hour); and Arbuthnott v. Secretary of HHS, No. 90-1739V, 1994 WL 17926, at *2 (Fed. Cl. Spec. Mstr. Jan. 7, 1994)(awarding Mr. Dodd $190.00 per hour). Therefore, the court will no longer consider $175.00 per hour to be the premier hourly rate paid under the program.[8] Accordingly, Mr. Dodd's hourly rate will not be measured against a $175.00 "cap."

Furthermore, while it may be true, as respondent contends, that the cost of living in Torrance, California is lower than the cost of living in Los Angeles, California, the fact remains, and respondent does not argue otherwise, that Torrance, California is considered to be a high cost area.[9]

---

[8]While the court is not establishing a new "premier rate", it does agree with petitioner's counsel that $225.00 per hour "may be near the high end of hourly rates requested in Vaccine Act cases." Fee Petition at 9. See also Barnes v. DHHS, No. 90-1101V (Cl. Ct. Spec. Mstr. Sept.17, 1999)(stating "a maximum hourly fee of $225.00 is reserved for 'a partner who has distinguished himself in proceedings under the Vaccine Act and whose firm is located in a city with the highest range of rates in the country'").

[9]Respondent was unable to find cost of living data on Torrance, California. See Resp. Obj. at 9, n. 7).

With that said, however, it is petitioner's burden to prove that an attorney's claimed hourly rate is appropriate. In applying the first prong of Erickson, namely reviewing the locality rate evidence submitted to define a range of reasonable hourly rates, the court is not convinced that the survey submitted by Mr. Dodd accurately reflects the prevailing market rate for attorneys in Mr. Dodd's relevant community because it only reports the billing rates of partners and associates at three (3) Los Angeles, California based firms. Also, the survey only reports the hourly rate of the nation's 250 largest law firms. Mr. Dodd, conversely, as stated earlier, is a solo practitioner whose practice consists largely of Program cases. The 1990 Demographic Survey of the State Bar of California submitted by respondent found that "the size of the law firm was strongly related to ... income derived from the practice of law, especially at the extremes of the two distributions." Resp. Obj. at Ex. H. Therefore, in accordance with the test set forth in Erickson and after carefully considering all of the evidence provided by both petitioner's and respondent's counsel, the court awards Mr. Dodd the hourly rate of $175.00 per hour.

B. Paralegal Hourly Rate

Petitioner also requests compensation for paralegal time expended in this matter by Ms. Nonisa at the rate of $75.00 per hour. Fee Petition at 2. Petitioner states that Ms. Nonisa has previously been awarded a rate of $45.00 per hour, but requests an increase to $75.00 per hour due to her seven years of experience in Vaccine Act cases. Id. at 10, n. 12. As support for the hourly rate requested, petitioner submitted a Declaration of a paralegal which attests that experienced paralegals are reasonably billed at one-third the hourly rate of their supervising attorney. Id. at Ex. 4. Respondent objects to the requested $75.00 per hour paralegal rate and avers that the appropriate rate should be $50.00 per hour. Resp. Obj. at 11. Respondent states that Ms. Nonisa requested $45.00 per hour in two previous cases (Depelchin v. Secretary of HHS, No. 90-1751 (Fed. Cl. Spec. Mstr. April 28, 1995) and Krel v. Secretary of HHS, No. 93-462V (Fed. Cl. Spec. Mstr. March 11, 1996)) and that an increase to $75.00 per hour is without merit. Id. As stated above, the two cases respondent relies on were decided in 1995 and 1996 respectively. In contrast, most of Ms. Nonisa's paralegal work occurred in 1997, 1998, and 1999. See Fee Petition at Ex. 2. The court, after considering when Ms. Nonisa performed the paralegal tasks, the geographical area in which Ms. Nonisa works, and the rates allowed for similar services in comparable geographical areas, concludes that a reasonable hourly rate for Ms. Nonisa is $60.00 per hour.

C. Number of Hours Expended

Petitioner claims 186.5 hours of attorney time and 7.4 hours of travel time for Mr. Dodd. Fee Petition at 2. Respondent argues the request is excessive for several reasons: (1) petitioner's counsel spent many more hours litigating this case than necessary, as measured by the hours spent by comparable counsel handling similar cases and with similar results;[10] (2) the case was simple, not

[10]The court notes that petitioner's counsel contends that due to the degree of complexity involved in this matter and the relatively unique reaction at issue, counsel spent considerable time acquainting himself with the medicine, facts, and law pertinent to the case. Pet. Reply at 2-3.

complex, as petitioner's counsel claims; (3) the proceedings were straightforward and involved no issues secondary to entitlement to compensation; (4) the facts were not in dispute; and (5) the case did not require 186.5 hours from an attorney highly experienced in Vaccine Program cases. Resp. Obj. at 12-14.

In reviewing the hours expended, the court must "exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice is ethically obligated to exclude such hours from his fee submission." Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). Special masters may rely upon their own experience under the Program as well as their experience with counsel in each case to make a determination of a reasonable number of attorney hours expended in a particular matter. Wasson v. Secretary of HHS, 24 Cl. Ct. 482, 483 (1991). In addition, the court would like to remind both petitioner's and respondent's counsel that "[a] request for attorneys' fees and expenses should not result in another extensive proceeding." Wasson v. Secretary of HHS, 24 Cl. Ct. 482, 483 (1991)(citations omitted).

Specifically, respondent objects to the number of hours Mr. Dodd spent prior to the filing of the petition in this matter. Resp. Obj. at 15. Respondent avers that 52.6 hours of work pre-dated the filing of the petition and that, given Mr. Dodd's experience under the Program, this amount of time is excessive. Id. Respondent points out that approximately 24 hours of this pre-filling time was spent "reviewing the file and medical records, and drafting the petition and affidavits."[11] Id. Petitioner's counsel counters by stating that the Chief Special Master has stated on numerous occasions that Program cases involve a "front-loaded system" and that petitioner's counsel is expected to perform substantial work prior to any initial filing.[12] Pet. Reply at 6. Nevertheless, respondent requests the court to reduce petitioner's counsel's pre-filing hours by one-half to adjust for unnecessary billing, or from 52.6 hours to 26.3 hours. Resp. Obj. at 15-16. Respondent further objects to 4.6 hours Mr. Dodd spent preparing his fee application and requests that this number be reduced by half, or to 2.3 hours. Id. at 16. After reviewing the entire file and considering the amount of materials filed by petitioner's counsel in this case, the court agrees with respondent that 52.6 hours of work pre-dating the filing of the petition is excessive and, as a result, the court will disallow 10 of the 52.6 hours claimed. In addition, the court finds 4.6 hours to prepare the fee application, by an attorney who routinely prepares fee petitions under this Program, excessive. Therefore, the court will disallow 3 of the 4.6 hours claimed.

---

[11]Petitioner's counsel avers that the time spent reviewing medical records and drafting the Petition and supporting documentation was actually 19.4 hours and not 24 hours as respondent stated. Pet. Reply at 6, n. 4.

[12]In reply to petitioner's counsel's assertion, respondent argues that Mr. Dodd's claim that the complexity of the case and unique reaction at issue led counsel to spend considerable time acquainting himself with the medicine, facts and law pertinent to the case is not supported by the record because petitioner's counsel filed only a handful of medical articles; the case was not one of "first impression" because respondent found at least two published Program cases discussing ADEM and its possible association with immunizations; and that the law was not new to Mr. Dodd because he has handled new Table cause-in-fact cases before in the Program. Resp. Response at 2-3.

Respondent also objects to Mr. Dodd's request to be compensated for approximately 57.15 hours of letter writing. Id. Respondent opines that 33.15 hours was spent writing letters to the client. Id. Respondent's counsel also posits that while he recognizes the importance of maintaining communication with the client, Mr. Dodd's numerous status updates to his client in this case was excessive. Id. at 17. Petitioner's counsel responds by stating that he wrote some 50 times to his client over the course of four (4) years and that clients in the Program, specifically, clients such as the Corders who are parents of badly injured children, are entitled to extra communication and extra reassurance. Pet. Reply at 7. Respondent answers by pointing out that Mr. Dodd has been criticized by the court in the past for his unnecessary and prolific letter writing. Resp. Response at 10. Respondent requests that the court reduce the award by 20 hours, or from 57.15 to 37.15 hours. See Resp. Obj. at 17. Reasonable communication with the client presents a mettlesome issue. The court certainly agrees with the notion that petitioner's counsel has a legal and ethical obligation to keep his clients informed of the progress of the case. However, spending over 30% of your time on a case communicating with your client is excessive by any measure. After examining the record and considering the frequent telephone conferences Mr. Dodd conducted with his client, the court agrees with respondent and disallows 20 of the 57.15 hours claimed by petitioner's counsel.

Respondent further objects to the 19.6 hours Mr. Dodd spent on legal research in this matter, claiming that this is considered an overhead cost. Id. Respondent asserts that "[g]iven Mr. Dodd's extensive background in Program litigation ... 19.6 hours of legal research is unwarranted in this case." Id. In addition, respondent asks this court to disallow two hours of travel to and from the law library on May, 13, 1998, as unreasonable because the amount of attorney hours expended was not decreased by the use of a paralegal. Id. at 18. Petitioner's counsel responds by asserting that a significant portion of the 19.6 hours was spent on research concerning matters requested by the court and responding to the government's Motion for Summary Judgment. Pet. Reply at 9. The court notes that while attorneys do have an obligation to know the law, they also have an obligation not to bill for excessive amounts of research. With that said, the court does not believe that 19.6 hours of legal research, conducted over a span of four years, is excessive. The court will allow the 19.6 hours of legal research. In addition, the court disagrees with respondent's assertion that the two hours of travel time on May 13, 1998 should be disallowed because Mr. Dodd did not make sufficient use of his paralegal. On the day in question, Mr. Dodd was traveling to and from the Superior Court Law Library to research a court required motion. See Fee Petition at Ex. 1. There is nothing in the record to suggest that a paralegal, rather than an attorney, should or could have conducted the research. Consequently, the court will allow the two hours.

On August 9, 1999, petitioner's counsel amended his fee application to include 12.8 additional hours spent, subsequent to June 14, 1999, responding, in major part, to the fee opposition filed by the government. Pet. Reply at Ex. C. Respondent objects to 10.1 of the 12.8 hours (8.6 hours of time spent responding to respondent's fee opposition + 1.5 hours of additional letter writing). Resp. Response at 13-14. Respondent contends that the amount of time responding to respondent's fee opposition is excessive and should be reduced to 2.0 hours. Id. at 14. In addition, respondent requests that the court disallow the 1.5 hours in additional letter writing. Id. at 13, n. 12.

Simply put, respondent requests that the award be reduced from 12.8 to 4.7 hours. After reviewing the record, the court deems 12.8 hours excessive. Specifically, the court will disallow 2 of the 7.6 hours petitioner's counsel spent preparing and completing his Memorandum In Reply to Respondent's Opposition and .7 hours spent writing two letters to Mr. Fischer on July 2, 1999 and August 6, 1999. In sum, the court reduces the hours awarded to Mr. Dodd from 12.8 to 10.1 hours.

Finally, petitioner requests reimbursement for 18.1 hours of paralegal time expended in this matter. Fee Petition at 2. Respondent avers that 9.4 hours of this time was spent on secretarial tasks, including writing simple transmittal letters, collating medical records, copying, and binding exhibits. Resp. Obj. at 18. The court agrees and reduces Ms. Nonisa's award from 18.1 to 14.1 hours.

In summary, the court allows 163.6 hours (199.3 hours (this amount includes the 186.5 hours plus the 12.8 hours claimed after June 14, 1999) - 10 hours (subtracted from the pre-filing time) - 3 hours (subtracted from the preparation of the fee petition) - 20 hours (subtracted from the correspondence time) - 2.7 hours (subtracted from the time spent after June 14, 1999) = 163.6) of attorney time and 7.4 hours of travel time for Mr. Dodd and 14.1 hours (18.1 hours - 4 hours (for secretarial tasks) = 14.1) of paralegal time for Ms. Nonisa.

D. Reasonable Costs

Petitioner may be reimbursed for reasonable costs incurred during the proceedings under the Program. Petitioner's counsel requests a total of $4,956.84 for costs incurred in this matter. Fee Petition at 2. Respondent objects to this amount. Resp. Obj. at 18-21.

Respondent first objects to the hourly rate charged by petitioner's expert, Dr. Georgia R. Prentice. Id. at 18. Dr. Prentice, the treating pediatric neurologist, billed $250.00 per hour for 11 hours of service for a total of $2,750.00. Fee Petition at Ex. G. Respondent argues that $200.00 per hour is the maximum hourly rate acceptable for qualified experts. Resp. Obj. at 18. In addition, respondent contends that Dr. Prentice provided almost no medical or scientific support for her opinion and, as a result, was not very helpful to the case. Id. at 19. Therefore, respondent requests that the court reduce Dr. Prentice's rate to $100.00 per hour. Id.

The notion that $200.00 per hour is the maximum awarded hourly rate for petitioner's experts in vaccine litigation has recently been challenged by this court. See Mandell v. Secretary of DHHS, No. 92-260V, 1998 WL 211914, *2 (Fed. Cl. Spec. Mstr. April 2, 1998). In Mandell, the court stated:

> it is an exceedingly difficult task for petitioners to obtain expert assistance with respect to Program cases. It appears that relatively few qualified medical experts are willing even to consider and evaluate theses cases for petitioners. As some of those few experts who are willing to do so have consistently charged petitioners well in excess of $225 per hour for their services. Those experts have also represented ... that they routinely receive $250 or more per hour for their services in non-Program

> settings. In these circumstances, it seems to me that it is reasonable for Program counsel to pay such rates for the services of such experts, even though such hourly rates still strike me intuitively as very high. Indeed, I have come to worry that in declining in the past to compensate petitioners for more than $225 per hour for expert assistance, in some cases I am restricting the ability of petitioners to obtain competent expert assistance, and in others I am simply forcing petitioners' counsel to pay for the additional amounts to these experts out of their own pockets.

Id. Furthermore, it is not uncommon for the court to award medical experts more than $200.00 per hour. See Berry v. Secretary of HHS, No. 97-01801V, 1998 WL 481882, (Fed. Cl. Spec. Mstr. July 27, 1998); Hayden v. Secretary of HHS, No. 91-643V, 1998 WL 430081, (Fed. Cl. Spec. Mstr. July 10, 1998); Lindsey v. Secretary of HHS, No. 90-2586V, 1995 WL 715513 (Fed. Cl. Spec. Mstr. Nov. 21, 1995); Woodcock v. Secretary of HHS, No. 90-1030, 1990 WL 329300 (Cl. Ct. Spec. Mstr Oct. 23, 1992); Yeoman v. Secretary of HHS, No. 90-1049V, 1994 WL 387855 (Fed. Cl. Spec. Mstr July 11, 1994); and Plott v. Secretary of HHS, No. 92-633V, 1997 WL 842543 (Fed. Cl. Spec. Mstr. April 23, 1997). As a result, the court finds that $250.00 per hour for Dr. Prentice's services is a reasonable amount.

Respondent next objects to petitioner's counsel's request for reimbursement of $647.53 for services provided by Copy Plus Legal Services. Resp. Obj. at 19. Respondent argues that while petitioner's counsel provided canceled checks for these services, he failed to provide descriptions or invoices explaining the bill. Id. at 20. Respondent wants reimbursement for theses services to be denied. Id. at 20-21. Petitioner's counsel responds by stating that some health care providers in California do not provide their own copies of records but rather insist on a professional outside copying service such as Copy Plus Legal Services. Pet. Reply at 10. Also, in response to respondent's assertion, petitioner's counsel filed copies of the bills for the disputed $647.53. Id. at Ex. B. Respondent answers by noting that Mr. Dodd has neither alleged or demonstrated that the health care provider in this case insisted on professional outside copying. Resp. Response at 12. Respondent further declares that of the $647.53, less than a third of the cost ($193.55) was for actual copying of medical records, while the rest was for miscellaneous fees and costs charged by Copy Plus. Id. Respondent maintains that because the Copy Plus invoices identify neither a per page copy charge nor the actual number of pages copied, it is difficult to determine the exact number of copies made by Copy Plus. Id. at 13. Respondent requests that reimbursement for the services of Copy Plus be reduced by $400.00, or from $647.53 to $247.53. Id.

Rule 39 of the Rules of Practice before the Federal Circuit allows only $0.08 per page, and such a rate has been upheld in vaccine cases. See Schelhaas v. Secretary of HHS, No. 90-1654V, 1994 WL 317480 (Fed. Cl. Spec. Mstr. June 20, 1994). However, this court finds $0.10 per page more in line with today's typical copy costs. See Froelich v. Secretary of HHS, No. 90-676V, 1992 WL 75169 (Cl. Ct. Spec. Mstr. March 20, 1992) and Smith v. Secretary of HHS, No. 90-3728V, 1992 WL 54332 (Cl. Ct. Spec. Mstr. Mar. 3, 1992), both which awarded $0.10 per page. In the present case, as respondent points out, it is difficult to tell from the invoices submitted by petitioner's counsel how much Copy Plus charged per page or the exact number of copies made by Copy Plus.

Nevertheless, the court accepts Mr. Dodd's representation as a member of the court's Bar but cautions him to use cheaper services in the future. Furthermore, in the court's experience, hospital billing has been allowed in the past at rates greater than $0.10 per page. Therefore, in light of the aforementioned, the court finds the $637.53 charge reasonable.

Respondent next objects to petitioner's counsel's request for $247.24 of express mail service expenses as excessive. Resp. Obj. at 20. Respondent contends that the circumstances of this case did not warrant the use of expedited services on a regular basis and requests that the award be reduced to $100.00. Id. It is petitioner's burden to show these costs were reasonable. Mr. Dodd provided proper documentation for these costs. See Fee Petition at Ex. E. After reviewing the file, the court determines that $247.24 for express mail services is reasonable in the present case.

Respondent also objects to petitioner's counsel's request to be compensated for $28.53 for notebooks purchased at Office Depot. Resp. Obj. at 20. While other special masters believe office expenses, such as pens, pencils, note pads, binders, envelopes, etc., are not recoverable under the Program, see, e.g., Yeoman v. Secretary of HHS, No. 90-1049V, 1994 WL 387855 at *4 (Fed. Cl. Spec. Mstr. July 11, 1994); Roedl v. Secretary of HHS, No. 90-1994V, 1993 WL 534740 at *1 (Fed. Cl. Spec. Mstr. Dec. 10, 1993), the undersigned disagrees, at least in terms of notebooks. Vaccine Rule 2 states "[a]ll documents accompanying the petition shall be assembled into one or more bound volumes or three-ring notebooks." See Appendix J, Rules of the United States Court of Federal Claims. Therefore, because this court requires petitioner's and respondent's counsel to utilize notebooks, the $28.53 will be allowed.

Lastly, respondent objects to petitioner's request to be reimbursed for $2,122.26 in litigation costs. Resp. Obj. at 20. Respondent argues that petitioner's counsel did not support this request because he failed to provide copies of actual bills and receipts detailing the costs incurred. Id. Respondent argues that unless these costs can be verified, they should be disallowed. Id. at 20-21. Petitioner's counsel responds that the total claim for costs, $4,956.84, which includes the costs advanced by the client ($2,122.26), is supported by appropriate documentation. Pet. Reply at 9-10. Respondent answers by stating that General Order No. 9 requires that counsel clearly delineate which costs were borne by petitioner. Resp. Response at 9. Furthermore, respondent requests that petitioner's counsel identify with specificity those costs paid by his client, rather than simply listing the total amount of costs incurred. Id. While the court agrees with respondent that a more detailed description of the costs borne by petitioner would be beneficial to the court in analyzing the costs incurred in this case, the court is satisfied that petitioner complied with General Order No. 9 and fully documented all of the costs incurred. It is true, as respondent contends, that the information submitted by petitioner and petitioner's counsel make it impossible to separate the individual specific costs incurred by petitioner from the costs incurred by petitioner's counsel. However, the court is confident that any costs deducted from the total amount claimed will necessarily be reflected in petitioner's costs.

II. Conclusion

After a thorough review of the fee petition, the court finds the following amounts to be reasonable in this matter:

Mr. Dodd	163.6 hours at $175.00/hr.	=	$28,630.00
	7.4 hours at $87.50/hr.	=	$647.50
Ms. Nonisa	14.1 hours at $60.00/hr.	=	$846.00
Costs		=	$2,834.58
Petitioner's Costs		=	$2,122.26
TOTAL			$35,080.34

Accordingly, pursuant to Vaccine Rule 13, petitioner is hereby awarded a total of $35,080.34 in attorneys' fees and costs.[13] The Clerk is directed to issue two checks. The first check, in the amount of $2,122.26, shall be made payable to petitioner. A second check, in the amount of $32,958.08, shall be made co-payable to petitioner and petitioner's counsel. The Clerk of the Court is directed to enter judgment in accordance herewith.[14]

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

[13]This amount is intended to cover all legal costs. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. It should be noted that § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991).

[14]The parties may expedite entry of judgment by filing notices renouncing their right to seek review in this matter.