In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 04-1329V

Filed: March 9, 2007

TO BE PUBLISHED

CHEN BOU,	*	
	*	
Petitioners	*	Attorney's Fees and Costs; Reasonable Hourly Rate for Expert Witness; Reasonable Number of Hours Spent; Encourage Settlement; Policy Arguments
	*	
v.	*	
	*	
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Ronald Homer, *Conway, Homer & Chin-Caplan, Boston, Massachusetts, for Petitioner.*

Robin Brodrick, *United States Department of Justice, Washington, D.C., for Respondent.*

ATTORNEYS' FEES AND COSTS DECISION[1]

GOLKIEWICZ, Chief Special Master

I. PROCEDURAL BACKGROUND

On August 16, 2004, petitioner filed her petition pursuant to the National Vaccine Injury Compensation Program[2] ("the Act" or "the Program") alleging that her frozen shoulder injury

[1]The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

[2] The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. §§ 300aa-10 et seq.

(continued...)

was caused by a tetanus immunization administered on August 19, 2001 . See Petition, filed Aug. 16, 2004. Respondent subsequently filed his Rule 4 Report denying compensation. See Respondent's Rule 4 Report, filed Nov. 16, 2004. On April 21, 2005 an expert Hearing was held in this matter. On June 30, 2005, the parties filed a Joint Status Report indicating that the parties were discussing the possibility of settlement. See Joint Status Report, filed June 30, 2005. On February 7, 2006, respondent's counsel informed the court that the parties had settled. The court then issued a Fifteen Week Stipulation Order. See Order, filed Feb. 9, 2006. The parties' filed their Stipulation on April 10, 2006. On April, 18, 2006, the court issued a Decision granting the parties' stipulation. See Decision, filed Apr. 18, 2006.

Subsequently, on April 25, 2006, petitioner filed her Application for Fees and Costs ("P. App. Fees") requesting $50,791.90 in fees and costs. Petitioner's application included exhibits documenting, among others, the hours expended by the law firm of Conway, Homer, and Chin-Caplan, their paralegals, petitioner's former counsel, Mark Buben and Philip Weinstein, and expert witness fees for Dr. Sheldon Margulies. See P. App. Fees, filed Apr. 25, 2006. Respondent filed his Opposition to Petitioner's Application for Fees and Costs ("R. Opp.") on May 8, 2006 objecting to, among others, the requested hourly rate for Dr. Margulies. Petitioner filed her reply on June 23, 2006 ("P. Rep."). Respondent then filed his Sur-Response to Petitioner's Application for Attorney's Fees and Costs ("R. Sur-Rep.") on July 14, 2006. The parties were encouraged to resolve this matter through alternative dispute resolution ("ADR"). On July 24, 2006, respondent's counsel telephoned the court indicating that respondent was not interested in ADR. On August 9, 2006, petitioner filed her Sur-Reply to Respondent's Opposition ("P. Sur-Rep.").

At respondent's request, a status conference was held on August 10, 2006 during which respondent's counsel stated that there is not enough evidence in the record to show the reasonableness of the hourly rate for Dr. Margulies.[3] The undersigned suggested that the parties participate in ADR or engage in informal settlement discussions while the parties gather and file more evidence. On August 11, 2006, another status conference was held in which respondent's counsel again stated that respondent did not want to participate in ADR. On August 14, 2006, the court issued an Order directing the parties to file all of their evidence. See Order, filed Aug. 14, 2006.

Petitioner filed her Supplemental Sur-Reply ("P. Supp."), including affidavits and other evidence, on September 12, 2006. Respondent filed his Response ("R. Rep. to P. Supp.") on October 4, 2006 requesting leave of the court to file an affidavit from an expert search firm. On

---

(...continued)

(West 1991 & Supp. 2002) ("Vaccine Act" or the "Act"). Hereinafter, individual section references will be to 42 U.S.C.A. § 300aa of the Vaccine Act.

[3] Although status conferences are not recorded, the information is taken from the undersigned's law clerk's contemporaneous notes of the status conference.

October 13, 2006, petitioner filed her Sur-Reply to Respondent's Response ("P. Sur-Rep. to R. Rep.") requesting that the undersigned grant respondent's request. The court issued an Order directing respondent to file the affidavit and petitioner to file a response to the affidavit. In the Order, the undersigned once again urged the parties to consider settling this matter. See Order, filed Oct. 31, 2006. Respondent filed the Declaration of Julian Loube on November 6, 2006. Respondent's Exhibit ("R. Ex. __") 10, filed Nov. 6, 2006. Petitioner filed her Reply ("P. Rep. to Ex. 10") on November 17, 2006 and her Supplemental Application for Fees and Costs ("Supp. Fee App.") requesting an additional $19,955.69 in fees and costs. Respondent filed his Opposition to Petitioner's Supplemental Application ("R. Opp. to P. Supp.") on November 28, 2006 objecting to, among others, the reasonableness of the number of attorney hours. On December 4, 2006 a status conference was held to discuss whether the parties intended to file any more evidence or briefs. Both parties indicated that there is nothing else to be filed.[4] This case is now ripe for Decision.

II. DISCUSSION

A. Expert Witness Hourly Rate

Petitioners' Position

Petitioner argues that Dr. Margulies $500 hourly rate is a reasonable, indeed modest, hourly rate. P. Sur-Rep. to R. Rep. at 7. The standard for determining a reasonable expert witness fee is calculated in the same manner as attorney's fees, i.e. the lodestar method.[5] P. Rep. at 6 (citing Crossett v. Secretary of HHS, No. 89-73, 1990 WL 293978 (Fed. Cl. Spec. Mstr. Aug. 3, 1990, and Blanchard v. Bergeron, 489 U.S. 87 (1989)). Additionally, "[a] reasonable rate reflects the expert's experience and credentials as well as the current market rate for

[4] Petitioner filed Exhibit 13, the contract between the U.S. Attorney's Office in Macon, GA and Dr. Marcel Kinsbourne, on February 2, 2007, although the record was closed. Despite the lateness of the filing, the undersigned considered the evidence in resolving this matter.

[5] Pursuant to 42 U.S.C.A. § 300a-15(e), special masters may award "reasonable" attorney's fees as part of compensation. To determine reasonable attorney's fees, this court has traditionally employed the lodestar method which involves "multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." Blanchard v. Bergeron, 489 U.S. 87, 94 (1989); Blum v. Stenson, 465 U.S. 886, 888 (1984); Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The resulting lodestar figure is an initial estimate of reasonable attorney's fees which may then be adjusted if the fee is deemed unreasonable based upon the nature of the services rendered in the case. Blanchard, 489 U.S. at 94; Pierce v. Underwood, 487 U.S. 552, 581 (1988) (Brennan, J. et al., concurring); Blum, 465 U.S. at 897, 899; Hensley, 461 U.S. at 434. See also, Ceballos v. Secretary of HHS, No. 99-97V, 2004 WL 784910 (Fed. Cl. Spec. Mstr. Mar. 25, 2004).

comparable services. It is one consistent with the prevailing rates in the expert witness community." Id. at 8-9. Further, "a reasonable hourly rate is one that fairly compensates a well-qualified expert who adequately prepares and advocates for a petitioner." Id. at 9. Petitioner argues that if the prevailing market rate is higher than what an expert would expect to be paid in the Vaccine Program, then "a petitioner is faced with the dilemma of hiring less qualified experts or paying the difference out of his or her own pocket." Id. Forcing the petitioner to do this would be unreasonable and not the intent of the Vaccine Act. Id. Moreover, petitioner argues, the test of reasonableness is not what experts in the Program have been paid in the past, as respondent contends. P. Supp. at 7. Indeed, given that respondent has a vast pool of experts to choose from, the petitioner urges the undersigned to "level the playing field" by increasing the hourly rate from $300, the rate petitioners' experts have been paid over the past decade, P. Sur-Rep. at 3, to $500, which is well within a reasonable range of hourly rates for experts. P. Supp. at 8.

In support of her argument, petitioner cites websites and case law, and filed affidavits of support from Dr. Margulies and other medical experts who have testified in the Vaccine Program. Petitioner states that Dr. Marcel Kinsbourne, a neurologist and frequent petitioner's expert, was paid $500 per hour for services previously performed in non-Program matters by a different section of the Department of Justice ("DOJ"). P. Rep. at 12. Petitioner argues that Dr. Kinsbourne was terminated by the DOJ when petitioner's counsel asked the DOJ to increase Dr. Kinsbourne's hourly rate for Vaccine cases to $500 per hour. Id. Thus, petitioner argues, while the DOJ conceded that $500 was a reasonable rate, they chose to end Dr. Kinsbourne's employment with the DOJ rather than increase his rate for Vaccine cases.[6] Id. Petitioner filed the affidavit of Dr. Kinsbourne who is based in Winchester, MA. Dr. Kinsbourne states that he charges $500 per hour for file review and $600 per hour for testimony in all jurisdictions in which he has testified. See Petitioner's Exhibit ("P. Ex. __") E. The affidavit of Dr. Margulies, who is based in Silver Spring, MD, states that he charges a flat rate of $500 per hour in all jurisdictions in which he has testified. See P. Ex. D. The affidavit of Dr. J. Ben Renfroe, a psychiatrist and neurologist based in Pensacola, FL, states that he charges $500 per hour for file review, conferences, research, travel time, and deposition, trial or hearing testimony. See P. Ex. F. All three medical experts state that their rates are based on their education, research and clinical experience, board certification, and their understanding of what other experts with similar qualifications charge. Dr. Kinsbourne states that his rates have been acceptable by all law firms that have proposed to retain him. P. Ex. E. at 2. However, Drs. Margulies and Renfroe state that while their rates have been acceptable to all legal firms that have proposed to retain them, they are not acceptable for those firms that retain their services in the Vaccine Program. P.

[6] Petitioner cites no evidence in support of this statement. Dr. Kinsbourne does not address his employment with the DOJ in his affidavit. P. Ex. E. Petitioner filed a copy of Dr. Kinsbourne's contract with the U.S. Attorney's Office in Macon, GA as evidence of Dr. Kinsbourne's $500 hourly rate with this section of the DOJ. See P. Ex. 13. By its terms, the anticipated beginning and ending dates for Dr. Kinsbourne's services were in 1998. Id. Part I #11. There is no indication that Dr. Kinsbourne had an ongoing relationship with DOJ, and in fact, the contract indicates otherwise.

Ex. D at 3; P. Ex. F at 2.

Next petitioner argues that many expert witnesses in civil litigation are affiliated with firms that act as consultants to attorneys charge rates within the $500 per hour range. P. Rep. at 12. These firms place experts by taking into account their specialties and logistics. For example, American Medical Forensic Services ("AMFS") charges an initial retainer of $1500 for two hours of work, a $500 administration fee, and "$500 per hour for *every one [sic] their experts, notwithstanding their expertise.*" Id. at 13 (emphasis in original). Thus, petitioner argues, AMFS and their clients consider $500 to be a reasonable per hour rate since it is the rate all experts charge. Id. Another consulting firm, Benchmark Medical Consultants ("Benchmark") charges a minimum of $500 per hour and then raises it to $650 per hour depending on the expert's credentials. Id. Thus, petitioner argues, $500 per hour is closer to the minimum rate than the maximum rate. Id.

Petitioner then cites to other courts' (outside the Vaccine Program) decisions for the proposition that medical experts receive higher rates than petitioner requests in the case *sub judice*. P. Rep. at 13. In Brew v. Ferraro[7], a 1998 case from the District Court of New Hampshire, petitioner argues that the court in that case determined that the median rate for urology experts is $600 per hour and the average rate is $700 per hour. Id. at 14. In Steinholtz v. Bridgestone[8], a 1999 case from a District Court in Pennsylvania, petitioner argues that general treating physicians have been awarded $600 per hour. Id. Finally, petitioner argues that twelve years ago a neurologist was awarded $400 per hour. Hose v. Chicago & North Western Transp. Co.[9] In that case, petitioner argues that the court awarded the expert $400 per hour even though the record is devoid of evidence that the neurologist was a preeminent expert or had unique training or knowledge. P. Rep. at 15. Additionally, petitioner argues that in Hose the case was filed under the Federal Employer's Liability Act, which like the Vaccine Act, is a remedial statute. Id.

Petitioner then argues that other neurologists not affiliated with consulting firms charge hourly rates of more than $500. P. Rep. at 14. For example, from information gleaned from the website of Dr. Lawson Bernstein, a neurologist, petitioner states that Dr. Bernstein currently receives $550 per hour for any civil litigation work under 96 hours, $2500 for depositions under four hours and $550 per hour thereafter, $5000 per day for local live testimony and $7500 per day for out of town live testimony. Id.

Petitioner also submits an excerpt from the National Guide to Expert Witness Fees and Billing Procedures ("National Guide"). P. Supp. at 9. Petitioner states that the average hourly

---

[7] 1998 WL 34058048 (D.N.H. 1998).

[8] 187 F.R.D. 221 (E.D. Pa. 1999).

[9] 154 F.R.D. 222 (S.D. Iowa 1994).

rate for in court testimony for all experts is $555 per hour and the average rate for file review is $319 per hour. Id. at 9. Petitioner argues that the study found that almost all medical experts hold the lawyer, not the party, responsible for the fee, receive sizeable retainers, are pre-paid and receive interest in late payments. Id. Thus, petitioner argues, no expert in the study would consider accepting the Vaccine Program's terms of payment for expert fees. Id.

Finally, petitioner alleges that respondent improperly disclosed settlement figures to the undersigned. See P. Rep. at 16-17. Petitioner argues that by introducing settlement figures, respondent has violated the "spirit" of Rule 408 of the Federal Rules of Evidence,[10] which covers settlement offers.[11] Id. Petitioner states that petitioner's counsel routinely submits draft fee applications to opposing counsel. Dr. Margulies' March invoice requesting $400 per hour instead of his actual hourly rate of $500 was a settlement tool and prepared by Dr. Margulies at petitioner's counsel's request. Petitioner's counsel requested that Dr. Margulies submit the bill with the "artificial" rate because in the past experts have been paid $300 per hour and the lower rate represented the best chance for petitioner to resolve the issue of attorney's fees and costs. P. Sur-Rep. at 3-4. Petitioner states that her counsel telephoned respondent's attorney, the Acting Deputy Director of the DOJ's Vaccine Litigation Group, regarding concerns he had about expert fees. Id. at 5. Petitioner's counsel informed the Acting Deputy Director that he would submit his draft application with the discounted rate of $400 in an attempt to resolve the matter. However, if the hourly rate could not be resolved, then he would file his fee application with Dr. Margulies actual rate of $500 per hour. Id. Petitioner states that when the Acting Deputy Director did not respond to petitioner's counsel's submission of the draft fee application, petitioner filed her application with Dr. Margulies actual rate of $500 per hour. Id. at 6.

Respondent's Position

Respondent objects to the requested hourly rate of $500 for Dr. Margulies. R. Opp. at 2. Respondent states that after respondent objected to Dr. Margulies' requested hourly rate of

---

[10] Although the Federal Rules of Evidence ("FRE") do not apply to proceedings on a petition filed pursuant to the Vaccine Program, see 42 U.S.C. § 300aa-12(d)(2)(B); Vaccine Rule 8(c), Rules of the Court of Federal Claims, Appendix B, states the federal evidentiary rules, which are to "be construed . . . [in a manner that permits] the truth [to] be ascertained and proceedings [to be] justly determined," FRE 102, provide valuable guidance for the evaluation of record evidence that a party desires a special master to consider in Program proceedings.

[11] FRE 408 states: Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

$400[12], which petitioner submitted to respondent in her draft fee application, petitioner then filed her fee application with a "new" invoice from Dr. Margulies, which reflected the $500 hourly rate. Id. at 3. Respondent argues that this requested rate "would be greatly in excess of what has been awarded to petitioners' experts in other Vaccine Act cases." Id. at 5. Respondent contends, citing three previous vaccine case awards, that petitioners' experts are usually awarded between $200 to $300 per hour. R. Opp. at 5. Thus, respondent argues, Dr. Margulies' rate should be adjusted accordingly. Id.

Respondent argues that an expert witness' reasonable hourly rate should be determined consistent with well-established standards. R. Rep. to P. Supp. at 2. In determining the reasonableness of expert costs, the court may consider factors such as a witness' area of expertise; education and training; prevailing rates of other comparable experts; and the nature, quality and complexity of the information provided, among others. Id.; see Wilcox v. HHS, No. 90-991V, 1997 WL 101572, *4 (Fed. Cl. Spec. Mstr. Feb. 14, 1997). Further, respondent argues, these standards are consistent with the Federal Rules of Civil Procedure ("FRCP"). Id. at 3. In particular, FRCP 26(b)(4)(C), which governs depositions and discovery, provides that "[u]nless manifest injustice would result . . . the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision." Respondent notes that other federal district courts have considered several factors in determining the reasonableness of experts' fees.[13] R. Rep. to P. Supp. at 3. Thus, flat rates for expert fees should not be set because it would fail to take these factors into account. Respondent argues that each expert must be considered individually in determining the reasonableness of the requested rate. Id.

Additionally, the Guidelines for Practice Under the National Vaccine Injury Compensation Program ("Guidelines") set forth the types of documentation required to support a requested hourly rate for attorneys. Respondent argues, that while there is no specific guidance for expert hourly rates, the Guidelines for attorneys are useful in determining expert rates. R. Rep. to P. Supp. at 4. See Guidelines XIV(A)(5). Therefore, respondent asserts that, similar to the evidence to support attorney's fees, the most useful evidence for expert fees would include Dr. Margulies retainer agreement, affidavits from other neurologists who practice in the same community, and state or local surveys. R. Rep. to P. Supp. at 5. Respondent notes that petitioner has not produced any such evidence. Id.

As an example of hourly rates for neurologists practicing in the same geographic area as Dr. Margulies, respondent submits as evidence the current fee schedules for two neurologists

---

[12] Respondent filed with his Opposition, Respondent's Exhibit ("R. Ex. __") 1 which is a bill from Dr. Margulies dated March 14, 2006 that was included in the draft Application for Fees and Costs sent by petitioner to respondent. This bill requests $400 per hour for Dr. Margulies' work.

[13] These factors are similar to those that this court has used in determining expert witness fees. See discussion infra p. 9-10.

(Dr. David Satinsky and Dr. Kenneth Eckman) who practice in Rockville and Wheaton, Maryland respectively. R. Rep. to P. Supp. at 5. For file review, Dr. Satinsky charges $360 per hour and Dr. Eckman charges $399 per hour. Id.; R. Ex. 4 at 1; R. Ex. 5 at 2. Dr. Satinsky charges $550 per hour for depositions and $2000 for a half-day trial or $3600 per day for a full day trial. Id.; R. Ex. 4 at 1. Dr. Eckman charges $600 per hour for depositions and $3000 for a half-day trial or $6000 per day for a full day trial. Id.; R. Ex. 5 at 2. Respondent further argues that both these neurologists "appear to be more highly-qualified than Dr. Margulies." R. Rep. to P. Supp. at 6. Respondent argues that "[a]t best, Dr. Margulies is similarly qualified" to these neurologists. Id. Thus, it is unreasonable for Dr. Margulies to charge $500 per hour for work done in late 2004 and early 2005, the majority of which was records review. Id.

Respondent contends that no weight should be given to the cases cited by petitioner. R. Sur-Rep. at 3. The rates paid for the pediatric urology experts in Brew v. Ferraro do not provide evidence of a reasonable rate for Dr. Margulies, a neurologist. Id. at 4. Further, respondent notes that the quoted information[14] from Brew in petitioner's brief is taken out of context. Id. Respondent notes that the quote was taken from the court's discussion of the reasonableness of the $1000 per hour requested rate, and the court noted that this rate was "strikingly high, like the rates charged by all but one of the urologists in this case." Id.; see Brew 1998 WL 34058048 at *5. The median rates charged by the urology experts in the Brew case was $600 per hour and the average rate was $700 per hour, and the court noted that the rates were "well above" the rates for other medical experts in recent cases. R. Sur-Rep. at 5; Brew at *5. In Scheinholtz v. Bridgestone[15], respondent notes that petitioner's failure to quote the court in full mischaracterizes the court's decision. In that case, the court "reluctantly" agreed to the deposition fee of $600 per hour of plaintiff's treating physician because the defendants agreed to the amount. However, respondent notes that the court added a footnote stating that the amount should not have precedential value. R. Sur-Rep. at 5. Next, respondent argues that petitioner's citation to Hose v. Chicago & North Western Transp. Co. for the proposition that Dr. Margulies' requested rate of $500 per hour is reasonable is misleading. Id. at 6. In Hose, the neurologist expert requested an $800 hourly rate. The court reduced the expert's fee to $400 because the parties' conceded that this was a reasonable rate. However, had the parties not conceded this rate, **"the court would [have] reduced [his] requested fee to $220.00 per hour."** Id. at 6 n.13 (emphasis added).

Petitioner's next piece of evidence, the website of Dr. Lawson Bernstein, also does not demonstrate that Dr. Margulies hourly rate is reasonable. R. Sur-Rep. at 6. First, Dr. Bernstein is "an extensively credentialed *neruopsychologist*" (emphasis in original) and Dr. Margulies is a neurologist. Id. Second, respondent's review of Dr. Bernstein website indicates that he charges $435 per hour, rather than the $550 per hour claimed by petitioner. Id.; R. Ex. 3. Dr. Bernstein

---

[14] In her brief, petitioner states the court in Brew "determined 'the median rate for urology experts . . . is $600 per hour, and the average rate is almost $700 per hour.'" P. Rep. at 14. Petitioner's ellipses omits the important words "in the case." See Brew at *5.

[15] 187 F.R.D 221 (E.D.Pa 1999).

does charge $550 per hour for work that requires turn around of less than four business days. Id.

Respondent argues that the rates charged by the expert consulting firms, AMFS and Benchmark Consulting, cited by petitioner are not relevant to determining a reasonable hourly rate for Dr. Margulies, who was not retained through a consulting firm. R. Rep. to P. Rep. at 7. Respondent argues that, for both firms, included in the hourly rates for expert services is the charge for administrative services provided by the firm. Id. Nothing on the website or in the evidence filed by petitioner indicates what the physician actually receives for his services. Id. Thus, respondent contends that the websites and cases cited by petitioner actually demonstrates the unreasonableness of Dr. Margulies' requested hourly rate. Id.

The affidavits of Dr. Margulies, Dr. Kinsbourne and Dr. Renfroe provide little guidance in determining a reasonable hourly rate for Dr. Margulies. Respondent argues that Dr. Margulies' affidavit is deficient because he does not indicate when he began charging $500 per hour, and he does not state what he charged petitioner in the instant case. R. Rep. to P. Rep. at 8. Additionally, Dr. Margulies' states in his affidavit that his rate is based on his experience as a licensed attorney, which, respondent argues, has no bearing on his qualifications to testify in this case. Id. The affidavits of Drs. Kinsbourne and Renfroe are "self-serving" since both experts frequently testify in Vaccine cases and would both benefit if Dr. Margulies' hourly rate was set higher. Id. at 9. Neither expert is in the same geographic area as Dr. Margulies. Id. Further, respondent argues, the qualifications of Drs. Kinsbourne and Renfroe are not comparable to those of Dr. Margulies. Id. Respondent notes that Dr. Kinsbourne has specialized training in pediatrics and is extensively published; Dr. Renfroe has training and experience in pediatric neurology and is board-certified in psychiatry. Dr. Margulies does not have these qualifications. Id.

Respondent argues that the National Guide petitioner submitted is of limited value because of its small sample size - only 466 medical experts responded to the survey. R. Rep. to P. Rep. at 9. Respondent also notes that petitioner cites hourly rates for all medical experts instead of hourly rates by speciality and geographic area. Id. For example, respondent notes that medical experts who live in Maryland, where Dr. Margulies is located, charge an average of $301 per hour for file review, $369 per hour for in court testimony, and $354 per hour for deposition testimony. Id.; see also R. Ex. 8 at 3. The average hourly rate for neurologists who responded to the survey is $365 per hour for file review, $575 per hour for in court testimony, and $500 per hour for deposition testimony. Id. at 9-10.

Relevant Case Law and Analysis for Determining A Reasonable Hourly Rate

In awarding expert fees, the following factors are helpful determinants:

> Fees for experts are subject to the same reasonableness standards as fees for attorneys. Crossett v. Secretary of HHS, 1990 WL 293978, at

> *4 (Fed. Cl.). To determine if a fee is reasonable, the special master should examine: the witness' area of expertise; the education and training required to provide him the necessary insight; the prevailing rates for other comparably respected available experts; the nature, quality, and complexity of the information provided; the cost of living in the expert's geographic area; and any other factor likely to assist the undersigned in balancing the various interests in the case. Wilcox v. Secretary of HHS, 1997 WL 101572, at *4 (Fed. Cl.).

Baker v. Secretary of HHS, 2005 WL 589431, at *1 (Fed. Cl.). These factors are similar to those discussed in the Federal Rules Decisions cited by both petitioner and respondent.[16] The parties have no disagreement on the fundamental criteria to be used in determining the expert's hourly rate. See P. Rep. at 10; R. Sur-Rep. at 2.

Analysis of Dr. Sheldon Margulies' Hourly Rate

The burden is on the petitioner to demonstrate the reasonableness of its expert's rate. Wilcox v. Secretary of HHS, No. 90-991V, 1997 WL 101572 at *4 (Fed. Cl. Feb. 14, 1997). See also Baker v. Secretary of HHS, No. 99-653V, 2005 WL 589431 at *5 (Fed. Cl. Feb. 24, 2005). Additionally, special masters may rely and should rely on their experience in awarding reasonable fees and expenses and has broad discretion in doing so. Wasson v. Secretary of HHS, 24 Cl. Ct. 482, 486 (1991), aff'd, 988 F.2d 131 (Fed. Cir. 1993). Petitioner's argument in support of Dr. Margulies' $500 rate, advanced in seven filings over the past ten months, is a mix of one part legal, one part policy, and one part unsubstantiated rebuke of respondent's handling of attorney's fees cases. To be clear, in deciding Dr. Margulies' hourly rate, the undersigned will consider only the legal arguments and supportive evidence thereto. After considering the wealth of evidence submitted by the parties and considering Dr. Margulies performance in this case, the undersigned awards Dr. Margulies $350 per hour. A full discussion follows.

---

[16] Petitioner cites Hose v. Chicago & North Western Transp. Co., 154 F.R.D. 222 (S.D. Iowa 1994) and Brew v. Ferraro, 1998 WL 34058048 (D.N.H. 1998). Respondent cites Coleman v. Dydula, 190 F.R.D. 320 (W.D.N.Y. 1999); Grdinich v. Bradlees, 187 F.R.D. 77 (S.D.N.Y. 1999); Mathis v. NYNEX, 165 F.R.D. 23 (E.D.N.Y. 1996); and Cabana v. Forcier, 200 F.R.D. 9 (D. Mass. 2001). The factors courts have considered in determining whether an expert's fee is reasonable have included the following: (1) the expert witness' area of expertise; (2) the education and training required; (3) the prevailing rates for comparable experts; (4) the nature, quality and complexity of the discovery provided; (5) the cost of living in the relevant community; (6) the fee being charged by the expert to the party who retained him; (7) fees traditionally charged by the expert on related matters; and (8) any other factor likely to be of assistance to the court in balancing the interests implicated by Rule 26. See e.g. Cabana v. Forcier, 200 F.R.D. at 15-16 and Brew v. Ferraro, 1998 WL 34058048 at *3.

Dr. Margulies' Credentials and Testimony at the April 21, 2005 Hearing

Petitioner contends that Dr. Margulies offers "impressive credentials." P. Rep. at 10. The undersigned reviewed carefully Dr. Margulies' CV, and while he is qualified as an expert, his credentials are far from "impressive" when compared to other experts. See discussion of Dr. Kinsbourne's and Dr. Renfroe's CVs, infra p. 17. It was clear to the undersigned that those "impressive credentials" did not serve Dr. Margulies well in this case. Dr. Margulies' opinion and testimony in this case was ever-shifting, poorly explained, and ultimately proved to be outside of his area of expertise. In short, Dr. Margulies' written report stated that petitioner suffered a direct mechanical injury by the needle into her median nerve or possibly an injection of the vaccine into the median nerve. P. Ex. 9 at 6. However, respondent's expert, Dr. Weinberg, questioned that opinion in his written report and explained at the Hearing that "the deltoid muscle is really nowhere in the vicinity of the median nerve." Transcript ("Tr. at __") at 67. As Dr. Weinberg explained, one could not hit the median nerve with a needle without going through the shoulder. Id. at 68.

After reading Dr. Weinberg's written report, Dr. Margulies conceded that he was incorrect, stating that "the median nerve doesn't go near there." Tr. at 13. He then stated, "[i]t could be the median nerve fibers." Id. He called this a "subtle difference." Id. When asked if the needle could have struck the median nerve fiber, Dr. Margulies explained:

> No. I don't think it could have struck the fibers itself. I think the contents could have injured the fibers, probably through venous drainage into the brachial plexus. That would be a possibility. It could have struck a nerve fiber, other than the median nerve, and caused pain. I mean, there's got to be some structure that was causing the pain.

Id. at 16. When challenged by respondent's counsel as to whether he changed his opinion, Dr. Margulies stated, "I have expanded it. I have not changed it. I think [a mechanical injury to her median nerve is] still included in the differential diagnosis." Id. at 32. That prompted the following questioning by respondent's counsel:

> QUESTION: Well, do you believe, sitting here today, that she was injured mechanically by the needle into the median nerve?
>
> THE WITNESS: Not mechanically. That has changed. Yes, I do. But chemically it may have.

Id. Thus, after "subtle[y]" altering his opinion from a mechanical injury to the median nerve to an injury to the median nerve fibers, id. at 13, Dr. Margulies maintained that a mechanical injury to the median nerve remained in the differential diagnosis despite his recognizing the physical

impossibility of such an injury. Id. at 32, 13. Incredibly, Dr. Margulies in his next answer changed the mechanism of injury from mechanical to chemical, id. at 32, and thus effectively nullified his previous response that the mechanical injury to the median nerve remained in the differential diagnosis. While there was no doubt in the undersigned's mind, Dr. Margulies finally recognized that indeed he had changed his opinion.

Respondent's counsel then engaged Dr. Margulies in the following line of questioning:

* * * * *

QUESTION: . . . in your direct examination, you said that, now you don't believe she had the median nerve injury, you're uncertain what structure was affected that caused her to stop using her arm, correct?

THE WITNESS: I think that's correct.

QUESTION: It could have been a bursitis, but you don't know?

THE WITNESS: That's correct.

QUESTION: It could have been caused by contents of the injection that leaked into the brachial plexus, correct?

THE WITNESS: It could have been.

QUESTION: But you don't know?

THE WITNESS: That's correct.

QUESTION: And you said the original injury may not even have been a neurologic one, correct?

THE WITNESS: That's possible, too. What caused her initial pain to make her not use her arm is - I don't think it's notable at this stage.

Tr. at 46.

The confusing nature and imprecision in Dr. Margulies' testimony prompted the undersigned to ask Dr. Margulies to "boil down what [his] opinion is" because the continuous use of "possibilities" and "could haves" in describing petitioner's injury is "going to cause a lot of problems later on, trying to work through [his] opinion." Tr. at 58. Dr. Margulies responded, "[i]f I had to come out, I would say [sic] probably hit a small branch of nerve in the deltoid muscle that caused pain without - that there was some structure locally that caused her to have pain in the deltoid." Id. at 59.

Respondent's expert, Dr. Weinberg, in stark contrast to Dr. Margulies, was well-prepared, clear, knowledgeable and cogent - in short, a very credible witness. Dr. Weinberg convincingly disputed virtually all of Dr. Margulies' testimony. To begin with, Dr. Weinberg explained why a mechanical injury to the median nerve was virtually impossible. Tr. at 66-68. Dr. Margulies had to concede that point. Tr. at 13. Next, in response to Dr. Margulies' testimony about venous drainage into the brachial plexus, Dr. Weinberg testified, ". . . I'm sure there's venous drainage to that region and all the things that Dr. Margulies said, but there's no way that a chemical substance that gets injected here affects nerves distantly." Tr. at 76. In response to Dr. Margulies' testimony that petitioner had bursitis, Dr. Weinberg testified that a diagnosis of bursitis is not a neurological diagnosis, but an orthopedic diagnosis because bursitis is an orthopedic problem of the shoulder. Id. at 84-85. Thus, both he and Dr. Margulies are unqualified to opine on that issue. The same is true with diagnosing injuries to the shoulder. Id at 85. Dr. Weinberg was then asked whether he agreed with Dr. Margulies' testimony that the pain at the injection site could have caused petitioner not to use her arm, which led to her frozen shoulder. Id. at 97. Dr. Weinberg testified that he did not know and that he did not feel competent to assess that since it is an orthopedic issue and he is a neurologist. Id. at 97-98. At that point, Dr. Weinberg's credible testimony had either effectively rebutted all of Dr. Margulies' neurological theories of injury or had placed any remaining theories beyond the expertise of Dr. Margulies or himself.

In an effort to boil the case down to its essence and to determine what future action was necessary to resolve the matter, the undersigned questioned Dr. Weinberg on Dr. Margulies "final" opinion, i.e. that the injection "probably hit a small branch of nerve[s] in the deltoid muscle that caused pain." Tr. at 59. While Dr. Weinberg very reluctantly conceded the possibility of such an occurrence, he testified that he knew of no "model" for such an injury evolving into a chronic disorder and, in any event, it is beyond his expertise - it is an orthopedic issue. Id. at 98-102. Since it was beyond Dr. Weinberg's expertise as a neurologist, it was beyond Dr. Margulies expertise as well.

In support of Dr. Margulies hourly rate, petitioner argues that Dr. Margulies' testimony "directly led to a settlement of the case." P. Sur-Rep. at 7 n.6. The undersigned cannot address what factors led the parties to settle this case. However, the undersigned has a very distinct memory of the Hearing. Without Dr. Weinberg's testimony, petitioner would have lost this case had the undersigned issued a decision on entitlement. Dr. Margulies was not a credible witness, and his testimony was so equivocal and unsupported that a positive finding was virtually impossible. Fortunately for petitioner, Dr. Weinberg was not only credible, he was forthright regarding the bounds of his expertise. It was his testimony, not Dr. Margulies, that led the court to continue the case, advising the parties of the need to address the issues through respective orthopedists. How and why the parties settled the undersigned cannot answer. However, from the undersigned's perspective, Dr. Margulies may have helped somewhat in defining the issues, but it was Dr. Weinberg who provided the credible answers.

Determination of and Support for the Expert's Hourly Rate

In summary, the undersigned relies on the following as the basis for a $350 hourly rate: the 2006 fee schedules of Drs. Satinsky and Eckmann (although the work done by Dr. Margulies was in late 2004 to early 2005); the affidavit of Dr. Julian Loube stating that the median charge for review of medical records and medical literature is between $300 to $400 per hour -- an average of $350 per hour; and the National Guide survey of medical experts in Maryland indicates an average of $341 per hour for all tasks.[17] See R. Ex. 8 at 3. Finally, the poor performance of Dr. Margulies at the Hearing, characterized by his confusing testimony filled with conjecture and ambiguity, warrants this rate. Each of these will be discussed in further detail.

Evidence Upon Which The Court Relies

As an example of hourly rates for neurologists practicing in the same geographic area as Dr. Margulies, respondent submitted as evidence the current fee schedules for two neurologists (Dr. David Satinsky and Dr. Kenneth Eckman) who practice in Rockville and Wheaton, Maryland respectively. R. Rep. to P. Supp. at 5; see supra p. 7-8. Given Dr. Margulies satisfactory, but not exemplary, CV, an impression buttressed by his poor performance as an expert in this case, and that only five of Dr. Margulies' 26.5 hours were for testimony, a $350 rate is reasonable in comparison to Drs. Satinsky and Eckman. It should also be noted that Dr. Margulies rates are for 2004 and 2005. Further, the undersigned considered fully petitioner's arguments against utilizing the "low end" of Drs. Satinsky's and Eckman's rates. P. Sur-Rep. to R. Rep. at 4. However, petitioner's arguments are unpersuasive since they are premised on comparability of the experts, which the undersigned does not support, and do not take into account that 80% of Dr. Margulies' hours were for lower compensated out-of-court tasks. Those factors in addition to the two-three year difference in the time value of the rates more than justify the reasonableness of $350 based upon this evidence.

The undersigned was persuaded that another item of evidence submitted by petitioner, the National Guide to Expert Witness Fees and Billing Procedures, supports the $350 rate. Based on a survey of 466 medical experts, petitioner states that the average hourly rate for in court testimony is $555 and $319 for file review. P. Ex. C at 5. However, as respondent correctly argues, the hourly rates should be compared by specialty and geographic area. While the survey is broken down into geographic area (Maryland) and specialty (neurology), the survey does not do a break down of both geographic area and specialty combined. When broken down by specialty and geographic area, only 18 neurology experts provided input and only 20 medical experts from Maryland provided input. R. Ex. 8 at 2-3. The average rates for experts from Maryland are $301 per hour for file review, $369 per hour for in court testimony, and $354 per hour for deposition testimony. Id. at 3. Thus, assuming that some of the experts from Maryland

[17]This is an average of $301 per hour for file review, $369 per hour for in court testimony, and $354 per hour for deposition testimony. R. Ex. 8 at 3.

who provided input were neurologists, the undersigned considered these rates. The survey was published in 2004. If one were to use the average rates for Maryland, petitioner's request for $500 per hour for all work is 74% higher than the highest average which is for in-court testimony. And in fact, most of the work billed by Dr. Margulies was for file review and research, which are out-of-court tasks. Only five hours of his total invoice was for the Hearing. P. Ex. B at 16. Furthermore, even if one were to base Dr. Margulies' rate on the national average, $555 is clearly excessive since that rate is for in-court testimony and the bulk of Dr. Margulies' work was for file review and research. Thus, an hourly rate closer to $319 is more reasonable. Petitioner argues that $500 per hour is a blended rate for all tasks. However, blending the national rate would not average out to $500 (the average rate is $437) and blending the Maryland rate would certainly be nowhere near $500 per hour (the average rate is $341). Thus, compared to these figures, $350 is reasonable.

The undersigned also found compelling the affidavit of Dr. Loube. Dr. Loube operates a consulting business which assists attorneys in locating medical expert witnesses. R. Ex. 10. Dr. Loube states that a review of his database shows the median charge for medical expert review including medical records and medical literature is between $300 and $400 per hour. Id. at 3. He states that he generally does not include experts who charge more than $700 per hour as he believes this is excessive. Id. He states that :

> I am often asked by physicians to provide advice on how to set their hourly rate. I generally recommend that physicians charge $350 per hour for record review and $450 per hour for in-court testimony, since based on my experience, this represents a reasonable hourly rate.

Id. He also states that one is paying for an expert's credentials, and that an expert's hourly rate is "commensurate with his or her qualifications, training, experience and academic affiliations." Id. at 4. Dr. Loube's affidavit is consistent with other evidence considered by the undersigned, and after factoring in Dr. Margulies' performance in this case, is consistent with the $350 rate found for Dr. Margulies.

Petitioner argues that Dr. Loube's affidavit shows that the range of rates is $300 per hour to $700 per hour, thus Dr. Margulies' $500 per hour rate is reasonable since it falls within this range. P. Rep. to R. Ex.10 at 9. The undersigned disagrees that $700 per hour is part of the range of hourly rates since Dr. Loube states that he rarely includes experts who charge this amount and he believes this rate is excessive. R. Ex. 10 at 3. In addition, while Dr. Loube states that experts charge $450 per hour for testimony, the undersigned finds that most of the work done by experts in the Program is for records review and drafting opinions. Thus, an average of the rates for file review and testimony, placing a heavier weight on the work done for file review, would not amount to the $500 per hour rate that petitioner requests, but would fall slightly under $400 per hour. Finally, petitioner's arguments are premised on a lofty view of Dr. Margulies as an expert. That is a view the undersigned cannot accept and rejected above.

Finally, the case of Hose v. Chicago & North Western Transp. Co., 154 F.R.D. 222 (S.D. Iowa 1994), cited by petitioner for support of her position, actually provides further support for $350 as a reasonable rate. The court in Hose determined that Dr. Golnick was not a preeminent expert in his field or possessed unique training. Petitioner argues that he was still awarded $400 per hour despite this. The Hose court reduced Dr. Golnick's requested $800 hourly rate to $400. Hose, 154 F.R.D. at 227. Indeed the court would have reduced Dr. Golnick's fee to $220 per hour were it not for the defendant's concession that $400 per hour is a reasonable fee. Id. at 227 n.13. Utilizing the United States Department of Labor Bureau of Labor Statistics Consumer Price Index,[18] the undersigned inflated the $220 rate the Hose court would have found reasonable. From the year 1994, the year of the Hose decision, through 2004, compounding the inflationary factors yields an hourly rate of $288; for 2005 the yield is $298 and in today's dollars it is $307. Thus, compared to the court in Hose, $350 per hour is very generous. Petitioner argues that the Hose court's determination that Dr. Golnick is not a preeminent expert or possessed unique training likens him to an ordinary expert while Dr. Margulies, as petitioner would have the undersigned infer, is better than an ordinary neurologist and possesses unique training. For the reasons discussed above, the undersigned does not find this to be the case.

In summary, the undersigned finds that Dr. Margulies' credentials, his performance in this case, and the objective evidence submitted by the parties supports an hourly rate of $350. In making this finding, the undersigned considered all of petitioner's arguments and evidence set forth in their seven filings. The undersigned addresses specifically the major points propounded by petitioner.

Review of Petitioner's Legal Arguments and Supportive Evidence

Petitioner presented several affidavits, internet information, and court decisions in support of the request for the $500 hourly rate.

As evidence as to what consists of a reasonable hourly rate, petitioner submits the affidavits of Drs. Kinsbourne and Renfroe, both of whom are neurologists. A review of Dr. Margulies CV, as compared to the CVs of Drs. Kinsbourne and Renfroe, submitted by petitioner, shows that Dr. Margulies does not appear to be as qualified as either expert. He is certainly not as credentialed as Dr. Kinsbourne who has extensive experience, research, and publications. See P. Ex. G. His qualifications resemble those of Dr. Renfroe, however, Dr. Renfroe has specialized training in and specializes in pediatric neurology. See P. Ex. H. He also has almost twenty years of research experience. Id. at 2. Dr. Kinsbourne states that he charges $500 for file review and $600 for testimony and that these fees have been acceptable by all law firms that have retained him. P. Ex. E at 2. Dr. Kinsbourne practices in Winchester, MA, but he has testified in several jurisdictions. P. Ex. F, G. While Dr. Kinsbourne's affidavit provides some support for awarding a $500 hourly rate to a medical expert, it is weak evidence to support a $500 hourly rate for Dr.

[18] http://www.bls.gov/cpi/ (follow "Table Containing History of CPI-U U.S." hyperlink).

Margulies. First, as respondent points out, the relevant community for Dr. Margulies is the Maryland suburbs of Washington, DC. Dr. Kinsbourne's relevant community is the suburbs of Boston. Second, Dr. Margulies' qualifications are not comparable to those of Dr. Kinsbourne. Dr. Kinsbourne is extensively credentialed. See P. Ex. G. He has had training in pediatrics, has held several teaching appointments including several current professorships, and has published numerous articles and books on neurology. Id. Dr. Renfroe states that he charges a flat rate of $500 per hour and this rate has been acceptable by all law firms that have retained him except for those firms that practice in the Vaccine Program. P. Ex. F. at 2. Again, Dr. Renfroe does not practice in the same relevant community as Dr. Margulies. Dr. Renfroe practices in Pensacola, FL. Dr. Renfroe is board certified in psychiatry and Dr. Margulies is not. Dr. Renfroe specializes in and has training in pediatric neurology. Dr. Margulies does not specialize in nor has training in pediatric neurology.

Petitioner argues that Dr. Margulies' requested $500 hourly rate is a blended rate and is consistent with the fee schedules of other similarly qualified medical experts. P. Sur-Rep. to R. Rep. at 4. Dr. Margulies practices in Silver Spring and Rockville, MD (suburbs of Washington, DC). His affidavit states that he charges an hourly rate of $500 for materials review, conferences, research, deposition, trial or hearing testimony. P. Ex. D at 2. He affirms that he bases his rate on his education, research and clinical experience, his experience as a licensed attorney, and an understanding of what other experts with his qualifications charge. Id. He further affirms that his rates have been acceptable to all legal firms that have proposed to retain him except for those firms that retain his services for the Vaccine Program. Id. Dr. Margulies' affidavit is flawed for several reasons.

First, respondent correctly noted that Dr. Margulies' affidavit does not state when he first started charging $500 per hour. It appears that he currently charges $500 per hour. He does not state how many times he has charged and has been compensated at this rate. His affidavit is dated September 12, 2006. The work performed by Dr. Margulies in the instant case occurred between August 2004 and April 2005. Dr. Margulies' invoice dated April 19, 2006 indicates that he charged petitioner's counsel $500 per hour and that he was paid a $500 retainer. P. Ex. B at 16. However, in awarding costs a special master is not bound by an agreement between petitioners and experts in determining appropriate costs. See Knox v. Secretary of HHS, No. 90-33V, 1991 WL 33242 (Cl. Ct. Spec. Mstr. Feb. 22, 1991). Second, Dr. Margulies states that he bases his fee partly on his experience as a licensed attorney. P. Ex. D at 2. Dr. Margulies experience as a licensed attorney does not have any bearing on his qualifications to testify as a **medical** expert in this case. Further, Dr. Margulies testified at the entitlement Hearing that while he passed the bar, he has never practiced law. Tr. at 8. Thus, even if experience as a licensed attorney would bolster a medical expert's credentials testifying in a legal matter (which it does not), Dr. Margulies does not even have the legal experience to claim this qualification. The undersigned did not find Dr. Margulies' affidavit particularly helpful or persuasive. Thus, comparing Dr. Margulies to Drs. Kinsbourne and Renfroe shows that the experts are not comparable in credentials and geographic location. Accordingly, the affidavits of Drs. Kinsbourne and Renfroe, while possibly supporting experts rates of $500, are not supportive of

Dr. Margulies' request for $500 per hour.

Related to Dr. Margulies and Dr. Kinsbourne, it must also be noted what petitioner did not provide -- two potentially key pieces of evidence that petitioner controls: the retainer agreement or contract with Dr. Margulies and details of Dr. Kinsbourne's hourly rate history in the Program. Respondent stated as early as October that "the most useful evidence in determining a reasonable hourly rate for Dr. Margulies would include his retainer agreement . . . ." R. Rep. to P. Supp. at 5. For some inexplicable reason, petitioner did not include the agreement in any of her three subsequent filings. Petitioner never denied the existence of such a contract. In fact, petitioner referenced such contracts as support for the requested hourly rate. See P. Sur-Rep. at 4 n. 4 (stating that "Dr. Margulies . . . is not limited to sums the Vaccine Program awards him. Depending on the terms of their contracts with petitioners' counsel, experts may- and do- demand the balance of their fees.") It strikes the undersigned as extremely odd that this piece of information was not provided.

Likewise, the undersigned was struck by what was not said in Dr. Kinsbourne's affidavit. See P. Ex. E. While Dr. Kinsbourne attests to $500 as a reasonable fee, affirms that his hourly rate is $500 for record review and $600 for testimony, and finally, affirms that these rates are acceptable to all legal firms that have retained him, not one piece of evidence was provided regarding his participation and payment in the Vaccine Program. It must be understood that Dr. Kinsbourne has testified in the Program from its inception. It is very fair to say that he is the most frequent expert witness for petitioners. While he has suffered some criticism over the years, on the whole, he is a highly credible witness. Evidence of his billing practices in the Vaccine Program would be highly probative. For example, evidence in the form of contracts for what he has charged counsel and for what years, and references to cases where either the court or respondent has accepted and reimbursed those billed rates would provide the concrete evidence that petitioner needs to prove her case. Instead, much like petitioner's arguments, Dr. Kinsbourne's affidavit provides generalities.[19] The legal firm involved herein frequently retains Dr. Kinsbourne. Thus, the information is presumably at their fingertips. The undersigned is unaware of any case that Dr. Kinsbourne billed $500 per hour for his time. The undersigned is unaware of any case that Dr. Kinsbourne was awarded $500 for his time. After requesting similar information from my colleagues, a similar response was received. The undersigned is highly skeptical of the claimed hourly rate as it relates to Dr. Kinsbourne's Vaccine Program work.[20]

---

[19] It does not escape attention that the affidavits of Drs. Margulies, Renfroe and Kinsbourne are strikingly similar in form and content. See P. Ex. D, E, and F.

[20] As discussed previously, supra p. 4 n. 6, petitioner submitted a contract between the DOJ (not the Vaccine Litigation section of DOJ) and Dr. Kinsbourne in which the DOJ agreed to pay Dr. Kinsbourne $500 per hour for expert services. P. Ex. 13, Part I #12. Petitioner argues that based upon that contract, the DOJ conceded that $500 per hour is a reasonable rate. P. Rep. at 12. (continued...)

Next, as respondent correctly noted, "[r]ather than submit affidavits or other documentary evidence to substantiate Dr. Margulies' requested hourly rate based on the factors outlined by this Court, petitioner relies on information gleaned from selectively researched websites and citation to cases in other jurisdictions." R. Sur-Rep. at 3 (footnote omitted). While in general the information submitted by petitioner appears to support much higher expert rates than the undersigned has seen requested and awarded in the Program, the information was not helpful in determining an hourly rate for Dr. Margulies. For example, petitioner relied on fees charged by two medical consulting firms, AMFS and Benchmark. This general information was culled from the internet with no effort to relate the information to Dr. Margulies' geographic location, specialty or credentials. However, petitioner argues that based on the fees charged by these firms, $500 is a reasonable hourly rate.

Petitioner submitted an expert services agreement with AMFS. P. Ex. A. The agreement indicates AMFS charges a non-refundable $400 administrative fee and $1000 for the expert's initial records review. For file review and evaluation, written reports, research, communication with counsel, and depositions the fee charged by the company is $500 per hour. The company charges $5000 per day for trials or hearings. Id. at 1. The date the agreement was executed is September 8, 2006. This evidence is irrelevant for several reasons. First, AMFS is a consulting firm. The fees charged by the company are not necessarily those paid to the medical expert. The fees charged include the cost of the firm locating the expert and matching a qualified expert to the needs of the client. In fact, AMFS boasts their ability to obtain the correct medical expert for their clients. See R. Ex. 7 at 1. AMFS also states on their website that they charge $400 to $500 per hour depending on the speciality. Id. Second, the AMFS services agreement petitioner submitted is for an orthopedic surgeon. Dr. Margulies is a neurologist. Third, the agreement is dated September 8, 2006. Dr. Margulies provided his services in 2004 to 2005. It is not known what AMFS charged during those years. For these reasons, this evidence is not helpful.

Petitioner also submitted a client fee schedule from Benchmark for Dr. Steven McIntire. P. Ex. B. This fee schedule is not dated. No specialty is indicated for Dr. McIntire and there is no CV to compare his qualifications. A note at the bottom of the fee schedule states, "This Fee Schedule is for the above-named independent consultant. Fee Schedules may vary depending on the consultant being utilized." Id. Thus, this evidence is unhelpful in determining a reasonable hourly rate for Dr. Margulies since it is not known what Dr. McInitre's specialty is or the hourly rates charged for 2004 to 2005. Additionally, Benchmark's website states that it provides the administrative support for its network of independent consultants who pay Benchmark for its services. P. Ex. 6 at 2. It can be reasonably inferred that part of the fees paid to Benchmark are subsumed in the fees that experts charge their clients resulting in a higher hourly rate than for an

---

[20](...continued)
Respondent did not address specifically the probative value of this contract. See R. Sur-Rep. at 3 n. 2. The undersigned views the evidence as meaningful. However, by itself and in light of the contrary evidence the undersigned relies upon for determining the $350 rate, including Dr. Margulies' inferior performance, the Kinsbourne contract is insufficient to establish a $500 rate for Dr. Margulies.

expert that does not use such a firm. Finally, the experts that are part of the Benchmark network have gone through an in-depth credentialing process. Id. at 3.

Next, petitioner states that Dr. Lawson F. Bernstein receives $550 per hour for civil litigation work under 96 hours of work. P. Rep. at 14. Thus, Dr. Margulies $500 is reasonable. However, Dr. Bernstein has board certifications in neurology, psychiatry, and forensic medicine, he holds several current academic appointments, and has received several research grants. See http://lfbmdpc.com/html/c_v_.html (last visited Feb. 26, 2006). Dr. Margulies does not share these qualifications. Additionally, Dr. Bernstein currently charges $550 for work that requires less than 96 hours of turn-around time. R. Ex. 3. However, his normal hourly rate is $435. Id. Further, these are Dr. Bernstein's current rates. It is not known what he charged in 2004 to 2005. Finally, Dr. Bernstein practices in Pittsburgh, PA, which is not the relevant community for Dr. Margulies. In addition to these major differences, the undersigned finds unconfirmed information taken from the internet of questionable value.

Petitioner then cites to other federal courts' decisions in support of the $500 hourly rate. Respondent argues that these cases have little bearing on determining a reasonable hourly rate for Dr. Margulies. Respondent also notes in a footnote that while petitioner argues that prior decisions by special masters have no relevance to the concept of reasonableness, petitioner then submits other federal courts' decisions as evidence of the reasonableness of a $500 hourly rate. R. Sur-Rep. at 4 citing P. Rep. at 7.[21]

After reviewing the cases cited by petitioner, the undersigned agrees with respondent that the decisions cited by petitioner are of little value. As a general matter, these decisions discuss the rate of expert witness testimony in the context of depositions under the FRCP in which the opposing party is responsible for paying the expert. Petitioner states that the court in Brew v. Ferraro "determined" that the median rate for urology experts is $600 per hour.[22] The undersigned disagrees with petitioner's characterization of the court's findings, and in fact, the court did not make this determination. See Brew at *5. Regardless of petitioner's arguments, the

---

[21] Petitioner is incorrect in stating that prior decisions in the Vaccine Program have no relevance on reasonableness. Prior decisions regarding hourly rates for other experts are helpful in determining the reasonableness of a requested rate. Moreover, a special master is entitled to use his discretion in fashioning a reasonable award. This court has routinely cited other cases in order to compare qualifications and the quality of work provided. See e.g. Jeffries v. Secretary of HHS, No. 99-670V, 2006 WL 3903710, (Fed. Cl. Spec. Mstr. Dec. 15, 2006); English v. Secretary of HHS, No. 01-61, 2006 WL 3410805, (Fed. Cl. Spec. Mstr. Nov. 9, 2006); Ceballos v. Secretary of HHS, No. 99-97V, 2004 WL 784910, (Fed Cl. Spec. Mstr. Mar. 25, 2004). The Federal Circuit strongly supported the Special Masters' use of their experience in determining the appropriate award of fees and costs. Wasson v. Secretary of HHS, 988 F.2d 131 (Fed. Cir. 1993).

[22] See supra p. 8 n. 14 for petitioner's quotation of the Brew court's discussion.

undersigned finds that this evidence has little relevance in determining the reasonableness of an expert fee for a neurologist since the specialty of the experts in Brew was pediatric urology; Dr. Margulies' specialty is neurology. Petitioner then argues that even general treating physicians have been awarded $600 per hour citing Scheinholtz v. Bridgestone. P. Rep. at 14. In that case the court **reluctantly** approved the $600 per hour rate for a treating physician since the defendants agreed to an amount not to exceed $600 per hour. Scheinholtz, 187 F.R.D at 222. The court noted that although other courts have awarded higher amounts than the statutory per diem of $40 to treating physicians, the usual amount was $250 per hour and none as high as $400. Id. Further, the court noted that the amount allowed should not be considered to have precedential value. Id. at 221 n.1. The last case petitioner relied on is Hose. The undersigned discussed that case at page 16 supra. While it is clear from the above cases that some experts are being paid large sums of money for their services, that fact alone in not helpful in determining Dr. Margulies' appropriate hourly rate. Without some showing of comparability in terms of qualifications, medical specialty, and geographic location, the undersigned is unable to translate the provided information to answering the question of what is a reasonable hourly rate for Dr. Margulies.

Based on the undersigned's experience and the evidence and arguments presented, the undersigned finds a rate of $350 per hour to be a reasonable and generous rate for Dr. Margulies.[23] In making this determination, the undersigned agrees that:

> the "ultimate goal" is to balance the parties' interests so that the party retaining the expert witness is not "unduly hampered in [its] efforts to attract competent experts" while the opposing party is not "unfairly burdened by excessive ransoms which provide windfalls for the [opposing side's] experts."

R. Rep. to P. Supp. at 3 citing Cabana v. Forcier, 200 F.R.D. 9, 16 (D.Mass. 2001) (quoting Anthony v. Abbott Lab., 106 F.R.D. 461, 465 (D.R.I. 1985)). In the instant case, petitioner did not show that Dr. Margulies was particularly well-credentialed. In fact, as compared to Dr. Kinsbourne and Dr. Renfroe, Dr. Margulies was less credentialed. Additionally, Dr. Margulies proved to be a poor expert witness in this case, and in fact, he testified beyond his area of expertise. Lastly, the majority of his work in this case for records review, literature review, and drafting an opinion letter does not square with the much higher hourly rates for deposition or in-

[23] Petitioner argues that respondent's introduction of an invoice dated March 14, 2006 prepared by Dr. Margulies, which shows a $400 hourly rate, given to respondent as part of settlement negotiations violates FRE 408. Respondent argues that a previously requested $400 hourly rate makes a $500 hourly rate *per se* unreasonable. The undersigned believes an honest mistake of intention and communication occurred with regard to this information. The undersigned accepts petitioner's counsel's statement that the information was intended for settlement purposes only, and thus, should not have been disclosed to the undersigned. Therefore, the undersigned did not consider this evidence in determining Dr. Margulies' hourly rate.

court testimony that petitioner would have this court adopt. Based upon these factors and considering the rate information provided by the parties, the undersigned believes the proper "balance" is struck by awarding Dr. Margulies $350 per hour for his time.

The undersigned adds the following comment. Petitioner's efforts were by no means in vain. The Special Masters do not review many expert fee disputes because the parties settle most fees cases. Thus, the information generated in this litigation certainly opened the undersigned's eyes to the high hourly rates that some experts (outside of the Program) are receiving. The information, from both sides, appears to support as reasonable, hourly rates higher than found in many past decided Vaccine cases (the undersigned has no way of knowing the rates for experts in cases where the parties have settled). Based upon the information submitted herein, with the appropriate set of facts the undersigned would have no issue with awarding the $500 requested by petitioner.[24] However, it must also be noted that the information provided in this case supports a range of rates, and the lower end extends well below $500 per hour. Hopefully the information generated in this case will assist the parties in settling future cases at rates that strike the appropriate "balance." The level of litigation involved in this case, which should prove helpful for many future cases, certainly proved taxing to the immediate participants.

Petitioner's Policy Arguments

Petitioner advanced a number of arguments that can be fairly characterized as policy-based appeals. In short, petitioner's entreaties should be aimed at Congress, not the courts. Thus, petitioner's contention that a reasonable hourly rate "is one that will attract new qualified experts to the Vaccine Program, not repel them," P. Rep. at 9; P. Supp. at 6, and the need to "level the playing field," P. Supp. at 7, 12, are irrelevant to the undersigned's determination. Likewise, petitioner's complaint that the reimbursement provision in the Vaccine Act, which provides for payment of attorney's fees and costs after the merits of the case have been resolved, works a financial injustice on petitioners is a legislative, not judicial, matter. The issue before the court is what is a reasonable rate, in essence the market rate, for the expert. That determination is based upon evidence, not mere argument. Petitioner also states that "counsel cannot secure qualified experts without adequately compensating them." P. Supp. at 6. On its face, that statement is virtually unassailable. However, read in the context of petitioner's briefs, the argument is that previous awards for experts are no longer acceptable to experts, that is the awards no longer reflect market rates, and thus petitioners are unable to hire qualified experts. Petitioner continues by stating that "it had been 10 years since expert rates had been adjusted." P. Sur-Rep. at 5. Quite frankly, the undersigned does not understand the meaning of that unsupported assertion. There is no "rate" that is subject to adjustment. The rate awarded is based upon the quality and persuasiveness of the evidence submitted. As petitioner noted, my

[24] This should not be interpreted to sanction an immediate increase in experts' hourly rates. Expert fees will be decided on a case-by-case basis. Further, it remains petitioners' burden to monitor expert fees. Perreira v. Secretary of HHS, No. 90-847V, 1992 WL 164436, at *4 (Cl. Ct. Spec. Mstr. June 12, 1992), aff'd 33 F.3d 1375 (Fed. Cir. 1994).

colleague awarded $500 per hour, the rate petitioner requests here, in 2001. P. Rep. at 8 citing Isom v. Secretary of HHS, No. 94-770V, 2001 WL 101459 at *3 (Fed. Cl. Spec. Mstr. Jan. 17, 2001). Properly documented, the undersigned is prepared to award the necessary expert fees. The problem in this case is that the requested rate, much like counsel's argument, is unsubstantiated.

Petitioner argues that if the prevailing market rate for experts is higher than the hourly rates awarded experts who testify in the Vaccine Program, then "petitioner is faced with the dilemma of hiring less qualified experts or paying the difference out of his pocket." P. Supp. Sur-Rep. at 6-7. This, petitioner argues, is not what the Vaccine Act intended. Id. at 7. However, there has been no indication or proof that petitioners have had difficulty securing experts to provide a medical opinion because the experts are not adequately compensated. The undersigned is not aware of any vaccine cases in which petitioners have not been able to secure a qualified expert because the expert refuses to testify due to inadequate hourly rates. Nor, to the undersigned's knowledge, has there been any substantiated complaints lodged by petitioners or their attorneys in cases before the Special Masters about the lack of qualified experts willing to testify on behalf of petitioners. If a petitioner has a concern regarding an expert's requested fee or has a problem retaining an expert, those issues must be brought to the Special Master's attention as soon as possible. Thus, "[a]ny aberrant or unforseen expenses should be brought to the Court's attention before they are incurred." Isom v. Secretary of HHS, 2001 WL 101459 at *4. Awarding an expert an unproven hourly rate at the end of the case is not going to assist in securing future experts.

Petitioner also urges the undersigned to "level the playing field" by awarding an hourly rate of $500 rather than the "grossly inadequate" hourly rate of $300. P. Supp. at 8. Again, "level[ing] the playing field" is not a proper consideration for the undersigned. In addition, while the undersigned agrees that an hourly rate of $300 for some of the more qualified and experienced experts may be inadequate in certain circumstances, there is no basis for awarding all experts a flat hourly rate regardless of their experience or qualifications or the quality of their work. Thus, an hourly rate of $300 is not necessarily unreasonable nor is it always reasonable. See Isom v. Secretary of HHS, 2001 WL 101459 at *4 (concluding that an hourly rate should be determined by the individual case and attendant circumstances). Neither is $500 a reasonable rate in all circumstances. Once again, there is no flat rate for awarding expert hourly rates nor is there a minimum or maximum hourly rate.

Lastly, petitioner's verbal assault on respondent's handling of vaccine cases is not only irrelevant but is an unsubstantiated attack on respondent's and his counsels' professional integrity. For example, petitioner stated that "respondent is content to attack a petitioner's evidence and use the 'hammer' of delay as a tool to force petitioners to accept **unreasonable** hourly rates for their experts. Surely, the Chief Special Master must appreciate this injustice." P. Supp. at 7 (emphasis in original). Petitioner's counsel are veteran quality counsel. They have litigated in the Program since its inception. They understand the process and know how to, and routinely do, use the process to their client's advantage; as they should. If at any time

petitioner's counsel, or any counsel, is dissatisfied with the efforts of opposing counsel, whether regarding procedural matters or settlement offers, recourse is available through the assigned Special Master. Petitioner's counsel understand that full well, and have on many occasions sought relief from this Special Master to correct a perceived wrong. The parties have a disagreement in this case. That is for the undersigned to resolve. While disagreements and zealous advocacy are expected, counsel is forewarned that unsubstantiated charges of improper conduct wrapped in the cloak of argument are unnecessary, unhelpful, and will not be tolerated.

B. Hours Expended By Dr. Margulies

Respondent objects to 13.5 hours spent by Dr. Margulies before April 2005. R. Opp. at 4. Respondent argues that since Dr. Margulies did not testify in accordance with his opinion, Dr. Margulies should not be compensated for the hours spent researching and writing an opinion he later "abandoned at the hearing, because these claimed hours ultimately were unnecessary and superfluous." Id. at 5. Petitioner argues that the change in Dr. Margulies' opinion was modest, but the crux of his opinion remained materially unchanged. P. Rep. at 20-21. Further, petitioner argues that similar to other scientists, expert witnesses in the Vaccine Program routinely change, qualify, or reconsider opinions based on new information or opposing expert opinions. Id. at 18. The undersigned, having reviewed all of the arguments, finds that Dr. Margulies should be compensated for the full 26.5 hours of work. Most of the hours expended to which respondent objects were reviewing medical records. While the undersigned agrees with respondent that Dr. Margulies changed his opinion at the Hearing, the undersigned disagrees with respondent that the change impacts measurably the claimed hours. Most of Dr. Margulies time was spent doing the foundational work, such as reviewing the file, for his testimony at the Hearing. That time would have been spent with or without the change in his opinion. Another way to look at the issue is what if Dr. Margulies had not changed his opinion at Hearing? In that case, the undersigned believes his time would have been awarded without question. Likewise, his time should be awarded even with the change.

C. Other Fees and Costs

Attorney's Fees for Buben and Weinstein

Respondent objects to approximately four hours of work by petitioner's prior counsel, Mr. Buben and Mr. Weinstein, because the hours included entries of time spent writing letters to or holding conferences with each other and other counsel. R. Opp. at 6. Respondent argues that is excessive coordination between attorneys. Id. Petitioner argues that both attorneys offered detailed and itemized billing statements and the minimal time spent by the attorneys attempting to determine how to proceed with a non-English speaking client is reasonable. P. Rep. at 23-24.

After reviewing the billing statements of Mr. Buben and Mr. Weinstein, the undersigned finds that the hours claimed are reasonable. Mr. Buben had an initial interview with petitioner in

January 2002. P. Ex. C. Mr. Weinstein had an initial interview with petitioner in January 2003. P. Ex. D. It appears that petitioner was then referred to her current counsel. The time spent by these attorneys communicating about petitioner is minimal, not excessive, and is reasonable.

Hours Spent By Paralegal

Respondent objects to the .20 hours of time spent by a paralegal on April 19, 2006 because respondent argues that the call was for the purpose of having Dr. Margulies submit an invoice with an increased hourly rate. R. Sur-Rep. at 9; see Ex. A at 38. This is respondent's deduction, and there is no evidence as to the exact nature of this call. Even if what respondent argues is true, the undersigned finds that a call to an expert regarding his bill just prior to petitioner submitting her application for attorney's fees is reasonable.

Parking Cost

Respondent objects to a $16.00 cost for parking at petitioner's counsel's office on a Sunday because it is an overhead cost. R. Opp. to Supp. Fee App. at 2; see Supp. Fee App. at 2. The undersigned agrees that parking costs along with other transportation costs to one's office is an overhead cost. The parking cost of $16.00 will be deducted from petitioner's fees and costs.

D. Reasonableness of Hours Claimed For Supplemental Fee Petition

Respondent objects to the overall number of hours in petitioner's Supplemental Application for Fees and Costs as unreasonable and excessive in light of the content and quality of work filed in this case.[25] R. Opp. to Supp. Fee App. at 1. Respondent specifically objects to the .80 hours of time for a phone call to "R. Gage" (presumably Richard Gage an attorney who practices in the Vaccine Program) regarding expert fees because it does not appear to be related to these proceedings. Id. at 2; see Supp. Fee App. Ex., A at 6.

In assessing the number of hours reasonably expended, the court must exclude those "hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." Hensely v. Eckerhart, 461 U.S. 424, 434 (1983). Additionally, in making reductions, the special master is not necessarily required to base his or her decisions on a line-by-line evaluation of the fee application. Wasson v. Secretary of HHS, 24 Cl. Ct. 482, 484 (1991), aff'd, 988 F.2d 131 (Fed. Cir. 1993). Moreover, special masters may rely on their experience with the Vaccine Act and its attorneys to determine the reasonable number of hours expended. Id. at 486.

At first glance, it appears that the total amount requested in the Supplemental Application

[25] Respondent made no objection to the hourly rates for the attorneys and paralegals for either the first Fee Application or the Supplemental Application.

($19,753.00) as compared to the amount requested in the first Fee Application ($29,571.00) is unreasonable. Petitioner's initial Fee Application is for approximately 187.5 hours of attorney and paralegal time. P. App. Fees, Ex. A at 40. The amount of time claimed in petitioner's Supplemental Application is for 112.2 hours. Supp. Fee App., Ex. A at 12. This was a hard fought litigation over the requested fees. While the undersigned believed that the parties should have settled the matter, the parties believed that the issues needed to be decided. Respondent is reminded that on two occasions, respondent declined to participate in ADR. The parties drew a line in the sand in this case, and the extensive legal efforts resulted. As discussed above in the procedural background, the parties filed a number of briefs and other documents in support of their positions: petitioner filed a total of seven briefs, applications, affidavits and other evidence; respondent filed a total of five briefs, affidavits and other evidence. See supra p. 2-3. Thus, after a full review of petitioner's Supplemental Application and in light of the extensive efforts from both sides, the undersigned finds the total amount requested in petitioner's Supplemental Application is reasonable.

As for the .80 hours of time claimed for a phone call to Richard Gage, the undersigned finds this to be reasonable. Given the paucity of published opinions regarding expert hourly rates in the Vaccine Program, it is reasonable for an attorney to consult another attorney regarding expert fees.

Finally, the undersigned wishes to comment on what has now amounted to a second litigation in this matter. As the Supreme Court admonished, "[a] request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." Hensley v. Eckerhart, 461 U.S. at 436. What could and should have been settled by the parties in April 2006 over what amounted to a few thousand dollar difference regarding the expert hourly rates has ballooned into a second round of litigation that has cost the government an additional $20,000 in attorney's fees and costs - an amount almost equal to the fees and costs of the first litigation.

Respondent argues that a "standard" expert rate that fails to account for the "factors" would be legally incorrect. R. Rep. to P. Supp. at 3. While legally unassailable, respondent should not take comfort in that position. For years respondent's counsel have settled expert fees by referencing court decisions and agreeing to a "generally" awarded rate. The undersigned has participated in literally hundreds of calls and mediations where respondent's counsel stated "the court has awarded generally the rate of 'x'" in representing respondent's position. In fact, in Respondent's Opposition brief, respondent states that "[d]ecisions indicate that such [expert] rates are almost uniformly between $200 and $300 per hour" citing three vaccine cases from different geographic areas and, except for one, different medical disciplines. R. Opp. at 5. If each expert "must be considered individually," as respondent argues, R. Rep. to P. Supp. at 3, what is the relevance of citing these cases where experts are from different geographic areas and different medical disciplines? The answer of course is that there is no science to determining an appropriate hourly rate. What other experts are paid and what they accept, creates a range of reasonable rates. As more data is accumulated, the range narrows. Reliance on the data and the

range, prompts settlements. That is how the parties have routinely used case information.

The parties spent much time and effort accumulating data for this case. As can be seen from the evidence filed in this case there is a wide range of hourly rates charged. To attain that "ultimate goal" of balancing petitioner's legitimate interest of hiring quality experts while not subjecting the Vaccine Trust Fund to the "burden [of] excessive ransoms," R. Rep. to P. Supp. at 3, compiling and comparing data on other experts is critical. Moreover, respondent holds the key, as a litigant in each case, to timely, informal, and reasonable resolutions. Respondent should consider continuing to amass expert fee data to create a range of acceptable fees as a basis for settlement. (Dr. Loube's continued cooperation could prove very helpful in this regard). Making this information known to petitioners could assist petitioners in avoiding legal battles like this one, either by not contracting with doctors who charge outside of the range or by bringing potential fees issues to the court's attention prior to hiring the expert. See Isom at *4.

Everyone benefits from eliminating disputes such as this. The Trust Fund does not "win" spending nearly $20,000 in additional fees to resolve a case that had at issue between $2,600 and $5,200 (26 hours times either $100 or $200 - the difference in the hourly rates at dispute). Ultimately, Dr. Margulies was awarded $10,675; he requested $14,910. The net "savings" to the government from this litigation was a **minus** $15,704.69. Respondent should not be content to resolve cases individually at such a high cost.

III. CONCLUSION

After a thorough review of petitioner's fee application and respondent's objections, petitioner is awarded **$53,695.75 in attorneys' fees** and **$12,650.84 in attorneys' costs**. The award shall be made payable jointly to petitioner and her attorneys. Petitioner is awarded **$150.00 in costs**. That award shall be made payable solely to petitioner.

Accordingly, pursuant to Vaccine Rule 13, petitioner is hereby awarded a **total of $66,496.59 in attorneys' fees and costs.**[26] In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment according to this decision.[27]

---

[26]This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-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).

[27]Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

Table 1

Attorney	Total Fees	Total Costs	Deductions
Conway, Homer & Chin-Caplan	$49,324.00	$12,594.34	$4235.00 - Dr. Margulies $16.00 - parking cost
Mark T. Buben	$2,025.75	$56.50	None
Philip Weinstein	$2,346.00	$0.00	None
Total	$53,695.75	$12,650.84	

IT IS SO ORDERED.

_____

Gary J. Golkiewicz
Chief Special Master