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

No. 01-61V

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| JAMES AND SHARON ENGLISH, as parents and natural guardians of JAMES JONES ENGLISH, Petitioners, v. SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondent. | * | Attorneys' fees and costs; home rule versus forum rule in hourly rate determination; Laffey Matrix; Westlaw costs; expert witness hourly rates; facsimile and copying costs. |

*Anne Carrion Toale, with whom was Altom M. Maglio, Maglio, Christopher & Toale, Sarasota, FL, for petitioners.*

*Michael P. Milmoe, United States Department of Justice, Washington, D.C., for respondent.*

**ATTORNEYS' FEES AND COSTS DECISION**[1]

**GOLKIEWICZ, Chief Special Master.**

## I. *Procedural Background*

On January 30, 2001, petitioners James and Sharon English, parents and natural guardians of their son, James Jones English, a minor, filed on behalf of their son, a petition pursuant to the

[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.

National Vaccine Injury Compensation Program [hereinafter "the Act" or "the Program"].[2] In their petition, petitioners alleged that James suffered a seizure disorder as a result of one or more of the vaccines that he received on September 12, 1998. Petition at 2. Petitioners' son tragically passed away on November 28, 2002. As respondent contested entitlement in his Rule 4 Report filed on March 31, 2004, a hearing was subsequently held on March 11, 2005, at which time several fact witnesses and two expert witnesses, Anne E. Dickison, M.D. and Paul Richard Carney, M.D., testified on behalf of petitioners. In a Decision denying entitlement issued on September 28, 2005, the undersigned found that petitioners' case failed "because the medical records and the experts' testimony support that [petitioners' son's] seizure disorder began in August 1998, and not in September 1998 as petitioners argue." English v. Secretary of Health and Human Services, No. 01-61V, slip. op. at 22 (Fed. Cl. Spec. Mstr. Sept. 28, 2005) (unpublished). Thus, petitioners failed "to demonstrate that [their child's] seizure disorder and subsequent death were caused-in-fact by the vaccinations he received on September 12, 1998." Id.

Subsequently, on December 5, 2005, petitioners filed an "Application for Attorney's Fees and Costs" [hereinafter "P. Dec. 5 App."] requesting $79,820.77 in fees and costs pursuant to § 15(e) of the Act. This petition included Exhibit A, which sets forth attorneys' fees for Anne C. Toale and Altom M. Maglio, expert fees and costs for Drs. Dickison and Carney, paralegal fees, and other case-related expenses. Ms. Toale's requested hourly rates are $190 per hour for time billed before January 1, 2005, and $225 per hour for time billed on or after January 1, 2005. Mr. Maglio's requested hourly rates are $190 per hour billed before January 1, 2005, and $225 per hour for time billed on or after January 1, 2005. The paralegal hourly rate requested was $75.

On February 27, 2006, petitioners filed an "Amended Application for Attorney's Fees and Costs " [hereinafter "Amended App."][3]. In response to status conferences held on February 8 and March 10, 2006, and an Order issued by the undersigned on March 13, 2006,[4] on March 31,

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[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. §§ 300aa-10 *et seq.* (West 1991 & Supp. 2002) ( hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C.A. § 300aa of the Act.

[3]Petitioners filed three pages entitled "Amended Application for Attorney's Fees and Costs," two subsequent pages including a summary of fees and costs and a Table of Contents, which are followed by a detailed packet of billing information, numbered from pages 1 to 43. For clarity and convenience, the undersigned will consider the fee application to be the separate billing entries on pages 1 to 43, with the preceding five pages considered as a notice of filing of the application [hereinafter "Notice of Filing Amended App."].

[4]On February 21, 2006, petitioners filed a "Motion of Ruling that Respondent Waived Their Entitlement to Respond to Petitioners' Fee Application," as well as a "Motion for Leave to Conduct Discovery." In the March 13 Order, the undersigned denied both motions.

2006, petitioners filed a "Response to Chief Special Master's Questions Regarding Application for Attorney's Fees and Costs." On April 20, 2006, petitioners filed a "Memorandum of Law in Support of Amended Application for Fees and Costs," [hereinafter "P. Brief"] which included two affidavits, one from Michael Kavanaugh, Ph.D., [hereinafter "Kavanaugh Aff."] and one from Ms. Toale, [hereinafter "Toale Aff."] in support of their Amended Application. There are also several exhibits associated with Ms. Toale's affidavit. In compliance with General Order #9, petitioners also attached an affidavit from Sharon English stating that petitioners paid $302.95 in costs regarding this claim. Amended App. at 42.

In their Amended Application, petitioners request an amount of $152,423.60 in attorneys' fees and costs, nearly double the amount requested in their initial fee petition. More specifically, petitioners request that Ms. Toale receive $476 per hour billed, that Mr. Maglio receive $423 per hour billed, and that paralegals receive $130 per hour of service. Petitioners indicate that they "have recalculated attorney's fees pursuant to the updated Laffey Matrix"[5] attached to the Amended Application, Notice of Filing Amended App. at 1, but that the total number of hours billed as well as costs associated with this case "remain identical to the First Application for

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[5]The Laffey Matrix is a chart of hourly rates for computing attorneys' and paralegals' fees and is used by the United States Attorney's Office for the District of Columbia to evaluate requests for attorneys' fees in certain civil cases in District of Columbia courts that are handled by the U.S. Attorney's Office. These are cases that involve fee-shifting statutes which permit a **prevailing party** to recover reasonable attorneys' fees from the government. The Laffey Matrix is prepared by the U.S. Attorney's Office based on the hourly rates allowed by the U.S. District Court for the District of Columbia in Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354, aff'd in part, rev'd in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985). The rates are updated yearly by adding the increase in the Consumer Price Index for All Urban Consumers for the Washington, D.C., area to the corresponding rates for the prior year. The rates are subject to further adjustment to ensure that the relationship between the highest and lowest rates remain reasonably consistent from year to year. See also http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_4.html.

Petitioners assert that an "updated" version of the Laffey Matrix should be used in the calculation of their attorneys' hourly rates as utilized in the District Court for the District of Columbia in Salazar Jr. et al. v. District of Columbia et al.,123 F.Supp.2d 8, 13 (D.DC. 2000). See Amended App. at 43. According to an affidavit submitted by Michael Kavanaugh, Ph.D., in Salazar he reviewed the Matrix utilized the U.S. Attorney's Office. See Kavanaugh Aff. The district court adopted the method that Dr. Kavanaugh developed in determining appropriate hourly rates. Dr. Kavanaugh attests that his method differs from the version used by the U.S. Attorney's Office for two reasons. First, he uses an index specific to legal services. In contrast, the U.S. Attorney uses the entire CPI for the metropolitan D.C. area. Second, the "U.S. Attorney's method applies its more general index to the 1982 observations of rates," whereas Dr. Kavanaugh's method applies "the specific legal services index to the most recent survey of rates developed in 1989. . . ." Id. at 4.

Attorneys' Fees and Costs." Id. at 5; see Amended App. at 43. The following is a table reflecting the calculation of total fees:

**Table 1**

| | Altom M. Maglio, Esq. Hours | Anne C. Toale, Esq. Hours | Paralegal Hours | Totals |
|---|---|---|---|---|
| 2000-01 | 9.7 | 0 | 6.6 | 16.3 |
| 2002 | 38.4 | 0 | 5.05 | 43.4 |
| 2003 | 8.5 | 10.0 | 25.7 | 44.2 |
| 2004 | 44.3 | 23.3 | 27.7 | 95.3 |
| 2005 | 52.2 | 66.8 | 48.8 | 167.8 |
| 2006 | 0 | 12.4 | 3.7 | 16.1 |
| **Total Hours** | 153.10 | 112.5 | 117.55 | 383.10 |
| **Total Fees** | **$64,761.30** | **$53,550.00** | **$15,281.50** | **$133,592.80** |

Notice of Filing Amended App. at 4.

Respondent filed a "Response to Petitioners' Application for Attorneys' Fees and Costs" on June 14, 2006 [hereinafter "R. Res."]. In his response, respondent contends that petitioners requested hourly rates for Ms. Toale and Mr. Maglio should be based upon the prevailing market rates for Sarasota, Florida, where these attorneys practice law, and not the Laffey Matrix. Thus, the rates should be reduced accordingly from those requested in the Amended Application. Moreover, respondent contends that the undersigned "should significantly reduce any award from the number of hours requested and deny reimbursement for several costs requested." R. Res. at 2.

Petitioners filed a "Reply to Respondent's Response to Petitioners' Amended Application for Fees and Costs" [hereinafter "P. Rep."] on June 23, 2006. In the response, petitioners reaffirm their argument that the Laffey Matrix applies to Program cases and object, *inter alia*, to respondent's challenges to the number of hours requested by petitioners as well as several of the costs as being beyond the scope of the undersigned's March 13 Order as well as discussions at the February 8 and March 10, 2006 status conferences.

After several unsuccessful attempts by the parties to reach settlement of these issues, this case is ripe for Decision.

## II. *Discussion*

### A. Hourly Rates

*Petitioners' Position*

In their memorandum supporting their amended petition for attorneys' fees and costs, regarding the issue of hourly rates, in sum, petitioners assert that

> fees should be based on prevailing rates in the Court's forum, Washington, D.C., and, accordingly, request compensation based upon the updated Laffey matrix prepared by Michael Kavanaugh, Ph.D. Alternatively, should this Court maintain its focus on the "hometown rule," petitioners contend that the Laffey rates could be adjusted downward for geographical variations, pursuant to the reasoning in Garnes v. Barnhart, Slip Copy 2006 WL 249522 (N.D. Cal. Jan. 31, 2006).

P. Brief at 1. Petitioners then assert that "[i]n the context of this fee litigation," a reasonable hourly rate for their attorneys in their geographic market with equivalent experience is $250 per hour and request that, at a minimum, they be awarded this hourly rate. Id. at 1-2.

With respect to determining reasonable attorneys' fees, petitioners point out that federal courts use the two-step analysis called the "lodestar" method. Petitioners argue that the "determination of an appropriate lodestar market rate triggers a threshold determination of the *relevant community*." Id. at 3 (emphasis in original). Petitioners assert that although the Supreme Court has not identified the relevant community as the local community, "every federal circuit has held that the relevant community is the local community, **defined as the forum in which the court sits**." Id. (emphasis in original). Petitioners then identify cases in all the Circuits that support their proposition. Petitioners note that there is one exception to the forum rule, that being when a petitioner is forced to hire a higher-priced, non-local counsel due to the unavailability of local attorneys qualified to handle the case; these non-local counsel are compensated with higher fees than the forum rule normally allows. Petitioners cite several cases in support of this exception. Id. at 4. Petitioners also point out that the findings of a study performed at the behest of the Chief Judge of the Third Circuit caused that Circuit to reverse its position from a "hometown" rule to a "forum" rule. Id. at 4-5.

Next, petitioners assert that utilizing "national rates" for calculating attorneys' fees may be applicable in the case of attorneys practicing in the Vaccine Program. Relying on the Second Circuit's Decision in In re Agent Orange Product Liability Litigation, 818 F.2d 226, 232 (2nd Cir.

1997), petitioners argue that "'the use of national hourly rates in exceptional multiparty cases of national scope, where dozens of non-local counsel are involved, appears to be the best available method of ensuring adherence to the principles of the lodestar analysis.'" Id. at 7 (citing Agent Orange, 818 F.2d at 232-33).

As an alternative approach to using national rates for determining reasonable hourly rates, petitioners assert that the undersigned should apply rates that are proffered in the Laffey Matrix, see *supra* n.5. Citing numerous cases, petitioners assert that although the Laffey Matrix was originally created for a Title VII discrimination suit, it has been recognized by the courts as a "determinant of 'reasonable attorneys' fees' in complex federal litigation furthering public interests as delineated by Congress." Id. at 8. Petitioners also allege that the Matrix has served as a "starting point for determining prevailing market rates for litigation in the District of Columbia, which can be supplemented with additional information." Id. Petitioners concede that Laffey Matrix rates "may not apply to *litigation outside of Washington, D.C.* (as opposed to attorneys residing outside of D.C.)." Id. at 9 (emphasis in original). Petitioners note that in American Canoe Ass'n, Inc. v. U.S. EPA, 138 F.Supp.2d 722 (E.D.Va. 2001), *accord* Cooper v. PayChex, 163 F.3d 598 (4th Cir. 1998), the court acknowledged that the application of the forum rule for determining reasonable hourly rates is well-settled law; however, the court held that Laffey Matrix rates were not applicable to litigation taking place in Alexandria, Virginia – the location where the district court was sitting. Id. at 9.

Petitioners distinguish the facts of the case *sub judice* from American Canoe and Cooper in that Vaccine Program attorneys "are admitted to and practice before the Court of Federal Claims, *in Washington, D.C.*" P. Brief at 9 (emphasis in original). Petitioners also argue that in Ray v. Secretary of Health and Human Services, No. 04-184, 2006 WL 1006587 at * 6-*7 (Fed. Cl. Spec. Mstr. Mar. 30, 2006), the undersigned had "misconstrued American Canoe and Cooper as precluding the application of Laffey rates to attorneys located outside of Washington, D.C. Rather, those cases precluded the application of Laffey to **litigation** outside of Washington, D.C." P. Brief at 9 n.1 (emphasis in original). Petitioners assert that since Vaccine Program practice "represents the level of complex federal litigation referenced in the Laffey Matrix and has been recognized by the Special Masters as such," that it is appropriate to apply Laffey Matrix rates in determining reasonable attorneys' fees. Id. at 9-10.

*Respondent's Position*

In response to the petitioners' Amended Application, respondent agrees that the lodestar method of determining attorneys' fees and costs is the "appropriate method to calculate reasonable attorneys' fees under the Vaccine Act," and that reasonable attorneys' fees under the Vaccine Act are determined by "'the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. . . .'" R. Res. at 3 (citing Saxton v. HHS, 3 F.3d 1517, 1521 (Fed. Cir. 1993)). Respondent, however, takes issue with petitioners as to the determination of a reasonable hourly rate.

With respect to the Laffey Matrix, respondent asserts that it "does not apply either to the Department of Justice generally, or to the Vaccine Act's fee provisions specifically." Id. at 6. In support of his position, respondent submits the "Declaration of Daniel F. Horn, Deputy Chief of the Civil Division, United States Attorney's Office for the District of Columbia." Mr. Horn explains that "'[t]he [M]atrix has not been adopted by the Department of Justice generally for use outside of the District of Columbia, or by other Department of Justice components, or in other types of cases.'" Id. at 6 (citing R. Ex. A ¶ 5). Respondent asserts that the fee-shifting statutes that use the Laffey Matrix are distinguishable from the fee-shifting provisions of the Vaccine Act. Id. According to Mr. Van Horn, "[f]ee-shifting statutes that apply in our practice areas specify that only prevailing parties are eligible to recover attorneys' fees from the government," such as the Civil Rights Act of 1964. R. Ex. A ¶ 6.

More specifically, "attorneys who rely exclusively upon the existence of a fee-shifting statute for their compensation on the civil cases our Office handles bear the risk that they may receive no fee or a reduced fee depending on their success on the merits of the case." Id. Thus, respondent asserts, the Laffey Matrix "is intended to reflect reasonable hourly rates in a market where the lack of success creates a risk of non-payment," which may not "be appropriate to apply those rates in a program where this risk is apportioned differently." Id. "Put another way," respondent notes, "the risk of not prevailing is subsumed into the Laffey Matrix rate, and so it is not an appropriate measure of the market rate for Vaccine Act attorneys' fees, which are not paid only to the prevailing party and do not involve the same risk of non-payment." R. Res. at 9.[6]

With respect to petitioners' assertion that the Laffey Matrix applies to a four-attorney firm located in Sarasota, Florida, respondent counters that case law has established that the Laffey Matrix does not apply to geographic areas outside of Washington, D.C. Respondent points out that the district court in American Canoe "expressly rejected the use of the Laffey Matrix to establish the prevailing market rate for Alexandria, Virginia – though it is just five miles outside of Washington, D.C." Id. at 10. Similarly, respondent points out that "prevailing market rates in Maryland are also substantially lower than Laffey Matrix rates." Id. at 11. As support, respondent refers to the "Appendix for the District Court of Maryland," which provides guidelines for hourly rate determinations in civil rights cases and other complex federal litigation based upon the years of experience possessed by an attorney. Respondent indicates that the guidelines establish an hourly rate of $200-$275 per hour in the District of Maryland, and points out that this court is located just miles from Washington, D.C. Id.

Respondent continues that under a "forum rule" analysis, the application of the Laffey Matrix is actually inappropriate and that petitioners' argument regarding application of the "forum rule" "actually supports application of Sarasota, Florida, market rates." Id. at 12. Citing

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[6]Respondent also points out that unlike the original application for attorneys' fees and costs filed in December of 2005, which accorded different hourly rates to years 2000-2005, in the Amended Application, petitioners do not provide different hourly rates for prior years of practice. R. Res. at 5.

Davis v. U.S. Environmental Protection Agency, 169 F.3d 755 (D.C. Cir. 1999) (per curiam), respondent states that "[u]nder the 'forum rule,' hourly rates for attorneys are normally based upon the forum of the litigation, as opposed to the business location of the attorneys." R. Res. at 12. However, respondent also points out that the Davis court "created a second exception to the forum rule for those cases where the attorneys practice in 'less expensive legal markets and perform the bulk of their work on the case at home in those markets.'" Id. (citing Davis, 169 F.3d at 759). Thus, respondent contends that "[e]ven if the forum rule applied to Vaccine Act fee awards, the locality-based exception would govern here," id. at 13, as "[p]etitioners' attorneys had no physical connection to the court in Washington, D.C., before the case was dismissed, other than mailing or electronically filing pleadings." Id. at 13-14.

Respondent likewise takes issue with the petitioners' assertion that the court apply "so-called" national rates for determining attorneys' fees. Id. at 17. Pointing out that the Court of Federal Claims has already rejected the imposition of a national hourly rate in Rupert v. Secretary of Health and Human Services, 52 Fed. Cl. 684, 691-92 (1999), respondent asserts that a national rate need not be imposed with this particular case as a market rate can be determined for petitioners' counsel who are located in Sarasota, Florida. R. Res. at 17, 20-21; see also Erickson v. Secretary of Health and Human Services, No. 96-361V, 1999 WL 1268149 at *5 (Fed. Cl. Spec. Mstr. Dec. 10, 1999) (The undersigned addressed and rejected the application of national rates to an hourly rate determination for Program attorneys.).

Along these lines, respondent points out that "prior fee decisions for counsel and their own evidence support an award at an hourly rate below petitioners' request." Id. at 20. Respondent offers that petitioners' fee application filed in December of 2005 requested hourly rates for counsel ranging from $190 to $225 per hour and it was "only when respondent challenged the number of hours expended that petitioners chose to amend their fee request to seek an amount not actually charged by the firm." Id. Respondent points out that in addition to the firm's own invoice, "local courts have also valued counsel's time in 2005 as being worth $225.00 per hour," citing Toale Aff., and that the affidavits provided from several Sarasota practitioners indicate that the hourly rate is commensurate with their experience. Id. at 21. Thus, respondent contests that counsel be awarded $250 per hour because several affiants attest that they charge that hourly rate "as counsel's own billing records indicate that the that hourly rate 'actually incurred' ranged from $190 to $225," and Court of Federal Claims case law makes it clear that only actually incurred attorneys' fees be reimbursed. Id. at 21.

*Petitioners' Reply*

Petitioners submitted a reply to respondent's response on June 23, 2006. Petitioners assert that respondent never filed an objection to petitioners' original application for fees and costs. From a status conference call with the undersigned, petitioners understood that as a consequence, respondent would be "limited to its objections as to various time entries and cost items specifically discussed at that conference." P. Rep. at 1. They assert that respondent exceeded the allowable scope by "taking issue . . . with specific time entries never before

questioned, as well as costs never before questioned." Id. Thus, petitioners request that the undersigned only consider the issue of appropriate hourly rate. Id. at 2. Attached to the reply are numerous invoices regarding expenses of petitioners' counsel for prosecuting this case.

With respect to respondent's assertions regarding the Laffey Matrix, petitioners argue that Mr. Van Horn's affidavit should be given little evidentiary weight as he is from respondent's counsel's own office. Petitioners assert that the submission of Mr. Van Horn's affidavit is "analogous to Mr. Maglio and [Ms. Toale] filing affidavits as to why [they] personally believe the Laffey matrix . . . should be applied. . . . " Id. Petitioners take issue with respondent's objection to the costs associated with Dr. Kanavaugh's affidavit regarding the updated Laffey Matrix, as it was sought to address deficiencies in evidence regarding prevailing market rates in Washington, D.C., as discussed in the undersigned's Decision in Ray, 2006 WL 1006587.

*Relevant Case Law*

Pursuant to §15(e) of the Act, special masters may award "reasonable" attorneys' fees as part of compensation. To determine reasonable attorneys' fees, it is settled law to employ 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 attorneys' 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 Health and Human Services, No. 99-97V, 2004 WL 784910 (Fed. Cl. Spec. Mstr. Mar. 25, 2004).

The court must ensure that the hourly rate requested is reasonable. The Supreme Court has made clear that an attorney's reasonable hourly rate is "to be calculated according to the prevailing market rates in the *relevant community*." Blum, 465 U.S. at 895 (emphasis added). More specifically, "the burden is on the fee applicant to produce satisfactory evidence – in addition to the attorney's own affidavits – 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." Id. at 896 n.11 (emphasis added). This is not an easy task. The Supreme Court has acknowledged that determining the appropriate market rate for attorneys is "inherently difficult" since the types of services, experience, skill, and reputation may vary not only throughout the marketplace, but within the petitioning attorney's firm as well. Id. In any event, 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, 487 U.S. at 573; Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 726-727 (1987); Blum, 465 U.S. at 899. In essence, the market rate "is determined by a reference to the *particular* attorney involved rather than to a minimally qualified

hypothetical lawyer." Pierce, 487 U.S. at 581 (Brennan, J. et al., concurring) (citations omitted) (emphasis added).

*Analysis of Hourly Rate*

Petitioners concede that in the absence of the application of the "forum" rule, the Laffey Matrix does not apply for the determination of hourly rates. P. Brief at 12-13. As discussed below, the undersigned finds that neither the forum rule nor the Laffey Matrix applies to attorneys practicing in the Vaccine Program.

1. Applicability of Laffey Matrix for the Determination of Hourly Rates

The undersigned has previously addressed the issue of whether the Laffey Matrix should be utilized for determining hourly rates for attorneys who practice in the Vaccine Program. In Ray, the undersigned found that "while the matrix may represent, and appears to represent, DOJ's accepted lodestar for Washington, D.C. under at least some fee-shifting statutes, there is no showing that it should be used as a lodestar under the Vaccine Act and there is no evidence to support extending the boundaries of the Laffey Matrix beyond Washington, D.C." 2006 WL 1006587 at *6; see P. Brief at 9 n.1. Petitioners have submitted no new evidence that establishes that the Laffey Matrix has applicability beyond those fee-shifting programs described in Mr. Van Horn's affidavit.[7] Thus, the undersigned declines to use the Laffey Matrix for the determination of reasonable hourly rates for attorneys practicing in the Vaccine Program.

Moreover, no court, including this court, is *required* to accept the rates in the Laffey Matrix as *the* prevailing market rate, even for attorneys located in downtown Washington, D.C. The Laffey Matrix is merely a starting point. See Blackman v. District of Columbia, 59 F. Supp. 2d 37, 43-44 (D.D.C. 1999); Covington v. District of Columbia, 57 F.3d 1101, 1109 (D.C. Cir. 1995); Cooper, 163 F.3d at *13 (stating that "[w]e are skeptical about endorsing a fee schedule" since courts may use, in addition to such a fee schedule, their own discretion in determining fee awards). A court may, while using the Laffey Matrix as a guide, exercise its discretion and adjust a fee award "upward or downward to arrive at a final fee award that reflects 'the characteristics of the particular case (and counsel) for which the award is sought.'" Muldrow v. Re-Direct, Inc., 397 F. Supp. 2d 1, 5 (D.D.C. 2005) (quoting Falica v. Advance Tenant Services, Inc., 384 F. Supp.2d 75, 78 (D.D.C. 2005)). Finally, there is no District of Columbia Circuit precedent requiring the application of the Laffey Matrix to an award of attorneys' fees. In Adolph Coors Co. v. Truck Insurance Exchange, 383 F. Supp.2d 93 (D.D.C. 2005), the law firm

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[7]Petitioners allege that the affidavit of Dr. Kavanaugh is "evidence of prevailing rates in Washington, D.C." P. Brief at 12. The undersigned declines to opine as to whether the affidavit provides sufficient support for prevailing rates in Washington, D.C., as the issue is moot. The undersigned rejects application of the Laffey Matrix for determination of reasonable hourly rates, thus making it unnecessary to determine whether these rates are the prevailing rates in Washington, D.C.

of Dickstein Shapiro sought hourly rates higher than those in the Laffey Matrix. The defendant argued that the Laffey Matrix was the prevailing community rate and therefore, the plaintiffs' attorneys' rates should be reduced. The court disagreed and stated the evidence submitted by the plaintiffs showed that the prevailing rate in the Washington, D.C., community was higher than those in the Laffey Matrix, and the rate that Dickstein Shapiro charges its clients was the market rate. Id. at 98. Thus, as stated in Ray, 2006 WL 1006587 at *8, "at most, the Laffey Matrix is a piece of evidence; a piece of evidence petitioners failed to show applies in this case."

2. The "Traditional Geographic Rule" Applies in the Determination of Reasonable Hourly Rates

As described above, petitioners assert that although the Supreme Court has never defined the terms "relevant community," "nearly every federal circuit has held that the relevant community is the local community, **defined as the forum in which the court sits.**" P. Brief at 3 (emphasis in original). In the alternative, petitioners request that the undersigned apply a "national market rate" in determining reasonable hourly rates. Id. at 5-7.

The issue of whether reasonable attorneys' fees should be based upon the forum or the prevailing market rate in the legal community has previously been addressed by Judge Christine Miller of the Court of Federal Claims in Rupert, 52 Fed. Cl. at 692-93. Judge Miller also addressed whether national market rates apply in the Program. In Rupert, Judge Miller endorsed the "traditional geographic rule," as opposed to a "national market rate" to define the relevant community for determining an attorney's hourly rate. Id. at 688-91. In finding that the "prevailing market rates in Boston, Massachusetts," id. at 693, were the linchpin for a determination of reasonable hourly rates for attorneys practicing in Boston, Massachusetts, Judge Miller opined:

> For purposes of the lodestar, a judge cannot make a finding of two prevailing market rates, one from the pool of medical malpractice, products liability, and personal injury attorneys in Twin Falls, and one from a separate national pool of Vaccine Act attorneys. The legal error is evident if one considers what a special master would be forced to do if he found that the national rate did not correlate with the local market rate.

Id. at 692-93. With respect to the application of a "national market rate," Judge Miller continued that "the mere fact that in any given geographic area only a few attorneys actively pursue Vaccine Act litigation does not justify an assumption that claimants shop nationally for such representation." Id. at 692. Nor are vaccine attorneys *"sui generis*," such that they can "never withstand a genuine comparison to an attorney with another type of practice." Id.

Additionally, the undersigned has previously commented on the forum rule, as well as the applicability of a national market rate for determining reasonable hourly rates. In Ray, the undersigned rejected petitioners' request that the "Laffey Matrix be relied upon to establish the

hourly rates not only in this case, but also nationally." 2006 WL 1006587 at *5-*6. Moreover, while not addressing the application of the forum rule specifically, in Erickson, the undersigned questioned the applicability of the forum rule to Program attorneys, noting that

> the court does not suggest that in future cases that [an attorney practicing in Twin falls, Idaho] would be awarded an hourly rate based on the Washington, D.C. market were he to so request. Simply stated, the court is skeptical of this approach given the vast differences in overhead costs between Twin Falls and Washington, D.C. The court fails to see the logic of this approach.

1999 WL 1268149 at *4 n.6.

Petitioners have pointed to no vaccine case in which the "traditional geographic rule" has not been utilized for purposes of determining hourly rates. To the contrary, based upon the undersigned's research, the traditional geographic method for calculating reasonable hourly rates has a long-standing history of use in the Program. See, e.g., Rupert, 52 Fed. Cl. at 692; Ray, 2006 WL 1006587 at *8-*9; Ceballos, 2004 WL 784910 at *9; Edgar v. Secretary of Health and Human Services, No. 90-711V, 1994 WL 256609 at * 3 (Fed. Cl. Spec. Mstr. May 27, 1994), aff'd, 32 Fed. Cl. 506 (1994); Maloney v. Secretary of Health and Human Services, No.90-1034V, 1992 WL 167257 at *5,*6 (Cl. Ct. Spec. Mstr. June 25, 1992, Awarding Order issued June 30, 1992).

3. The Lodestar Two-Step Analysis is the Proper Method for Determining Reasonable Attorneys' Fees

The lodestar method has been employed in determining reasonable attorneys' fees under the Act. The Court of Appeals for the Federal Circuit, whose decisions are binding on the special masters, has affirmed the usage of the lodestar method. See Saxton, 3 F.3d at 1521. Petitioners have submitted a plethora of evidence that is relevant to the determination of reasonable hourly rates in Sarasota, Florida. As an initial matter, petitioners submitted an affidavit from Ms. Toale elaborating on her experience as an attorney as well as Mr. Maglio's experience as an attorney. According to the affidavit, Ms. Toale has been a member in good standing of the Bar of Florida since 1992. Toale Aff. at 1. She has a "nationwide practice in the Vaccine Program, and a statewide practice in Florida's Birth-related Neurological Injuries Compensation Program." Id. In addition, a small portion of her practice involves medical malpractice, nursing home, and other negligence claims. Id. Similarly, Mr. Maglio was admitted to Florida's Bar in 1996. Id. He also has a nationwide practice in the Vaccine Program as well as a nationwide products liability practice. A small portion of his practice consists of medical malpractice, nursing home, and other negligence actions.

Ms. Toale indicates that there are no comparable attorneys in Sarasota, Florida for comparison of hourly rates as there are no other Program attorneys, and most personal injury attorneys work on a contingency fee basis, not an hourly rate. However, petitioners submitted

affidavits and other evidence in order to establish a reasonable hourly rate in Sarasota. First, petitioners submitted a July 2005 Sarasota County Circuit Court decision awarding fees to Mr. Maglio at the hourly rate of $225. See Toale Aff., Ex. A. Petitioners also submitted several affidavits from other attorneys practicing in the same community and attesting to what the prevailing market rate is in their community. The first affidavit is from Mr. Scott Westheimer, Esq., an attorney "actively engaged in the practice of law in Sarasota since December of 1996." Toale Aff., Ex. B at 1. Mr. Westheimer's practice areas include personal injury, medical malpractice, premises liability, product liability, commercial litigation, and general litigation. Id. Mr. Westheimer affirms that he is "familiar with charges made by attorneys for like services in Sarasota, Florida," that he charges $250 per hour, and that he believes that "in light of his experience and expertise," that rate is "competitive in the Sarasota, Florida, legal market." Id.

Petitioners also supply the affidavit of Alice S. Bowman, Esq., who is a partner in a small firm in Sarasota, Florida, and was admitted to the Florida Bar in 1993. Ms. Bowman practices in the area of estate planning and probate and charges $200 to $250 per hour, with the latter being her most recent hourly rate. Toale Aff., Ex. C at 1. She affirms that she is "familiar with charges made by attorneys for like services in this county, and this hourly rate is commensurate with the charges by attorneys of similar experience for similar services." Id.

Next, Ms. Varinia Van Ness, Esq., affirms that she is a principle in a two-attorney firm located in Sarasota, Florida, and has been a member of the Florida Bar since 1991. Toale Aff., Ex. D at 1. The other principal in her firm, W. Scott Van Ness, was admitted in 1992. Id. Both of these attorneys practice in the areas of business and real estate litigation, as well as personal injury litigation, which is not done on a contingency fee basis. Id. Ms. Van Ness affirms that she "is familiar with charges made by attorneys for like services in this county, and the $225 hourly rate charged by counsel for Petitioners is commensurate with, or lower than, the charges by attorneys of similar experience for similar services." Id.

The last affidavit submitted on behalf of petitioners is that of Melinda Delpech, Esq. Ms. Delpech is a sole practitioner is Sarasota, Florida, and has been a member of the Bar of Florida since 1993. Toale Aff., Ex. E at 1. Ms. Delpech practices in the area of family law litigation and charges her clients $250 per hour. Id. She claims that she is "familiar with charges made by attorneys for like services in [Sarasota County], and this hourly rate is commensurate with the charges by attorneys of similar experience for similar cases." Id.

Petitioners have provided ample evidence for the undersigned to determine reasonable attorneys' fees for both Mr. Maglio and Ms. Toale. Respondent does not object to the original rates requested. R. Res. at 20-21. Based upon the evidence presented and the undersigned's experience, as delineated as Exhibit A of petitioners' original fee application filed on December 5, 2005, an hourly rate for both Ms. Toale as well as Mr. Maglio of $190 per hour for hours billed from 2000-2004 is reasonable. The hourly rate was increased to $225 for hours billed on or after January 1, 2005, which the undersigned also finds to be reasonable. The hourly rate for paralegals shall be $75 per hour as requested in the original petition.

**B. Hours Expended**

*The Parties' Positions*

In their Amended Application, petitioners request that Mr. Maglio be compensated for 153.10 hours of time, and that Ms. Toale be compensated for 112.50 hours of time, for a total of 265.6 hours. Notice of Filing Amended App. at 4. Petitioners request that 117.55 paralegal hours be compensated. Respondent takes issue with the number of hours expended by petitioners' counsel in litigating this case, but does not object to the number of hours requested for paralegal time. With respect to the expenditure of time, first, respondent indicates that "it is difficult to analyze the manner in which petitioners' counsel spent their time working on the instant case due to their consistent practice of billing for tasks completed in 'blocks.'" R. Res. at 22. Id. Respondent also objects to the amount of time allocated to "research and review," as it is "excessive for counsel experienced in vaccine cases." Id. at 23. Respondent suggests the undersigned reduce the requested number of hours expended by 25%. Id.

Respondent also objects to counsel charging their full hourly rate for travel to the hearing and for meeting with experts. Hours spent in travel should be billed at half of the attorney's regular hourly rate. Id. Respondent asserts that this premise also applies to expert travel time. Id. at 24.

Finally, respondent asserts that "[p]etitioners have not provided any evidence as to why two attorneys were needed to prosecute this case," and that respondent finds "the use of more than one attorney to litigate this case unreasonable." Id. Respondent asserts that the number of hours expended on this case was increased due to two attorneys working the case. Thus, the "inordinate amount of review may have been due to multiple partners working the case simultaneously." Id. Petitioners have provided no explanation for the need for two attorneys to work on this case, and thus respondent requests that the undersigned reduce the number of hours expended by 25%. Id. at 23-24.

Petitioners take issue with respondent's objection that it is difficult to determine how much time was spent on an activity as well that excess time was spent on research and review. P. Rep. at 3-4. Petitioners indicate that the terms "research and review" are broad categories and that "time entries are then specifically explained in the following column of the billing records, and it can be seen from the descriptions what the attorneys were actually doing." Id. at 4. Petitioners' counsel also states that she "spends entire days sitting at a desk, either reviewing medical records, researching medical issues online, or doing legal research. That is the crux of the practice from a Petitioners [sic] standpoint, 'figuring out' cases, by review and research." Id. Moreover, petitioners argue that the respondent's response regarding objections to hours expended as well as costs are beyond the scope of what the undersigned allowed to be challenged due to respondent's late filing of his response. Id. at 2.

Petitioners also request an additional 10 hours be added to the existing total for Ms. Toale in reviewing respondent's response to the Amended Application as well as preparing petitioners' reply. Id. at 6.

*Analysis*

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 practice ethically is obligated to exclude such hours from his fee submission." Hines v. Secretary of Health and Human Services, 22 Cl. Ct. 750, 754 (1991); Hensley, 461 U.S. at 434. A special master, however, is not required to base his or her decision on a line-by-line analysis of the fee application. See Wasson v. Secretary of Health and Human Services, 21 Cl.Ct. 482, 484 (1991), aff'd, 998 F.2d 131 (Fed. Cir. 1993).

First, the undersigned rejects petitioners' request to strike this part of respondent's response. Even though respondent was derelict in filing his response timely, because petitioners filed an Amended Application, the undersigned finds that petitioners, in essence, re-opened the application for review by the respondent. Thus, the undersigned considered respondent's objections. However, the undersigned has reviewed the time entries in question that petitioners' counsel have entered and finds them to be reasonable. This case involves a voluminous record in which "[l]egal causation was . . . was hotly contested, and was complicated by a disputed factual issue." Petitioner[s'] Response to Chief Special Master's Questions Regarding Application for Attorney's Fees and Costs, filed Mar. 31, 2006, at 4. The undersigned notes that each counsel was responsible for specific portions of the case and competently questioned their respective expert witness on behalf of petitioners during the March 2005 hearing. The undersigned finds counsels' handling of this case appropriate, efficient, and importantly, extremely competent. As discussed by the undersigned during several conference calls held regarding the Amended Application, the undersigned is not inclined to determine how or why attorneys divide their workload, as the Court of Federal Claims has found that it is reasonable for two attorneys to "collaborate . . . in order to assure that the litigation proceed[s] in a timely fashion," and that a special master should not substitute his own judgment for how to conduct the litigation of a petitioners case. Holton v. Secretary of Health and Human Services, 24 Cl. Ct. 391, 396-97 (1991). Based on the undersigned's experience, the number of hours expended is reasonable and the undersigned declines to reduce the number of hours as requested by respondent.

With respect to the rate that the attorneys bill for travel time, petitioners assert that counsel's "time is equally valuable regardless of whether [they] are flying or driving or performing other tasks. In this particular case, [counsel] drove to the hearing together, and discussed [their] upcoming client meeting, and how they would try the case during the trip. . . ." Petitioner[s'] Response to the Chief Special Master's Questions Regarding Application for Attorney's Fees and Costs, filed Mar. 31, 2006, at 3. It has been a consistent practice in the Program to award one-half the hourly rate for travel time unless it has been well documented as to what work was done during that time period. Scoutto v. Secretary of Health and Human Services, No. 90-3576V, 1997 WL 588954 at *5 (Fed. Cl. Spec. Mstr. Sept. 5, 1997); LeBlanc v.

Secretary of Health and Human Services, No. 90-1607V, 1995 WL 695202 (Fed. Cl. Spec. Mstr. Nov. 8, 1995); Cain v. Secretary of Health and Human Services, No. 91-817V, 1992 WL 379932 (Fed. Cl. Spec. Mstr. Dec. 3, 1992). Petitioners cited no persuasive case law to the contrary.

In their Amended Application on page 16, on August 22, 2004, petitioners' attorneys claim 4.7 hours at an hourly rate of $190 for "Review file and prepare for meeting with Dr. Carney, travel to Gainesville." Petitioners do not delineate how much of this time was for traveling, who actually did the traveling, nor how much time was for preparing for the meeting. Thus, the undersigned allows for two hours of time to be reduced by one-half – for a reduction of $190 in attorneys' fees. The undersigned also reduces the return travel on August 23, 2004 by $190.00. The total deduction is thus $380 from the attorneys' fees claimed.

With respect to travel to and from the hearing, counsel claims "Travel to Gainesville for hearing, Anne C. Toale," for three hours at an hourly rate of $225 on April 12, 2005 as well as for the return trip the next day. See Amended App. at 26. In addition, on April 13, 2005 is an entry for "Travel to and from Gainesville for hearing for Altom M. Maglio" for 6.00 hours at an hourly rate of $225. Id. These amounts shall be reduced by one-half for a reduction in fees of $1350.

Lastly, the undersigned finds it reasonable to add 10 hours of time to Ms. Toale's total expenditure in 2006 for reviewing respondent's response to the Amended Application as well as for drafting petitioners' reply.

**C. Costs**

*The Parties' Positions*

Respondent also contests several of the costs that are requested by petitioners for reimbursement. First, respondent contests that petitioners have "provided no receipts to document their expenses." R. Res. at 25. More specifically, respondent objects to reimbursement for payments made for research documents on the following dates: (12/1/00, 5/7/02, 5/20/02, 6/17/02, 3/29/05, 10/20/04,4/22/05). Id. Respondent also objects to Pacer Fees on 11/01/02, Auto Trax search on 6/7/04, as well as Westlaw research fees on 4/22/05 and 10/19/05. Id. Respondent asserts that the requests are too vague or are part of the overhead expenses of a law office. Id. Respondent also objects to facsimile expenses as they are also part of the overhead costs and not compensable at $1.00 a page. Id.

Respondent also takes issue with counsels' photocopying charge of $0.25 per page and the charge listed for 7/30/04 wherein the charge is for $0.49 per page for copying. Id. Respondent asserts that a reasonable charge for copies is $0.10 per page. Id. Finally, respondent objects to a 6/15/05 notation for lunch with clients and a 4/11/05 entry for "English cash travel expenses." Id. (citing Amended App. at 41).

Finally, respondent takes issue with several of the costs requested for expert witnesses. Respondent objects to the hourly rate of Dr. Carney as being excessive at $450 per hour. Respondent points out that petitioners have provided no justification for such a rate, noting that the undersigned was highly critical of Dr. Carney's testimony during the hearing and that Dr. Carney is not even Board Certified. R. Res. at 26. In addition, respondent objects to the charges of $800 for Dr. Gilmartin as he "never appeared at the trial and no report was ever filed for Dr. Gilmartin." Id. Respondent objects to the bill for Dr. Dickison as no invoice was ever provided. Respondent also asserts that the experts be billed at one-half their hourly rate for travel. Id. at 24.

In their reply, petitioners address respondent's objections. Petitioners reiterate their objection to respondent's position as to the issue of costs as the respondent waived any objections for not filing his response in a timely manner. With respect to respondent's concern that no documentation for certain expenses was provided, petitioners attached receipts to their reply. P. Rep. at 4; see P. Rep., Ex. A. Petitioners also discuss their rationale for charging $0.25 per page for copies versus the $0.10 that respondent deems reasonable. Petitioners explain that they charge this amount because "all documents are scanned and maintained electronically, rather than just merely copied. This results in overall cost savings to the [P]rogram, because no further copies of these documents are ever necessary." P. Rep. at 5.

With respect to expert fees, petitioners disagree with respondent's position and ask that their experts be compensated as requested.[8] See P. Rep. at 5-6. Petitioners assert that "[e]xpert witnesses are routinely paid $300 or more per hour in the [P]rogram." Id. at 5 (citing Hart v. Secretary of Health and Human Services, 2004 WL 3049766 (Fed. Cl. 2004)). Petitioners assert that "[m]erely because Dr. Carney did not provide the 'winning' testimony does not mean that his hourly rate should be reduced." P. Rep. at 5. Recognizing that he is not board certified, petitioners assert that he was nonetheless "highly qualified." Id. Petitioners note that the undersigned has already acknowledged that Dr. Dickison's rates are reasonable. Id. Dr. Dickison's invoice is provided at Exhibit A, page 17 of petitioner's reply. With respect to Dr. Gilmartin, petitioners explain that while they approached him for an opinion, he declined to provide one. Petitioners state that "[s]urely [r]espondent is not suggesting that [p]etitioners only get one shot at an expert witness, while [r]espondents [sic] have an unlimited supply of experts at their disposal." Id. Dr. Gilmartin's expenses are attached as Exhibit A to Petitioner's Reply at page 16. He requests $200 per hour for his services.

*Costs Analysis*

As with attorneys' fees, the reasonableness requirement also applies to costs claimed for reimbursement. Perreira v. Secretary of Health and Human Services, 27 Fed. Cl. 29, 34 (1992),

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[8]Petitioners also assert that the Respondent objects to the expert fee requested for Dr. Kavanaugh, as it "'has no bearing on this case.'" P. Rep. at 2. Respondent did not object to this request in his response. However, even if respondent did object, the undersigned finds the request to be reasonable.

aff'd, 33 F.3d 1375 (Fed. Cir. 1995). Moreover, "[i]t is petitioners' burden to substantiate costs expended with supporting documentation such as receipts, invoices, canceled checks, etc." Ceballos, 2004 WL 784910 at *13; see Barnes v. Secretary of Health and Human Services, No. 90-1101V, 1999 WL 797468 at *7 (Fed. Cl. Spec. Mstr. Sept. 17, 1999). A petitioner, however, is only required to provide "reasonably specific documentation." Ceballos, 2004 WL 784910 at *13 (citing Comm. Heating & Plumbing Co., Inc. v. Garrett, III, 2 F.3d 1143, 1146 (Fed. Cir. 1993)). With these holdings as a backdrop, the undersigned next analyzes petitioners' requested costs.

Research Charges

As an initial matter, as discussed above, the undersigned rejects petitioners' argument that respondent waived any objections to costs as he did not file his response in a timely manner. Accordingly, the undersigned has reviewed the receipts provided by the petitioner. The receipts provided do not reflect the payments for "Research documents," as described by petitioners in their cost logs – they are apparently for different documents or searches. See, e.g., Amended App. at 38. Nonetheless, while petitioners have not submitted receipts for all their research expenses, the undersigned is satisfied that these costs were related to the above-captioned case and were reasonable expenditures. Thus, the undersigned rejects respondent's argument that the undersigned reduce the requested costs regarding research documents, including the objections to the Pacer Fees and Auto Trax expenditures.

The undersigned also rejects respondent's objection to Westlaw search charges. It has been held that computer research fees are compensable. Dunham v. Secretary of Health and Human Services, 18 Cl. Ct. 633, 645 (1989); Farnsworth v. Secretary of Health and Human Services, No. 90-2049V, 1997 WL 739489 at *3 (Fed. Cl. Spec. Mstr. Nov. 13, 1997). Accordingly, the costs are allowed.

Copying and Facsimile Charges

With respect to the charges for copying, the undersigned finds that $0.25 per page is reasonable. Petitioners state that their attorneys use a scanner to make electronic records of documents. This is cost-effective as paper copies do not need to be continually made. In addition, this court favors and even encourages electronic documentation for efficiency as seen by the Court's electronic docketing system, CM/ECF.

Although facsimile expenses are generally considered overhead and not compensable, Wilcox v. Secretary of Health and Humans Services, No. 90-46V, 1997 WL 74664 at *2, the undersigned has previously indicated a "willingness to consider facsimiles as a compensable cost so long as the attorney requesting compensation supplies reasonable evidence as to the actual, out-of-pocket cost involved in using the facsimile." Ceballos, 2004 WL 784910 at *14 (citing Wilcox, 1997 WL 74664 at *2; Coats v. Secretary of Health and Human Services, No. 91-504V, 1999 WL 94924 at *3 (Fed. Cl. Spec. Mstr. Jan. 29, 1999); Barnes,1999 WL 797468 at *6. In Ceballos, the undersigned denied facsimile costs because counsel "provided no evidence as to

how many facsimiles were sent or how the charges were computed," thus making it impossible to assess the actual out-of-pocket costs. 2004 WL 784910 at *14. In the case *sub judice*, however, petitioners have provided the number of pages that were faxed. They did not provide, however, any explanation as to how counsel derived the cost per page. As a result, the undersigned will reimburse for this expense, but finds that the charge of $1.00 per page is excessive. A reduction of one-half for the cost of each page is reasonable, and thus $19.50 in costs will be deducted from petitioners' original request.[9]

Expert Fees

As for respondent's objection to the charges incurred for expert expenses, the undersigned finds that the charges for Drs. Dickison and Gilmartin are reasonable and are awarded accordingly.[10] With respect to Dr. Carney, the undersigned finds that a reasonable hourly rate for his services is $300 per hour. Petitioners have provided no information (such as hourly rate awards in other cases or affidavits from other similarly situated experts in his field as to their typical hourly rates), to substantiate the hourly rate requested for Dr. Carney. Moreover, the undersigned finds that the $300 per hour rate is commensurate with other recent awards for qualified experts in the Program. See, e.g., Ray, 2006 WL 1006587 (awarding Dr. Mark Geier, a geneticist, $250 per hour); Baker v. Secretary of Health and Human Services, No. 99-653V, 2005 WL 589431 (Fed. Cl. Spec. Mstr. Feb. 24, 2005) (awarding Dr. Classen, who is not board certified in any specialty, $200 per hour); Hart, 2004 WL 3049776 (awarding Dr. Byers, a board-certified expert, $300 per hour). In the absence of evidence supporting a higher rate, Dr. Carney is awarded $300 per hour. Thus, petitioners' request for costs shall be reduced by $1575.[11] See Amended App. at 41.

Other Expenses

Respondent objects to two other of petitioners' requests for reimbursement, those being for travel expenses on 4/11/2005 for $60.00, as well as for lunch on 6/10/2005 for $13.33 because there are no receipts. R. Res. at 25; see Amended App. at 43. The undersigned adds that petitioners have not submitted receipts for lunch costing $74.23 during the hearing on 3/29/05. The undersigned agrees with respondent that these costs should be deducted since petitioners did

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[9]The undersigned counted 39 pages of facsimile charges from the following billing dates in the Amended Application: 6/14/2004, 7/16/2004, 8/17/2004, 9/23/2004, and 5/17/2005.

[10] The undersigned notes that although respondent objected to providing the full hourly rate for travel, petitioners have adjusted the hourly rates by one-half in their Amended Application. Amended App. at 41. Thus, respondent's objection is moot.

[11]The total bill for Dr. Carney is $4725 for 10.5 hours of work. See Amended App. at 41. At $300 per hour, Dr Carney receives $3150 for his services, $1575 less than petitioners' requested.

not correct this defect in their reply. Thus, petitioners' request for costs shall be reduced by $147.56.

## III. *Conclusion*

After a thorough review of petitioners' Amended Application and respondent's objections, petitioners are awarded **$64,399.25** (total fees awarded are $66,129.25 minus $1730 = $64,399.25) in fees and **$17,088.74** (total costs presented in Notice of Filing Amended App. of $18,830.80 minus $1742.06 for reduction in costs) in costs.[12] The award shall be paid jointly to petitioners and their attorneys. The Clerk is directed to enter judgment accordingly.[13]

**Table 2**

| | Altom M. Maglio, Esq. Hours | Anne C. Toale, Esq. Hours | Paralegal Hours | Total Fee Award |
|---|---|---|---|---|
| 2000-01 | 9.7 X $190.00 | 0 | 6.6 X $75.00 | $2338.00 |
| 2002 | 38.4 X $190.00 | 0 | 5.05 X 75.00 | $7674.75 |
| 2003 | 8.5 X $190.00 | 10.0 X $190.00 | 25.7 X $75.00 | $5442.50 |
| 2004 | 44.3 X $190.00 | 23.3 X $190.00 | 27.7 X $75.00 | $14,921.50 |
| 2005 | 52.2 X $225.00 | 66.8 X $225.00 | 48.8 X $75.00 | $30,435.00 |
| 2006 | 0 | 22.4 X $225.00 | 3.7 X $75.00 | $5317.50 |
| **Total Fees** | | | | $66,129.25 |

**IT IS SO ORDERED.**

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

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[12]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. § 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 Beck v. Secretary of Health and Human Services, 924 F.2d 1029 (Fed. Cir. 1991).

[13]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 U.S. Court of Federal Claims Judge.