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

No. 07-372V
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Published

STEPHEN TORDAY, M.D.,	*	
	*	
Petitioner,	*	
	*	Attorney fees and costs
v.	*	
	*	
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Lisa Annette Roquemore, Broker & Associates, P.C., Irvine, C.A., for petitioner.
Darryl R. Wishard, United States Department of Justice, Washington, D.C., for respondent.

RULING ON ATTORNEY FEES AND COSTS
AND ORDER[1]

GOLKIEWICZ, Special Master.

Petitioner seeks an award for attorney's fees and costs in this compensated case. Previously, by informal resolution, petitioner received an interim award for fees and costs for work performed during 2007 and through 2008. See Decision, filed January 27, 2009; see also Petitioner's Final Application (hereinafter "P Final App at _") at 4. That award totaled $110,979 for fees and costs. These fees and costs related to the entitlement portion of this case. Petitioner's Final Application filed on December 6, 2010, seeks an additional $78,998.50 in attorney's fees, $51.35 in attorney costs, $17,150 for costs of the life care plan, and $56,445 for economic analysis related to petitioner's claim for lost wages. See generally P Final App (including supporting exhibits A through K). Petitioner also filed on December 6, 2010, the

[1] The undersigned intends to post this decision on the website for the United States Court of Federal Claims, 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing.** Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

Declaration of Mr. Panis, petitioner's economist (hereinafter "P Panis Dec at _"). This declaration was accompanied by exhibits L through N. These fees and costs relate to the damages phase of the case.

Unfortunately, unlike the vast majority of fee applications, this case did not resolve between the parties. Respondent raised a number of objections to both the requested fees and costs. Respondent's Objections, including exhibits A through E, filed December 15, 2010 (hereinafter "R Obj at _"). Petitioner replied on December 20, 2010, including supporting exhibits O through U (hereinafter "P Reply at _"). Respondent filed a Sur-Reply on December 22, 2010 (hereinafter "R Sur-Reply at _"). Petitioner responded on December 27, 2010 (hereinafter "P Resp at _"). The undersigned has considered the entire Record and makes the following determinations.

Before beginning, some context for this resolution may be helpful. After finding entitlement for petitioner, the parties set about determining the appropriate level of compensation. Ultimately, as is generally the case in Vaccine Act cases, the parties worked through the damages and agreed upon compensation. The undersigned managed the proceedings, but had no substantive involvement. Petitioner set forth the following summary of events in his Application, which respondent did not question.

In brief, the entitlement decision finding petitioner entitled to compensation was issued on November 18, 2009. Petitioner hired a life care planner to determine future needs. P Final App at 4. The use of a life care planner has been the routine in vaccine cases, with some changes in recent years due to the shift from vaccine-injured children to compensated adult cases. Adult cases tend to not require life care plans because they do not present the myriad of lifetime needs that attach to cases involving children. This case was an exception. The life care planning took place from December 2009 through mid-March of 2010. Id. at 5. Petitioner filed his life care plan on March 22, 2010. Id. A joint life care plan was filed by respondent on June 30, 2010. See id.

With the life care plan issues determined, the issue of lost wages was tackled. That issue was critical in this case and the undersigned anticipated some difficulties. That is because petitioner, Dr. Torday, is an obstetrician and his injuries were affecting his continued ability to practice. Petitioner contracted the services of economist Stan Panis in June 2010 to address the lost wages issue. Id. at 5. Petitioner presented his lost wages calculation to respondent in July 2010. Id. After addressing several issues, the parties were able to resolve the lost wages issue in September 2010. Id. That left past unreimbursed expenses and pain and suffering to resolve. Again, the parties worked together to resolve these issues and filed a proffer with the court on October 8, 2010. The undersigned issued a decision accepting the proffer on October 13, 2010.

It should be emphasized that the parties worked diligently in agreeing upon an appropriate level of compensation in a potentially difficult case of damages given Dr. Torday's profession and the impact of his injury. This took good work and cooperation. It is unfortunate that those cooperative efforts did not carry forth into the fees portion of this case - as most other cases do. Disagreements, even substantial disagreements, are not impediments to discussion, reasonable exchange of information, and ultimately agreement. This dispute should have, if not

resolved, narrowed significantly. It is noted that the undersigned has handled several cases with petitioner's counsel, and those experiences helped greatly in resolving the issues presented in the current litigation. See Saxton v. Sec'y of the Dept. of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993)("[v]accine program special masters are also entitled to use their prior experience in reviewing fee applications."). Many of the same issues were discussed and resolved in Mueller v. Sec'y of the Dept. of Health & Human Servs., No. 06-775V, slip op. (Fed. Cl. Spec. Mstr. May 27, 2010). See also Broekelschen v. Sec'y of the Dept. of Health & Human Servs., No. 07-137V, 2008 WL 5456319 (Fed. Cl. Spec. Mstr. 2008). With that background, the parties' disagreements are addressed.

A. Attorneys' Fees

Reasonable attorneys' fees under the Vaccine Act are determined by "multiplying the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate . . . ." Avera v. Sec'y of HHS, 515 F.3d at 1347-48 (Fed. Cir. 2008) (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984). The burden is on petitioner to establish the reasonableness of the request. See, e.g., Broekelschen , 2008 WL 5456319, *3 (citing Mares v. Credit Bureau of Raton, 801 F.2d 1197, 1210 (10th Cir. 1986)).

1. Hourly rates

Ms. Roquemore is awarded $345 per hour for her time. E.g., Mueller, slip op, at 2; Broekelschen, 2008 WL at 5456319, *4. There was some confusion between the parties as to the claimed rate, however, it is unnecessary to discuss further the issues since the undersigned found in Mueller that $345 is reasonable and sees no reason to deviate from that rate at this time. The paralegal's hourly rate of $125 per hour was not challenged. It is found reasonable.

2. Reasonable Number of Hours

The second step in determining reasonable attorneys' fees under the Act is calculating the reasonable number of hours to be awarded. The Federal Circuit provided the following guidance:

> "The [special master] also should exclude from this initial fee calculation hours that were not 'reasonably expended.' . . . Counsel for the prevailing party should make a good-faith effort to exclude from a fee request 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. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority."

Saxton, 3 F.3d 1517, 1521 (Fed. Cir. 1993)(emphasis in original)(quoting Hensley v. Eckerhart, 461 U.S. 424, 433-34 (1983)). Respondent has challenged a number of the hours billed by Ms.

Roquemore. R Opp at 7-11. Petitioner countered with explanations for each of the challenges. P Supp at 3-10.

The undersigned faced this issue with petitioner's counsel in the past. Ms. Roquemore is an excellent counsel who represents her clients zealously. She is always well-prepared, organized and knowledgeable about the issues at hand. The results of her efforts are apparent. That said, Ms. Roquemore spends far greater hours than her contemporaries handling her cases. As commented on in Mueller, "[w]hen does an attorney's exhaustive efforts become unreasonable? There is no bright line, and the undersigned is mindful to not punish a lawyer for zealous representation. However, the Vaccine Act does not provide a 'blank check'. Perreira v. Sec'y of the Dept. of Health & Human Servs., 27 Fed. Cl. 29, 34 (Fed. Cl. 1992)." Mueller, No. 06-775V, slip op. at 3. It is clear that counsel crossed the line in some instances in this case.

The undersigned has reviewed the parties' briefs and has conducted a line-by-line review of petitioner's request. For ease of reference, the undersigned will follow the order of objections set forth in respondent's Objections.

a. Time spent on fees applications

Respondent objected to the "approximately" 20 hours claimed for preparing the Interim Fee claim filed on January 8, 2009, but billed as part of the final fees request. R Obj at 7. Respondent also objected to the "approximately" 22 hours billed for the final fee submission. Id. Respondent cites several special master decisions awarding two hours or less for preparing a fee Petition. Id. Petitioner rejoins that it would be "impossible" to prepare a fee submission for counsel and experts that complies with established requirements in such a short period of time. P Supp at 5 (emphasis in original). Petitioner explains:

> This final fee application was not just for me. It included my firm, the life care planner **and** the economist as well as declarations and evidence. It takes much more than one or two hours to obtain all the information needed to provide the appropriate information for the fee application with the appropriate evidence.

Id. Petitioner also points to the award of 20.3 hours in Broekelschen for preparing her fees and costs "without deduction." Id.

While past cases in fact have found that fees submissions should take no more than two hours, it would be legally incorrect to "cap" the award at two hours where the evidence supports a higher award. Thus, the focus necessarily is placed on the activities and the reasonableness of the time spent in accomplishing those activities. However, while petitioner argues that it would be "impossible" to accomplish the necessary tasks in less than the time spent here, the fact is that other counsel are in fact spending far less time in preparing fee submissions. See, e.g., Savin v. Sec'y of the Dept. of Health & Human Servs., No. 99-537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008)(six hours requested; four hours awarded). Special circumstances may warrant more hours, but no such justification was provided or was apparent here. Both a review of counsel's time sheets and other cases shows that counsel takes unreasonably greater time to accomplish tasks than her colleagues.

1. Interim Fees time

- - While counsel should assist experts in submitting an appropriately supported bill, counsel should not be assisting the expert in substantiating higher rates. Dr. Steinman made the claim that he raised his hourly rates because he was charging "below market." Steinman Declaration at 3. There is no indication that Dr. Steinman made this determination independently of the information provided by counsel. The support for the higher rate was solicited by and provided by counsel. Id. Time spent in this effort is denied. Thus, 0.9 e-mailing Dr. Utz and Dr. Latov is denied. Similarly, 0.2 billed on 1/7/09 for e-mails is denied. 1.1 hours in total are denied.

- - Reviewing the totality of the documents, the over 6 hours spent up to and including the first entry on 1/7 was more than sufficient time to complete the interim fee submission. It is inconceivable how an additional 3.7 hours was spent on the second entry on 1/7. 1 additional hour is allowed for finalizing the filing; 2.7 hours are denied.

- - Having allowed over 6 hours of attorney time, the question becomes what was the paralegal doing for 5 hours on 1/7 that was in addition to the attorney's efforts. There simply is not enough work product to justify the billed time. Of note, 2.5 hours of paralegal time were billed to draft a proof of service and file the documents. This claim defies any level of credulity. Checking with court staff, including Clerk's Office staff and law clerks, it was unanimous that the electronic filing should take 5 minutes and on the outside 10 minutes. The proof of service is a form that required typing in the documents filed and the name and address of opposing counsel. These tasks combined took no more than 15 minutes or 0.3 hours. How 2.5 hours were billed calls into question counsel's billing practices. 2 hours of paralegal time is allowed; 3 hours are denied. Counsel needs to once again review the use of a paralegal to ensure there is no duplication of efforts. It is not enough to utilize a paralegal; it must be done with efficiency.

- - 1 hour is deducted on 1/8 for reviewing the Heinzelman decision. Counsel has a continuing obligation to keep abreast of pertinent legal decisions. See Mueller v. Sec'y of the Dept. of Health & Human Servs., No. 06-775V, slip op. at 6 (Fed. Cl. Spec. Mstr. May 27, 2010)("As part of her ethical obligations as an attorney, counsel should keep apprised of the Federal Circuit's decisions in the Vaccine Program."); see also Ramirez v. Elgin Pontiac GMC, Inc., 187 F. Supp. 2d 1041, 1047 (N.D. Ill. 2002); In re Alvarado, 363 B.R. 484, 489-90 (Bkrtcy, E.D. Va. 2007); ABA MODEL CODE OF PROF'L RESPONSIBILITY EC 6-3 (1980).

- - 0.3 is deducted from 1/9 to read a boilerplate extension Order and to docket entries - this would be an effective use of a paralegal, or even a secretary.

- - 0.4 is deducted from 1/19, the interim fees has already been filed with the supporting data.

2. Final Fees time

- - Counsel's first billing entry is on 11/30/2010 for 6 hours to "Commence fee applications for economist Stan and Life Care Planner, Liz Holakiewicz." There is no way of knowing what counsel did to "commence" this process. It certainly is not evident from the filings. In addition, it is noted that counsel billed an additional 1.2 hours that same day for efforts devoted to these experts' billing and a total of 10.1 hours on 12/1 and 12/2 devoted to the same. Reviewing the billings from these two experts leaves the undersigned nonplused; it simply is inconceivable how so much time was spent producing so little. The file for these experts consists of declarations that are four and six pages respectfully, CVs and schedules of hourly rates from other life care planners to support Ms. Holakiewicz and CVs and a one-line note from a friendly colleague to support Mr. Panis' hourly rate. How over 17 hours can be spent accumulating this information is a mystery. Why counsel, and not the experts or a paralegal, is performing the tasks is a deficiency in billing judgment. Petitioner is obliged to explain adequately his request in the first instance. The special master is not obligated to request further support. See Savin, 85 Fed. Cl. 313, 318 (2008); see also Sabella v. Sec'y of the Dept. of Health & Human Servs., 86 Fed. Cl. 201, 209 (2009). Petitioner is awarded 5 hours of counsel time and 5 hours of paralegal time; 12.3 hours are denied. It is noted that this is extremely generous.

- - 3 hours of paralegal time is claimed for preparation and filing of the fees application. As noted earlier, the filing task should take 5 -10 minutes. Given the award of 5 hours for paralegal time, which included "Finalize all fee applications," this time is denied in total.

b. Post-Hearing Brief

Respondent questioned the billing of 43 hours in January 2009 for preparing the post-hearing Reply Brief in this case. R Obj at 8. Respondent notes that the Reply Brief was 18 pages in length. Id. Petitioner understandably disagreed. Petitioner indicates that her recollection is that the undersigned gave a tentative determination after the trial that was unfavorable to petitioner. P Supp at 6. It certainly is my practice to educate counsel post-trial as to how the case is being viewed, but there is no such memory in this case. This was a difficult and close case to resolve and it was only resolved after an extensive review of the record that a decision was reached. In any event, the undersigned takes no issue with counsel's recollection or the reasonableness and ethical duty to put the absolute best case before the court. With that said, is it reasonable to spend 43 hours on a post-trial Reply brief?

Counsel states that much time was spent analyzing my colleagues decision in Heinzelman, which canvassed the existing precedent regarding burden shifting. It is agreed that this is more than "keeping abreast" of the law. See P Supp at 6 n 2. Reviewing the billings, counsel spent 14 hours reviewing the "shifting of burden" cases, 3 hours to draft "synthesis of various causation cases, history and evolution and shift of burden," and 27 hours to produce the Reply Brief. P Supp, Ex B at 8-9. The undersigned re-read petitioner's Reply Brief and although 27 hours is a significant period of time to produce 18 pages of text (which incorporates much of what was argued in the initial brief), it cannot be said that it is unreasonable. However, the 14 hours spent researching and re-reading causation cases is unreasonable. Counsel is involved in a number of vaccine cases. The decisions involved here are the same cases counsel is applying in other cases. While time is necessary to refresh one's knowledge of the nuances of

the case law, to determine the applicable case, and to apply the teachings to the case at hand, 14 hours is far too long given experienced counsel's baseline familiarity. This is particularly true where counsel was utilizing the Heinzelman decision, which traced the evolution of the shifting of burden cases in the Federal Circuit. In effect, Heinzelman did the work counsel is billing for. Thus, 20% or 2.8 hours is deducted. See Broekelschen, WL 5456319, *8 (Fed. Cl. Spec. Mstr. Dec. 17, 2008)(applying a 20% reduction); Mueller, No. 06-775V, slip op. at 4, n. 2 (applying an overall reduction of 23%). The claim for 3 hours for doing what Heinzelman already did, trace the history of these cases, is denied as unsupported.

c. Payment procedure

Respondent questioned 1 hour spent essentially researching the payment procedure. R Obj at 8. Petitioner explains why the task was necessary, but fails to explain how it relates to this case. P Supp at 7-8. This hour is denied.

d. Miscellaneous Billings

Respondent questions several entries, mostly involving reading of cases. R Obj at 8-9. These entries were after the post-trial briefs were filed and while the parties were awaiting a decision from the undersigned. As stated earlier, counsel has an ethical duty to stay abreast of the law. Supra p. 5. In the Vaccine world, this means reading the special masters decisions along with the decisions from the Court of Federal Claims and the Federal Circuit. Petitioner's counsel argues that "I am obligated to make a determination for each client whether new case law applies and whether to apprise the court." P Supp at 8. While petitioner's argument explains and is accepted regarding the Federal Circuit's Andreu decision, it does not explain the 1 hour billed on 6/3/09 for reviewing GBS/CIDP precedent. It also does not explain the 1 hour spent on a Special Master Order on 7/7, given that an Order cannot impact another special master's case. Lastly, the 1 hour spent on 7/8 reviewing decisions relating to flu vaccine and adverse events is denied given that the description of time is so vague and broad so that it cannot be applied to this case. 3 hours are denied.

The 0.8 billed on 8/13 and 8/24 is denied since the interim fees decision had been issue and thus this time cannot apply to the case at hand.

Counsel billed 0.4 hours on 2/22/2010 to review the revised Vaccine Rules. This time is denied as not applicable to this case. All other miscellaneous objections were reviewed. After considering petitioner's responses, the time is allowed.

e. Time spent on Damages

Respondent questioned in blocks of time hours spent by counsel on various aspects of damages. R Obj at 9-11. Petitioner responds that the "damages phase is a process where the experts work with the attorney and some with the Petitioner." P Supp at 9. Petitioner states that respondent failed to point with any specificity to unnecessary hours and thus provided no helpful guidance to the court and nothing for petitioner to respond to. Id. Respondent filed a Sur-Reply wherein he correctly notes that the burden to substantiate the fees and cost is on petitioner. R

Sur-Reply at 3-4, citing Saunders v. Sec'y of the Dept. of Health & Human Servs., 26 Cl.Ct. 1221, 1226 (1992), aff'd, 25 F.3d 1031 (Fed. Cir. 1994).

The undersigned notes that the parties excellent efforts in settling cases has the unfortunate side effect of leaving the special master without intimate knowledge of the efforts that take place in reaching the agreement. Unlike years past when the special masters tried many of the damages cases and thus knew with great detail what efforts took place – which expert had the greatest impact on the award, the quality of the respective experts and what role counsel played – today, the special masters for the most part are on the sidelines during damages. That leaves the special master in a difficult position in assessing the reasonableness of challenged fees and costs relating to damages. Utilizing past experience, most of the knowledge gap is made up in reviewing the attorney's time sheet and the descriptions therein. For example, the undersigned knows well the actions of the life care planner and is comfortable in weighing those efforts. However, while knowing generally the efforts of the economist with regard to lost wages, as will be discussed later, there are some issues that require more information. Which raises a last point regarding respondent's objections: while it is clear that petitioner bears the burden of proof, and respondent in fact is not required to make any objection for the special master to deny fees and costs, see Sabella, 86 Fed. Cl. at 204 (citations omitted), it would be extremely helpful, when respondent files objections to actions that took place outside of the special master's purview, for respondent to give some context. For example, from respondent's viewpoint, was this a difficult and extensive life care plan requiring attorney involvement? Many attorneys attend meetings with providers and on-site visits, did this occur? Were the lost wages complex? Did the negotiations require extensive give-and-take, requiring the experts continual involvement? While arguably this information could and should come from petitioner, in the few cases that respondent contests extensive hours, as in this one, it would be helpful to get respondent's perspective on how the case proceeded.

Before looking at the individual blocks of time at issue, this general observation is made - while petitioner's counsel is correct that the damages phase is a "process," it is a process heavily weighted to experts. The primary expert is usually a life care planner. In this case involving lost wages, an economist played an essential role. Counsel's role is subordinate during the time that these experts are producing their work. Obviously, once the work product is produced, counsel again plays the important role of advocating based upon the information provided by the expert. What is seen in the billings here is that counsel spent extensive time during the period when the experts were producing their reports. It is this time that is unexplained and based upon extensive experience is unwarranted.

- - Respondent questions 18 hours billed from November 2009 to June 2010 communicating with the life care planner. R Obj at 9. Respondent acknowledges that some communication is necessary but contends that 18 hours is excessive. The undersigned has reviewed the time entries and is hard pressed to see much in the way of value added to the case. Stated another way, petitioner hired a highly qualified life care planner who spent 85 hours from 11/20/09 to 10/28/2010 in accumulating information regarding petitioner's future needs, producing a plan of future needs and working with respondent's life care planner on agreeing to a plan of lifetime needs. That is an efficient process and one that thankfully occurs routinely in the Program. What is inefficient and unnecessary is for counsel to be intimately involved in the

process - informed, yes; centrally involved, no. Thus, after spending nearly 9 hours strategizing the damages from 12/1 - 12/8/2009, it is wasteful and inefficient for counsel to be in constant contact regarding the gathering of medical records, scheduling of site visits and discussion with other providers. That is the life care planners job; a life care planner that petitioner contends is highly qualified and deserving of the highest hourly rates paid to life care planners in the Program. A prime example of the inefficiency of counsel at this stage of the process is the 2.2 hours of time claimed on 12/14 and 12/15. There are 9 entries for this period. They relate totally to the court's Order setting a date for Petitioner's life care plan. It is quite frankly inexplicable that so much time is billed related to this routine Order.

As respondent recognizes and the undersigned agrees, counsel plays a role in the life care plan process, albeit a minor role, and must stay informed. The undersigned allows 10 hours for counsel's participation. Petitioner has not provided any justification for a greater amount of time. Thus, 8 hours is denied.

- - Respondent questioned 9 hours billed in May 2010 related to the lost wages analysis. R Obj at 9-10. Petitioner responded as he did to the life care plan issues that these are mere conclusions. P Supp at 9. The undersigned reviewed the hours and sees them differently than the hours spent on the life care plan. The lost wages were complicated - admittedly this is an assumption based upon past experience and Dr. Torday's medical practice and the effects of his injuries. From the billings, the time spent was in substantive discussions as opposed to the unproductive time spent duplicating the life care planner's efforts. This time is allowed.

- - Respondent contested 5 hours billed on December 1-2, 2009, and 2 hours billed in January 2010 reviewing petitioner's malpractice insurance policy. R Obj at 10. Respondent argued that this is not time spent on a Petition. See § 15(e)(1). Petitioner argues that it was necessary to determine for the wage loss to determine whether petitioner was committing malpractice delivering babies while taking medications required for his vaccine injury. P Supp at 9. What petitioner does not explain is why this issue arose after the entitlement decision? Why wasn't this an immediate issue when petitioner considered working? Also, given that counsel immediately consulted with a "medical malpractice attorney" regarding this issue, see P Supp, Ex B at 12/1/09, 12/9/09, 1/25/10, and 1/26/10, it appears that counsel recognized that she was unqualified to handle the issue, but this was after spending 5 hours researching the issue. See Carter v. Sec'y of HHS, No. 04-1500V, 2007 WL 2241877, *5 (Fed. Cl. Spec. Mstr. July 13, 2007)("an experienced attorney may not ethically bill his client to learn about an area of law in which he is unfamiliar. If an attorney may not bill his client for this task, the attorney may also not bill the Program for this task."). Using a "but for" test, the undersigned finds that the issue of petitioner's malpractice exposure due to the medications is related to his vaccine injury. Whether explored immediately after the injury or for purposes of damages, the cost is reimbursable as either a past unreimbursable expense or a cost of damages. The real issue is whether vaccine counsel should be reimbursed for time spent on an issue she was unqualified to handle. That answer is no. Counsel will be reimbursed for 3 hours (deducting 4 hours) to do the necessary research of the policy in order to determine proper counsel to consult.

- - Respondent objected to 20 hours counsel communicated with her client over a period of 11 months. After reviewing the time, while recognizing that is more time than seen in most cases, it cannot be said that it is unreasonable given the issues being addressed during this period. In light of the issues being addressed, attorney time is appropriate. I have reviewed the other concerns raised by respondent, and while they have some merit I cannot conclude that the time was unreasonable given petitioner's explanations.

B. Costs

1. Liz Holakiewicz

Respondent contested the Life Care Planner's hourly rate of $200. R Obj at 11. After considering the totality of the evidence and the respective arguments, the undersigned concludes that the requested rate is reasonable. In making this finding, it is again emphasized that with an experienced life care planner, there is no need for extensive attorney involvement - paying $200 per hour to schedule site visits is expensive enough, involving counsel increases the cost to $545 per hour ($200 for the life care planner and $345 for counsel).

There was no objection to Ms. Holakiewicz's hours. Accordingly, Ms. Holakeiwicz's bill is approved in full.

2. Economists

Respondent raised objections to both the hourly rates and the number of hours spent by the two economists employed by petitioner. R Obj at 13-14. AACG billed 114.9 hours for two experts, billing at $525 and $450 per hour respectively, to determine petitioner's lost wages. P Supp, Ex L. Respondent cited one case decided in the Program where an economist with a Ph.D was awarded $250 per hour in 2006. R Obj at 13. Petitioner rejoins that Mr. Panis' hourly rate of $475 was approved by the undersigned in a previous litigation. See P Supp at Ex S. With inflation, the $525 rate is reasonable. P Supp at 12. Petitioner submitted in addition the CVs of Mr. Panis and Mr. Padmanabhan, along with a statement from a fellow economist, James Dertouzos. P Panis Dec; Ex M. While Mr. Dertouzos is obviously a highly qualified economist, see CV attached to Ex M, he provides little assistance here as the totality of his note states:

> Hi Stan. I normally bill out at $500 per hour. As I suggested, this appears to be below market and will probably go to $600 for new clients. I hope things are well for you. Jim

Id. While this states what Mr. Dertouzos bills, there is no discussion of the type of work billed for, how it relates in complexity to the calculation of lost wages and no statement that it is reasonable for the economists involved here. In short, it provides little positive help for Petitioner. It does call into question Mr. Padmanabhan's claimed rate of $475. Mr. Padmanabhan's CV appears focused on investment issues, with little to no support for knowledge of the issues presented herein. If Mr. Dertouzos with his extensive experience bills at $500, there is no reasonable way to pay Mr. Padmanabhan $475. Petitioner has failed to make

his case for Mr. Padmanabhan's hourly rate. As will be discussed later, it is also not clear what value Mr. Padmanabhan brought to this case.

Regarding Mr. Panis' hourly rate, it is true that the undersigned stated during a status conference in the Carrera- Meza v. Sec'y of the Dept. of Health & Human Servs., No. 03-2016V, slip op. (Fed. Cl. Spec. Mstr. Feb. 26, 2008), that "[i]f I had to rule today . . . the remainder of the request [including the claimed hourly rate of $475] would be allowed." P Supp Ex S (the undersigned's notes from a status conference, supplied to the parties for the purposes of settling the case). With that and other advice, the undersigned sent the parties off to resolve the dispute. Id. ("I hope this is helpful in resolving this dispute."). The parties did in fact resolve the dispute. The undersigned did not "approve[]" Mr. Panis' hourly rate. It is unknown what would have occurred if the parties did not settle the matter - whether respondent would have put on more evidence to address the issues raised by the undersigned during that status conference, whether petitioner would have successfully rebutted any additional evidence, and then ultimately what would the undersigned have found. It is fair to state that based upon the evidence before me **at that time**, I would have approved Mr. Panis' hourly rate. However, the undersigned did not "approve" the rate because the evidentiary record was not closed. Thereafter, the parties settled the dispute. The undersigned notes that cursory comparison of the Mr. Panis' CV to that of Mr. Dertouzos appears to give the edge to Mr. Dertouzos. Thus, if Mr. Dertouzos charges $500 per hour, Mr. Panis should be compensated at a lower level.

Regarding the number of hours, the overarching questions are why two economists were necessary to calculate the lost wages, and if the two partnered as one on the task, was there duplication of efforts? Regarding Mr. Panis claim for 63.20 hours, 10.30 hours were spent on OASI calculations. Mr. Padmanabhan billed 39.50 hours for OASI analysis. This totals to nearly 50 hours to analyze petitioner's social security benefits as part of the lost wages. This is very difficult to understand. Calculations of contributions while working and benefits while retired are easily performed on-line at Social Security's web-site and web-sites at various financial organizations. However, Mr. Padmanabhan "replicated the algorithm" used to compute Social Security benefits. P Panis Dec at 3. The question is why? Petitioner owes a clear explanation of why so much time was spent on this seemingly straightforward calculation. Much like computer programs that are incredibly complex, Social Security benefits are based upon complicated formulas. However, one does not need to understand programming language to utilize the computer. Likewise, it is unnecessary to understand the social security formula to calculate the benefit. While based upon the minimal descriptions given for the tasks performed, Mr. Panis' other time is not questioned, it is unclear how Mr. Padmanabhan's efforts dove-tailed with Mr. Panis' and therefore whether those efforts were necessary. While case law provides that the undersigned does not owe petitioner an opportunity to correct a deficiency in proof, Sabella, 86 Fed. Cl. at 209, given the significant amount of money involved and the fact that the undersigned was not involved in the damages' process, fairness dictates giving the parties an opportunity to develop more fully the issues regarding the economists.[2]

C. Additional fees request

[2] It is freely conceded that my observation that this is a "straightforward calculation" could be incorrect. However, petitioner has not established the complexity of this lost wage calculation. This is an instance where insight from respondent, in addition to that provided by petitioner, could prove helpful to understanding the process and complexity of computing lost wages in this case.

Petitioner filed a claim for the time spent responding to respondent's objections. P Supp, Ex U. This request is for an additional 22.5 hours, 2.6 of which was for the paralegal. Id. Respondent objected to this time as excessive. R Sur-Reply at 6.

- - Counsel billed 3.4 hours on 12/3 and 12/6 to substantiate the economists hourly rates in response to objections raised by respondent. P Supp, Ex U at 1. As part of this effort, counsel communicated with other economists regarding their rates. Id. None of this information was filed. The undersigned allowed previously 5 hours of attorney time for completing the final fees submission. Supra pp. 5-6. This included time spent on preparing and justifying the experts' time and rates. Id. It was noted that this allowance was "generous." Id. Reviewing the work product, it simply is inconceivable how counsel billed for so many hours. Counsel billed for over 17 hours devoted to this effort, and is billing for an additional 3.4 hours. In reviewing the submissions for the experts, the content consists of CVs, billing statements, and four and six page declarations. The issue mostly addressed is the hourly rate, which for the life care planner was addressed adequately with support seen routinely in other cases. For the economists, a single letter from a colleague was produced, which was not helpful. Quite frankly, someone billing at $525 per hour should be able to justify such a rate without relying on counsel to provide the support. One hour is allowed; 2.4 hours is denied for the non-productive efforts of counsel.

- - Counsel billed 4 hours on 12/15 to review respondent's objections. Respondent's objections are 14 pages in length and take at most one hour to digest. Counsel then spent an additional 4.4 hours taking notes, researching the objections and drafting a letter to respondent. The undersigned can understand 4 hours to read the objections, take notes and research, but anything beyond that time is unreasonable. An additional 2 hours is allowed for the letter to respondent. Thus, 2.4 hours is denied.

- - Following counsel's letter and unsuccessful efforts to resolve the matter, counsel spent 8.1 hours drafting petitioner's supplemental fees filing. Respondent contends that the brief contains much of the same information contained in the e-mail letter. R Sur-Reply at 6. Petitioner does not address this argument in his Response. It certainly makes sense that the issues and contentions raised in the e-mail in an effort to convince respondent of petitioner's position would mirror those raised in the formal Supplemental filing, albeit in less formal prose. In the absence of an explanation from petitioner, the hours are reduced by 3 hours. Even with this reduction, petitioner is awarded a total of 11.5 hours to review, notate, research and respond to respondent's 14 pages of objections. That is a great deal of time for such an effort.

Conclusion and Order

After an extensive and time consuming review of this record, the undersigned deducts 48.6 hours of attorney time and 6 hours of paralegal time. Thus, petitioner will be awarded a total of $61,481.50 for fees. Unfortunately, the costs cannot be finalized without more information concerning the economists. Petitioner will be awarded $51.35 in attorney's costs

and $17,150 for his life care planner. The cost of the economist is to be determined.[3] The undersigned is hopeful that the parties can put aside whatever differences were preventing informal resolution of this dispute and, considering the observations made herein, reach agreement on the economists' costs. It will be unfortunate for more time and expense to be incurred to resolve this issue. Accordingly:

- **The parties shall file a joint status report in twenty-one (21) days, by no later than April 29, 2011, reporting on their efforts to resolve this dispute, or proposing a schedule for further proceedings to formally resolve the matter.**

Any questions regarding this Order shall be directed to my law clerk, Danielle Strait, at (202) 357-6343

IT IS SO ORDERED.

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

[3] Petitioner states that no costs incurred by counsel were paid by petitioner, "except as noted for my experts." P Final App, Ex C. This is an unclear declaration. No request was made for petitioner's costs. However, it appears that petitioner paid $2,000 as a retainer for the economist. See id.; P Ex B at 35; Panis Dec; P Ex L at 1. Despite Panis being paid $2,000, counsel billed for Panis' entire amount. P Final App at 2. Petitioner shall clarify this issue and whether petitioner is owed $2,000.