In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-382V

Filed: June 15, 2009

TO BE PUBLISHED

QUINTON O. RIGGINS, JR.,	*	
	*	
Petitioner,	*	Attorneys' Fees; Payment of Fees and
	*	Costs for General hepatitis B claims;
	*	Reasonable Attorney Fees and Costs;
	*	Use of Consultants; Duplicative
v.	*	Billing; Attorneys' Responsibility
	*	to Monitor Fees and Costs
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, VA, for petitioner.

Melonie J. McCall, United States Department of Justice, Washington, DC, for respondent.

ATTORNEYS' FEES AND COSTS DECISION[1]

GOLKIEWICZ, Chief Special Master.

This decision involves a lengthy dispute regarding the fees and costs submitted by

[1] Because this decision contains a reasoned explanation for the undersigned's action in this case, 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.

petitioner's counsel's law firm, Shoemaker & Associates (hereinafter S&A) for "general" work performed and costs incurred in S&A's prosecution of approximately 150 cases involving the hepatitis B vaccination. This decision also involves the fees and costs associated with the above-captioned petitioner's (Quinton Riggins') case. However the focus of the parties' briefs, numerous status conferences, and this decision is largely upon the "general" hepatitis B fees and costs submissions by S&A.

On April 1, 2008, petitioner's counsel, Clifford Shoemaker, filed an Application for Attorneys' Fees and Costs (hereinafter referenced to as Petitioner's Application), requesting a total of $221,211.34 in attorneys' fees and costs. Counsel requests $16,592.16 in fees and costs related to the above-captioned matter, and $204,619.18 in fees and costs related to the "general hepatitis B proceedings." Petitioner's Application For Attorney's Fees and Costs (hereinafter cited as P App).[2] Respondent filed an Opposition to Petitioner's Application for Attorneys' Fees and Costs (hereinafter referenced to as Respondent's Opposition) on April 18, 2008. Respondent's Opposition to Petitioner's Application for Attorneys' Fees and Costs filed April 18, 2008 (hereinafter cited as R Opp).

On July 1, 2008, petitioner's counsel filed Petitioner's Response to Respondent's Opposition to Petitioner's Application for Attorney's Fees and Costs (hereinafter referenced to as Petitioner's Response). Petitioner's Response to Respondent's Opposition to Petitioner's Application for Attorney's Fees and Costs filed July 1, 2008 (hereinafter cited as P Resp). Respondent filed a reply to Petitioner's Response (hereinafter referenced to as Respondent's Reply) on August 7, 2008. Respondent's Reply to Petitioner's Response to Respondent's Opposition to Petitioner's Application for Attorney's Fees and Costs filed August 7, 2008 (hereinafter cited as R Reply). Petitioner filed a Sur-Reply to Respondent's Reply on October 22, 2008. Petitioner's Surreply to Respondent's Reply to Petitioner's Response to Respondent's Opposition to Petitioner's Application for Attorney's Fees and Costs filed October 22, 2008 (hereinafter cited as P Sur-Reply). Additionally, petitioner filed affidavits from Dr. Mark Geier and David Geier on November 24, 2008, relating to the costs submitted by petitioner for the Geiers' consulting services. Petitioners' Exhibits Fee Exhibit 6 - Affidavits regarding Geiers' Hours/Billing (hereinafter cited as P ex 6). After efforts to informally resolve any of the issues in this matter failed, on December 8, 2008, the parties filed a Joint Status Report indicating their "request that the court issue its decision in this matter." Joint Status Report filed December 8, 2008.

[2] The undersigned notes a status conference was held on April 11, 2008 to discuss the undersigned's initial impressions regarding Petitioner's Application. The undersigned, while urging the parties to settle this matter, or at a minimum settle as many issues as possible, communicated to the parties his considerable concerns regarding the overall reasonableness of Petitioner's Application. The undersigned's initial impressions discussed at the April 11, 2008 status conference are consistent with the instant Decision.

I. BACKGROUND

As the fees and costs submission for S&A's "general" efforts to prosecute the firm's hepatitis B cases is somewhat unusual, the undersigned will briefly provide some background. Beginning in approximately 1999, petitioners began filing a number of claims in the Vaccine Program alleging various injuries resulting from the receipt of hepatitis B vaccinations. Efforts were made in the ensuing years by the court, petitioners' counsel, and respondent's counsel to organize these claims involving injuries allegedly resulting from hepatitis B vaccinations into particular injury categories. Additionally, the parties and the undersigned worked on an effort, commonly referred to as the "Hepatitis B Panel," in an attempt to resolve the cases. The undersigned has previously described this effort in decisions awarding fees and costs to other counsel involved in the effort, as follows.

> The so-called Hepatitis B Panel was a collective effort of the court, petitioners' Bar and respondent to utilize an independent panel of experts to assist in the resolution of several hundred Hepatitis B cases. Although the effort ultimately failed, due to the inability to fund the effort, the undersigned firmly believes that the independent panel concept was a very good idea and would have resolved the Hepatitis B cases efficiently and fairly. The undersigned also firmly believes that, but for the funding issue, the parties' excellent work would have secured that success.

Ross v. Sec'y of HHS, No. 05-417V, 2007 WL 415187 (Fed. Cl. Spec. Mstr. Jan. 22, 2007); Simmons v. Sec'y of HHS, No. 99-546, (Fed. Cl. Spec. Mstr. Sept. 24, 2007)(unpublished). See also Lamar v. Sec'y of HHS, No. 99-584, 2008 WL 3845157 at *7, fn. 19 (Fed. Cl. Spec. Mstr. July 30, 2008). The undersigned has awarded fees without objection by respondent to petitioners' counsel in the past for various efforts made related to the hepatitis B Panel. Ross v. Sec'y of HHS, 2007 WL 415187; Simmons v. Sec'y of HHS, No. 99-546, (Fed. Cl. Spec. Mstr. Sept. 24, 2007)(unpublished) . See also Cramer v. Sec'y of HHS, No. 99-428, (Fed. Cl. Spec. Mstr. Sept. 1, 2005)(unpublished) (award of fees and costs in the Neurodyemlinating Omnibus test cases); see also Cedillo v. Sec'y of HHS, No. 98-916V, 2009 WL 811449 (Fed. Cl. Spec. Mstr. Mar. 11, 2009) (award of interim fees and costs in an Omnibus Autism Proceeding test case).

Before discussing the issues presented herein, the undersigned notes that in Petitioner's Response, counsel complains vehemently regarding the quality of respondent's objections given the amount of time petitioner's fee request remained outstanding between the point at which it was first forwarded (however not filed into the record) to respondent's counsel to when it was responded to by respondent in Respondent's Opposition. However, a close examination of the procedural history of this request shows petitioner's complaints are overstated and unjustified. The fees and costs associated with S&A's hepatitis B efforts in general, were initially filed into the Simmons case. However, it became apparent that S&A's fee request would result in substantial delays in resolving counsel's fees and cost request in Simmons, thus Mr. Shoemaker withdrew his request in Simmons and elected to pursue his general hepatitis B fees within the

instant matter.[3] Mr. Shoemaker, provided an informal demand in this matter to respondent's counsel many months prior to filing his formal application for fees and costs. See R Opp at 1, fn. 2. The undersigned notes that petitioner is correct, seven months passed between these events, however the undersigned also notes the passage of only 17 days between the actual filing of Petitioner's Application on April 1, 2007 and the filing of Respondent's Opposition on April 18, 2007. In fact, the Petitioner's Application was only filed after a telephonic status conference was held March 31, 2008, at petitioner's request, to address the outstanding demand in this matter. At that status conference, the undersigned urged counsel to file Petitioner's Application in order to move towards resolving the matter formally, while the parties continued to pursue informal resolution. Petitioner could have filed Petitioner's Application at any time prior to the March 31, 2008 status conference, however, for whatever reason chose not to do so. Further, the undersigned notes the parties requested extensions of time to file briefs in this matter. In fact, petitioner's counsel as recently as November 24, 2008, requested additional time to attempt further settlement talks with respondent, informing the court only on December 8, 2008, that the parties "request a decision" and thus were unable to reach settlement. The undersigned agrees it has taken too long to resolve this fees and costs request, but petitioner is not blameless for any "delay" and thus petitioner's complaints are not warranted.

II. LEGAL STANDARD

Pursuant to 42 U.S.C. § 300aa-15(e) of the National Childhood Vaccine Injury Act,[4] special masters may award "reasonable" attorney's fees as part of compensation. This is true even if petitioner was unsuccessful on the merits of the case. §15(e)(1). To determine reasonable attorneys' fees, this court has traditionally employed the lodestar method which involves "multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." Blanchard v. Bergeron, 489 U.S. 87, 94 (1989) (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)); Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Avera v. Sec'y HHS, 515 F.3d 343, 1347-48 (quoting Hensley) (Fed. Cir. 2008); Saxon v.Sec'y HHS, 3 F.3d 1517, 1521 (Fed. Cir. 1993). 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. Sec'y of HHS, No. 99-97V, 2004 WL 784910 (Fed. Cl. Spec. Mstr. Mar.

[3] The undersigned notes that while the requested fees by S&A in the instant matter and those requested in Simmons are not identical, they are substantially similar.

[4]The National Vaccine Injury Compensation Program (hereinafter 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. (2006)(hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

25, 2004).

The requirement that attorneys' fees be reasonable applies likewise to costs, *e.g.*, consultant and expert fee costs. "The conjunction 'and' conjoins both 'attorneys' fees' and 'other costs' and the word 'reasonable' necessarily modifies both. Not only must any request for attorneys' fees be reasonable, so must any request for reimbursement of costs." Perreira v. Sec'y of HHS, 27 Fed. Cl. 29, 34 (1992), aff'd, 33 F.3d 1375 (Fed. Cir. 1994). The undersigned notes that neither the attorneys' rates nor the rates for petitioner's experts and consultants is at issue in the instant matter. What is at issue is whether the number of hours expended by petitioner's attorneys, experts, and consultants is reasonable.

A. What is Reasonable

The burden lies with petitioner to provide adequate documentation at the time he submits his fee application that the fees and costs petitioner is requesting are reasonable. Wasson v. Sec'y of HHS, 24 Cl. Ct. 482, 484 fn. 1(1991). My colleague, Special Master Moran, has reviewed the "reasonableness standard" at some length as follows. Although discussed below in the context of "reasonable costs" the same standard applies to reasonable fees.

> "Reasonableness" may be evaluated from a paying client's perspective. The United States Supreme Court stated that "[h]ours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority. Hensley[5], 461 U.S. at 433-34 (emphasis in original). If a hypothetical yet reasonable client would be willing to pay for an expert's report, then it is appropriate to award compensation for that expert's report. Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany and Albany County Bd. of Elections, 522 F.3d 182, 184 (2d Cir. 2008) (stating a trial court must act to ensure that the attorney does not recoup fees that the market would not otherwise bear. Indeed, the district court (unfortunately) bears the burden of disciplining the market, stepping into the shoes of the reasonable, paying client, who wishes to pay the least amount necessary to litigate the case effectively); Goos v. National Ass'n of Realtors, 68 F.3d 1380, 1386 (D.C.Cir.1995) (phrasing the question as "would a private attorney being paid by a client reasonably have engaged in similar time expenditures); Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292, 1302 (11th Cir. 1988) (recognizing that "in the private sector the economically rational person engages some cost benefit analysis"); Presault v. United States, 52 Fed. Cl. 667, 680 (2002). The client must be pictured hypothetically because individual attributes of Mr. Sabella (for example, his wealth or poverty) should not determine whether the cost is reasonable. Furthermore, it must be assumed that the client would have to pay for the expert because the client's self-interest would lessen the likelihood that the client would

[5] Citing Copeland v. Marshall, 205 U.S. App 390, 401, 641 F.2d 880, 891 (1980).

invest money into the expert needlessly.

> One aspect of the general rule that costs must be reasonable to be compensable is that costs are not awarded for work that is not necessary work. Duplicative work is presumptively unnecessary. Attorneys are not entitled to compensation for performing work that is not necessary. Hensley, 461 U.S. at 434. The same principle restricts experts. Kantor.

Sabella v. Sec'y of HHS, 2008 WL 4426040, at *28 (Fed. Cl. Spec. Mstr. Sept. 23, 2008) (hereinafter Sabella I) partially aff'd and partially rev'd (on other grounds) by Sabella v. Sec'y of HHS, 86 Fed. Cl. 201 (2009) (hereinafter Sabella II). The above standard will be applied to the issues in this case.

B. Determining reasonableness is within the discretion of the Special Master

While the burden rests with petitioner to prove reasonableness, petitioner is not given a "blank check to incur expenses." Perreira, 27 Fed. Cl. at 34. The Federal Circuit has stated "[i]t was well within the special master's discretion to reduce the hours [expended in a matter] to a number that, in his experience and judgment, was reasonable for the work done." Saxton, 3 F.3d at 1521; Sabella I at *10 ("The special master [] is not required to award fees and costs for every hour claimed, he need only award fees and costs that are reasonable. See 42 U.S.C. § 300aa-15(e).").

In assessing the number of hours reasonably expended, the court must exclude those "hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). In making reductions, the special master is not necessarily required to base his or her decisions on a line-by-line evaluation of the fee application. Wasson v. Sec'y of HHS, 24 Cl. Ct. at 484 (affirming the special master's general approach to petitioner's fee request where the entries and documentation contained in the 82 page fee petition were organized in such a manner that specific citation and review were rendered impossible), aff'd, 988 F.2d 131 (Fed. Cir. 1993). Moreover, special masters may rely on their experience with the Vaccine Act and its attorneys to determine the reasonable number of hours expended. Wasson, 24 Cl. Ct. at 486, aff'd, 988 F.2d 131 (Fed. Cir. 1993). Just as "[t]rial courts routinely use their prior experience to reduce hourly rates and the number of hours claimed in attorney fee requests . . . . [v]accine program special masters are also entitled to use their prior experience in reviewing fee applications." Saxton v. Sec'y of HHS, 3 F.3d 1517, 1521 (Fed. Cir.1993) (citing Farrar v. Sec'y of HHS, 1992 WL 336502, at *2-3 (Cl. Ct. Spec. Mstr. Nov. 2, 1992) (requested fees of $24,168.75 reduced to $4,112.50)); Thompson v. Sec'y of HHS, No. 90-530V, 1991 WL 165686, at *2-3 (Cl. Ct. Spec. Mstr. Aug. 13, 1991) (requested fees of $18,039.75 reduced to $9,000); Wasson, 24 Cl. Ct. at 483 (1991), on remand, No. 90-208V, 1992 WL 26662 (Fed. Cl. Spec. Mstr. Jan. 2, 1992), aff'd, 988 F.2d 131 (Fed. Cir. 1993) (hourly rates reduced, and requested fees of $151,575 reduced to $16,500; special master disregarded the claim for 698.5

hours and estimated what, in her experience, would be a reasonable number of hours for a case of that difficulty)).

Additionally, a special master may reduce a fees and costs request which is not reasonable "*sua sponte,*" regardless of whether respondent filed an objection to a particular request. In making such a reduction, a special master is not required to provide petitioner with an opportunity to explain the unreasonable request as the burden lies with petitioner to provide an adequate description and documentation of all requested costs and fees in the first instance. Sabella II at 208-209; Saunders v. Sec'y of HHS, 26 Cl. Ct. 1221, 1226 (1992); Duncan v.Sec'y of HHS, No. 99-455, 2008 WL 4743493, at *1 (Fed. Cl., Aug. 4, 2008) ("the Special Master had no additional obligation to warn petitioners that he might go beyond the particularized list of respondent's challenges."); Savin v. Sec'y of HHS, 85 Fed. Cl. 313, 317-19 (2008) (Order denying Motion for Review).

C. Attorneys must monitor fees and costs

As the undersigned discussed in the Simon case "the **petitioner must monitor the expert's overall fees to ensure that the fees remain reasonable**." Simon, No. 05-941, 2008 WL 623883 at * 2 (Fed. Cl. Spec. Mstr. Feb. 21, 2008)(emphasis in original) citing Perreira v. Sec'y of HHS, No. 90-847V, 1992 WL 164436, at*4 (Cl. Ct. Spec. Mstr. June 12, 1992), aff'd 33 Fed. 3d 1375 (Fed. Cir. 1994) ("This court has continuously warned counsel of their obligation to monitor expert fees.") (citations omitted). While the undersigned in Simon, and the judge in Perreira discussed petitioner's obligation to monitor fees and costs in relation to medical experts, it necessarily follows that the same obligation flows to any type of expense that arises in petitioner's case. Thus, petitioner, or petitioner's counsel, must continuously monitor counsel's fees incurred in working on a case, and also all fees and costs incurred by experts and/or consultants in the prosecution of petitioner's case, in order to ensure that all costs remain reasonable and appropriate in a given matter. Further, petitioner should not hesitate to bring to the court's attention for guidance any unusual fee or cost which would forseeably be objected to as unreasonable by respondent, before such fee or cost is incurred. See Isom v. Sec'y of HHS, No. 94-770V, 2001 WL 101459, at*4 (Fed. Cl. Spec. Mstr. Jan. 17, 2001) ("[a]ny aberrant or unforseen expenses should be brought to the Court's attention before they are incurred."); Glaser v. Sec'y of HHS, No. 06-764V, 2009 WL 1320964 (Fed. Cl. Spec. Mstr. April 22, 2009) (Order ruling upon a petitioner's oral motion for preapproval of an expert fee rate).

III. ANALYSIS

The undersigned is extremely familiar with counsel's advocacy on behalf of Vaccine Program petitioners, as counsel and the undersigned have been involved with the Vaccine Program since its inception. Counsel, is an able vaccine attorney, who has achieved some excellent results for his clients over the years. However, counsel has a history of failing to monitor the fees and costs associated with his cases; this poor judgement has been noted not only

by my colleagues in a number of attorney's fees and costs decisions, but also by several judges of the United States Court of Federal Claims. Judge Allegra in the Savin decision noted from 1997 through "April 22, 2008, seven different special masters reduced fee and costs requests filed by petitioners' counsel in at least fourteen different cases." Savin, 85 Fed. Cl. 313, 317 (2008) (Order denying Motion for Review).[6] Unfortunately, the instant fees and costs submission represents the height of unreasonableness - lacking convincing explanation, devoid of support from similar past practices of this counsel or any other counsel practicing in the Program, and patently unreasonable. The undersigned notes again that it is incumbent upon the party requesting attorney fees and costs to demonstrate the reasonableness of the request; petitioner has largely failed to meet this burden as applied to the S&A's general hepatitis B fees and costs requested in this matter, and therefore the request is reduced substantially, as described below. The Federal Circuit's decision in Saxton approving a 50% reduction in attorneys' fees made by a

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[6] *See Rydzewski v. Sec'y of HHS*, No. 99-571V, 2008 WL 382930 (Fed. Cl. Spec. Mstr. Jan. 29, 2008) (denying compensation for failure to prove receipt of vaccine); *Hamrick v. Sec'y of HHS*, No. 99-683V, 2007 WL 4793152 (Fed. Cl. Spec. Mstr. Jan. 9, 2008) (making downward adjustments for excess time billed); *Turner v. Sec'y of HHS*, No. 99-544V, 2007 WL 4410030 (Fed. Cl. Spec. Mstr. Nov. 30, 2007) (unreasonableness of duplicative billing entries); *Kooi v. Sec'y of HHS*, No. 05-438V, 2007 WL 5161800 (Fed. Cl. Spec. Mstr. Nov. 21, 2007) (denying compensation for legal services provided by client's spouse); *Turner v. Sec'y of HHS*, No. 99-544V, 2007 WL 5180524 (Fed. Cl. Spec. Mstr. Aug. 31, 2007) (unreasonableness of duplicative billing entries); *Melbourne v. Sec'y of HHS*, No. 99-694V, 2007 WL 2020084 (Fed. Cl. Spec. Mstr. June 25, 2007) (excessive, inaccurate, and egregious billing judgment); *Schrum v. Sec'y of HHS*, No. 04-210V, 2007 WL 1772056 (Fed. Cl. Spec. Mstr. May 31, 2007) (unreasonable rate and hours of medical consultant and fees); *Rydzewski v. Sec'y of HHS*, No. 99-571V, 2007 WL 949759 (Fed. Cl. Spec. Mstr. Mar. 12, 2007) (denying compensation for failure to prove receipt of vaccine); *Jeffries v. Sec'y of HHS*, No. 99-670V, 2006 WL 3903710 (Fed. Cl. Spec. Mstr. Dec. 15, 2006) (rejecting "vague block entries" and undocumented costs); *Desmore v. Sec'y of HHS*, No. 99-588V, 2006 WL 5668063 (Fed. Cl. Spec. Mstr. Aug. 14, 2006) (reducing fee by $10,000 for vague and excessive hours); *Stott v. Sec'y of HHS*, No. 02-192V, 2006 WL 2457404 (Fed. Cl. Spec. Mstr. July 31, 2006) (excessive hours and use of multiple doctors); *Ray v. Sec'y of HHS*, No. 04-184V, 2006 WL 1006587 (Fed. Cl. Spec. Mstr. Mar. 30, 2006) (excess hours, rates, and duplication of efforts); *Britton v. Sec'y of HHS*, No. 02-0094V, 2005 WL 6115366 (Fed. Cl. Spec. Mstr. July 11, 2005) (excess hours charged); *Brown v. Sec'y of HHS*, No. 99-539V, 2005 WL 1026713 (Fed. Cl. Spec. Mstr. Mar. 11, 2005) (denying compensation because there were no records to support the claim); *Beatty v. Sec'y of HHS*, No. 98-911V, 2003 WL 21439671 (Fed. Cl. Spec. Mstr. Apr. 22, 2003) (excess hours and many vague "review" entries); *Farnsworth v. Sec'y of HHS*, No. 90-2049V, 1997 WL 739489 (Fed. Cl. Spec. Mstr. Nov. 13, 1997) (excess rates); *Robertson v. Sec'y of HHS*, No. 95-187V, 1997 WL 338601 (Fed. Cl. Spec. Mstr. June 4, 1997) (excess rates).

Savin, 85 Fed. Cl. 313, 317 (2008).

special master based upon his experience, explained that it is "well within the special master's discretion to reduce the hours to a number that, in his experience and judgment, was reasonable for the work done." Saxton, 3 F.3d at 1521 (reversed opinion of Court of Federal Claims judge who found the special master acted arbitrarily in reducing the attorney's fees and costs award). See also Mares v. Credit Bureau of Boca Raton, 801 F.2d 1197, 1210 (10th Cir. 1986) ("The burden is not for the court to justify each dollar or hour deducted from the total submitted by counsel. It remains counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero. In the process and especially in the end result, [trial] courts must continue to be accorded wide latitude."). While the undersigned has reviewed and considered all of the filings, the undersigned will not conduct a line-by-line, or hour-by-hour, explanation of the Petitioner's Application in this decision, but will discuss and analyze sections of Petitioner's Application, citing to specific examples of unreasonable billing. Based upon that discussion, the undersigned will reduce petitioner's request as appropriate, based upon the undersigned's experience and expertise in this area.

Finally, the undersigned cannot state strongly enough how shockingly unreasonable many of the claimed items are in Petitioner's Application. Counsel either does not understand the obligation to monitor hours expended or he simply ignored his responsibility. Petitioner's Application represents a complete abandonment of the principle of claiming only what counsel would reasonably charge a client. In the undersigned's 20 years of experience in the Program, no other attorney, including this attorney, has billed for items such as overseas travel to discuss **possible** vaccine-injuries causal connections, or utilized a consultant as extensively and as unreasonably as counsel did in this matter. This is not to say there might not be a legitimate need in some future case or cases for some of the types of expenditures billed in this application, however petitioner failed to mount any reasonable explanation for the need here.

A. Hepatitis b "General" Costs

The undersigned will address S&A's general hepatitis B costs first, as the costs associated with S&A's use of the Geiers as consultants represents the most egregious billing in Petitioner's Application.

Petitioner's counsel requests $110,386.73 in costs related to S&A's general hepatitis B work, of which counsel has earmarked **$97,443.43** as costs (for fees and expenses) owed to Dr. Mark Geier and his son, David Geier. P App at 31. The undersigned is not aware of an award or request for an award in Vaccine Program history, including requests in other omnibus efforts, of this magnitude for consultants, and petitioner has failed to provide a reasonable or persuasive justification here. The undersigned understands that S&A argues it utilized the services of the Geiers in relation to general hepatitis B matters to prepare approximately 150 cases for prosecution, however, the undersigned finds this request grossly unreasonable for the multiple reasons described below. The undersigned notes that the itemized request for costs to Dr. Geier and Mr. Geier represents the quintessential example of counsel's failure to monitor costs.

1. David Geier

The undersigned is quite familiar with Dr. Mark Geier, see discussion infra at 11-17, but far less familiar with his son David Geier. Petitioner has requested approximately[7] $37,543.75 in costs associated with fees to be paid to David Geier. P App at 51-63. The undersigned, for the reasons described below, finds petitioner's request for fees and costs associated with activities performed by David Geier unsubstantiated, and thus unreasonable, and denies the request in total.

Petitioner argues David Geier is a qualified consultant and petitioner saved funds by employing David Geier. See P Resp at 10 ("In his consultation with Counsel Dr. Geier would enlist the assistance of David Geier, his son, at a greatly reduced rate than his own, an action which resulted in further savings to counsel, and subsequently, the Program." (footnote omitted)).

As an initial matter, David Geier is not qualified to serve as a consultant on the medical issues presented in the Vaccine Program. To the undersigned's knowledge, David Geier has not been compensated as a consultant in any prior Program case, and petitioner has not cited any such prior Program compensation. David Geier does not possess any advanced medical or scientific degrees. P ex. 6 at 24. The only degree David Geier possesses is a Bachelor of Arts in Biology. Id. According to his CV, he has taken graduate level coursework, but does not appear to have finished any program, nor does he appear to be currently enrolled in any graduate program. Id. at 24-27. While David Geier is named as co-author in numerous vaccine related papers with his father, Mr. Geier possesses no advanced degrees or credentials to qualify him for work as a Vaccine Program consultant.[8] Id. at 24-38. The issues in this matter concern medical causation for which Mr. Geier does not have the requisite background and credentials.[9] On this basis alone, petitioner's request for compensating David Geier is denied.

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[7] The undersigned will use approximate figures in discussing various types of requests made by David Geier and Dr. Mark Geier as the Geiers' invoice is extensive and not perfectly clear. Given how the undersigned resolves this issue, it is not necessary to identify the precise requests. See infra at 16-17.

[8] The undersigned notes that attached to David Geier's affidavit, as "Exhibit B" is a retainer agreement signed by an attorney in Chicago and David Geier in which the attorney client appears to be retaining the services of MedCon, Inc. (of which Mr. Geier is president) to perform research "involving thimerosal litigation and other related matters" at a rate of $250 an hour. P Ex. 6 at 39 -40. The undersigned does not find this agreement establishes David Geier's qualifications to serve as a consultant in Program cases. At most, this agreement may demonstrate that someone has agreed to pay MedCon, Inc. to perform research "involving thimerosal litigation and other related matters" at a rate of $250 an hour. Id.

[9] David Geier, also lists as "scientific employment" his positions in various consulting and research organizations. However, holding these positions alone does not give Mr. Geier the background necessary to qualify him for work as a Vaccine Program consultant. Id. at 24-25.

However, even assuming *agruendo* that David Geier was qualified to serve as a Vaccine Program consultant, the work performed in this matter by Mr. Geier is duplicative of the work performed in this matter by his father, Dr. Mark Geier. To state that counsel is saving the Vaccine Program money by employing David Geier is simply not established nor is it a credible statement. For **virtually every single request** for costs for work or travel performed Dr. Geier, an **identically described request** is made by David Geier (albeit at a lower rate than his father). See P App at 51-63. Petitioner attempts to justify this unreasonable submission for fees and costs for the services of both Dr. Mark Geier and David Geier by arguing "that it is counsel's prerogative to determine how to prosecute his case." P Resp at 8 (citations omitted).[10] Within certain bounds, including ethical and reasonableness, that is true, however, it is not counsel's "right" to be compensated simply because counsel says a charge is reasonable. Attorneys retained by paying clients are not able to make any expenditure they desire. Hensley, 461 U.S. at 433-34, citing Copeland v. Marshall, 641 F.2d at 891 ("Hours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority.) (emphasis in original). In private litigation, the client's oversight constrains expenditures. Likewise, petitioners in the Program are not given a "blank check to incur expenses" to be paid by the Vaccine Trust Fund. Perreira, 27 Fed. Cl. at 34. The undersigned has a duty to review petitioner's request, and determine through his analysis of the caselaw, the Vaccine Guidelines and Rules, as well as his own experience, whether requested costs and fees are reasonable, Saxton, 3 F.3d at 1521, and whether a hypothetical client would find the request reasonable. Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany and Albany County Bd. of Elections, 522 F.3d at 192 ("the district court can enforce market discipline . . . ."). The undersigned finds a hypothetical client would find counsel's request for consulting fees paid to David Geier unjustifiable as he is unqualified, his costs constitute over-billing as they duplicate his father's charges, and thus the charges are entirely unreasonable. Therefore, fees and costs associated with David Geier are denied in their entirety.[11]

2. Dr. Mark Geier

The undersigned is extremely familiar with Dr. Mark Geier. Dr. Geier has written numerous vaccine related articles, testified as an expert in the Program many times, including

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[10] The cases cited by counsel only reinforce the undersigned's opinion. As stated in Petitioner's Response, the U.S. District Court for the District of Columbia states, "absent a clear misallocation of resources, this Court is unwilling to second-guess counsel's judgment." However the court goes on to state, "[t]his does not mean, however, that the Court will not exercise any oversight of counsels' staffing decisions," and in fact eliminates a number of hours. Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354, 366 (D.D.C. 1983), aff'd in part rev'd in part, 572 F.Supp. 354, 32 Fair Empl.Prac.Cas. (BNA) 770 (D.D.C. Jul 29, 1983) (NO. CIV. 2111-70) citing Connors v. Drivers, Chauffeurs & Helpers Local Union 639, C.A. 82-1840, slip op. at 15, (D.D.C. March 4, 1983). It is evident that the instant matter involves a "clear misallocation of resources."

[11] The undersigned notes David Geier's "costs" while on travel are intermingled with the travel costs of Dr. Geier which are addressed infra at pp. 18-20.

before the undersigned, and served as a consultant to S&A in a number of their Program cases. Dr. Geier is a Ph.D in genetics, an M.D., and is board certified in genetics. P Ex 6 at 41-42. Dr. Geier was also named a Fellow of the American College of Epidemiology in 2007. Id. at 43. Dr. Geier holds positions in a number of various organizations, including but not limited to: Genetic Centers of America (President), Genetic Consultants (co-director), Institute of Immuno-Oncology and Genetics (Director). Id. at 43. However, Dr. Geier's qualifications as an expert, testimony in the Program, and credentials, have been subject of considerable criticism over the years by the court. The undersigned questioned his expertise as far back as 1991. Daly v.Sec'y of HHS, No. 90-590V, 1991 WL 154573, at *7 (Cl. Ct. Spec. Mstr. July 26, 1991) ("[T]his court is inclined to not allow Dr. Geier to testify before it on issues of Table injuries. Dr. Geier clearly lacks the expertise to evaluate the symptomatology of the Table injuries and render an opinion thereon."). More recently, in a published Order, my colleague, Special Master Vowell, addressed this criticism, as well as her concerns regarding petitioners utilizing medical articles authored by Dr. Geier, as follows:

> I found that the articles authored by Dr. Geier unpersuasive and not scientifically sound, based on my prior reading of the articles and critiques of them. I am also aware that Dr. Geier is trained as a geneticist and obstetrician, not an immunologist, epidemiologist, or rheumatologist, and that my fellow special masters[12] and several other judges[13] have opined unfavorably on his qualifications

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[12] *Thompson v. Sec'y, HHS,* No. 99-436, 2003 WL 21439672 at *19 (Fed. Cl. Spec. Mstr. May 23, 2003)(special master found Dr. Geier unqualified to testify about infantile spasms and found his testimony filled with speculation); *Haim v. Sec'y, HHS,* No. 90-1031V, 1993 WL 346392 at *15 (Fed. Cl. Spec. Mstr. Aug. 27, 1993) ("Dr. Geier's testimony is not reliable, or grounded in scientific methodology and procedure. His testimony is merely subjective belief and unsupported speculation."); *Marascalco v. Sec'y, HHS*, No. 90-1571V, 1993 WL 277095 at *5 (Fed. Cl. Spec. Mstr. July 9, 1993) (where the special master described Dr. Geier's testimony as intellectually dishonest); *Aldridge v . Sec'y, HHS*, No. 90-2475V, 1992 WL 153770 at *9 (Cl. Ct. Spec. Mstr. June 11,1992)(special master found Dr. Geier's reliance on statement from two outdated medical textbooks which was not included in the current edition to be disingenuous. "Were Dr. Geier an attorney, he would fall below the ethical standards for representation."); *Ormechea v. Sec'y, HHS*, No. 90-1683V, 1992 WL 151816 at *7 (Cl. Ct. Spec. Mstr. June 10, 1992) ("Because Dr. Geier has made a profession of testifying in matters to which his professional background [obstetrics and genetics] is unrelated, his testimony is of limited value to the court.") . . . .

Doe/03 v. Sec'y of HHS, 2007 WL 2350645, at *3, fn 8.

[13] *Piscopo v. Sec'y, HHS,* 66 Fed. Cl. 49 (2005) (special master did not abuse his discretion in determining that Dr. Geier did not have the education, training or experience to proffer a reliable opinion on the cause of petitioner's autoimmune disorder); *Graham v. Wyeth Laboratories*, 906 F.2d 1399, 1418 (10th Cir. 1990) (Dr. Geier's calculation error was of sufficient magnitude so as to warrant a new trial); *Doe v.*

and testimony as an expert.

Doe/03 v. Sec'y of HHS, No. [Redacted]V, 2007 WL 2350645, at *3 (Fed. Cl. Spec. Mstr. July 31, 2007) (footnotes in original). Further, my colleague Special Master Moran, in a recently published decision denying a request for fees and costs to be paid to Dr. Geier for consulting in relation to a specific hepatitis B claim, held that retaining Dr. Geier in the matter was not reasonable, explaining as follows:

> Retaining Dr. Geier was not reasonable. A lengthy explanation is not necessary because many other decisions have refrained from compensating Dr. Geier.
>
> At best, Ms. Valdes argues that employing Dr. Geier to review Ms. Valdes's case was reasonable because the hepatitis B cases were relatively new. (This argument overlooks the fact that Ms. Valdes's case was filed in May 1999, and Dr. Geier was not engaged until January 2001.) While Ms. Valdes's argument has some superficial appeal, the argument is not persuasive.
>
> Like many other petitioners, Ms. Valdes fails to explain what in Dr. Geier's background makes him a reasonable person to consult. Dr. Geier does not specialize in immunology, the field best suited to explain how a person might react to an immunization. Dr. Geier does not specialize in epidemiology, the field best suited to conduct research using databases. By 2001, when Dr. Geier was initially retained, many special masters had already found his opinions unpersuasive and called into question Dr. Geier's credibility. E.g., Sabella, 2009 WL 539880 *20 (affirming special master's decision not to compensate Dr. Geier); Ormechea v. Sec'y of Health & Human Servs., No. 90-1683V, 1992 WL 151816 *7 (Cl. Ct. Spec. Mstr. June 10, 1992) ("Because Dr. Geier has made a profession of testifying in matters to which his professional background (obstetrics, genetics) is unrelated, his testimony is of limited value.")

> *Ortho-Clinical Diagnostics,* 440 F. Supp. 2d 465, 474 (M.D.N.C. 2006) (excluding Dr. Geier's testimony as based on "hypothesis and speculation.")*; Redroot v. B.F. Ascher & Company,* 2007 U.S. Dist. LEXIS 40002 (N.D. Ca 2007) (excluding Dr. Geier as an expert, finding his testimony "not reliable.") *Pease v. American Cyanamid Co.*, 795 F. Supp. 755, 760-61 (D. Md 1992) (in granting summary judgment, trial judge noted inconsistencies in Dr. Geier's opinion); *Jones v. Lederle Laboratories, American Cyanamid Co.*, 785 F. Supp. 1123, 1126 (E.D. NY 1992) ("the court was unimpressed with the qualifications, veracity, and bona fides" of Dr. Geier); and *Militrano v. Lederle Laboratories, American Cyanamid Co.*, SCt NY, 3 Misc. 3d, 523, 537-38 (2003) (characterizing Dr. Geier's affidavit as "conclusory and scattershot" and "undermined by many of the materials submitted in support of it").

Doe/03 v. Sec'y of HHS, 2007 WL 2350645, at *3, fn 9.

> In short, if a well-informed, hypothetical client were asked to pay for Dr. Geier's services in 2001-2002, the reasonable response from the client would have been to refrain from retaining Dr. Geier. Consequently, Ms. Valdes's request for the Vaccine Injury Compensation Trust Fund to pay for Dr. Geier's work is rejected. Hours spent by Ms. Valdes's attorneys in working with Dr. Geier are also rejected.

Valdes v. Sec'y of HHS, No. 99-310, 2009 WL 1456437, at *7 (Fed. Cl. Spec. Mstr. Apr. 30, 2009) (Motion for Review filed June 1, 2009). The undersigned shares similar concerns regarding the work of Dr. Geier, particularly when Dr. Geier's literature or testimony is relied upon exclusively to meet petitioners' burden in a case. Further, the undersigned notes that although Dr. Geier ultimately published multiple articles regarding the hepatitis B vaccine, see P ex 6 at 12 -13, none of the articles appear to have been published at the time (1999) Dr. Geier began to consult on counsel's hepatitis B cases.

The undersigned notes in the instant matter, it appears counsel is claiming the services of Dr. Geier and his son David as consultants as opposed to experts. See P Resp at 9-10, P Sur-Reply at 1. The undersigned recognizes, and has in fact acknowledged, the helpful role consultants can play in the prosecution of Vaccine Program cases. See Simon, No. 05-941, 2008 WL 623883, at *4, Ray v. Sec'y of HHS, No. 04-184, 2006 WL 1006587, at *12 (Fed.Cl Spec. Mstr., Mar. 30, 2006); see also Lamar v. Sec'y of HHS, No. 99-584, 2008 WL 3845157, at *12 (Fed. Cl. Spec. Mstr. July 30, 2008). Consultants with sufficient medical experience can provide counsel with the necessary tools to determine whether or not a particular claim is potentially compensable in the Program, what issues are presented, and what expert qualifications are necessary to address the issues. Such efforts by a qualified consultant can efficiently move a case to resolution. Petitioner's counsel is correct in stating that the undersigned has approved counsel utilizing the consultative services of Dr. Geier in this past. P Resp at 9-10. The undersigned has stated in a previous attorneys' fees and costs decision that

> [g]iven the undersigned's experience with Dr. Geier and his expertise in vaccine literature, it is reasonable for petitioners' counsel to have consulted with Dr. Geier in their review and assessment of this case. The undersigned agrees with petitioners' counsel that counsel may employ consultants if necessary and reasonable. Petitioners have set forth in their response to respondent's objections why Dr. Geier was consulted. It is not unreasonable for Dr. Geier to have spent 6.25 hours doing research and review. The fact that Dr. Geier did not testify as an expert is irrelevant. Petitioners' use of Dr. Geier as a consultant, as opposed to contracting with another expert, is a cost-effective means of evaluating the case prior to full-blown litigation.

Ray v. Sec'y of HHS, 2006 WL 1006587, at *12. However, the undersigned's approval of counsel's use of Dr. Geier in Ray cannot be interpreted as a blanket endorsement for utilizing Dr. Geier, or any other consultant or expert in a case, without supervision and appropriate constraint.

In the Ray case, Dr. Geier billed 6.25 hours for reviewing petitioner's medical records and performing research regarding petitioner's injury. The undersigned approved counsel utilizing Dr. Geier in this manner, to evaluate the claim prior to "full-blown" litigation, in lieu of utilizing an expert. Id. The role of a consultant is to identify medical issues and thus identify the type of expert to support the case. Counsel utilized Dr. Geier efficiently and effectively in the Ray case. My colleague, Special Master Vowell, has also approved a "modest" award of costs to Dr. Geier for acting in a limited manner as a consultant in an individual hepatitis B case, but noted that determining the reasonableness of the award was "complicated by the failure to explain clearly what he actually did." Lamar v. Sec'y of HHS, No. 99-584, 2008 WL 3845157, at *15 (Fed. Cl. Spec. Mstr. July 30, 2008).

The problem with counsel's use of Dr. Geier as a consultant in this matter is that it is clear Dr. Geier was not merely consulting, but was performing the function of an expert (which he is unqualified to do), or if acting only as a consultant, Dr. Geier went well beyond the limited role a consultant should perform in a matter. Once a consultant performs an initial, limited review of the issues and provides guidance to counsel, an appropriate expert steps in to analyze fully the medical issues involved and offer an opinion. With the expert assisting counsel, the role of the consultant ceases. Counsel consulted with a number of experts in these cases, but Dr. Geier's "consultant" efforts continued. Dr. Geier's efforts were either unnecessary or a duplication of the experts'. A consultant is not an armchair expert.

In the instant matter, the undersigned finds it was reasonable (and appropriate) for counsel to consult with Dr. Geier in a **limited** manner regarding the hepatitis B claims. Those efforts would entail Dr. Geier performing an initial review of the counsel's hepatitis B claims and some initial research regarding vaccine injuries resulting from hepatitis B vaccine. Dr. Geier would then educate counsel as to the nature of the issues and the types of experts required. However, once Dr. Geier performed an initial review of these claims for counsel, and once counsel began reaching out to doctors who would ultimately serve as experts in S&A's hepatitis B claims, it was no longer reasonable for Dr. Geier to be billing hours and incurring costs in S&A's general hepatitis B efforts. Dr. Geier at this point was moving well beyond the role of a consultant.[14] Thus by the beginning of 2002, when Mr. Shoemaker began to meet with experts[15] to assist in the prosecution of the hepatitis B claims, Dr. Geier's work on behalf of S&A's general hepatitis B efforts was no longer needed and should have concluded.[16] See P App at 34-

[14] It should be noted that while Dr. Geier is not qualified to serve as an expert in these cases, the extensive request for fees and costs by Dr. Geier would be highly questionable even if Dr. Geier were qualified to serve as an expert in these matters.

[15] Aside from Dr. Bellanti with whom counsel had been meeting since these claims were first filed.

[16] The undesigned notes the only exceptions would be for 5/28/2003 billing where Mr. Shoemaker consulted with Dr. Geier regarding the parties' efforts to form a hepatitis B Panel; and a meeting regarding VSD materials with Mr. Shoemaker on 3/31/03 of which the undersigned and respondent was

35 (meetings with Dr. Tornatore, Dr. Bellanti, Jack Riggs, Dr. Hirsch, Dr. Goldsmith, and Dr. Megson);[17] P Resp at 4 ("[m]any meetings were held with Dr. Bellanti discussing how to prove causation in HBV cases in general."). Thus, the undersigned finds it was unreasonable for Dr. Geier to continue to bill for services relating to the S&A's general hepatitis B efforts after the start of February 2002. In addition, the undersigned finds not only did Dr. Geier exceed the appropriate scope of a consultant in this matter, but also that Dr. Geier's invoice presents a large number of requests that are clearly unreasonable and inconsistent with the guidance provided by the Vaccine Act and case law pertaining to permissible fees and costs in the Program as discussed below.

Based upon the above discussion, the undersigned finds $10,000.00 to be appropriate and reasonable compensation for Dr. Geier for his time spent consulting counsel in this matter. The undersigned will not conduct a line-by-line analysis of Dr. Geier's invoice, but will discuss specific areas of particular concern. Sabella II at *4.[18] The undersigned notes an award of $10,000.00 represents an almost 90% reduction of the invoice submitted by the Geiers in this matter. The award of $10,000.00 is reasonable for Dr. Geier's consultant efforts, and thus should not be viewed as a "reduction," but viewed as reasonable compensation for Dr. Geier's role as a consultant. The time not compensated is time largely spent by Dr. Geier duplicating the efforts of the experts, duplicating his own work, or performing work as an expert (work he is not qualified to perform). Stated another way, once experts were identified and became involved, Dr. Geier's role as a consultant ended. While finding $10,000.00 a reasonable award for Dr. Geier's

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aware. P App at 58-59; Respondent's Sur-Reply at 4, fn 3.

[17] The undersigned notes that counsel also utilized Dr. Geier as a consultant regarding specific hepatitis B claims in the Program and has been reimbursed in many cases for case specific work, while being denied compensation in others. The use of Dr. Geier as a consultant in specific hepatitis B claims raises serious additional questions of duplication of efforts and billings between S&A's billings in general, those specific to Dr. Geier in this matter, and in S&A's individual hepatitis B petitions.

[18] The special master is not "required to base his . . . decisions on a line-by-line evaluation of the fee application." Carter v. Sec'y of the Dep't of Health & Human Servs. (Carter), No. 04-1500V, 2007 WL 2241877, at *3 (Fed. Cl. Spec. Mstr. July 13, 2007). The special master can choose to reduce the award by a percentage. Hensley, 461 U.S. at 438 n.13 ("In addition, the District Court properly considered the reasonableness of the hours expended, and reduced the hours of one attorney by thirty percent to account for his inexperience and failure to keep contemporaneous time records."); Mares v. Credit Bureau of Raton (Mares), 801 F.2d 1197, 1203 (10th Cir. 1986) ("A general reduction of hours claimed in order to achieve what the court determines to be a reasonable number is not an erroneous method, so long as there is sufficient reason for its use."). "The burden is not for the court to justify each dollar or hour deducted from the total submitted by counsel. It remains counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero." Mares, 801 F.2d at 1210.

Sabella II at *4.

consultant services, the undersigned will discuss below, additional reasons why Dr. Geier's billing in this matter was unreasonable thus "excessive, redundant or otherwise unnecessary." Hensley, 461 U.S. at 434; Saxton 3 F.3d at 1521 citing Hensley.

a. Duplicative Costs - Dr. Mark Geier

Dr. Geier's invoice contains a large number of entries which are not compensable as clearly duplicative. "Duplicative work is presumptively unnecessary. Attorneys are not entitled to compensation for performing work that is not necessary." Sabella 1 at *28 citing Hensley 461 U.S. at 434. For example, the Geier invoice contains approximately 25 entries for a total of approximately **46 hours** requesting a total of approximately $9,200.00 in fees[19] for Dr. Geier performing the repeated identical tasks of "Literature review, summary and prepare materials on Hepatitis B vaccine adverse reactions for meeting with . . . ." Pet App 51-59, 61.[20] Why it was necessary for Dr. Geier to continually perform literature review is not explained.

Additionally, Dr. Geier participated in numerous meetings with Mr. Shoemaker and/or various other doctors and/or experts, billing approximately $15,150.00 for this time, including time spent traveling to these meetings at his full hourly rate. See P App 51-58.[21] Petitioner has failed to adequately explain why it is necessary fo Dr. Geier **and** Mr. Shoemaker to meet together with various experts; nor, why it is necessary for Dr. Geier to repetitively meet with Mr. Shoemaker. See discussion supra at 14-16 (regarding the limited role of a consultant). The undersigned notes petitioner's counsel has extensive experience in the Vaccine Program and is capable of meeting with doctors and/or experts to discuss the medical or scientific issues presented in his cases. See also Sabella I, at *41(Special Master Moran found it was unnecessary for consultant to meet with expert and petitioners in addition to the attorneys). Thus, the undersigned finds Dr. Geier's presence at these meetings duplicative of Mr. Shoemaker's presence at these meetings. Dr. Geier's presence at these meeting along with Mr. Shoemaker clearly represents costs which are "excessive, redundant or otherwise unnecessary" as described by the Supreme Court in Hensley and the Federal Circuit in Saxton. Hensley, 461 U.S. at 434; Saxton 3 F.3d at 1521 citing Hensley.

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[19] This is not including the fees requested by David Geier for performing the identical tasks on the identical dates as Dr. Geier.

[20] The undersigned notes the only difference in these entries is with whom Dr. Geier is preparing to meet with to discuss this information.

[21] The undersigned notes it is sometimes necessary to look at both the entry for travel time as well as the entry for meeting time to determine if Dr. Geier was meeting only with petitioner's counsel or with petitioner's counsel and another expert and/or doctor. Additionally, the undersigned notes this does not include meetings or travel time for meetings the Geiers billed while in France or Italy.

b. ***Fees and Costs Associated with France and Italy Travel***

Another extreme example of counsel's error in billing judgment is the request by counsel for fees and costs billed by Dr. Mark Geier and David Geier for trips to France and Italy in the summer of 2005 and winter of 2006 respectively, and for Mr. Shoemaker to travel to France with the Geiers in the summer of 2005. These requests represent a complete abdication of billing judgment.

Dr. Geier and Mr. Geier together billed a total of over $20,000.00, P App at 62-63, to travel along with Mr. Shoemaker to France and meet with various doctors and lawyers to discuss adverse events following the hepatitis B vaccination. Dr. Geier, in his affidavit, and counsel in Petitioner's Sur-Reply, allege it was necessary to travel to France to discuss the doctors' and lawyers' experiences and research relating to adverse reactions stemming from the hepatitis B vaccination, and that this information could only be obtained in "face-to-face" discussions.

In addition, Dr. Geier and Mr. Geier together billed $23,690.00 to travel to Italy to attend the 5th International Conference of Autoimmunity. Petitioner argues in Petitioner's Response that the Geiers were invited to present their research at the conference by Dr. Shoenfeld, a leading expert in autoimmunity, and that at the conference they were able to secure Dr. Shoenfeld's services as an expert in counsel's cases. Petitioner further alleges the Geiers were able to discuss autoimmune disorders with experts at the conference and further "expedite the prosecution of various hepatitis b cases." P Resp at 12.

The undersigned finds petitioner has failed to explain why it was reasonable for the Geiers (and Mr. Shoemaker) to travel to France and Italy, billing and spending in excess of **$44,000.00**, **including $19,175.00 billed as travel time**, see P App at 60-63, to talk to other doctors and lawyers about their experiences and research "face-to-face." Petitioner alleges the cost of this travel is "*de minimus*" when apportioned across all of counsel's hepatitis B claims. P Resp at 12. However, the undersigned agrees with respondent "[w]hether the cost is de minimus when apportioned over 150 cases is irrelevant; the essential inquiry is whether the fees and costs sought are reasonable." R Reply at 6. Petitioner has failed to adequately explain why these costs were necessary or how they aided the prosecution of counsel's hepatitis B claims. Counsel asserts that the test to be applied "is whether it was reasonable to believe that the trip would result in useful and relevant information that would benefit the cases." P Sur Reply at 3. The undersigned disagrees, and not surprisingly counsel offers no citation to support his "test." That is, counsel's "test" is not the standard to be applied in judging whether fees and costs incurred in a matter are reasonable. The undersigned notes there is an endless amount of activities that might reasonably benefit a petitioner's case in the Vaccine Program, however the statute does not authorize a blank check to counsel to pursue potentially relevant information. Perreira, 27 Fed. Cl. at 34. The test to be applied in evaluating whether a fees and costs request is reasonable under a fee shifting statute is whether a hypothetical client would pay these costs. The answer to that question is no. These fees and costs requested for these trips are excessive and not compensable. See Hensely v. Eckerhart, 461 U.S. 424, 434 (1983); Saxton, 3 F.3d at 1521

(quoting Hensley, 461 U.S. at 434) ("[h]ours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority.") (emphasis in original); See also Lamar v. Sec'y of HHS, 2008 WL 3845157 at *8. Additionally, the undersigned notes again, Dr. Geier has stepped significantly beyond the role of a consultant. Dr. Geier's role as a consultant as discussed supra at 14-16, should be to provide initial guidance to counsel regarding the hepatitis B claims. However, by the time the Geiers traveled to France and Italy in 2005, counsel's hepatitis B claims had been pending for years,[22] and counsel had long been consulting and working with qualified experts in prosecuting his hepatitis B cases. Thus, it was not reasonable for the Geiers, as consultants, to travel to France and Italy to discuss counsel's hepatitis B claims with doctors and lawyers located in those countries.

Additionally, the Geiers provided ***absolutely no supporting documentation***, such as receipts, to evidence the **$9,399.68**, see P App at 60, they allege they incurred in costs for airline tickets, other transportation costs, parking, hotel, "daily expenses," food, and conference fees during these trips. P App at 61-62. By itself, this failure justifies not awarding these costs.

In discussing his trip to France, Dr. Geier states that while in France he met with two doctors to discuss "their research and opinions regarding the relationship between hepatitis B vaccination and adverse reactions. The information gleaned from our face-to-face discussions would not have been possible by any other means, and allowed for me to provide Mr. Shoemaker with invaluable information to help him pursue his legal cases in the NVICP." Dr. Geier then cites a list of medical articles published by those doctors. Pet. Ex. 6 at 16. Counsel argues the "cheapest and quickest way to accomplish those meetings was to travel to France during a short period of time when all of the meetings could be arranged" with a translator who arranged the meetings and worked at "no cost." P Sur-Reply at 3. In discussing his trip to Italy, Dr. Geier also stated while there he was able to "meet with worldwide renowned researchers on hepatitis B vaccination associated adverse reactions and experts on the biological basis of autoimmunity." Again, Dr. Geier claims "[t]his information would not have been attainable except by face-to-face meetings . . . ." Pet. Ex. 6 at 18. Counsel likewise states in discussing the Geiers' trip to France "the 'in-person' meeting was critical" and "could never have been accomplished by telephone or other means of correspondence." P Sur-Reply at 3- 4. This explanation is simply insufficient. Petitioner fails to explain why counsel or Dr. Geier would not be able to obtain copies of foreign research papers through traditional means, and consult with foreign doctors, lawyers, and experts via the telephone or internet. Given the extraordinarily high costs of these trips and the clearly duplicative involvement of Mr. Geier, Dr. Geier, and Mr. Shoemaker, the undersigned is unpersuaded that petitioners could not have gathered any relevant information in a more cost effective manner. Other counsel utilize foreign doctors, including Dr. Shoenfeld, without traveling overseas. In fact, the undersigned notes Dr. Shoenfeld has testified in other vaccine cases via video conferencing.

[22] The undersigned notes counsel's first claims were filed and initial hours were first billed by counsel and the Geiers in 1999.

Further, there is no explanation of why the Geiers, who are not qualified experts, were taken to engage in conversations with these foreign experts as opposed to qualified experts counsel had retained to opine in S&A's hepatitis B cases. It must not be forgotten that Dr. Geier is not qualified to serve as a medical expert in this matter, thus he is discussing issues with these experts for which he is unqualified. Accordingly, petitioner's counsel consulted on numerous occasions with Dr. Bellanti. In fact, petitioner's counsel in explaining the necessity of multiple meetings with Dr. Bellanti, a qualified medical expert, states "[m]any meetings were held with Dr. Bellanti discussing how to prove causation in HBV cases in general." P Resp at 4. Petitioner fails to explain why the efforts of other experts counsel consulted and billed for in this matter were insufficient. Nor does counsel aver that the qualified experts, such as Dr. Bellanti who counsel consulted from his initial filings, recommended the foreign trips to gather information. The undersigned notes petitioners in the Program regularly submit and have translated medical articles published outside the United States without traveling to a country where the articles were published, researched, or written. Additionally, as petitioner states, the Geiers were invited by Dr. Shoenfeld to attend the conference in Italy and present their research. It is completely unreasonable and extremely inappropriate to bill the Vaccine Fund for the costs of the Geiers traveling to Italy and attending a professional conference that the Geiers were invited to attend as researchers. The undersigned remains unconvinced that petitioner's efforts abroad were necessary, assisted in any way the advancement of the hepatitis B cases, were conducted in an efficient manner, or were conducted by the appropriate professionals. Thus, the request is denied.

3. Conclusion - Geiers

Counsel has a duty to monitor the fees and costs incurred in a case. In the instant matter, counsel should have been monitoring more closely the extremely high and unreasonable costs his consultants were incurring. It appears that the Geiers in this matter incurring significant costs with no oversight. While petitioner is partially correct in asserting "it is his counsel's prerogative to determine how to prosecute his case," P Resp at 8 , again, attorneys retained by paying clients are not free to incur any expenditure they desire. Hensley, 461 U.S. at 434 (citing Copeland v. Marshall, 641 F.2d at 891 "Hours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority.") (emphasis in original)). "Petitioners are not given a blank check to incur expenses . . . ." Perreira, 27 Fed. Cl. at 34; see also Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany and Albany County Bd. of Elections, 522 F.3d at 192 ("the district court can enforce market discipline"); see also Lamar v. Sec'y of HHS, 2008 WL 3845157 at *13.[23] In summary, the undersigned finds the costs for

[23] Petitioner's counsel is quite correct in asserting that he is in the best position to gauge what assistance he needs in a case. However, in traditional civil litigation, the client paying consultant costs (or expert fees) provides a necessary check on the costs an attorney might wish to incur. In a fee-shifting program such as the Vaccine Act, the petitioners only rarely incur personal costs for expert or consultant reviews, although nothing in the statute or our rules prohibits petitioners' counsel from requiring their

David Geier's efforts to be obviously unreasonable as Mr. Geier is not qualified to address the medical issues involved in the Program and his work was duplicative of the efforts by Dr. Geier. Thus, the undersigned denies the request for costs for David Geier in its entirety. Based on the undersigned's experience as a special master, and the undersigned's experience in the evolution of the Program's hepatitis B claims, the undersigned finds it reasonable and appropriate to award Dr. Geier $10,000.00 for his services as a consultant in assisting counsel in the prosecution of counsel's general hepatitis B claims. The undersigned notes that this amount represents compensation for 50 hours at Dr. Geier's requested hourly rate of $200.00. The undersigned finds based on his experience in this matter, that this is a generous award for the consultation services performed by Dr. Geier in furtherance of the prosecution of counsel's hepatis B claims ***in general***. The undersigned notes again that Dr. Geier served as a consultant in a number of counsel's individual hepatitis B cases specifically, and has been awarded compensation for that work as appropriate.[24]

> clients to advance these costs.

Lamar v. Sec'y of HHS, 2008 WL 3845157 at *13.

[24]Additionally, it appears that Mr. Shoemaker and Dr. Geier's work relationship extends beyond Mr. Shoemaker utilizing Dr. Geier as an independent expert and/or consultant on S&A's Program cases. This potential conflict is described by my colleague, Special Master Vowell in another fees and costs decision involving Mr. Shoemaker requesting reimbursement for costs associated with Dr. Geier consulting services.

> When there are indications that the arrangement between consultant and attorney is not entirely at arms length, the issue of consultant fees becomes even more problematic. Public records reflect that petitioner's counsel is an officer or director of the Institute for Chronic Illnesses, Inc., a nonprofit corporation. *See* http://www.taxexemptworld.com/organization.asp?tn=1502647. (last visited July 24,2008). One of Dr. Geier's many published articles identifies his organizational affiliation as the Institute for Chronic Illnesses, Inc. *See A meta-analysis epidemiological assessment of neurodevelopmental disorders following vaccines administered from 1994 through 2000 in the United States*, NEURO ENDOCRINOL LETT, 2006 Aug: 27(4):401-13. As nonprofit corporations may pay their employees and officers, the nonprofit status of the corporation does not resolve the issue of whether this particular consultant-attorney relationship requires a careful and objective review of consultant fees billed to the Vaccine Program by this firm for this consultant.

Lamar v. Sec'y of HHS, 2008 WL 3845157 at *13, fn 31. The undersigned notes the website page cited above (last visited May 12, 2009), no longer lists Mr. Shoemaker as an officer or director of the Institute for Chronic Illnesses, Inc. Nonetheless, this possible conflict of interest is a serious concern and should be explored more fully in any future submissions for costs to the Geiers by S&A.

4. Shoemaker & Associates Miscellaneous "General" Hepatitis B Costs

Petitioner requests reimbursement for several items to Shoemaker & Associates. These costs are listed in a one page "Client Transaction Report," as well as a "Synopsis of Fees and Costs" both found in Petitioner's Application. P App at 31, 48. Petitioner requests: $3,500.00 for costs paid to Victor Miller for "researching and obtaining hard copies of hundreds of articles," $21.69 for costs paid to Federal Express,[25] and $182.55 costs paid to Mark Greenspan, M.D. Id. at 48. The following items contain the notation "trips to Boston - mtgs w experts:" $279.59 for costs paid to Dollar Rent a Car on 6/18/2001, $1,356.14 for costs to Ritz Carlton on 6/18/2001, $466.67 for costs to Ritz Carlton on 7/28/2001, and $368.61 for costs to Ritz Carlton on 7/28/2001. Id. Finally, petitioner requests $730.00 in costs to United Airlines with a notation "trip to FL to meet other lawyer," and $481.38 for costs to Hotel Anglet for "France Trip. Id. [26] The only further explanation counsel provides for the above described travel related costs is "Travel Exp's-Mtg w/experts." P App at 31.

The undersigned notes respondent has not objected to these requests, however it is not necessary for respondent to object to a request for fees and costs, in order for a special master to review a Petition for Fees and Costs and if unreasonable, reduce accordingly. See Sabella II at *7-8; Saunders v. Sec'y of HHS, 26 Cl. Ct. 1221, 1226 (1992); Duncan v.Sec'y of HHS, No. 99-455, 2008 WL 4743493 at *1 (Fed. Cl. Spec. Mstr. Aug. 4, 2008); Savin v. Sec'y of HHS, 85 Fed. Cl. at 317-319. Petitioner's counsel has failed to provide adequate information for the undersigned to determined exactly what the costs represent and whether or not the costs were reasonably incurred. No receipts are provided for any of these expenses. For example, for what did counsel pay costs to Federal Express? Who traveled to Boston and stayed at the Ritz Carlton? What expert was met with in Boston? Who traveled to Florida? And what attorney was met with in Florida? As to the costs paid to Victor Miller and Dr. Greenspan, petitioner has failed to establish why it was necessary, and therefore reasonable, to retain Mr. Miller and Dr. Greenspan to search for medical articles when counsel retained the services of Dr. Geier to perform literature research. Further, counsel failed to provide Mr. Miller's qualifications or provide any indication of the reasonableness of the fee charged by Victor Miller. Petitioner has the burden of establishing entitlement to an award for fees and costs, Hensley 461 U.S. at 437, thus "the petitioner 'should present adequate proof [of entitlement] at the time of submission [of the fee application]." Sabella II, at *3, citing Wasson, 24 Cl. Ct. 484 n. 1; see also Long v. Sec'y of HHS, No. 91-326, 1995 WL 774600, at *8 (Fed. C1. Spec. Mstr. Dec. 21, 1995) ("[the court]

[25] The undersigned notes in petitioner's synopsis of the total "general" hepatitis B Fees and Costs, the $21.36 for Federal Express is not included. P App at 31. Accordingly, while the undersigned finds this charge not sufficiently explained, and thus not reasonable, the undersigned will not deduct the $21.36 from Petitioner's Application as the cost does not appear to have been included by counsel in calculating his total expenses requested.

[26] The undersigned notes the $481.38 for costs to Hotel Anglet for "France Trip" P App at 48, appear to be counsel's hotel costs incurred counsel's trip to France addressed infra at 23.

simply cannot compensate petitioner for undocumented, unexplained charges"); Farrar v. Sec'y of HHS, No. 90-1167V, 1992 WL 336502 (Fed. C1. Spec. Mstr. Nov. 2, 1992) (costs denied for insufficient explanation; expense sheet did not contain adequate information to determine the reasonableness of requests). Petitioner has not meet this burden as it pertains to these costs. Thus, the undersigned finds the aforementioned costs are unreasonable, and reduces petitioner's fee application by $7,364.94.

B. S&A General Hepatitis B Fees

Petitioner initially requested $ 94,232.45 in attorneys' fees for work performed relation to the prosecution of S&A's hepatitis B claims in general. See P App at 31. The undersigned notes petitioner withdrew a total of $906.50 from his fee request during the briefing process in this matter. See P Resp at 16; see P Sur-Reply at 6-8. The undersigned will divide this section into subsections with titles corresponding to the titles the parties utilized in Respondent's Reply and Petitioner's Surreply. The undersigned notes the issues raised in section B(14), were neither raised by respondent nor addressed by petitioner.

1. Mr. Shoemaker Fees and Costs for Travel to Paris

The undersigned discussed the trip by counsel and the Geiers at length, supra at 18-20. The undersigned denies in total petitioner's request for counsel's costs and fees associated with traveling to Paris for the reasons stated in that section. The undersigned notes again that billing for travel to Paris to talk to other lawyers, journalists, and experts represents a complete abdication of counsel's responsibility to monitor fees and costs. Counsel's argument that the costs associated with this trip are reasonable in light of the approximately 150 hepatitis B cases S&A prosecuted is not persuasive. A reasonable client would not pay for counsel to travel to France for what amounts to a search for potential information, without a showing of reasonable need or expectation for success. Counsel has failed to adequately explain why this trip was necessary to advance the prosecution of S&A's hepatitis B cases, and why he could not use alternative means to gather medical articles and discuss hepatitis B causation issues with attorneys and doctors in France short of embarking on a costly international trip. Petitioner's argument that the court has considered or even taken international travel to conduct necessary hearings in cases is not analogous to the instant matter. Accordingly, the undersigned finds it was unreasonable for counsel to travel to France in this matter, and reduces petitioner's request for fees by $9,487.50 for counsel's billed time relating to the trip to France. P App at 40-41.

Respondent also objects to 2.5 hours of time billed by Mr. Shoemaker for email correspondence to Dr. Gherardi in France, and to a French reporter to discuss the French litigation. R Opp at 15. The undersigned finds this minimal time corresponding with the doctor and journalist from France the an appropriate means to discuss "French experience" with hepatitis B claims, as opposed to traveling to France to do so, and thus reasonable.

2. Mr. Shoemaker's Meetings with Dr. and Mr. Geier

Respondent objects to 14 hours of time billed for S&A attorneys meeting with Dr. Geier and Mr. Geier. R Opp at 14-15; R Reply at 6.[27]

As discussed supra at 10–11, the undersigned denies all requests for fees and costs for Mr. Geier. R Reply at 6; see also R Opp at 14. Accordingly, the undersigned denies the one hour of attorney fee requests for costs associated with meeting or communicating exclusively with Mr. Geier and reduced Petitioner's Application by $155.00. Fee App at 45 (entry for SSK dated 2/8/05), and 46 (entry for SSK dated 8/11/2005).

As discussed supra at 12-21, a substantial proportion of the work billed by Dr. Geier was unreasonable as it was excessive, redundant or otherwise unnecessary. Further, counsel never adequately met his burden of explaining why it was necessary for Dr. Geier and counsel to meet repeatedly in order to advance the cases of counsel's hepatitis B petitioners in general. Further, the undersigned finds that after February of 2002 it was unreasonable for counsel to continue utilizing Dr. Geier as a consultant. See discussion supra at 16. However, the undersigned does find that a portion of Dr. Geier's fees were reasonable in serving as a consultant to counsel. See discussion supra at 16. Since it is appropriate for Dr. Geier to serve counsel in a limited manner as a consultant in the prosecution of counsel's hepatitis B claims, it also appropriate for counsel to meet with his consultant to discuss this matter. Thus, the undersigned likewise finds a portion of counsel's fees reasonable and appropriate for meeting with Dr. Geier. The undersigned finds it reasonable and appropriate for petitioner to be awarded attorneys' fees for meetings and communications with Dr. Geier prior to February of 2002. It follows that the undersigned finds it unreasonable for counsel to be awarded fees for meetings and communications with Dr. Geier after February of 2002,[28] and reduces petitioner's request for fees by $920.50 (4.1 hours). P App at 36, 37, 44, and 46 (see entries dated 8/8/02 CJS, 3/25/2003 CJS, 8/05/2003 SSK, and 10/31/2005 SSK).

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[27] The undersigned also notes entries of time billed by counsel for meeting with the Geiers coupled with performing several other activities making it impossible for the undersigned to determine how much of the billed time was spent communicating with the Geiers. Id. at 36, 37, and 38, (See entries dated 6/20/02 CJS, 2/7/2003 CJS, 3/19/2003 CJS, 5/26/2003 CJS, and 5/28/2003 CJS). Compensation will not be awarded for numerous activities grouped together such that it is impossible for the undersigned to determine whether or not the fees requested for the various entries are reasonable. Savin v. Sec'y of HHS, 85 Fed. Cl. 313, 316-317 (2008) (Order denying Motion for Review). These requests will be addressed infra at 33-34 and are not addressed here.

[28] The undesigned again notes the only exceptions would be for 5/28/2003 billing where Mr. Shoemaker consulted with Dr. Geier regarding the parties' efforts to form a hepatitis B Panel; and a meeting regarding VSD materials with Mr. Shoemaker on 3/31/03 of which the undersigned and respondent was aware. Petitioner's Application at 58- 59; Respondent's Sur-Reply at 4, fn 3.

3. Travel for Meetings with the Court and Filing of Pleadings

Respondent objects to 9.5 hours, or $2,250.00, in requested fees for petitioner's counsel traveling to the court to file pleadings, discuss the filing of pleadings, and to meet with the undersigned and the Chief Judge, arguing that this time is administrative in nature and benefits clients beyond those involved in the counsel's hepatitis B cases. In the event that the undersigned finds these activities compensable, respondent argues that delivering filings to the clerk should not be compensated at the rate of $250.00 an hour as such a task is of a paralegal nature. R Opp at 16, R Reply at 7; see also P. App at 32, and 33. The undersigned has no recollection of a meeting between himself and counsel related to counsel hepatitis B claims on April 10, 2000, nor any knowledge of counsel meeting with the Chief Judge on October 27, 1999. In fact, it would be quite unusual for a Vaccine Program attorney to meet with the Chief Judge to discuss filing matters. Additionally, counsel does not provide adequate information regarding his meeting with the undersigned or the Chief Judge for the undersigned to determine whether or not these alleged meetings were reasonable. Savin v. Sec'y of HHS, 85 Fed. Cl. at 317 ("[F]ee records must be specific."). The undersigned does note that counsel had a large number of new claims he was filing during this time period with the court. Thus, the undersigned finds it is reasonable that counsel would participate in discussions with the Clerk of the Court regarding filing procedures for this group of cases. However, it is unreasonable for counsel to bill his hourly rate of $250.00 to receive this guidance from the Clerk. Counsel lists his legal assistant rate at $55.00. P App at 31. The undersigned finds based on his experience that these meetings with the court and travel to the court could have been handled by a legal assistant at the rate of $55.00 an hour for a total fee for these tasks of $522.50. Accordingly, the undersigned reduces petitioner's request for attorney fees by $1,727.50.

4. Meetings Regarding Scanning Issues, Computer Issues & Case Review by Legal Nurses Associates

Respondent objects to five hours of time billed by counsel for "'meeting with consultants about scanning issues'" on April 19, 2000; one hour of time billed by counsel for "'review[ing] computer breakdowns and update computer field'" on October 8, 2002; and three hours of time billed by counsel for a "consultation with Legal Nurses Association to discuss reviewing cases and preparing chronologies" on September 19 and 21, 2001. R Opp at 17; see also R Reply at 7. Respondent objects to these billings on the basis that the billings are administrative in nature, "more properly categorized as overhead" and would benefit "all petitioners represented by [counsel's] firm." Id. The undersigned agrees. Fees for items that constitute overhead are not properly billed to a client, are not reasonable, are administrative in nature, and are not compensable in the Program. See Lamar v. Sec'y of HHS, 2008 WL 3845165, at *9; Duncan v. Sec'y of HHS, No. 99-455V, 2008 WL 2465811 at *5 (Fed. Cl. Spec. Mstr. May 30, 2008); Melbourne v. Sec'y of HHS, No.99-694V, 2007 WL 2020084, at *7 (Fed. Cl. Spec. Mstr. June 25, 2007). The undersigned finds counsel is not entitled to fees for these items and reduces counsel's fee request by $2,250.00.

5. Neurological Demyelinating Omnibus Work

Respondent objects to 15 hours billed by Mr. Shoemaker and 8 hours billed by Ms. Gentry as unreasonable expenses in this case, due to the fact that these hours are associated with S&A's hepatitis B neurological demyelinating (neurodemyelinating) cases, and thus should have been submitted in Cramer v. Sec'y of HHS, No. 99-428V. R Opp at 18-19. Petitioner's counsel argues the hours billed in 2002 were prior to "counsel becoming involved in an omnibus proceeding for the neurodemyelinating cases." P Sur-Reply at 6. Petitioner argues these hours were not requested in the Cramer case or any other case, and since they involve "work performed on hepatitis b proceedings" they are appropriately requested in the instant matter. P Resp at 14. The undersigned agrees with Respondent.

A specific omnibus proceeding was conducted for cases involving neurodemyelinating injuries allegedly resulting from the hepatitis B vaccination. All attorney fees and costs, representing work performed in preparing and presenting the general causation portion of the hepatitis B neurodemyelinating omnibus proceeding were awarded in the Cramer case. Mr. Shoemaker was counsel of record in Cramer and was awarded $51,743.33 in attorneys' fees and costs. The hours claimed here clearly constitute background work performed on S&A's hepatitis B neurodemyelinating cases in preparation for proving general causation in these cases, and it is irrelevant when counsel "became involved in the hepatitis B neurodemyelinating omnibus proceeding." The hours should have been billed as part of the Cramer fees and costs application which was designed for that specific purpose. Further, then Special Master Sweeney specifically stated in the Cramer Attorneys' Fees and Costs Decision, "[t]he attorneys' fees and costs requested by petitioner's counsel are intended to cover all attorneys' fees and costs incurred in the general causation portion of the Omnibus Proceeding through July 13, 2004, with the exception of any fees and costs associated with Dr. Mark Geier." Cramer v. Sec'y of HHS, No. 99-428, slip op at 2 (Fed. Cl. Spec. Mstr. Sept. 1, 2005)(unpublished).[29] Based upon the undersigned's experience and knowledge in the processing of the court's hepatitis B claims, these hours should have been billed in the Cramer case, and the fact that petitioner's counsel failed to request reimbursement for these hours in Cramer does not make it reasonable to request the hours in the instant matter. The undersigned deducts $5,150.00 billed for these entries.[30]

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[29] The undersigned notes then Special Master Sweeney specifically noted the Maglio Law Firm was the only firm of the three firms involved, including S&A, not paid for their efforts in the Neurodyemlinating Omnibus in Cramer v. Sec'y of HHS, No. 99-428, slip op at 2 (Fed. Cl. Spec. Mstr. Sept. 1, 2005)(unpublished).

[30] The undersigned notes that counsel lumped the separate activities of "preparation of expert reports to file for Special Master Sweeney" with "emails to and from the Geiers and Telephone conference with Mark" into two hours billed on May 26, 2003. While it is evident that the first activity constitutes work performed on the hepatitis B neurodyemlinating omnibus proceeding before Special Master Sweeney, it is entirely unclear as to what counsel was communicating with the Geiers. Thus, the undersigned denies the entire two hours requested by counsel. Savin v. Sec'y of HHS, 85 Fed. Cl. at 317 ("[F]ee records

6. Third Party Discovery

Respondent objects to one hour billed by Mr. Shoemaker on October 22, 2003 for "[a]ttempts to contact manufacturer reps to discuss 3rd party discovery," P App at 38, on the basis that third party discovery was not an issue in this matter, although "[i]t was an issue briefed and argued before Special Master Hastings in the omnibus autism proceedings." R Opp at 19-20; R Reply at 8. Petitioner explains this entry has nothing to do with the omnibus autism proceedings, but rather counsel made phone calls to several attorneys "who represented vaccine manufacturers . . . to see what their positions would be with regard to discovery requests through the program." P Sur Reply at 6. The undersigned agrees with petitioner, and finds it appropriate and reasonable for counsel to bill one hour to contact attorneys for vaccine manufacturers to explore what their position would be if counsel requested formal discovery in the Program.

7. Report of Dr. Shoenfeld

Respondent objects to "time billed for conferences with Dr. Shoenfeld and reviewing and commenting on a draft report authored by Dr. Shoenfeld." R Opp at 20; see also R Reply at 9. Respondent objects to this time on the basis that "no report was filed" as part of general hepatitis B cases, or the hepatitis B panel. R Reply at 9. Respondent argues the time billed for contacting Dr. Shoenfeld and reviewing reports is "unreasonable with respect to the prosecution of petitioners' hepatitis B claims." R Opp at 20.

The undersigned disagrees with respondent on this point. Counsel explained the aforementioned "report" by Dr. Shoenfeld was not a report in the "sense of a expert report to be filed in any particular case," P Sur-Reply at 7, but was rather "a general report on hepatitis b vaccinations and autoimmune responses." P Resp at 15. Petitioner's counsel also clarified that counsel was meeting with Dr. Shoenfeld to obtain "general information about things he and others had written and indicating the types of cases that he felt comfortable offering opinions about." P Sur-Reply at 7. The undersigned notes this is precisely the type of activity which is appropriate to bill as part of S&A's general hepatitis-B fees and costs. The undersigned notes that counsel's communications with Dr. Shoenfeld as reflected in these billings should be juxtaposed with the unreasonable billings for traveling for "face-to-face meetings. See supra at 18-20, 23. S&A had a large number of hepatitis-B claims, and thus it was necessary and appropriate for counsel to reach out to qualified medical experts to discuss these claims and whether or not the medical expert could offer supportive causation testimony regarding a portion of S&A's cases. Accordingly, the undersigned will award S&A fees for meetings and discussions with Dr. Shoenfeld regarding these cases.

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must be specific."); see discussion infra at 33-34 regarding difficulties determining reasonability of multiple activities lumped into one request.

8. Meeting Regarding Legislation

Respondent objects to 1.5 hours of time billed by Ghada Anis (a former attorney with S&A) for a meeting at NVIC (National Vaccine Information Center) "regarding legislation and Hep B Claims" on the grounds that "time spent on legislative issues is not appropriately billed in a vaccine injury case." R Resp at 20.

The undersigned agrees with respondent, however the undersigned will award this time based upon petitioner's counsel's explanation for the 1.5 hours billed at NVIC. Petitioner's counsel explained that Ms. Anis was not at the NVIC for a meeting regarding legislation, but rather went to NVIC to "see what literature, transcripts, and other materials they had in their library that might prove helpful in proving causation in hepatitis B cases." P Sur-Reply at 7. Petitioner's counsel explained they are unaware of any discussion Ms. Anis had regarding legislation at this meeting. Id. Based upon petitioner's counsel explanation in Petitioner's Sur-Reply the undersigned will award counsel fees for the 1.5 hours billed by Ms. Anis for time spent at the NVIC.

9. Preparation for and Attending Hearing in June, 2003

Respondent objects to 27 hours of time billed by Ghada Anis "for reviewing literature, meeting with other counsel and Dr. Bell to prepare for the hearing, and attending the hearing" on the basis that no hearing was held regarding "general" hepatitis B claims during that time. Rather, a hearing was held in five hepatitis B/rheumatoid cases handled by another law firm. R Opp at 21. Petitioner argues the time is appropriately billed in this matter as the purpose of the hours billed Ms. Anis was to see "how evidence would be received in a large number of cases." P Sur-Reply at 7.

The undersigned was the special master who presided over the hearing held in the five hepatitis B/rheumatoid cases. The undersigned remembers distinctly Mr. Shoemaker himself being present for this hearing and in fact cross-examining a witness. Mr. Shoemaker is an able and experienced vaccine attorney. While the undersigned notes it is unclear if Mr. Shoemaker has billed the Program for fees associated with his time spent at these hearings, he did in fact attend and participate in the hepatitis B/rheumatoid hearings before the undersigned. Thus, Mr. Shoemaker could see for himself "how evidence would be received in a large number of cases." Petitioner has failed to offer any explanation for why Ms. Anis' involvement in this hearing was necessary in addition to Mr. Shoemaker. Thus, it is unreasonable and clearly duplicative for S&A to bill for Ghada Anis' time preparing for and attending these hearings in June of 2003, when Mr. Shoemaker was present and participatory in that matter. "Duplicative work is presumptively unnecessary. Attorneys are not entitled to compensation for performing work that is not necessary." Sabella I at *28 citing Hensley 461 U.S. at 434. Accordingly, the undersigned deducts $4,320.00 for the 27 hours billed by Ghada Anis for preparation and attendance at the June 2003 hearing held in the five lead hepatitis B/rheumatoid cases.

10. Client File Organization and Maintenance

Respondent objects to a number of entries billed by Sabrina Knickelbein totaling 8.36 hours on the basis that the work performed was case specific and thus not reasonable in the instant matter. R Opp at 22-23. Petitioner's counsel explained the hours billed in these entries involved "work performed on various days that and related to multiple cases" such as Ms. Knickelbein working on "dividing cases into categories of injuries and prioritizing cases by the completeness of the records, etc." P Sur-Reply at 8.

The undersigned finds based on petitioner's counsel explanation that it is reasonable to bill Ms. Knickelbein's time for these grouped tasks regarding counsel's hepatitis B claims. However, the undersigned finds these tasks are not reasonably billed at an attorney rate. A recurring issue in the instant fee petition, as well as in several other fee petitions filed by S&A, is time billed by Ms. Knickebein at an attorney rate for work that involves paralegal tasks. "A separate issue is the work performed by one of Mr. Shoemaker's associates, Ms. Knickelbein. Previous decisions have refrained from compensating all of Ms. Knickelbein's work at the rate typically paid to an attorney because some of her work could have been performed by a paralegal." Turpin v. Sec'y of Health & Human Servs., No. 99-535V, 2008 WL 5747914, at *5-7 (Fed. Cl. Spec. Mstr. Dec. 23, 2008). [31]

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[31] Categorizing and collecting medical records as a paralegal task is well established. Approximately 15 years ago, a special master commented upon the division of responsibility between attorneys and support staff. "The problem for Mr. Shoemaker is that he does not use any paralegal staff or junior attorneys to assist him in his work. A substantial portion of the work performed by him- such as reviewing and summarizing records, scheduling appointments, calling records custodians, review of medical literature-could just as well have been performed by a person commanding a lower rate." Borden v. Sec'y of Health & Human Servs., No. 90-1169V, 1992 WL 78691 *1 (Cl .Ct. Spec. Mstr. March 31, 1992).

Other decisions of similar vintage also state that paralegals can collect medical records. Hamilton v. Sec'y of Health & Human Servs., No. 90-1011V, 1992 WL 35792 *3 (Cl. Ct. Spec. Mstr. Feb. 10, 1992) (noting that the attorney "was able to keep attorney hours to a minimum by employing a paralegal-capable of performing many of the tasks such as gathering medical records-for a significant number of hours."); Kosse v. Sec'y of Health & Human Servs., No. 90-930V, 1992 WL 26196 * 2 (Cl. Ct. Spec. Mstr. Jan. 30, 1992) ("It should be noted that Mr. Webb properly reduced the necessary attorney hours by employing paralegals to gather the medical records, essentially a clerical task. Vaccine cases do not always require the full application of a range of legal skills.")

This practice has not changed in the intervening 16 years. Decisions within the last few years continue to state that paralegals can perform the task of collecting medical records. E.g., Gardner-Cook v. Sec'y of Health & Human Servs., No. 99-480V, 2005 WL 6122520 *2-3 (Fed. Cl. Spec. Mstr. June 30, 2005).

Organizing cases by completeness of records and categorizing cases by injury are tasks appropriately billed at a paralegal or a legal assistant's rate. Tasks that can be completed by a paralegal or a legal assistant should not be billed at an attorney's rate. Sabella I at *22, aff'd, (on relevant grounds and rev'd on non relevant grounds) Sabella II at 211; Lamar v. Sec'y of HHS, No. 99-583, 2008 WL 3845165, at *14 (Fed. Cl. Spec. Mstr. July 30, 2008).[32] It is not reasonable for counsel to bill Ms. Knickelbein's hourly rate of $155.00 to $165.00 an hour for these tasks. Counsel lists his legal assistant rate at $55.00. P App at 31. The undersigned finds based on his experience that these tasks could have been handled by a paralegal at the rate of $105.00 (Splitting the difference between Ms. Knickelbein's associate attorney rate of $155.00 and S&A' s listed legal assistant rate of $55.00). See Turpin v. Sec'y of Health & Human Servs., 2008 WL 5747914, at *7 (Special Master Moran using the same analysis also recently found $105 a reasonable hourly rate for Ms. Knickelbein's work determined to be of a paralegal nature). [33] Further, the undersigned found several other entries billed by Ms. Knickelbein as involving tasks a paralegal, or even a legal assistant, could reasonably perform. For example: P App at 14, 10/21/2003 (Review a list of cases to make sure not missing any cases or that any cases are not misfiled); id., 1/15/2004 ("Find addresses for providers whose letters were returned as insufficient address."); id., 3/25/04 ("Go over list of CFS cases and note if primary injury or secondary injury and who SM is for the cases."). Accordingly, the undersigned deducts $500.00 for the aforecited hours involving work that could be performed by a paralegal billed by S&A at an attorney rate.

11. Conference Regarding Cases

Respondent objects to .5 hours billed by Ms. Knickelbein for a conference call with Dr. Geier "regarding cases" on the grounds that "time spent working on a specific case should be billed in that case and is not a reasonable expense in this case." R Opp at 24. Petitioner argues that this

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Turpin v. Sec'y of Health & Human Servs., 2008 WL 5747914, at *6.

[32] Just as an attorney should not bill at an attorney's rate for tasks that a paralegal should perform, nor should he bill for paralegal time when the tasks involved are of a secretarial nature, a doctor-lawyer should not bill at a medical consultant's rate for tasks that a nurse consultant or paralegal should perform. *See, e.g., Plott v. Sec'y, HHS,* No. 92-0633V, 1997 U.S. Claims LEXIS 313 (Fed. Cl. Spec. Mstr. April 23, 1997).

Lamar v. Sec'y of HHS, No. 99-583, 2008 WL 3845165 at *14 (Fed. Cl. Spec. Mstr. July 30, 2008)

[33] "This amount ($105 per hour) may be a little high for paralegal work performed before 2006. But, a slightly higher rate is appropriate because Ms. Knickelbein either may have performed some duties more quickly than a paralegal or may have done some work that is truly the work for an attorney. This estimate, although somewhat rough, is reasonable." Turpin v. Sec'y of Health & Human Servs., 2008 WL 5747914, at *7.

entry "is clearly a billing for a discussion of multiple cases and not a single case, and it is appropriately billed here." P Sur-Reply at 8. The undersigned does not find anything "clear" about this particular entry except that it is "clearly" vague, and thus the undersigned is unable to determine what the call between Ms. Knickelbein and Dr. Geier "regarding cases" concerned and whether it is an appropriate expense in this case. "Fee entries must be specific." Savin v. Sec'y of HHS, 85 Fed. Cl. 313, 316-317 (2008) (Order denying Motion for Review).[34] Further, as discussed supra at 15-17, S&A's continued consultation with Dr. Geier after counsel began seeking experts in this matter is found to be unreasonable by the undersigned. However, the undersigned notes the $77.50 requested from Petitioner's Application for this entry was deducted supra at 24-25.

12. Review of Medical Articles

Respondent objects to 1.2 hours billed by Ms. Knickelbein to "read several articles regarding CFS." R. Opp at 24. Respondent objects on the basis that "[p]etitioner has not explained the relevance" of this activity "to prosecution of petitioners' hepatitis B injury claims." Id. Petitioner responded to respondent's objection by stating "Chronic Fatigue Syndrome is one of the injuries that was ultimately claimed in several Hepatitis B cases." P resp at 16. Again, petitioner fails to adequately explain why this activity was necessary to be performed by Ms. Knickelbein. It should be noted that petitioner consulted with multiple experts in these cases. Thus, the undersigned cannot judge whether or not the time spent was reasonable in the circumstance. Accordingly, the undersigned deducts $186.00 requested from Petitioner's Application for this entry.

13. Additional Objections

i. Meeting with Potential Experts

Respondent objects "to time [approximately 29 hours] billed by petitioner's counsel for meeting with various physicians in an effort to recruit them as experts." R Reply at 11-12. Respondent bases this objection on the fact that the parties never reached a point in their hepatitis B panel efforts in which it was "reasonable to contact specific experts to participate in an independent panel." Id. Petitioner's counsel explains counsel's meetings with various experts had nothing to do with the hepatitis B panel efforts, but rather counsel met with many experts in an

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[34] *See, e.g.*, *Lipsett v. Blanco*, 975 F.2d 934, 938 (1st Cir. 1992) (affirming reduction of hours where "several entries contain[ed] only gauzy generalities" too nebulous to allow the opposing party to dispute their accuracy or reasonableness); *In re Donovan*, 877 F.2d 982, 995 (D.C. Cir. 1989) (confirming that the district court properly excluded hours with "vague description[s] such as legal issues," "conference re all aspects," and "call re status"); *Tomazzoli v. Sheedy*, 804 F.2d 93, 98 (7th Cir. 1986) (affirming reduction in hours where plaintiff listed hours spent on "research" without greater specificity).

Savin v. Sec'y of HHS, 85 Fed. Cl. 313, 316-317, fn. 2 (2008).

attempt to find experts to use in counsel's hepatitis B claims. P Sur-Reply at 9.

The undersigned finds counsel's meeting with potential medical experts to explore utilizing potential experts in counsel's hepatitis B claims a reasonable and appropriate effort and expense in this matter because finding appropriate experts to use directly relates to the furtherance of the prosecution of S&A's hepatitis B claims in general.

ii. Meetings with Williams Bailey Group

Respondent objects to 4.5 hours billed by petitioner's counsel for meeting with the Williams Bailey Group (WBG) (another law firm). R Reply at 12-13. Petitioner's counsel contends he was seeking assistance in how to manage a large group of cases, as well as "funding for experts and studies and work that would benefit all hepatitis B claimants," and that discussing WBG's potential "involvement in and assistance" with the hepatitis B claims was appropriately billed to the instant matter. P Sur-Reply at 9.

The undersigned disagrees with petitioner. Talking to another law firm about potentially becoming involved in litigation is not reasonably billed to a client and is part of a law firm's administrative overhead. The undersigned deducts $1,125.00 from Petitioner's Application for the 4.5 hours billed by counsel for meetings or conferences with WBG.

iii. Case Specific Work

Respondent objects to one hour of time billed by Mr. Shoemaker for preparing for and participating in a status conference, and then preparing correspondence for a client. R Reply at 12. Respondent also objects to 1 hour billed by Ms. Gentry for preparing for and participating in two status conferences on distinct dates on the basis that time appears to be case specific. Id. at 12-13. Petitioner's counsel explains the time billed by Mr. Shoemaker involved a status conference before Special Master Abell involving a large number of cases assigned to Special Master Abell, and time billed by Ms. Gentry involved status conferences regarding the hepatitis B panel efforts. P Sur-Reply at 9. Respondent also objects to time billed by Mr. Shoemaker preparing client newsletters and mass status reports. R Reply at 13. The undersigned notes these newsletters and mass status reports were used by counsel to communicate with his clients and the court. P Sur-Reply at 9-10. The undersigned finds these items appropriately billed in the instant matter and not time spent on a specific hepatitis B claim.

iv. Meeting with TMP

Respondent objects to a 3 hours billed by Mr. Shoemaker, $750.00, for meeting with "TMP," on the basis that petitioner has failed to identify who TMP is, what his role and the relevance of the meeting was in the prosecution of S&A's hepatitis B claims was. R reply at 13. Petitioner asserts "TMP now works for the government and would prefer not to provide his name" although counsel offered to provide the name and relevance of the work performed to the

undersigned "*in camera*". P Resp at 5; see also P Sur-Reply at 10. Respondent requested the undersigned convene a status conference or other proceeding to allow petitioner's counsel to present the relevant information regarding TMP to determine the reasonableness of this expense. R Reply at 13-14. As the undersigned does not wish to further delay Petitioner's Application in investigating the fee request associated with TMP, the undersigned defers ruling on this particular request at this time and invites counsel to present this request in another of counsel's hepatitis B claims (Hunt v Secy's of HHS, No. 99-356V) pending before the undersigned so that the matter can be fully discussed between the undersigned and the parties. Accordingly, the undersigned deducts the $750.00 billed by petitioner for this entry in the instant application as not adequately explained.

14. Mixed Billing Entries

The undersigned finds that S&A counsel have in many instances grouped together several activities into one entry. Thus, the undersigned is unable to properly assess and determine the reasonableness of the requests. The following represents a sample of such entries made in this matter: P Fee App at 33, 11/16/1999 ("Review general status report information; PCs w Bob McGolerick; preparation of pleadings") Id. at 35, 6/11/02 ("Preparation of discovery; attempts to reach Vince; email to SM Abell; conference calls with Jeff and other steering committee lawyers; meeting with Ghada re status of master scheduling orders, etc."); Id., 6/17/2002 ("Prepare for meeting with Dr. Hirsch; meeting with Dr. Hirsch (travel at ½ time); meeting with Peter Myers to discuss Dr. Hirsch; meeting with Dr. Bellanti); id., 6/20/2002 (Meeting with Dr. Megson; meeting with Dr. Geier; meeting with Jeff Thompson); id. at 36, 7/29/2002, ("Preparation of pleadings - work on General Order, Discovery and Scheduling Order; review SM email about delays; PC with Chris K; attempts to reach Vince"); id. at 37, 3/19/2003 (Phone Conference with Dr. Geier re VSD saga and review email from him with update; phone calls with Altom's office (wife in labor); Telephone conference with Vince to reschedule conference call today; discuss matter with Jeff"); id. at 42, 5/28/2002 ("Review Hepatitis B Committee projects, discovery requests, scheduling order. Individual phone conferences with Altom Maglio, Jeff Thompson, Ron Homer, and Kevin Conway regarding committee issues. Circulated emails to petitioners . . . "); id. at 43, 9/16/2002 (Review Documents, Phone conf w court clerk, phone conference with Altom Maglio, phone conf w Jeff Thompson, conference with CJS. Preparation of Status Report to Hep B committee).

The Vaccine Guidelines specifically note a fee "petition should include" among other items:

> Contemporaneous time records that indicate the date and specific character of the service performed, the number of hours (or fraction thereof) expended for each service, and the name of the person providing such service. Each task should have its own line entry indicating the amount of time spent on that task. Several tasks lumped together with one time entry frustrates the court's ability to assess the reasonableness of the request.

Guidelines for Practice Under the National Vaccine Injury Compensation Program at 19.[35] See also Savin v. Sec'y of HHS, 85 Fed. Cl. 316-317 ("[t]hese guidelines reflect the accumulated wisdom of numerous decisions . . . that fee records . . .must 'avoid mixed' entries that lump together several activities" and approving the Special Master's reduction of the instant law firm's request for fees and costs associated with lumping together entries in the fee application). The large number of lumped entries in petitioner's application makes it nearly impossible to assess whether or not a particular expense or activity is reasonable. Further, it is impossible to ferret out how much time was spent on activities that appear reasonable and fully explained versus those that do not when multiple separate activities are entered as one group. The undersigned deducts $2,500.00 from petitioner's application for fees for these improperly mixed billing entries.[36]

C. Riggins Case Specific

Petitioner requests $12,418.50 for attorneys' fees and $ 4,423.66 for costs specific to the case of petitioner, Quinton O. Riggins.

1. Fees

Respondent objects to time billed in petitioner's case by Mr. Shoemaker on 7/31/2005, 8/3/2005, 8/8/2005, 8/10/2005, and 5/30/2006 as "items that constitute overhead, are unexplained, or otherwise do not appear to be relevant to Mr. Riggins' vaccine claim." R Opp at 3.[37] In Petitioner's Response, petitioner argues the items are all related to petitioner's claim. However, the entry on 8/3/2005 for "[e]mails to and from client; discuss gallium scintigraphy protocol with Dr. Geier and work on trip to France" represents an impermissible grouping of separate activities. See discussion supra at 33-34. While the email to and from client may be reasonable, it is impossible to determine how much time client spent on this activity and the other two activities in this entry, which are not compensable. Mr. Riggins' case did not require a trip to France, nor did Dr. Geier serve on Mr. Riggins' case as an expert, for which he is not qualified, or as a consultant. Thus, the undersigned deducts $220.00 for this entry. The 5/30/2006 entry bills 0.5 hours to "[r]eview excel chart and update information; transfer information needed for SC to laptop," P. App at 18. The "transfer information needed for SC to laptop" entry was explained by counsel as

[35] See http://www.uscfc.uscourts.gov/sites/default/files/OSM.Guidelines.pdf

[36] Additionally, the undersigned notes again that many of the entries cited above are extremely vague and do not sufficiently describe the particular activity/activities for which counsel is billing - again frustrating the court's ability to judge the reasonableness of counsel's requests. See Savin v. Sec'y of HHS, 85 Fed. Cl. at 317 ("[F]ee records must be specific.").

[37] Respondent asserts that these entries total 3.1 hours, R Opp at 3, petitioner asserts these entries total 2.9 hours, P Resp at 1,the undersigned finds the entries, found at P App at 18, to total 2.4 hours.

constituting mere seconds and thus not administrative overhead. P Resp at 2, fn 1. However, counsel failed to address the remainder of the entry and identify what excel chart he was updating and how that activity was relevant to Mr. Riggins' case. However, far more egregiously, counsel has billed for this exact same activity on precisely the same date twice before in two separate hepatitis B cases. This entry was denied in each of those cases, including once by the undersigned. See Gabbard v. Sec'y of HHS, No. 99-451, 2009 WL 1456434, at *6 ("The chief special master has already rejected the reasonableness of this activity performed in a different case on the same date. . . . Given the previous rejection of this item, a reasonable question is why has Mr. Shoemaker continued to seek compensation for it."). Additionally, the undersigned notes counsel billed .10 hours for a "[c]onference with Sabrina and staff at office meeting re status," P App at 17, which as Special Master Vowell pointed out in denying this identical billing in the Lamar case, has been billed in numerous hepatitis B cases. Lamar v. Sec'y of HHS, No. 99-584, 2008 WL 3845157 at *7. The undersigned deducts $150.00 for the 5/30/2006 entry and $25.00 for the 2/02/2004 entry from Petitioner's Application. The undersigned finds the entries on 7/31/2005, 8/8/2005, and 8/10/2005 reasonable and awards compensation for that time.

Respondent next objects to two entries billed by Renee Gentry on 8/1/2006 and 8/2/2007 totaling 2.5 hours and $530.00. R Opp at 4. Respondent objects to these entries on the grounds that they are "duplicative and not sufficiently explained." Id. Petitioner explains these include time Ms. Gentry spent on 8/1/2006 reviewing the file, preparing a Motion for Judgment, preparing a retainer statement and table of expenses, and emailing these items to Mr. Riggins in addition to preparing the Application for Attorney Fees and Costs on 8/2/2007. P reply at 2-3. The undersigned finds these items appropriate and reasonable, and awards counsel compensation for this time.

Finally, respondent objects to six entries[38] by Ms. Knickelbein on the grounds that the items are

> not sufficiently explained . . . administrative, ministerial, and non-legal. See Cowan v. Sec'y of HHS, No. 90-1189, 1993 WL 410090 (Fed. Cl. Spec. Mstr. Sept. 30, 1998) (lawyer's time spent faxing, delivering and mailing information, conferring with staff, planning travel arrangements was administrative/secretarial and not compensable); Vickery v. Sec'y of HHS, No. 90-997V, 1992 WL 281073 (Cl. Ct. Spec. Mstr. Sept. 24, 1992)(telephonically leaving a message, filing records in a drawer are secretarial tasks and not compensable); Hensley v. Eckerhart, 461 U.S. 424,434 (1983)(in assessing the number of hours reasonably expended in a case, the court must exclude those "hours that are excessive, redundant, or otherwise unnecessary.")

R Opp at 4. Petitioner argues in each of these entries that Ms. Knickelbein is "working up the case,

[38] Respondent asserts that these entries total 2.8 hours and $434.00, R Opp at 4, petitioner does not challenge this total, P Resp at 3-4, however the undersigned finds the entries, found at P App at 21, to total 2.6 hours and $403.

subpoenaing medical records, or preparing exhibits," P Reply at 3, and that her work is "legal work," not the "mailing or faxing of the subpoenas," but rather "subpoena compliance, HIPPA compliance, and direct communication with hospital and physician legal departments, as well as working with clients to work up chronologies and outstanding records." Id at 3, n. 4. The undersigned partially agrees with petitioner, the work is broadly speaking legal work, but these activities do not need to be conducted by an attorney, as they are all activities a paralegal can adequately perform. See Valdes v. Sec'y of HHS, 2009 WL 1456437, at *4 ("Other law firms routinely use paralegals to obtain medical records. Their success in obtaining medical records without using an attorney shows that Ms. Knickelbein's skills as an attorney are not required."). If counsel elects to have an attorney perform these activities, it is in counsel's discretion. However, the time spent by an attorney performing work that a paralegal can accomplish should be billed at a paralegal's hourly rate, not an attorney's. See also discussion supra at 29-30. Additionally, the undersigned notes, counsel has mixed separate activities into one entry frustrating the court and respondent's ability to determine their reasonableness. The undersigned finds based on his experience that these tasks could have been handled by a paralegal at the rate of $105.00 an hour. Accordingly, the undersigned deducts $130.00 for the aforecited hours involving work that could be performed by a paralegal billed by S&A at an attorney rate. [39]

Finally, the undersigned notes petitioner requested one hour of time to respond to this section of Respondent's Opposition. The undersigned finds this request reasonable and compensable.

2. Costs

Petitioner requests $4,423.66 for costs accrued by counsel and petitioner in the prosecution of Mr. Riggins' case. P App at 2-14. Respondent has no objection to this request. R. Opp at 5. The undersigned finds petitioner's requests for costs associated with this matter reasonable and appropriate, and awards counsel the requested $4,423.66.

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[39] The undersigned notes that the sarcastic and hostile tone taken by counsel, an officer of the court, in drafting this section of Petitioner's Response is not professional or appropriate. Counsel complains loudly regarding the quality of respondent's objections, many of which the undersigned is in agreement with respondent. P Reply at 3-4. Additionally counsel complains loudly regarding the length of time the fee application was pending, id., which the undersigned again notes is an incorrect characterization of the procedural history of the attorney fees and costs portion of this case. See supra at 3-4. Ironically, the undersigned notes respondent filed Respondent's Opposition one week after petitioner officially filed the Fee Application in this case. Petitioner however, filed Petitioner's Reply over two months after Respondent's Opposition was filed requesting three extensions of time. Finally, petitioner argues Ms. Knickelbein has performed and been awarded an attorney rate for these tasks previously without objection from respondent. P Reply at 3. The undersigned notes the fact that such time has previously been awarded without objection does not preclude respondent from objecting in this matter, nor does it preclude the undersigned from evaluating this issue and reaching a different conclusion.

IV. Conclusion

The undersigned has reviewed the entire record regarding petitioner's application for fees and costs. Based upon that review, the undersigned finds petitioner has established that some portion of his requested attorneys' fees and costs are reasonable. The undersigned has determined the following summary tables of fees and costs awarded to be reasonable and therefore compensable. In the tables below, the undersigned will not list every deduction, but rather list the total fees and costs found compensable.

Summary of Award for Attorneys' Fees and Costs for "General" Hepatitis B	
Total Attorneys' Fees Awarded	$64,254.45
Costs Awarded for Dr. Geier	$10,000.00
Costs Awarded for Dr. Bellanti	$5,500.00
Miscellaneous Attorneys' Costs	$28.36
Total Costs Awarded	$15,528.36

Summary of Award for Attorneys' Fees and Costs for Quinton O. Riggins, Jr.	
Total Attorneys' Fees Awarded	$12,123.50
Total Costs Awarded	$4,423.66

Accordingly, petitioner is entitled to the following award for fees and costs for efforts in the Riggins case and for efforts on the hepatitis B cases in general: **$95,801.72** for attorney's fees and costs to be paid by check payable to petitioner and petitioner's counsel; and **$528.25** in petitioner's costs to be paid by check payable to petitioner. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/Gary J. Golkiewicz
Gary Golkiewicz
Chief Special Master