In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-865 V
Filed: June 13, 2011
For Publication

LISA CALISE,	*	
	*	
Petitioner,	*	
	*	Attorneys' Fees & Costs;
v.	*	Interim Award
	*	
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

Ronald C. Homer, Boston, MA, for petitioner.
Michael P. Milmoe, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING INTERIM ATTORNEYS' FEES AND COSTS[1]

On December 4, 2008, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging influenza vaccine caused her neuromyelitis optica.

On February 10, 2011, petitioner filed an Application for Interim Attorneys' Fees and Costs ("P App for Interim Fees") pursuant to *Avera v. Sec'y of HHS*, 515 F.3d 1343 (Fed. Cir. 2008), and Rule 13(b) of the Vaccine Rules. Petitioner requested $57,795.70 in attorneys' fees, $20,345.91 in attorneys' costs, attorneys' fees of $25,383.00 for petitioner's former attorney Darren M. Dawson, and attorneys' costs of $4,116.18 for petitioner's former attorney Mr. Dawson for a total of $107,640.79. Petitioner expended no personal costs. *See* P App for Interim Fees, p. 1, and tabs A through C.

[1] Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access.

On February 24, 2011, the respondent filed an opposition, *in toto*, to the petitioner's application. *See* R Opposition to P App for Interim Fees ("R Opp").

On March 14, 2011, the undersigned issued a ruling on entitlement in favor of petitioner. 2011 WL 1230155 (Fed. Cl. Spec. Mstr. 2011). The case is now in damages.

Also on March 14, 2011, petitioner filed her response to the respondent's opposition. *See* P Response to the R Opp to P App for Interim ("P Response"), and filed Exhibit 58, an affidavit of undue hardship of petitioner.

Thereafter, the court ordered the respondent "to file specific objections to petitioner's application for interim attorneys' fees and costs." *See* Order of March 29, 2011. On April 4, 2011, the respondent complied with the court's order. *See* R Specific Objections in Opposition to P App for Interim Fees ("R Spec. Obj.").

On April 15, 2011, petitioner filed an Additional Application for Interim Attorneys' Fees and Costs, seeking $2,654.30 to pay the retainer for a life care planner and participate in an onsite visit. This additional application became unnecessary when petitioner's counsel received payment of attorneys' fees and costs in other cases, and the undersigned denied this additional application in an Order dated May 11, 2011.

On April 19, 2011, petitioner filed a response to respondent's specific objections ("P Response to Spec. Obj."). Also on April 19, 2011, petitioner filed Exhibit 60, an affidavit of Darren M. Dawson in support of P App for Interim Fees.

On May 2, 2011, respondent filed an Opposition to petitioner's Additional Application for Interim Attorneys' Fees and Costs, which is not mooted by the undersigned's Order of May 11, 2011.

I. The Appropriateness of an Interim Award

Relying on the Federal Circuit's decision in *Avera*, petitioner seeks an interim award of attorneys' fees and costs. In *Avera*, the Federal Circuit held that the Vaccine Act's silence on the subject of interim fees does not prohibit their award. In her opposition brief, respondent intimates that *Avera* was wrongly decided. R Opp. at 5 n.1 ("Recognizing that an award of interim attorneys' fees and costs is not authorized by the Vaccine Act, members of Congress have introduced proposed amendments to the Act that would provide such interim compensation for attorneys' fees and/or costs, without success.") She argues that *Avera* permits interim fees and costs only under the very limited procedural posture obtaining in that case, and that as the instant case is factually and procedurally distinct, interim fees are not authorized by the Vaccine Act or *Avera* here. Respondent regularly makes the same arguments in all cases in which petitioners seek interim fees. The special masters have not accepted these arguments. See *Hammitt v. Sec'y of* HHS, No. 07-170V, 2011 WL 1827221, at *4 (Fed. Cl. Spec. Mstr., Apr. 7, 2011); *Whitener v. Sec'y of HHS*, No. 06-477V, 2011 WL 1467919, at *1 (Fed. Cl. Spec. Mstr., Mar. 25, 2011). The

undersigned holds that an interim award is both permitted and appropriate in this case. In doing so, the undersigned necessarily rejects respondent's objections that (i) the Vaccine Act does not authorize interim awards, and (ii) that *Avera* should be interpreted narrowly to deny an interim award in this case. *Whitener*, 2011 WL 1827221, at *2.

A. Respondent's Objection to Interim Fees

In her opposition, respondent contends that the scope of § 300aa-15(e)(1) is clear from the plain language and cannot be interpreted to allow interim fee awards in this case. *See* R Opp. at 3. In addition to the Act's plain language and legislative history, respondent relies on the Federal Circuit's decision in *Avera* to support her argument that interim fees are not permissible in this case. R Opp. at 6. Here, respondent's central argument is that the Federal Circuit's holding in *Avera* "must be limited to the very narrow procedural and factual scenario at issue in that case—a request for payment of an undisputed portion of a fee award during the pendency of an appeal regarding attorneys' fees and costs, following a resolution on the merits." *Id*.

Respondent emphasizes that *Avera* fits within the scope of §300aa-15(e)(1) because judgment had entered on the decision denying compensation. Respondent characterizes any fees and costs award made prior to an award of compensation as an award *pendente lite,* implying that there is a meaningful distinction between such an award and an interim award. *Id*.

In addition to her broad objections to interim fees, and *Avera* in general, respondent argues that this case does not meet the factors set forth in *Avera*. Respondent argues that petitioner has "failed to demonstrate the necessary circumstances to justify an interim award." R Opp. at 7. Through her citation of a specific quote in *Masias*, respondent suggests that the fault of the protraction of these proceedings lies with petitioner. *Id.* (citing *Masias v. HHS*, No. 99-7697V, Order at 1 (Fed. Cl., Hodges, J, Sept. 17 2009) (a petitioner "cannot expect to receive an interm (fee) award on the basis of protracted proceedings if the fault for such protraction lies with petitioner himself, or his counsel").

Respondent contends that petitioner has filed nothing to indicate that petitioner herself, rather than counsel, incurred any undue hardship. *Id*.

B. Petitioner's Response to Respondent's Opposition

Petitioner's Response to respondent's Opposition asserts that payment of interim attorneys' fees and costs in this case is appropriate because it is consistent with congressional intent that petitioners have access to competent attorneys. P Response at 4. She cites *Saunders v. Sec'y of HHS*, 25 F.3d 1031, 1035 (Fed. Cir. 1994), as well as the Federal Circuit's decision in *Avera,* that the award of interim attorneys' fees and costs is integral to ensuring that petitioners have a readily available competent bar to represent them. *Avera*, 515 F.3d at 1352, citing *Saunders*, 25 F.3d at 1035.

Petitioner argues that respondent's continued failure to recognize the availability of interim

fees and costs in appropriate cases is in violation of the Vaccine Act, Federal Circuit law, and the Vaccine Rules. Petitioner argues that respondent's conduct may go as far as to be sanctionable under Rule 11(b)(2) of the Rules of the U.S. Court of Federal Claims.[2] P Response at 10 n.8. In support of this assertion, petitioner claims that respondent previously established a policy of negotiating for interim fees under the "undue hardship" prong of Avera, but changed course after it became apparent that litigating interim fees would be burdensome for respondent's counsel. P Response at 11-12.

Petitioner asserts that contrary to respondent's position, each of the three *Avera* factors is present in this case. Foremost, she cites her affidavit stating that she is unable to pay the fees or costs to her law firm to continue, and that they cannot continue her representation without interim fees and costs. *See* Exhibit 58. To contradict respondent's position that undue hardship cannot be based on the assumption that attorneys will stop representing petitioners in the Program if they must wait too long for fees, petitioner cites *Avera* stating, "Denying interim fee awards would clearly make it more difficult for claimants to secure competent counsel because delaying payments decreases the effective value of awards." 515 F.3d at 1352. Petitioner argues that the proceedings have been protracted and that she retained a costly expert, and it is true that damages will take some time and her expert was costly. *See* P Response at 16.

C. Respondent's View that Interim Fees Awards Are Inappropriate is Unpersuasive

Respondent's argument that the undersigned should read *Avera* narrowly is unpersuasive. "The Federal Circuit's discussion of the availability of interim awards sweeps broadly, both in *Avera* itself (*see* 515 F.3d at 1351-52), as well as in *Shaw* (*see* 609 F.3d at 1374)." *Whitener*, 2011 WL 1467919, at *3 (referring to the Federal Circuit decision in *Shaw v. Sec'y of HHS*, 609 F.3d 1371, 1374-75 (Fed. Cir. 2010), in which the Federal Circuit approved the award of interim attorneys' fees and costs before a ruling on entitlement ("Deferring consideration of attorneys' fees and costs until a decision on the merits is effectively a denial of interim fees." 609 F.3d at 1376). In *Avera*, the Federal Circuit specified only when interim fees "are particularly appropriate" without stating that those circumstances ("where proceedings are protracted and costly experts must be retained" and "undue hardship") are the only circumstances in which petitioners may receive interim attorneys' fees and costs awards. 515 F.3d at 1352.

II. Interim Fees are Appropriate in this Case

Petitioner has established entitlement in this case and, therefore, good faith and a reasonable basis to go forward are not issues here.

[2] Rule 11(b) states, "By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it--an attorney. . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. . . ." Rules of the U.S. Court of Federal Claims, Rule 11(b)(2) (as revised and reissued May 1, 2002; as amended Nov. 3, 2008).

Petitioner's attorneys have expended a large number of hours on this case. Although some of the hours may be duplicative, discussed *infra*, the vast majority were legitimately expended in furtherance of petitioner's case. The undersigned can find no reason to subject counsel in the Vaccine Program to delays in compensation for indefinite periods of time, particularly where a large amount of expert fees and costs have been incurred. Just as importantly, petitioner herself filed an affidavit indicating personal hardship and stating that the only way to go forward with the case would be with an award of interim fees. The extent of petitioner's injury makes damages resolution most likely protracted. Since undue hardship and protracted litigation are present in this case, an award of interim fees is appropriate.

Respondent's Conduct is not Sanctionable

Although respondent continually raises the same opposition to the award of interim fees and costs, this apparently represents respondent's official policy, and under Rule 11(b)(2) is nonfrivolous. Therefore, the undersigned does not find sanctions appropriate. However, the necessity to respond in each case to the same unavailing opposition necessitates the incursion of time and expense, and petitioner's time is compensable at respondent's expense. Unless respondent appeals any of the myriad awards of interim fees and costs to the U.S. Court of Federal Claims and to the Federal Circuit, respondent may want to reconsider the merit of continuing her opposition. *Hibbard v. Sec'y of HHS*, No. 07-446V, 2011 WL 1135894, at *3 n.5 (Fed. Cl. Spec. Mstr. Mar. 7, 2011) (respondent is not sanctionable under Rule 11 of the U.S. Court of Federal Claims for arguing that petitioner is entitled to interim fees only after judgment).

III. Determining the Amount of Attorneys' Fees and Costs to be Awarded

A. The Legal Framework for Determining a Reasonable Award

This court applies the lodestar method to any request for attorneys' fees and costs. *See Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989) ("The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1984))); *see also Avera*, 515 F.3d at 1347-48; *Saxton v. Sec'y of HHS*, 3 F.3d 1517, 1521 (Fed. Cir. 1993). The standards set forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), for calculating attorneys' fees "are generally applicable in all cases in which Congress has authorized an award of fees." *Hensley*, 461 U.S. at 433 n.7.

The reasonable hourly rate is "the prevailing market rate," which is defined as the rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum*, 465 U.S. at 895 n.11. Petitioners have the burden to demonstrate that the hourly rate requested is reasonable: "[T]he burden is on the fee applicant to produce satisfactory evidence–in addition to the attorney's own affidavits–that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id.*

The "prevailing market rate" is determined using the "forum rule." *Avera*, 515 F.3d at 1349 ("to determine an award of attorneys' fees, a court in general should use the forum rate in the lodestar calculation"). In *Avera*, the Federal Circuit also adopted the "*Davis* exception"[3] to the forum rule. The court held that the *Davis* exception applies when the bulk of the work in a case is performed outside the forum (Washington, DC, in Vaccine Act cases), in a locale where the attorneys' rates are very significantly lower. 515 F.3d at 1349.

In the recent case of *Perdue v. Kenny A.*, the United States Supreme Court found that the presumptive lodestar fee should be enhanced or reduced only in extraordinary circumstances, although not in that case. 130 S. Ct. 1662, 559 U.S. ___ (2010). The Court stated that the lodestar may be enhanced only when "specific evidence" shows "that the lodestar fee would not have been 'adequate to attract competent counsel.'" 130 S. Ct. at 1674 (quoting *Blum*, 465 U.S. at 897).

In determining the number of hours reasonably expended, a court must exclude 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*, 461 U.S. at 434. Special masters may use their experience in Vaccine Act cases to determine whether the hourly rate and the hours expended are reasonable. *Wasson v. Sec'y of HHS*, No. 90-208V, 24 Cl. Ct. 482, 483 (1991), *aff'd*, 988 F.2d 131 (Fed. Cir. 1993) (Table) (noting special masters have broad discretion in calculating fees and costs awards); *see also Masias v. Sec'y of HHS*, No. 2010-5077, 634 F.3d 1283, 1292 (Fed. Cir. 2011) (finding it is within the special master's discretion to distinguish the work done by an attorney in a Vaccine Act case from other types of litigation in calculating an hourly rate and finding it is within the special master's discretion to rely on prior Vaccine Act cases establishing a relevant local rate); *Rodriguez v. Sec'y of HHS*, No. 2010-5093, 632 F.3d 1381, 1386 (Fed. Cir. 2011) (finding it is within the special master's discretion to consider Vaccine Act work specifically in computing an hourly rate).

B. Respondent's Specific Objections

Respondent does not object to the hourly rates petitioner seeks for petitioner's attorneys, paralegals, and law clerks. R Specific Obj. at 2 n.2. Respondent generally argues that the number of hours billed by petitioner's attorneys is unreasonable, and, in some instances, not properly documented. R. Spec. Obj. at 4. Specifically, respondent objects to the number of hours expended in preparation of the post-hearing brief, and to petitioner billing at a full rate for travel, and for food and catering costs incurred around the time of the hearing. *Id*. at 4-5. The undersigned will address these arguments in the discussion below.

Respondent also objects to the allegedly unsubstantiated rate of $350.00 per hour for Dr. Steel, as well as the number of hours he expended. *Id*. at 7.

Finally, respondent objects to the reasonableness of the rate for petitioner's former

[3] The "Davis exception" is based on *Davis County Solid Waste Mgmt. & Energy Recovery Special Serv. Dist. v. EPA*, 169 F.3d 755 (D.C. Cir. 1999).

counsel, Mr. Dawson, and the necessity of a nurse retained by Mr. Dawson, whose hourly rate was $125.00. *Id*. at 7. Additionally, respondent opposes all hours for admission to the Court of Federal Claims and for the preparation of a life care plan, as well as for basic research on the internet and on elementary principles of vaccine practice, and full hourly rate for travel. *Id.*

C. Petitioner's Response to Respondent's Specific Objections

As a general matter, petitioner argues that consistent with *Holton Ex. Rel. Holton v. Sec'y of HHS*, 24 Cl. Ct. 391, 398 (1991), petitioner's counsel had the utmost duty to prosecute their client's case, and that all services were necessary and relevant to doing so. P Response to R Specific Obj. at 3. Petitioner contends that the hours expended on the post-hearing brief were not excessive, and that none of the allegedly duplicative activities was in fact duplicative. *Id*. at 4-5.

Petitioner argues that attorney Chin-Caplan's travel expenses are reimbursable, and that her travel time is reimbursable at the full rate. Petitioner does not cite any authority for this proposition although Judge Horn's opinion in *Gruber v. Sec'y of HHS*, 91 Fed. Cl. 773, 791 (2010), reflects that counsel may receive full fees for travel if counsel substantiates that he or she was working on the case during travel time.

In response to respondent's contention that Dr. Steel's rate is not justified, petitioner states that Dr. Steel is a board-certified neurologist with over 20 years experience as a physician. His hourly rate is well within the range of rates for experts the special master has approved for experts who have testified before her. *Id*. at 7 (citing *Davis v. Sec'y of HHS*, No. 07-451V (Fed. Cl. Spec. Mstr. Mar. 2010) (wherein Dr. Steel's hourly rate of $350.00 was approved by a different special master)). Petitioner claims that due to the complexity of the issues in this case, and the volume of relevant medical literature in this case, Dr. Steel's hours are fully supported.

Petitioner points to the affidavit of Darren M. Dawson in support of his claimed rate of $300.00 per hour. In his affidavit, Attorney Dawson indicates that he has been an attorney in North Carolina since 1992, thus giving him approximately 19 years of experience. Exhibit 60 at 1. He notes a substantial amount of medical and dental malpractice, serious personal injury, and wrongful death experience. *Id*. He also notes, however, a lack of experience with vaccine cases that led him to refer the case to petitioner's current law firm, Conway, Homer & Chin-Caplan. *Id*. at 3.

IV. Determination of Awards

A. Petitioner's Present Counsel

Petitioner requests between $101-105 for paralegal work and $318-330 per hour for Attorney Conway ("Mr. Conway"), $290 per hour for Attorney Homer ("Mr. Homer"), $200 per hour for Attorney Ciampolillo ("Ms. Ciampolillo"), $300 per hour for Attorney Chin-Caplan ("Ms. Chin-Caplan"), $208 per hour for Attorney Fashano ("Ms. Fashano"), and $200 per hour for Attorney Pepper ("Mr. Pepper"). Each of these rates is consistent with the prevailing forum rate.

Respondent's objection to Attorney Chin-Caplan's billing practice for traveling to the hearing is, in the instant action, unpersuasive. In *Gruber*, 91 Fed. Cl. at 791, the court stated that, in appropriate cases, petitioners may be able to present a basis for an award of full attorney rates for travel time, particularly when a special master is presented with sufficient documentation. The court in *Gruber* stated that petitioners' attorneys should not automatically assume that it is reasonable to assess any and all travel time to a client-based destination as billable to that client. Rather, as noted in *Gruber*, each case should be assessed on its own merits, and even a 50 percent award may be too high for an undocumented claim, given the possibility that an attorney may use the travel time to work on another matter or not to work at all while traveling. The instant case warrants a full hourly rate, given that petitioner's record at hearing consisted of 53 medical record exhibits, two medical expert reports, and 32 medical literature articles. This extensive collection of documentation warrants not only the 25+ hours of hearing preparation between 6/22/2010 and 6/28/2010, but the eight hours of travel time as well, when counsel was preparing for the hearing. Petitioner states that Ms. Chin-Caplan was working during the time she was traveling. The undersigned finds this sufficient plus the extensive records to support this request.

Respondent's objection to the hours billed for the post-hearing brief is unavailing. While in most circumstances having law clerks perform over eight hours of review after a partner wrote a document and an associate reviewed it would normally be excessive, but the post-hearing brief was a relatively complex 42-page document. Mr. Conway's time writing it was clearly warranted. A review by Ms. Ciampolilo was also warranted as a typical, second-attorney review for errors and improvements. The law clerk review seems like an excessive amount of time spent reviewing at first glance, but law clerks bill at a significantly lower rate and thus appear to have been an economical way to review the lengthy document at close to or less than the cost of having an associate more thoroughly review the document.

After a thorough review of the billing records, the undersigned does not detect the "excessive amount of time performing the relatively simple tasks" that respondent ascribes to petitioner's billings. Instead, the undersigned finds legitimate tasks that have been billed at the minimum increment, of .1 hours or six minutes. Although the undersigned is wary of potential duplication of effort as will be discussed below, these small charges do not warrant respondent's objections, as they do not herald the widespread inefficiency that respondent alleges.

Respondent does point out an important area that should be further clarified. Respondent alleges that "Stage 2" is inefficient and duplicative. Respondent points to absolutely nothing in support of this contention, and the undersigned does not detect facial duplication or inefficiency. However, the firm's billing sheets should provide more than merely "Stage 2" in order to give the special master sufficient information to assess the reasonableness of hours expended. The undersigned has a vague idea of what Stage 2 is, but does not have the information in the billing records to parse out any potential unbillable activity, duplication of effort, or other inefficiency. Therefore, the undersigned reduces all billing entries labeled merely "Stage 2" by 50 percent both because the undersigned has no idea how much of these entries is indeed billable, and to encourage counsel to document properly their billing hours in the future. Counsel bills for 39.5 hours of

"Stage 2" with no additional remarks, at $105.00 per hour. The undersigned reduces the award by 50 percent, or $2,073.76.

After reducing the requested billings in accordance with the above discussion, the undersigned finds that petitioner's current counsel is entitled to **$55,721.94** in attorneys' fees.

B. Petitioner's Former Counsel

Respondent objects to $300.00 per hour for petitioner's former attorney, Darren M. Dawson. As noted above, the determination of an appropriate hourly rate normally begins with the determination of the forum rate, the determination of the local rate (Greenville, North Carolina), and the comparison of the two. In the instant case, the undersigned is left with an utter dearth of information to determine the local rate in Greenville, North Carolina. As already stated, the burden is on the fee applicant to produce satisfactory evidence–in addition to the attorney's own affidavits–that the requested rates are in line with market rates in the relevant community for similar work by lawyers of reasonably comparable skill, experience, and reputation. Mr. Dawson has failed to carry this burden. His affidavit does not fulfill it on its own. The undersigned takes into account Dawson's substantial tort litigation experience, but also notes his lack of experience in vaccine litigation, which is precisely why he passed this case to petitioner's present firm.

Avera applied the *Davis* exception precisely to avoid "windfalls inconsistent with congressional intent." 515 F. 3d at 1349. If the undersigned were simply to allow $300.00 per hour with no substantiation, it might result in a windfall to a non-forum practitioner inconsistent with congressional intent. Mr. Dawson had the opportunity to buttress his application with additional information, but did so only scantily. Therefore, the undersigned reduces his rate to $275.00 per hour, which better reflects the combination of his 19 years of experience with his utter inexperience in vaccine cases.

Consistent with respondent's meritorious objections, the undersigned reduces Mr. Dawson's billings for admission to the U.S. Court of Federal Claims, as well as basic internet research and research into the elementary principles of vaccine litigation. Attorney admission and basic education are not compensable under the Program. Therefore, the undersigned reduces the following: 1. 8/23/06 Research of Guidelines for Practice, 2.0 hours; 2. 9/18/06 Reading of Materials regarding court admission, .7 hours; 3. 9/25/06 Internet Review of Vaccine Table, 2.0 hours; 4. Telephone call with Kevin Conway regarding procedure, .5 hours; 5. 10/10/06 Reading of Cases regarding applicable standard of care, 2.0 hours; 6. Review of Petition for Admission, .2 hours. These uncompensable admission and educational tasks equal 5.9 hours. Mr. Dawson requested 39 total hours. The undersigned awards 33.1 hours, at a rate of $275.00, which comes to $9,102.00.

Mr. Dawson's law partner, Harry H. Albritton, worked on the case for 2.8 hours. However, he billed for: 1. 8/25/06 Research – Administration of NVICP, 1.5 hours which is uncompensable because it is merely education about the elementary procedures of the court; and 2. A Conference about legal strategies regarding the future care needs of client; discussion of Client's

condition, necessity of economic and/or life care planner, which is unnecessarily duplicative because Attorney Dawson and Ms. Bakalar were already in attendance, making Albritton's attendance pointless. Petitioner requested $840.00 for Albritton, which is denied.

Petitioner further requests .2 hours for Deborah H. Bell, paralegal, at an hourly rate of $90, for a total of $18.00, which is approved. Jamie Hayes, an intern, worked 15.5 hours at a very low rate of $25, for a total of $387.50, which is approved.

Respondent further objects to the $125.00 per hour charged by Mr. Dawson's firm for Cathy Bakalar, R.N. R Specific Obj. at 7. According to Mr. Dawson's affidavit, Ms. Bakalar is a registered nurse with nearly 20 years experience in nursing. She has also been a contributor in the legal field since 2003, deciphering, gathering, and organizing medical records for use in legal cases. She also played a significant role in petitioner's case. The undersigned finds that $125.00 per hour for a medical professional who is performing medically-related analysis related to legal issues is justified. However, Ms. Bakalar often performed only paralegal tasks such as contacting medical providers and requesting information or research names and addresses. This is worth only $90.00 per hour, according to the firm's billing practices for Deborah H. Ball. Ms. Bakalar's following work is considered only paralegal work and should be compensated at $90.00 per hour: 1. 8/29/06 Conference, 3.5 hours; 2. 8/30/06 Memorandum, 1.0 hours; 3. 9/19/06 Name and address research, 1.3 hours; 4. 9/20/06 Internet research, .5 hours; 5. 9/20/06-9/21/06 Research of Names and addresses, preparation of cover sheets, 7.2 hours; 6. 10/3/06 Telephone Call, .3 hours; 7. 12/06 Research on Dr. Wingerchuk, phone call, .4 hours; 8. 12/28/06 File organization, 3.8 hours; 9. 1/10/07 Requests, .6 hours; 10. 1/31/07 Reviewed Requests, .9 hours; 11. 2/12/07 File organization, 1.2 hours; 12. 3/19/07 Received medical records, 1.0 hours; 13. 2/18/08 File organization, 1.3 hours; 14. 4/29/08 Medical Record requests, 4.0 hours; 15. 5/5/08 Telephone conversation, .6 hours; 16. 10/12/08 Order review, 2 hours; 17. 10/13/08 Medical records requests, 7 hours; 18. 11/07/08 Record Requests, .8 hours. These paralegal tasks equal 35.6 hours, which should be compensated at $90.00 per hour, which multiply to $3,204.00. The remaining 63.9 hours may be multiplied by a nurse's hourly rate of $125.00 per hour, to reach $7,987.50. These two sums total $11,191.50.

The undersigned awards petitioner's former counsel **$20,699.00**, which represents $9,102.00 for Mr. Dawson, $0.00 for Mr. Albritton, $18.00 for Ms. Bell, $387.50 for Jamie Hayes, and $11,191.50 for Ms. Bakala.

C. Reasonable Costs

Petitioner requests interim costs in the amount of $20,345.91. Respondent objects to several aspects of the amount requested. First, respondent objects to the rate and number of hours for Dr. Steel. Dr. Steel is a board-certified neurologist with over 20 years of experience. His rate of $350.00 was approved in the *Davis* case. Moreover, the number of hours Dr. Steel expended was reasonable. Indeed, this case required the review of a very large number of medical records and scientific articles.

Respondent also objects to $267.83 for meals during the hearing and a June 29, 2010 hotel bill of $124.02. R Specific Obj. at 6. Petitioner included a specific listing of the expenses in reply, with each meal carefully delineated. The undersigned is aware that it is common for hotels to submit invoices devoid of specifics, and counsel would have been unable to get an official printout of exactly what was ordered. Petitioner's notations seem accurate and the undersigned has no reason to doubt their veracity. The undersigned finds the entire **$20,345.91** requested by petitioner's present counsel to be reasonable.

Respondent does not specifically object to petitioner's former counsel's costs. The undersigned does not find the costs requested to be unreasonable. The undersigned awards the full amount of **$4,116.18.**

In accordance with General Order #9, petitioner represents that she incurred no personal costs to pursue the petition.

V. Conclusion

Petitioner has demonstrated that an interim award of attorneys' fees and costs is appropriate in this case. The undersigned awards petitioner interim attorneys' fees and costs in the following amounts:

a. **$76,067.85**, representing $55,721.94 in fees and $20,345.91 in attorneys' costs. The award shall be in the form of a check made jointly payable to petitioner and the law firm of Conway, Homer & Chin-Caplan, P.C.

b. **$24,815.18**, representing $20,699.00 in fees and $4,116.18 in costs for petitioner's former counsel. The award shall be in the form of a check made jointly payable to petitioner and the law firm Dawson & Albritton, P.A.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.[4]

IT IS SO ORDERED.

Dated: June 13, 2011

/s/ Laura D. Millman
Laura D. Millman
Special Master

[4] Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.