OFFICE OF SPECIAL MASTERS

February 24, 2005

JOANNE BAKER, legal representative for JONATHAN BAKER,	*	
Petitioner,	*	
v.	*	No. 99-653V
	*	PUBLISHED
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

Michael J. Katarincic, Milwaukee, WI, for petitioner.
Ann K. Donohue, Washington, DC, for respondent.

DECISION[1]

MILLMAN, Special Master

This case was reassigned to the undersigned on November 8, 2002, and the undersigned issued a published decision in this case on September 26, 2003. 2003 WL 22416622 (Fed. Cl. Spec. Mstr.). Judgment was entered on November 10, 2003. Petitioner elected to file a civil action on February 6, 2004. Petitioner also filed a motion for review pro se on May 11, 2004. Her motion was dismissed for lack of subject matter jurisdiction on July 7, 2004. Petitioner moved for reconsideration which was denied on September 1, 2004.

[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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

On October 1, 2004, petitioner filed a Fee Petition of Petitioner's Counsel. In that fee petition is a claim by petitioner's expert, Dr. John Barthelow Classen, for fees and costs totaling $101,484.58, reflecting 404.42 hours billed at $250.00 per hour. Petitioner's counsel initially requested $62,415.13 in fees and costs, but, subject to negotiations with respondent's counsel, reduced that to $58,700.00. On November 15, 2004, respondent filed an Opposition to Petitioner's Application for Attorneys' Fees and Costs, stating respondent does not object to petitioner's counsel's receiving $58,700.00 in fees and costs, but does object to Dr. Classen's bill totaling $101,484.58.[2] The undersigned rules below.

DISCUSSION

Fees for experts are subject to the same reasonableness standards as fees for attorneys. Crossett v. Secretary of HHS, No. 89-73V, 1990 WL 293878, at *4 (Cl. Ct. Spec. Mstr. August 3, 1990). To determine if a fee is reasonable, the special master should examine: the witness' area of expertise; the education and training required to provide him the necessary insight; the prevailing rates for other comparably respected available experts; the nature, quality, and complexity of the information provided; the cost of living in the expert's geographic area; and any other factor likely to assist the undersigned in balancing the various interests in the case.

[2] Respondent raises the question whether Mr. Katarincic is the appropriate counsel to represent petitioner in this application for fees and costs since petitioner appealed pro se and then filed a simultaneous appeal with the United States Court of Appeals for the Federal Circuit with different counsel, which was dismissed on October 13, 2004. As respondent is aware, neither of petitioner's appeals was timely and they were dismissed for lack of subject matter jurisdiction. Petitioner and her subsequent counsel cannot receive an award for any fees or costs from the undersigned for these appeals. Mr. Katarincic is still listed with the United States Court of Federal Claims as petitioner's counsel, no other counsel having been substituted for him and his not withdrawing as her representative. Therefore, he is the appropriate counsel to apply for fees and costs for the case he brought before the undersigned.

Wilcox v. Secretary of HHS, No. 90-991V, 1997 WL 101572, at *4 (Fed. Cl. Spec. Mstr. February 14, 1997).

The special master must "exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). "The question is not whether [the expert] expended the number of hours claimed, but whether it was necessary or reasonable for him to do so." Wasson v. Secretary of HHS, No. 90-208V, 1991 WL 135015, *3 (Fed. Cl. Spec. Mstr. July 5, 1991), remanded (for additional explanation of basis for awards), 24 Cl. Ct. 482, 483 (November 19, 1991), aff'd, 988 F.2d 131 (Fed. Cir. January 29, 1993) (table). A special master may rely upon her own experience in the Vaccine Program to determine what a reasonable number of hours is. Plott v. Secretary of HHS, 92-633V, 1997 WL 842543, at *4 (Fed. Cl. Spec. Mstr. April 23, 1997). Special masters are entitled to use their prior experience in reviewing fee applications. Saxton v. Secretary of HHS, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (citing cases). It is well within the special master's discretion to reduce the hours to a number that, in her experience and judgment, is reasonable for the work done. Id.

The positions of the parties

Dr. Classen, in petitioner's Ex. 2, has a summary sheet dated May 27, 2003, followed by 10 pages of hours or portions of hours by date (from February 6, 2000 to June 5, 2003). In these 10 pages, Dr. Classen does not list what activity he was engaged in for these 404.42 hours. After these 10 pages is a letter from Dr. Classen to petitioner's counsel, dated April 27, 2004, in which Dr. Classen states:

> Regarding my time spent. I don't have exact records of what I did on any given day. Based on your FOI [Freedom of Information] request it does not appear that the JDL [Justice Department Lawyer]'s experts have a complete log

either. It was never required at the time that I keep a complete log. As far as I know the Court of Claims does not have a SOP for logging expert's time. I have the following points.

My estimates of time spent

3/2000-5/2000: Prepared Testimony summarizing support for causation
6/2000-2/2001: **6 hours spent during 9 months** keeping myself and attorney abreast of the data [emphasis included]
3/2001: Reviewed Government's response to plaintiff's filing, letter to attorney
6/2001-7/2002: **6 hours spent during 12 months** on miscellaneous issues
9/2002: Up dated [sic] attorney on new information relevant to causation
11/21/2002-2/18/2003: Prepared for trial
2/19-21/2003: precourt meeting and trial
2/23/2003: filing post-trial summary etc., discussions with attorney

Apparently, only for six hours was Dr. Classen prepared to say what he specifically did. For the remainder, either he knew he spent six hours on unspecified matters, or he knew he did specific things for an unspecified period of time between specific dates.

To prove with more specificity the matters upon which Dr. Classen worked in order to justify a claim that he expended 404.42 hours in this case, and his claimed hourly rate of $250.00, petitioner's counsel faxed three pages to the undersigned consisting of Dr. Classen's one-page invoice dated November 30, 2004, and a two-page letter from Dr. Classen to petitioner's counsel, also dated November 30, 2004, and filed by the undersigned's leave December 1, 2004.

Dr. Classen states in his invoice that he spent:

186.5 hours reviewing a chart, writing testimony including proof of causation from 2/6/00 to 7/25/00
2.16 hours on miscellaneous communications and review from 10/5/00 to 10/11/00
11.51 hours responding to experts and communicating with the attorney from February 1, 2001 to April 16, 2001

33.93 hours providing the lawyer with additional proof of causation from 6/19/01 to 12/17/02
119.65 hours on pretrial preparation and responding to the court from 12/23/02 to 2/18/03
30 hours for a two-day trial and day before trial meeting from 2/19/03 to 2/21/03
20.65 hours on post-trial preparation of a summary for the court, etc., from 2/23/02 to 6/5/03.

Dr. Classen writes,

> I have provided a more detailed break down [sic] of my hours. There was an [sic] time of 186 hours writing my initial testimony. The reason for this was that my opinion was based on 10 years of research in the field and this needed to be summarized in an [sic] manner that would be acceptable to the court. In particular while some of my research had been published other observations had not been published. I needed to provide my non published [sic] observations in a form that was acceptable to the court i.e. the criteria set by Daubert. I therefore included my evidence of proof in a document, prepared specifically for the court, entitled "Scientific Evidence Proving Vaccines Cause Insulin Dependent Diabetes (IDDM)." There was an extensive time between the filling [sic] of this testimony (7/25/00) and the trial (2/20/03). During this interval I spent 34 hours providing additional evidence of causation to the attorney. A lot more time was actually spent on preparing this additional evidence of causation but the work was billed to other similar cases that I was working on at the same time as this case. In the two months prior to the case I spent 119.65 hours preparing for the case. I was asked to provide answers to specific questions addressed by the court. I also had to prepare for replies to issue [sic] that were to be brought up by the government's experts. Since there were three experts working for the government and all had different challenges to my testimony I needed to spend significant time in preparation for their challenges. The plaintiff's lawyers met with me the day before the trial and there was extensive preparation for the trial as well as discussions after the first day of the trial. Finally, the justice department [sic] lawyer insisted that both sides prepare written summaries of the case post trial, and I worked on this as well. I have actually spent hours preparing my bill including this letter which I have not billed for.

Dr. Classen states in his letter to petitioner's counsel that he justifies an hourly rate of $250.00 because "the vaccine court set precedent" in the Dawn Lowrey case by paying him that. The undersigned is unaware that the Lowrey case was ever published or even decided and

suspects that this might instead be a settlement between the parties. In either case, a prior award to Dr. Classen does not bind this special master. Hanlon v. Secretary of HHS, 40 Fed. Cl. 625, 630 (1998), aff'd, 191 F.3d 1344 (Fed. Cir. 1999), cert. denied, 530 U.S. 1210 (2000).

Dr. Classen lists as further justification for his hourly rate of $250.00 that another attorney in a workmen's compensation case paid him that rate. That Dr. Classen succeeded in obtaining this rate from another attorney in a different forum does not substantiate $250.00 as a market rate.

Dr. Classen further justifies his hourly rate of $250.00 by stating that he has 13 ½ years as President of Classen Immunotherapies;[3] holds multiple United States patents in the fields of testing immunization schedules, autoimmune diseases, pharmaceutical epidemiology, and pharmaceutical safety; is currently a plaintiff in two patent infringements suits where the defendants include vaccine manufacturers; has written multiple papers on vaccines' effect on autoimmune disease and the etiology of autoimmune disease, noting "He [sic] has more publications on this subject than any expert the DOJ has used;" spent 13 ½ years as a part-time consultant to Wall Street financial firms evaluating epidemiological studies and clinical trials on the safety and efficacy of biopharmaceuticals; has been an expert to Congress several times on the adverse effects of vaccines; "widely accepted by major media organizations as an expert in pharmaceutical safety" (with two appearances on ABC's World News Tonight with Peter Jennings in 1998 and a recent story by the Associated Press); and "Dr. Classen was at the time the only expert with enough expertise to provide adequate testimony that vaccines cause diabetes.

[3] At trial, Dr. Classen admitted he is the only employee of Classen Immunotherapies, Inc., and that he does not have a secretary. Tr. at 39, ll. 17-19; at 56, ll. 15-16.

The laws of supply and demand allowed him to seek what ever [sic] fees he requested since there were few if any alternatives." Letter dated November 30, 2004.

One could hardly suppose that the market rate for an expert would be appropriately determined by a veiled type of blackmail ("the laws of supply and demand") or the media concerns to get out a story that people would listen to or read. It may be that the only reason Dr. Classen is the only available expert for his type of testimony is that his testimony runs contrary to the consensus of medical opinion in the fields of epidemiology and immunology.

Regardless of Dr. Classen's vaunting of his expertise to justify an hourly rate of $250.00, he admitted at trial[4] that he spends only half his time on vaccines, spending the other half doing urgent care medicine, which he described as follows: "It's a walk-in clinic, and essentially people come in with different problems. They could be minor trauma where I would sew up a patient, set a fracture. It could be a urinary tract infection, upper respiratory infection, that type of thing." Tr. at 11, ll. 20-25. Dr. Classen has marketed his expertise as a product, up for sale to the bidder willing to pay his price. This offers scant support for a market rate in Baltimore for whatever his services may be (part-time, untrained, uncertified epidemiologist/immunologist).

Testifying for respondent at the hearing were Dr. Neal Halsey, an epidemiologist located in Baltimore, Dr. Burton Zeiman, an immunologist, and Dr. Barry Bercu, a pediatric endocrinologist. Dr. Classen testified the entire first day and the last hour of the second day, although he was present during the testimony of respondent's witnesses.

Respondent's opposition to petitioner's application for fees and costs is based on both Dr. Classen's fee request of $250.00 an hour and the amount of hours (404.42 hours) he has

[4] Tr. at 39, l. 20, to 40, l. 4.

requested. Respondent takes the view that, since Dr. Classen is not board-certified in any specialty, much less epidemiology and/or immunology (in which fields he claims expertise), and does not practice medicine in those fields (and has never done so, being an emergency care physician), he does not satisfy the American Medical Association (AMA) standards for being classified as an expert, a point the undersigned first noted in her opinion on liability in this case, at *33, n. 12. Dr. Classen, on the other hand, regards himself as an expert in epidemiology, autoimmunity, immunology, "sewing up certain cutaneous lacerations," and "other areas of practice of medicine and some related areas in science." Tr. at 37, ll. 1-5, 14-23.

Regarding accepting Dr. Classen as an expert, the undersigned stated at trial:

> THE COURT: Let me short circuit this [voir dire]. I think that when you have your [respondent's] witnesses testifying they can criticize the credentials of Dr. Classen as far as training as a [sic] epidemiologist, training as an immunologist, et cetera. I will accept his testimony, and I recognize that he doesn't have what we have termed formal training.
>
> He certainly doesn't have any board certification, and I recognize that it's very unusual to reject testimony by a medical doctor in this program. We don't normally do that. I have rejected the testimony of a dentist. I would not allow him to testify about neurological diagnoses, but Dr. Classen is not a dentist.
>
> I will accept his testimony, and we will hear it. I think that will shortcut the rest of your [respondent's] voir dire.

Tr. at 90, l. 22, to 91, l. 13.

Thus, the undersigned's acceptance of Dr. Classen as an expert for petitioner was a recognition not of his asserted expertise but of the Vaccine Program's flexibility in permitting petitioners to put on their best case with the medical doctors they were able to retain as experts. Rather than treat the proffer of Dr. Classen's testimony as an issue of admissibility, the undersigned regarded it as an issue of weight, a matter more cogently evaluated after the giving

of both sides' experts' testimony and a reading of the medical literature, and which the undersigned fully discussed in her opinion on liability.

Respondent's experts, including its renowned epidemiologic expert, Dr. Neal Halsey, received hourly rates of $200.00 for 10 hours up to April 27, 2001,[5] and, subsequently, $250.00, for 87 hours, amounts of which Dr. Classen is cognizant since petitioner's counsel filed a Freedom of Information Act (FOIA) request to determine how many hours respondent's experts spent on the case and at what hourly rate respondent paid them. Fee Petition of Petitioner's Counsel, Ex. 4, second through sixth pages (unnumbered).

It may well be that there is no market rate for an emergency care physician in Baltimore who spends half his time in fields (e.g., epidemiology, immunology) in which, though he holds himself out as an expert, he is not formally trained or recognized by professionals. This seems to be respondent's view: Dr. Classen does "truly novel work conducted in the context of litigation." R. Opposition to P. Application for Attorneys' Fees and Costs, p. 10. Logically, if there is no market rate for Dr. Classen, he should receive zero in fees.

Petitioner has not provided any evidence of what is the market rate for an expert such as Dr. Classen (assuming he is not unique) located in his specific location (Baltimore).[6] It is petitioner's burden to satisfy those legal criteria. Case law states that the undersigned may rely

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[5] Fee Petition from Petitioner's Counsel, Ex. 4, unnumbered p. 7.

[6] Obviously, respondent's payments of $200.00 and subsequently $250.00 per hour to each expert (Dr. Halsey, the epidemiologist in Baltimore; Dr. Barry Bercu, the pediatric endocrinologist in St. Petersburg, Florida; and Dr. Burton Zweiman, the immunologist in Philadelphia) do not connote any market rate but instead reflect contractual obligations into which respondent entered based on respondent's budgetary and policy decisions. As such, respondent's rates do not assist the undersigned in determining the market rate for Dr. Classen in Baltimore.

upon her experience and reason in determining a market rate in the absence of petitioner's proof. See Wasson, Plott, and Saxton, supra.

The undersigned declines to take the draconian position that Dr. Classen should receive zero for his fee because either (1) there is no market rate for an emergency care physician who holds himself out as an expert epidemiologist/immunologist even though he has not been formally trained in those fields, is not board-certified in anything, and has never been employed professionally as an epidemiologist/immunologist; or (2) petitioner did not satisfy her burden of proving what is the market rate of an emergency care physician who holds himself out as an expert in epidemiology/immunology in Baltimore.

Instead, the undersigned will assume that there is some market rate for Dr. Classen in Baltimore and, based upon the undersigned's experience in the Vaccine Program, the undersigned finds that $200.00 per hour is a fair market rate for him. *See* Macrelli v. Secretary of HHS, No. 98-103V, 2002 WL 229811 (Fed. Cl. Spec. Mstr. January 30, 2002) (Dr. Marcel Kinsbourne, a pediatric neurologist in Boston, and Dr. John Shane, a pathologist in Allentown, PA, awarded an hourly rate of $200.00). *See also* Hart v. Secretary of HHS, No. 01-357V, 2004 WL 3049766, *6 (Fed. Cl. Spec. Mstr. December 17, 2004) (hourly rate of $300.00 awarded to Dr. Vera Byers, a San Francisco immunologist; cites seven cases awarding $300.00 to experts).

As for the number of hours, respondent states the well-founded view that the undersigned does not pay experts for work they would be doing in any event. As the undersigned described in her opinion on liability, Dr. Classen has attempted to make his thesis of vaccine causality of medical injuries the basis for remuneration through the licensing of patents he has obtained. This motive is independent of his attempt to help petitioner prevail in this case.

The undersigned is of the opinion that Dr. Classen would have written his articles on vaccine causation whether or not he had become involved in this action. His participation at various workshops has also served his interest in further publicizing his views and his patents in the hope of financial remuneration. Moreover, a 96-page monograph[7] Dr. Classen wrote, as he explained it, to assist the court was unnecessary in light of his extensive testimony (all of one day and part of the next), which included his discussion of his published and draft articles.

Petitioner filed Dr. Classen's two-page first report (Ex. 11), dated July 25, 2000, on November 27, 2000.[8] By that time, according to Dr. Classen's assertions above, he had put in 186.5 hours on the case. Accompanying Ex. 11 is Dr. Classen's two-page affidavit (Ex. 13).[9] It should have taken him no longer than 25 hours to review an area to which he has devoted half of his professional life. It should also have taken him an additional 2 hours to write his two-page first report and two-page affidavit.

Petitioner filed Dr. Classen's second report (a response to respondent's report), dated March 14, 2001, on March 27, 2001. This response is six pages long with ten pages of

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[7] The monograph is dated June 2000, copyrighted in 2000, and entitled "Scientific Evidence Proving Vaccines Cause Type I, Insulin Dependent Diabetes (IDDM)" (Ex. 12).

[8] Petitioner's counsel notes that he sent Dr. Classen records on February 7, 2000. This is the first notation of contact with Dr. Classen. Fee Petition of Petitioner's Counsel, Customer Balance Detail, p. 1.

[9] Also filed are Ex. 12, the 96-page monograph manuscript; and manuscripts, some submitted for publication: "Clustering of cases of IDDM occurring 2-4 years after vaccination is consistent with clustering after infections and progression to IDDM in autoantibody positive individuals" (Ex. 55) with Dr. David C. Classen, first cousin to Dr. Classen; "Clustering of cases of IDDM 2 to 4 years after hepatitis B immunization is consistent with clustering after infections and progression to IDDM in autoantibody positive individuals" (Ex. 56); "Scientific Evidence Proving Vaccines Cause Type I, Insulin Dependent Diabetes (IDDM)" (Ex. 57).

attachments consisting primarily of prior e-mails to journals. This should have taken Dr. Classen no longer than 4 hours.

Petitioner filed Dr. Classen's three-page letter dated September 12, 2002 to petitioner's counsel on October 11, 2002, accompanied by two pages of references. This should have taken Dr. Classen no longer than 2 hours.[10]

Petitioner filed Dr. Classen's two-page letter dated September 15, 2002 to petitioner's counsel also on October 11, 2002, accompanied by a little over two pages of references. This should have taken Dr. Classen no longer than 2 hours.

Petitioner filed Dr. Classen's six-page letter dated November 27, 2002, to petitioner's counsel on January 27, 2003. Also included in the filing is a two-page letter dated July 27, 2002, from Dr. Classen to petitioner's counsel. Together, these letters should have taken Dr. Classen no longer than 4 hours.

Petitioner filed Dr. Classen's animal data to which he referred during testimony and his computer software insert on May 20, 2003. The first is four pages of a computer printout and the second is a one-page excerpt from an article. This should have taken Dr. Classen no longer than 1 hour.

Dr. Classen's assertion that he spent nearly 120 hours on trial preparation is not credible. Petitioner's counsel notes 9 hours of trial preparation of Dr. Classen on February 19, 2003. Fee

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[10] With the exhibits of October 11, 2002 are more drafts of articles: "Scientific Evidence Proving Vaccines Cause Type I, Insulin Dependent Diabetes (IDDM)" ((Ex. 24), "Clustering of cases of IDDM occurring 2-4 years after vaccination support causal relationship between pediatric vaccines and Type 1 (insulin dependent) diabetes" (Ex. 25), and "Study Design Flaws Obscure Relationship between Vaccines and IDDM" (Ex. 26) with Dr. David C. Classen as co-author and submitted for publication. The undersigned considers these manuscripts as part of Dr. Classen's professional interest rather than as work necessary for his testimony at trial.

Petition of Petitioner's Counsel, Invoice # 123201CS, p. 10. Petitioner's counsel lists 8 and 8.5 hours for trial on February 20 and 21, 2003.[11] Dr. Classen should similarly receive 25.5 hours for preparation and trial. In addition, the undersigned will award 4 hours to include the time Dr. Classen spent in preparing charts about which he testified during his rebuttal testimony at the end of the second day of trial and further conversation with petitioner's counsel in preparation for the second day of trial.

Petitioner's counsel notes the following times for telephone conversations with Dr. Classen:[12] .05 of an hour each (or a total of 6 minutes) on July 10 and 11, 2002; .08 of an hour (or 4.8 minutes) on July 29, 2002; .23 of an hour (or 13.8 minutes) on September 9, 2002; .31 of an hour (or 18.6 minutes) on December 11, 2002, .16 of an hour (or 9.6 minutes) also on December 11, 2002, .21 of an hour (or 12.6 minutes) on December 17, 2002; .05 of an hour (or 3 minutes) in a message left for Dr. Classen on January 8, 2003; .4 of an hour (or 24 minutes) on January 14, 2003; .58 of an hour (or 34.8 minutes) on January 16, 2003; .31 of an hour (or 18.6 minutes) on January 21, 2003; .11 of an hour (or 6.6 minutes) on January 23, 2003; .7 of an hour (or 42 minutes) on January 24, 2003; .3 of an hour (or 18 minutes) on January 28, 2003; .3 of an hour

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[11] Petitioner's counsel mistakenly lists February 21, 2003 twice and lists first "8.5 [hours] hearing" and secondly, "8 [hours] 2nd day of hearing," which makes no sense. He lists 8 hours for February 20, 2003, the first day of the hearing. Fee Petition of Petitioner's Counsel, Invoice # 123201CS, p. 10. The undersigned will assume petitioner's counsel spent 8 hours on the first day and 8.5 hours on the second day. Petitioner's counsel also lists the 8 hours for the first day of the hearing, February 20, 2003, twice.

[12] Those items which mix activities--such as spending .48 of an hour (or 28.8 minutes) on November 20, 2002, in a status conference, a telephone call to the undersigned's clerk and respondent's counsel regarding Ex. 16, and a telephone call to Dr. Classen regarding hearing dates--make determining how many of those minutes were devoted to conversing with Dr. Classen impossible to ascertain. Fee Petition of Petitioner's Counsel, Invoice # 123201CS, p. 2.

(or 18 minutes) on January 30, 2003; .16 of an hour (or 9.6 minutes) on February 4, 2003; .51 of an hour (or 30.6 minutes) on February 10, 2003; and 4.33 hours (or 4 hours and 19.8 minutes) on February 17, 2003 in an interview with Dr. Classen. Following the hearing, there were the following phone conversations: .5 of an hour (or 30 minutes) on February 24, 2003; .21 of an hour (or 12.6 minutes) on April 29, 2003; and .25 of an hour (or 15 minutes) on May 19, 2003. Fee Petition of Petitioner's Counsel, Invoice # 123201CS, pp. 1-11. This comes to 588 minutes or 9.8 hours.

The total, then, for a reasonable amount of hours for Dr. Classen's work in this case is 79.3 hours[13] at an hourly rate of $200.00 or $15,860.00.

Petitioner is awarded $58,700.00 plus $15,860.00 in attorneys' fees and costs for a total of $74,560.00 in attorneys' fees and costs. The clerk of court shall direct that a check be issued payable to petitioner and petitioner's counsel in the amount of $74,560.00. Petitioner provided a statement in accordance with General Order # 9, dated March 10, 2004 and filed with her fee petition, that she herself expended no fees or costs.

CONCLUSION

[13] It makes sense that Dr. Halsey would spend more time (97 hours) on this material than Dr. Classen because Dr. Classen has been living the subject matter at issue during half of his professional life (e.g., writing and publishing articles) when not employed at the urgent care clinic, whereas Dr. Halsey had to study Dr. Classen's articles and all of the other material upon which he based his opinion, analyze Dr. Classen's methodology, and listen and respond to Dr. Classen's testimony.

Petitioner is awarded $74,560.00 in attorneys' fees and costs.[14] In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.

IT IS SO ORDERED.

_____ _____

DATE Laura D. Millman
Special Master

[14] This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against the client, "advance costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See Beck v. Secretary, HHS, 924 F.2d 1029 (Fed. Cir. 1991).