

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

NANCY HAMRICK, as executor of the estate of HOKE BROCK HAMRICK,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

No. 99-683V
Special Master Christian J. Moran

Filed: November 19, 2007
Published: January 9, 2008*

Fees and costs; reasonable basis for claim; reduction of fee amount.

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, Virginia for petitioner;
Vincent J. Matanoski, United States Dep't of Justice, Washington, D.C. for respondent.

PUBLISHED DECISION**

Even when a petitioner in the Vaccine Program does not prevail on his or her claim and does not receive compensation, a special master may award reasonable attorneys' fees and other costs if "the petition was brought in good faith and there was a reasonable basis for the claim." 42 U.S.C. § 300aa-15(e) (2006). Nancy Hamrick seeks an award of the fees and costs that were incurred in prosecuting this case unsuccessfully. Respondent objects to an award of any fees and costs because, respondent contends, there was not a reasonable basis for the claim. For the reasons explained below, this court finds that Ms. Hamrick has established a reasonable basis for the claim. Therefore,

* The published decision corrects a mathematical error in the final paragraph.

** Because this published decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it 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).

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 to move to delete such information before 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.

awarding her some of her fees and costs is appropriate. The actual amount awarded, however, is less than requested.

I. Procedural History

The pending application for fees and costs raises two questions: was there was a reasonable basis for the claim, and, if so, what is a reasonable amount for the attorneys' fees. Resolving these issues requires an analysis of the underlying action and its procedural history.

This case began on August 6, 1999, when, according to Ms. Hamrick's application, Hoke Brock Hamrick consulted an attorney with Mr. Shoemaker's firm. On this day, the attorney interviewed Mr. Hamrick, drafted the petition, traveled to court, and filed a petition seeking compensation. Pet'r Application for Attorneys' Fees and Costs, Exhibit 3 at 3, filed August 2, 2007. The petition alleged that Mr. Hamrick received the hepatitis B vaccine and experienced an adverse reaction. Pet. ¶ 3. The petition did not define the nature of the adverse reaction. The petition did not include any medical records or affidavits as required by 42 U.S.C. § 300aa-11(c).¹ Filing the petition on August 6, 1999, was critical because on August 6, 1999, the period of time for filing claims based upon injuries arising before August 6, 1997, due to receiving the hepatitis B vaccine, expired. 63 Fed. Reg. 25777, 25778 (May 11, 1998).

In the first few months after the petition was filed, relatively little happened. On April 27, 2000, the case was stayed. The purpose of the stay was to explore efficient methods for resolving the numerous cases involving the hepatitis B vaccine. The Office of Special Masters estimates that more than two hundred cases involving the hepatitis B vaccine were filed in 1999. With assistance from the Office of Special Masters, counsel for petitioners and respondent worked, in good faith, to develop a method for resolving them.² Different methods of alternative dispute resolution were considered. Eventually, the parties grouped together cases in which petitioners sought compensation for similar injuries. See, e.g., Sanders v. Sec'y of Health & Human Servs., Fed. Cl. No. 99-430V, 2007 WL 853229 (Spec. Mstr. Mar. 6, 2007) (noting a group of cases with rheumatoid arthritis); Lovett v. Sec'y of Health & Human Servs., Fed. Cl. No. 98-749V, 2007 WL 852104 (Spec. Mstr. Feb. 8, 2007) (discussing omnibus proceeding involving demyelinating diseases); Piscopo v. Sec'y of Health & Human Servs., 66 Fed. Cl. 49, 51 (2005) (noting a group of cases with immunological illnesses). Organizing the hundreds of cases necessarily took some time, but offered the possibility of quicker resolution for some cases.

¹ The lack of medical records does not affect jurisdiction of the Office of Special Masters to entertain Mr. Hamrick's petition. Stewart v. Sec'y of Health & Human Servs., Fed. Cl. No. 02-819V, 2002 WL 31965743 (Spec. Mstr. Dec. 30, 2002).

² Ms. Hamrick's attorney of record participated in these activities. However, Ms. Hamrick has not sought compensation for these activities in this case. It is assumed that this omission is because the attorney has already been compensated in requests for attorneys' fees and costs in other cases involving the hepatitis B vaccine.

During the next few years, the parties worked on the hepatitis B cases collectively. Accordingly, after the stay was entered, activity on this specific case halted almost entirely. From August 2002 until January 2006, nothing was filed with the Clerk's Office. Ms. Hamrick's attorneys' timesheets are similarly sparse, reflecting the lack of activity. Pet'r Application for Attorneys' Fees and Costs, Exhibit 3.

In 2006, because this particular case had not been grouped with other cases, the need to adjudicate it individually was recognized. The case was transferred to the undersigned, the stay was lifted, and the case began to progress. Mr. Hamrick presented a collection of medical records to his attorney sometime in 2006. Pet'r Rep. to Spec. Mstr. Order, dated Sept. 28, 2007, at 1. (Counsel's statement implies that before 2006, counsel did not have any medical records about Mr. Hamrick.) On June 13, 2006, petitioner filed these medical records as exhibit 1. Exhibit 1 appears to consist of records that Mr. Hamrick gathered himself, not records requested by Mr. Hamrick's attorney. These records total 19 pages. They indicate that Mr. Hamrick received a dose of the hepatitis B vaccine on February 25, 1991. Exhibit 1 at 1. They also indicate that Mr. Hamrick experienced cardiopulmonary problems in late March 1991, which were diagnosed as deep vein thrombosis. Exhibit 1 at 5, 8.

Around the time exhibits were being filed in this case, the petitioner's attorneys learned that Mr. Hamrick had died. (While the record is clear when the attorneys learned that their client had died, the record contains no information about the date of his death.) Following the attorneys' learning that Mr. Hamrick died, they attempted to communicate with members of his family. Eventually, on August 11, 2006, counsel filed a motion to amend the caption to reflect that the proper petitioner was now Nancy Hamrick, the executor of Mr. Hamrick's estate and Mr. Hamrick's widow. (The identity of the petitioner does not affect the outcome of this litigation in any way.) Counsel also filed a status report indicating that Ms. Hamrick did not wish to pursue the litigation, and that counsel was waiting for written instructions before wrapping up the case. Pet'r Status Report, filed August 11, 2006.

Ms. Hamrick filed a very short motion for judgment on the record on August 28, 2006. This motion was granted and a decision in favor of respondent was made on October 6, 2006. After allowing time for the filing of a motion for review, the Clerk's Office entered judgment in this case on November 8, 2006.

On August 2, 2007, Ms. Hamrick filed a motion for an award of her fees and costs. Taking into account supplemental submissions, Ms. Hamrick requested a total of \$5,977.25 in attorneys' fees. Ms. Hamrick stated that she, personally, incurred a total cost of \$120.00, which was the fee for filing a petition. Her attorneys stated that they incurred costs totaling \$6.00, which was the fee for parking on the date the petition was filed.

Respondent objected to Ms. Hamrick's request on the ground that there was not a reasonable basis for filing the petition. Respondent, however, did not object to any individual items. Resp't

Opp., filed August 9, 2007, at 1 & n.1. Ms. Hamrick replied and the issue is now ready for adjudication.

II. Analysis

A. Law Regarding Availability Of Attorneys' Fees

Attorneys for petitioners whose cases are adjudicated on the merits can be paid only through the program. 42 U.S.C. § 300aa-15(e)(3) (stating “No attorney may charge any fee for services in connection with a petition filed under section 300aa-11 of this title which is in addition to any amount awarded as compensation by the special master or court under paragraph (1)”); see also Beck by Beck v. Sec’y of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

In the Vaccine Program, when petitioners fail to establish that they are entitled to compensation, special masters enjoy discretion to award petitioners reasonable attorneys’ fees and costs. When compensation is not awarded,

the special master or court may award an amount of compensation to cover petitioner’s reasonable attorneys’ fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

42 U.S.C. § 300aa-15(e)(1).

Section 15(e)(1) permits, but does not mandate, an award of attorneys’ fees and costs when an unsuccessful petitioner fulfills two requirements; specifically, that the petition was brought in good faith and that there was a reasonable basis for the claim. Saxton v. Sec’y of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993) (“If the petition for compensation is denied, the special master ‘may’ award reasonable fees and costs if the petition was brought in good faith and upon a reasonable basis; the statute clearly gives [a special master] discretion over whether to make such an award.”) (citation omitted). These requirements are discussed in more detail below.

Consistent with this deference, the Federal Circuit reviews decisions awarding or denying attorneys’ fees to petitioners in the Vaccine Program under an abuse of discretion standard. Perreira v. Sec’y of Health & Human Servs., 33 F.3d 1375, 1377 (Fed. Cir. 1994).

The first of the two requirements is that “the petition was brought in good faith.” “Good faith” is a subjective test. Chronister v. Sec’y of Health & Human Servs., Cl. Ct. No. 89-41V, 1990 WL 293438 *1 (Spec. Mstr. Dec. 4, 1990); cf Phonometrics, Inc. v. Westin Hotels Co., 350 F.3d 1242, 1248 (Fed. Cir. 2003) (defining bad faith litigation as one in which the attorney knowingly or recklessly pursues frivolous litigation). Here, Ms. Hamrick’s attorney asserts that the claim was

brought in good faith and respondent has not challenged this assertion. Because there is no evidence to the contrary, it is found that Ms. Hamrick has fulfilled the first requirement.

The second requirement is the crux of the dispute. Respondent maintains that Ms. Hamrick has failed to show a reasonable basis for the petition. Respondent supports its argument by quoting the decision finding that petitioner was not entitled to compensation: “[t]he medical records do not indicate that Mr. Hamrick suffered an injury, let alone an injury caused by the hepatitis B vaccination.” Resp’t Opp., filed August 9, 2007, at 3, quoting Decision, filed October 6, 2006. Respondent also notes that when the petition was filed, it did not comply with 42 U.S.C. § 300aa-13(a)(1). Thus, respondent concludes that considering all the facts of this case, Ms. Hamrick is not entitled to any compensation because the petition lacked a reasonable basis.

Although the statute uses the phrase “reasonable basis,” that phrase is not defined in the statute, which was enacted in 1986. Pub. L. 99-600, 100 Stat. 3743. A review of the legislative history of the National Childhood Vaccine Injury Act has not revealed any insights as to the intention of Congress. However, Congress is presumed to use terms found in the common law in accord with their common law meaning. Beck v. Prupis, 529 U.S. 494, 500-01 (2000); N.L.R.B. v. Amax Coal Co., 453 U.S. 322, 329 (1981); Bohac v. Dep’t of Agriculture, 239 F.3d 1334, 1339 (Fed. Cir. 2001).

Both before and after Congress enacted the National Childhood Vaccine Injury Act, decisions from different contexts show that awarding or denying attorneys’ fees authorized by statutes depends upon underlying facts and circumstances. Perricone v. Medicis Pharmaceutical Corp., 432 F.3d 1368, 1380 (Fed. Cir. 2005) (listing factors for a district court to consider pursuant to 35 U.S.C. § 285, which authorizes attorneys’ fees to a prevailing party in an “exceptional” patent case); Smith v. Principi, 343 F.3d 1358, 1363 (Fed. Cir. 2003) (holding the determination of whether a position of the United States was “substantially justified” to preclude an award of attorneys’ fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, depends upon the “totality of the circumstances”); Dunn v. Dep’t of Veterans Affairs, 98 F.3d 1308, 1312 (Fed. Cir. 1996) (listing non-exclusive factors to consider whether an award of attorneys’ fees pursuant to 5 U.S.C. § 7701(g)(1) is “in the interest of justice.”); S.C. Johnson & Son, Inc. v. Carter-Wallace, Inc., 781 F.2d 198, 201 (Fed. Cir. 1986) (35 U.S.C. § 285); Essex Electro Eng’rs, Inc. v. United States, 757 F.2d 247, 253 (Fed. Cir. 1985) (28 U.S.C. § 2412). Consistent with these persuasive precedents, the evaluation of the reasonable basis of Ms. Hamrick’s petition will consider the totality of the circumstances.

In the Vaccine Program, the facts and circumstances often change as the case develops. Petitioner’s counsel must review periodically the evidence supporting petitioner’s claim that a vaccine injured him or her. A case that begins with a reasonable basis may lose its reasonableness as more evidence is acquired. Perreira, 33 F.3d 1375 (affirming decision to award attorneys’ fees only until a hearing was scheduled because petitioner’s expert did not offer a reliable theory of causation); The Ravens Group v. United States, __ Fed. Cl. __, Fed. Cl. No. 07-243, slip op. at 12, 2007 WL 3277277 (Oct. 31, 2007) (refraining from awarding sanctions pursuant to Rule 11 of the Rules of the Court of Federal Claims on the ground that weakness of plaintiff’s factual allegations became apparent only after defendant filed documents).

B. Application

Ms. Hamrick's case can be divided into four different periods. The first period begins when the case was filed and ends approximately one year later. During this time, counsel spent 3.3 hours. The second period runs until 2006, when the stay was lifted. Counsel worked on this case for 7.38 hours. The third period is when the case was actually being resolved and the time spent to resolve the case was 11.3 hours. The fourth and final period is the time spent seeking attorneys' fees, which was 4.1 hours.

1. First Period: Filing The Petition And Related Activities

In the first period, Ms. Hamrick seeks compensation for 3.3 hours of counsel's time. During the first year, Ms. Hamrick's attorney filed the petition, reviewed pleadings, and corresponded with Mr. Hamrick. These activities are reasonable and the amount of time spent on them is reasonable.

Respondent argues, in essence, that the petition should not have been filed because the medical records, which were filed in 2006, failed to indicate that the hepatitis B vaccine caused a particular injury. However, respondent fails to recognize that the looming statute of limitations prevented a thorough examination of the case before the case could be filed. According to Ms. Hamrick's attorney, Mr. Hamrick first contacted the law firm on August 6, 1999, the date on which the period for filing Mr. Hamrick's claim expired. Pet'r Rep. at 1. If petitioner's counsel had waited until records were gathered and then filed the petition, the case would have been dismissed. Staley v. Sec'y of Health & Human Servs., Fed. Cl. No. 06-547V, 2007 WL 268779 (Spec. Mstr. Jan. 9, 2007).

When faced with a near certainty that the statute of limitations will bar the action if the action is not filed quickly, petitioners' attorneys must file the action and investigate the case more thoroughly after the case is filed. Thus, petitioners' attorneys are entitled to the benefit of a doubt when they file a petition just before the statute of limitations expires. (This statement assumes, of course, that the attorneys were contacted by their clients for the first time just before the time for filing an action expired.) Setting a relatively low standard for a reasonable basis in filing a petition (as opposed to prosecuting a petition) is supported by public policy and cases interpreting roughly analogous rules from civil litigation.

The Office of Special Masters has long recognized that an impending deadline set by the statute of limitations affects whether a petition has a reasonable basis. Metzger v. Sec'y of Health & Human Servs., Cl. Ct. No. 90-2955V, 1991 WL 278783 (Spec. Mstr. Dec. 10, 1991).

Latitude in evaluating the reasonable basis for filing a petition comports with public policy. The Vaccine Program is a remedial program intended, in part, to divert people from suing vaccine manufacturers and vaccine administrators. Lowry v. Sec'y of Health & Human Servs., 189 F.3d 1378, 1381 (Fed. Cir. 1999); see also Flowers v. Sec'y of Health & Human Servs., 49 F.3d 1558,

1562 (Fed. Cir. 1995) (recognizing remedial nature of the program). In creating this alternative to the traditional tort system, Congress provided expressly for attorneys' fees. Therefore, a fair inference is that Congress anticipated that attorneys would represent petitioners in this program.

To evaluate whether there was a reasonable basis for the filing of a petition by an overly rigorous standard would undermine a congressional purpose. If attorneys were forced to document all of their client's claims before filing a petition, attorneys would decline many cases. Petitioners who struggle to find representation would resort to filing petitions pro se.

Increasing the number of pro se petitioners would have a deleterious effect both inside and outside of the Vaccine Program. The Vaccine Program is a non-exclusive alternative system. After their case has been pending for 240 days or a final decision has been reached in their case, petitioners may opt out of the Vaccine Program and may pursue their claims against vaccine manufacturers and administrators. See 42 U.S.C. § 300aa-21. Congress intended for people to participate in the Vaccine Program, rather than sue manufacturers in state courts. Vaccine Injury Compensation: Hearing on H.R. 1780, H.R. 4777, and H.R. 5184 Before the Subcomm. on Health and the Environment of the H. Comm. on Energy and Commerce, 99th Cong. (1986) 242 (statement of Rep. Waxman). When petitioners are given a meaningful opportunity to be heard in the Vaccine Program, including the assistance of counsel, they are probably less likely to seek redress for their injuries elsewhere. The knowledgeable assistance of counsel does not prevent a person from filing an action in state court, but counsel's advice may deter litigation in the state courts.

Within the Vaccine Program itself, adopting rules that dissuade attorneys from representing petitioners would not promote an efficient administration of justice. Due to their lack of legal training, pro se petitioners require more attention from special masters, assistant clerks in the Clerk's Office, and, probably, attorneys within the Department of Justice. Historically, the respondent seems to have agreed with this position because respondent has not often challenged the reasonable basis for the filing of a petition. See, e.g., Metzger, 1991 WL 278783 (noting that respondent did not challenge the reasonable basis for a petition filed shortly before the expiration of a statute of limitations and the petitioner filed a motion to dismiss within one year).³ For these reasons, the Vaccine Program as a whole benefits when attorneys represent petitioners and one way to encourage attorneys to represent petitioners is to evaluate their basis for filing a petition pursuant to a relaxed standard. See Jessen v. Sec'y of Health & Human Servs., Fed. Cl. No. 94-1029V, 1997 WL 48940 *5 (Spec. Mstr. Jan. 17, 1997) (discussing advantages in encouraging attorneys to represent petitioners and rejecting respondent's argument for a strict test in determining reasonable basis).

In addition, other rules regarding attorneys' fees in the civil litigation system also are interpreted leniently for filing a petition. One example is Rule 11 of the Federal Rules of Civil

³ Respondent's policy, at least as manifest in this case, is a change from its established practice. Respondent has not offered any explanation as to why it is disputing the reasonable basis in this case. An obvious basis for a change in analysis, an amendment to the relevant statute, has not occurred.

Procedure (and the Rules of the Court of Federal Claims). Rule 11 indicates that by signing a pleading the attorney certifies the allegations have factual support and also authorizes the imposition of a sanction upon an attorney for a violation of this rule. See View Engineering, Inc. v. Robotic Vision System, Inc., 208 F.3d 981 (Fed. Cir. 2000). When a client consults an attorney shortly before an action must be filed, attorneys are afforded some leeway in investigating the case less thoroughly than if the statute of limitations did not compel a quick action. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 401-02 (1990); Smith v. Our Lady of the Lake Hosp., Inc., 960 F.2d 439, 447 (5th Cir. 1992) (reversing imposition of sanctions as an abuse of discretion); Fed. R. Civ. Proc. 11, Advisory Committee Notes to 1983 Amendment. The Federal Circuit has endorsed this view. See Hoffman LaRoche, Inc. v. Invamed, Inc., 213 F.3d 1359, 1364 (Fed. Cir. 2000) (affirming denial of attorneys' fees requested pursuant to Rule 11 because plaintiff's investigation of infringement before filing the lawsuit was reasonable and lawsuit allowed plaintiff discovery).

Pursuant to this liberal standard, Ms. Hamrick had a reasonable basis for filing the petition. While petitioner's attorney did not have much information to support the petition, the meager information sufficed to establish a reasonable basis for filing the petition. In a telephone call, Mr. Hamrick informed his attorney that he received the hepatitis B vaccine. Documents submitted much later proved the accuracy of this statement. In the same call, Mr. Hamrick told his attorney that after receiving the hepatitis B vaccine, he had problems with his heart. Mr. Hamrick consulted an attorney about a possible connection between the two events. This consultation supports an inference that Mr. Hamrick, himself, believed or at least suspected that the hepatitis B vaccine caused his heart problem. Mr. Hamrick's belief cannot be the basis of a finding of entitlement. 42 U.S.C. § 300aa-13(a). Nevertheless, Mr. Hamrick's belief may establish that there was a reasonable basis for filing the petition, at least, when the press of the statute of limitations precluded a more thorough investigation.

Another relative factor is that Mr. Hamrick's case was filed with hundreds of other cases shortly before the time for filing look-back cases based upon the hepatitis B vaccine expired. Before 1999, special masters had not decided whether the hepatitis B vaccine caused any compensable injuries. Thus, Mr. Hamrick and his attorney were venturing into relatively uncharted waters. As special masters adjudicate more cases involving the hepatitis B vaccine, petitioners can be fairly expected to evaluate their petitions against the existing precedent. However, until that background is established, petitioners are pursuing a new claim. The relative newness of an issue may be considered in deciding whether to award attorneys' fees. Luciano Pisoni Fabbrica Accessori Instrumenti Musicali v. United States, 837 F.2d 465, 467 (Fed. Cir. 1988).

For these reasons, Ms. Hamrick has established that there was a reasonable basis for filing the petition and that her attorneys' activities during the first year were reasonable. Furthermore, respondent has not objected to the hourly rates requested for any period of time. Therefore, the requested rates, which vary depending upon the attorney and the time of the activity, are accepted and found to be reasonable. Ms. Hamrick is awarded \$682.00 in attorneys' fees for this time.

2. Second Period: Developing The Evidence

A different level of scrutiny is appropriate for the second period of time, the time from 2001 through the end of 2005. The case was filed; the press of the statute of limitations did not require immediate action. During this time, the primary goal of counsel should have been to obtain medical records from Mr. Hamrick’s treating physicians. At an absolute minimum, counsel needed to confirm that Mr. Hamrick received the hepatitis B vaccine. Ideally, these records should have been filed with the petition. 42 U.S.C. § 300aa-11(c). Counsel’s activities that are directed to meeting this goal are presumptively reasonable. Activities for other purposes are not.

From 2001 to 2005, Ms. Hamrick’s attorneys spent 7.38 hours. Ms. Hamrick has sought compensation in the amount of \$1,347.25. However, some activities are not reasonable given the posture of this case.

The following chart shows adjustments between the amount sought and the amount awarded.

Date	Activity	Claimed	Awarded
6/12/2001	File Review	0.40	0.1
11/12/2001	Review notice of appearance; review file; check on status of records	0.50	0.1
7/17/2002	Preparation of pleadings-prepared status report re hep b inclusion	0.33	0.2
1/20/2004	Review case with Sabrina and discuss how to proceed	1.00	0.25
2/06/2004	Go through file and accounts folder to find all of the bills for medical records and determine which ones are prepaids (where the records have not yet been received); update computer and hard copies; send correspondence to clients and providers	0.80	0.25
3/09/2004	Discuss case during meeting with Dr. Geier	0.50	0.0
6/25/2004	Meeting re medical literature and recent decisions (½ travel time charged)	0.05	0.0
TOTAL		3.58	0.9

The first five items are different permutations on reviewing the file. The time claimed for these activities is unreasonable because the file was so thin that little review was required. Ms. Hamrick’s attorneys provide no information about the nature of their file review. Ms. Hamrick’s attorneys were not filing documents in the Clerk’s Office because the case was stayed. The attorneys were not gathering medical records, which were obtained in 2006. The Clerk’s file in 2002 was thin

and Ms. Hamrick’s attorneys do not indicate that their file was any more detailed. Thus, spending more than fifteen minutes reviewing the file at any time seems unreasonable.

Furthermore, the isolated events show that the case was not being developed. If a review of the file is the first step in a process, then the initial file review is reasonable. However, if the file review does not prompt an action relatively close in time, then the review seems pointless. While some time for “file review” may be appropriate, the lack of activity in the case indicates that very little, if anything, was being done. Therefore, the time for these tasks is adjusted as set forth in the table above.

For the last two items, no time is awarded. In 2004, when Ms. Hamrick’s attorney had a meeting with Dr. Geier and another meeting with an unidentified person, Ms. Hamrick’s attorney possessed, at most, 19 pages of medical records. The nature of Mr. Hamrick’s injury was not defined. Thus, any meetings to discuss the case with a potential expert witness, such as Dr. Geier, or to discuss medical literature was premature. Therefore, no time is awarded for these activities.

Other than these seven events, the activities of Ms. Hamrick’s attorneys from 2001-2005 were reasonable, and mostly were devoted to gathering medical records. The total amount of reasonable time, including the 0.95 described above, is 4.75 hours. This number of hours for various attorneys who charged various hourly rates totals \$833.75.

3. Third Period: Resolving The Case

The third period of time is from when the case became active in 2006 until when the motion for judgment on the record was resolved. During this approximately one-year period, Ms. Hamrick’s attorneys claim to have spent 11.3 hours. Most of this time was reasonable.

A few items require adjustment and/or explanation.

Date	Activity	Claimed	Awarded
3/09/2006	Reviewed file for status and put status in chart for Status Conference.	0.30	0.1
3/21/2006	Review charts from Sabrina and prepare for upcoming SC	0.50	0.1
5/05/2006	Review order of 20060504-CMECFs granted	0.10	0.1
5/07/2006	Review order of 20060504-designating as ECF	0.10	0.0
6/22/2006	Multiple attempts to call client in the evening	0.40	0.4
6/23/2006	Multiple attempts to call client in the evening	0.50	0.1

6/24/2006	Multiple attempts to call client in the evening	0.40	0.1
6/25/2006	Multiple attempts to call client this evening	0.40	0.1
TOTAL		2.7	1.0

The first two items consist of time spent by an associate attorney and the partner to prepare for an upcoming status conference. Some amount of time was appropriate. The amount, however, should have been much smaller because the file had been reviewed several times and because the file was not very complex. Again, at most, there were 19 pages of medical records. Thus, preparing for this status conference should have taken only a short amount of time.

The next two items on the chart indicate that the attorney duplicated the work in reviewing an order designating the case as one using electronic case filing. Thus, the second item is eliminated.

The last four items also relate to the same task – trying to reach the client – occurring on four consecutive days. For the first day, the full amount (24 minutes) is allowed. However, only 6 minutes are allowed for each of the next three days. It is unlikely that counsel spent more than one hour, even scattered over three days, trying to contact someone. Thus, these events are reduced to only 0.1 hours each.

For the active period of the case, Ms. Hamrick seeks compensation for 11.3 hours. However, only 9.6 hours were reasonably spent on this case during this period. The amount of compensation awarded is \$2,461.50 (versus \$2,944.50 claimed).

4. Fourth Period: Requesting Attorneys' Fees

The final period of time is the time spent addressing the motion for attorneys' fees and costs. Ms. Hamrick seeks compensation for 4.1 hours of attorney time. This amount is reasonable entirely. The amount of compensation awarded is \$877.50, the same amount requested.

Ms. Hamrick has also requested reimbursement for two items of costs. Both these costs are reasonable and appropriate. She is awarded \$120.00 for the cost of filing her petition and \$6.00 for her attorney's cost for parking.

III. Conclusion

In sum, Ms. Hamrick's attorney acted reasonably in bringing the petition, and spent approximately three and a half hours in this first phase of the case. In the next phase of the case, when very little was happening, Ms. Hamrick's attorney reasonably spent approximately five hours developing and gathering the case. Once the case became active and counsel realized that the case could not be pursued, the attorneys moved relatively quickly in resolving the case. The attorneys spent approximately 10 hours on this task, an amount of time which includes activities related to the

substitution of the petitioner due to Mr. Hamrick's death. Finally, in the attorneys' fees portion of the case, the attorneys reasonably spent approximately four hours.

After reviewing the request, Ms. Hamrick is awarded **\$4,980.75** in attorneys' fees and litigation costs, of which **\$4,860.75** shall be paid jointly to petitioner and her attorney. The remaining **\$120.00** shall be made payable solely to petitioner. The Clerk shall enter judgment accordingly.⁴

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

⁴ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.