IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ONELIA VALDES,	*	
	*	No. 99-310V
Petitioner,	*	Special Master Christian J. Moran
v.	*	Filed: April 30, 2009
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	Attorneys' fees and costs; errors in counsel's billing records; paralegal work done by an attorney; duplication in work by experts
Respondent.	*	

Clifford A. Shoemaker, Shoemaker & Associates, Vienna, VA, for petitioner;
Althea Walker Davis, United States Dep't of Justice, Washington, DC, for respondent.

PUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS[*]

Ms. Valdes alleged that the hepatitis B vaccine caused her to develop joint pain and rheumatoid arthritis. Pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa–10 et seq., she sought compensation for her injuries. The parties resolved this claim without the need for a hearing, and Ms. Valdes was awarded compensation.

Ms. Valdes now seeks an award for her attorneys' fees, her attorneys' costs, and her own costs. Ms. Valdes is awarded $28,190.42 in attorneys' fees, $10,823.49 in attorneys' costs, and $341.59 in costs for herself.

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[*] 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).

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, a party 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. 42 U.S.C. § 300aa–12(d)(4); Vaccine Rule 18(b).

I. Procedural History

Before Ms. Valdes filed her petition, she was apparently represented by an attorney from the Law Office of David Krathen in Fort Lauderdale, Florida. See Pet'r Mot. at pdf 2, and pdf 21. This attorney may have spent some time collecting medical records for Ms. Valdes. See Pet'r Mot. at 2 (showing review of materials from this office). However, an attorney from this law firm did not appear in this case.

When Ms. Valdes filed her petition, she was represented by Mr. Clifford J. Shoemaker. Mr. Shoemaker represented Ms. Valdes until the conclusion of her case. On behalf of Ms. Valdes, Mr. Shoemaker filed a petition on May 14, 1999. No medical records were filed with the petition.[1]

Ms. Valdes filed her first collection of medical records on June 10, 2002. In 2002 and 2003, Ms. Valdes filed additional medical records periodically.

The docket for this case shows that no activity took place from October 2003 until March 2005. During this time, the Chief Special Master was resolving a series of cases in which petitioner alleged that the hepatitis B vaccine caused rheumatoid arthritis. See Capizzano v. Sec'y of Health & Human Servs., No. 00-795V, 2003 WL 2242500 (Fed. Cl. Spec. Mstr. Aug. 5, 2003). After the Federal Circuit issued its decision in Capizzano v. Sec'y of Health & Human Servs., 440 F.3d 1317 (2006), Ms. Valdes's case resumed.

Ms. Valdes was ordered to file a report from an expert. After receiving several enlargements of time, Ms. Valdes filed a report from Dr. Yehuda Shoenfeld on March 6, 2007. Exhibit 40. Approximately one month later, Ms. Valdes filed a revised version of Dr. Shoenfeld's report.

After Ms. Valdes submitted Dr. Shoenfeld's report, the parties discussed resolving this case based upon the costs and risks of continued litigation. This process eventually produced an agreement. The undersigned adopted this stipulation in a decision filed on March 21, 2008.

On November 1, 2008, Ms. Valdes filed the pending motion for attorneys' fees and costs. In this motion, Ms. Valdes stated that she was seeking additional information from "co-counsel" and that this documentation would be filed after it was received. After the passage of several months, Ms. Valdes was informed that her motion would not be adjudicated until the application for attorneys' fees and costs was complete. Order, filed Feb. 4, 2009. Ms. Valdes promptly

[1] The failure to file any medical records with the petition is surprising because Mr. Shoemaker's time sheets show that he reviewed records from Mr. Krathen's office on May 12, 1999. See Pet'r Mot. at pdf 2.

replied that her attempts to obtain information from the predecessor attorney were not successful and that she considered her application complete. Pet'r Status Rep't, filed Feb. 6, 2009.

Respondent then filed a response. Ms. Valdes filed a reply. Ms. Valdes's motion for attorneys' fees and costs is ready for adjudication.

II. Attorneys' Fees

A. Standards for Adjudication

Petitioners in the Vaccine Program who receive compensation are entitled to an award for their attorneys' fees and costs. Like other litigation allowing a shift in attorneys' fees and costs, awards for attorneys' fees and costs in the Vaccine Program must be "reasonable." 42 U.S.C. § 300aa–15(e)(1) (2006).

Reasonable attorneys' fees are determined using the lodestar method – "'multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.'" Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1347-48 (Fed. Cir. 2008) (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)).

Here, one variable in the lodestar calculation is not disputed. The parties have agreed to the reasonable hourly rate for attorneys representing Ms. Valdes. Thus, the remaining question is the reasonable number of hours.

The second factor in the lodestar formula is the reasonable number of hours. Quoting a decision by the United States Supreme Court, the Federal Circuit has explained some of the limits of the number of hours for which compensation may be sought.

> The [trial forum] also should exclude from this initial fee calculation hours that were not "reasonably expended.". . . . Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority."

Saxton v. Sec'y of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993) (emphasis in original) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433-34 (1983)). One reason a trial court possesses discretion to reduce the number of hours is that a trial court "is somewhat of an expert in the time that is required to conduct litigation." Case v. Unified School Dist. No. 233, Johnson County, Kansas, 157 F.3d 1243, 1256 (10th Cir. 1998).

A decision by a special master to reduce the number of hours is entitled to deference because special masters are familiar with the litigation. Saxton, 3 F.3d at 1521 (reversing decision of a judge of the Court of Federal Claims ruling that the special master acted arbitrarily in reducing number of hours); Guy v. Sec'y of Health & Human Servs., 38 Fed. Cl. 403, 406 (1997).

B. Determination

Ms. Valdes originally sought $32,257.27 in attorneys' fees. Pet'r Mot. at 16. Respondent's objections can be classified into three categories. First, respondent objected to time spent by Mr. Shoemaker in working with two non-testifying consultants, Dr. David Geier and Dr. Mark Greenspan. Because Mr. Shoemaker's time depends on the reasonableness of engaging Dr. Geier and Dr. Greenspan, this issue will be discussed in the context of the claim for costs in section III.B below. Respondent's second objection concerns relatively small tasks performed by Mr. Shoemaker. The final objection challenges the reasonableness of engaging one of Mr. Shoemaker's associates, Ms. Knicklebein, to perform tasks that, according to respondent, could be done by a less expensive professional.

Ms. Valdes also sought compensation for the time her attorneys spent in preparing the reply brief in support of her application for attorneys' fees. The time spent was reasonable. Therefore, Ms. Valdes is awarded $600 for the reply brief.

1. Tasks Done by Mr. Shoemaker

Other than Mr. Shoemaker's work with Dr. Geier and Dr. Greenspan, respondent has relatively few objections to tasks for which Mr. Shoemaker seeks compensation.

Respondent notes that Mr. Shoemaker has sought compensation for 0.3 hours (or 18 minutes) for preparing a motion to file electronically. Resp't Resp. at 6; see also Pet'r Mot. at 6 (entry for June 18, 2006). In reply, Ms. Valdes maintains that the entry of 0.3 is actually a typographical error.[2] Mr. Shoemaker intended to enter only 0.1 (or 6 minutes) for this motion, which was only one sentence long. Pet'r Reply at 2-3. Therefore, the amount for attorneys' fees will be reduced by $60.00.

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[2] Additionally, Mr. Shoemaker erred in recording when two status conferences took place. See Resp't Resp. at 7 n.2. Although these mistakes do not affect the amount of attorneys' fees requested, they lessen the confidence in Mr. Shoemaker's time keeping. "[B]ad and excessive billing is inconsistent with superb lawyering." Kenny A. ex rel. Winn v. Perdue, 532 F.3d 1209, 1229, reh'g en banc denied, 547 F.3d 1319 (11th Cir. 2008), cert. granted, __ U.S. __, 2009 WL 229762, 77 USLW 3442, 77 USLW 3553, 77 USLW 3557 (U.S. Apr 06, 2009) (NO. 08-970).

Respondent also questioned Mr. Shoemaker's entry for attempting to reach a treating doctor on New Year's Day 2001. Ms. Valdes agreed to eliminate 0.1 hours. Therefore, the attorneys' fees will be reduced by $25.00. Pet'r Reply at 2.

Ms. Valdes's response is reasonable, yet troubling. A charge of 0.1 hours for preparing a standard motion might be reasonable. However, the need to change the entry is a problem. A pattern appears to be developing in which Mr. Shoemaker creates unreasonable or duplicative entries. Then, when Mr. Shoemaker is challenged about the particular entry, Mr. Shoemaker replies that the entry actually was created in error.

It is important to note that this problem is a pattern. Certainly, an attorney may make an innocent mistake in recording time. Because recording time is a relatively mundane task, errors should be extremely rare. But, errors for Mr. Shoemaker's time are not rare. See Savin v. Sec'y of Health & Human Servs., 85 Fed. Cl. 313, 317 (2008) (stating "seven different special masters reduced fee and cost requests filed by petitioner's counsel in at least fourteen different cases") (emphasis in original); Turpin v. Sec'y of Health & Human Servs., No. 99-535V, 2008 WL 5747914 *2-3 & n.1 (Fed. Cl. Spec. Mstr. Dec. 23, 2008); Duncan v. Sec'y of Health & Human Servs., No. 99-455V, 2007 WL 2465811 *5 (Fed. Cl. Spec. Mstr. May 30, 2008) (deducting time for reading a one-sentence order that was filed in 27 cases), mot. for review den'd, 2008 WL 4743493 (Aug. 4, 2008); Barber v. Sec'y of Health & Human Servs., No. 99-434V, 2008 WL 4145653 *17 (Fed. Cl. Spec. Mstr. Aug. 21, 2008) (deducting time from Mr. Shoemaker's time sheets for, among other things, scheduling a status conference in a case in which he was no longer counsel of record); Melbourne v. Sec'y of Health & Human Servs., No. 99-694V, 2007 WL 2020084 *4 (Fed. Cl. Spec. Mstr. June 25, 2007) (noting that Mr. Shoemaker amended application to remove a blank entry for which he charged 0.3 hours due to a "clerical error"). Mr. Shoemaker's time records contain far more mistakes than any other attorney in the Vaccine Program. Cf. Saxton v. Sec'y of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993) (authorizing special masters to use their experience in reviewing applications for attorneys' fees).

After Mr. Shoemaker submitted his time records in this case, a status conference was held in another case in which Mr. Shoemaker stated that he would review his firm's submissions with more care. See Turpin, 2008 WL 5747914 *2. It is assumed that Mr. Shoemaker did not review the records for Ms. Valdes with the care that he promised because the motion in Ms. Valdes's case was already pending. However, in light of the continued problems with Mr. Shoemaker's

time records, future errors may not be tolerated without penalty.[3] See Environmental Defense Fund, Inc. v. Reilly, 1 F.3d 1254, 1258 and 1260 (D.C. Cir. 1993).

2. Tasks Done by Ms. Knickelbein

Ms. Valdes seeks compensation for work performed by an associate attorney who works for Mr. Shoemaker, Ms. Knickelbein. Initially, Ms. Knickelbein's hourly rate was $155, and while this litigation was pending, it increased to $185. Pet'r Mot. at 12-16.

Respondent objects to compensating Ms. Knickelbein for performing tasks that "are more consistent with paralegal work." Respondent notes, correctly, that Ms. Knickelbein has charged for tasks such as preparing subpoenas for medical records, contacting providers to follow up on requests for records, and locating names and addresses of medical providers. Respondent states that Ms. Kinckelbein's work on these tasks totals 4.9 hours. Resp't Resp. at 8; see also Pet'r Mot. at 12-16.

Respondent's objection is well founded. The undersigned has previously found that Ms. Knickelbein's duties, which do not vary from case to case, are much more consistent with the duties of a paralegal. Turpin v. Sec'y of Health & Human Servs., No. 99-535V, 2008 WL 5747914 *5-7 (Fed. Cl. Spec. Mstr. Dec. 23, 2008).

The argument made to support compensating Ms. Knickelbein at a higher hourly rate is not persuasive. Ms. Valdes maintains that tasks like collecting medical records are tasks that need to be performed by an attorney. Pet'r Reply at 3-4. This argument is soundly contradicted

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[3] The threat of a penalty may motivate Mr. Shoemaker to eliminate "mistakes" in his record keeping. Without the threat of losing some or all of the requested attorneys' fees and costs, Mr. Shoemaker has not improved his submissions.

This case provides a small example of how economic incentives must be changed. In 2006, Mr. Shoemaker's hourly rate was $300. A one-sentence motion to convert to electronic case filing should take no more than six minutes of an attorney's time (or $30.00). Mr. Shoemaker has claimed 18 minutes, which, given Mr. Shoemaker's hourly rate, is $90.00. Pet'r Mot. at 6.

At this point, there are two possibilities. First, no one notices that Mr. Shoemaker charged 18 minutes for preparing this motion. Consequently, Mr. Shoemaker is compensated for an, arguably, undeserved $60.

The second possibility is what actually happened in Ms. Valdes's case. Respondent objects to the unreasonable entry. Mr. Shoemaker, then, modifies his request to only six minutes. This amount of the time is the amount that should have been entered originally. Consequently, Mr. Shoemaker is no worse off than if he had submitted a reasonable request originally.

It is apparent that a third possibility must be explored. When Mr. Shoemaker submits fee requests that contain erroneous, duplicitive, or unreasonable entries, he may lose not just the mistaken entry, but the entire fee application.

by the experience of other law firms. Other law firms routinely use paralegals to obtain medical records. Their success in obtaining medical records without using an attorney shows that Ms. Knickelbein's skills as an attorney are not required.

Consequently, 4.9 hours at $165 will be removed from Ms. Valdes's request. This amount totals $808.50.

III. Costs

A. Standards for Adjudication

Ms. Valdes is entitled to an award for the reasonable costs incurred by her attorneys. 42 U.S.C. § 300aa–15(e). The reasonable amount of an expert's compensation is determined using the same lodestar method used to determine the reasonable amount of compensation for an attorney. Simon v. Sec'y of Health & Human Servs., No. 05-941V, 2008 WL 623833 * 1 (Fed. Cl. Spec. Mstr. Feb. 21, 2008); Kantor v. Sec'y of Health & Human Servs., No. 01-679V, 2007 WL 1032378 *4-8 (Fed. Cl. Spec. Mstr. Mar. 21, 2007).

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

One aspect of the general rule that costs must be reasonable to be compensable is that costs are not awarded for work that is not necessary work. Duplicative work is presumptively unnecessary. Attorneys are not entitled to compensation for performing work that is not

necessary. Hensley, 461 U.S. at 434. The same principle restricts experts. Kantor, 2007 WL 1032378 *4-8 (Fed. Cl. Spec. Mstr. Mar. 21, 2007).

As the party requesting an award of costs, petitioners bear the burden of establishing their reasonableness. Presault, 52 Fed. Cl. at 670. When petitioners fail to meet their burden of proof, such as by not submitting appropriate documentation, special masters have refrained from awarding compensation. See, e.g., Gardner-Cook v. Sec'y of Health & Human Servs., No. 99-480V, 2005 WL 6122520 *4 (Fed. Cl. Spec. Mstr. June 30, 2005). This practice is consistent with how the Federal Circuit and the Court of Federal Claims, two courts that review decisions of special masters, have interpreted other fee-shifting statutes. See Naporano Iron and Metal Co. v. United States, 825 F.2d 403, 404 (Fed. Cir. 1987) (the Equal Access to Justice Act); Presault, 52 Fed. Cl. at 679 (the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970). On the other hand, special masters have also compensated experts when the petitioner failed to submit information about the expert's hourly rate. See, e.g., English v. Sec'y of Health & Human Servs., No. 01-61V, 2006 WL 3419805 *16 (Fed. Cl. Spec. Mstr. Nov. 9, 2006). These principles are the basis for evaluating whether the cost of a specific person is reasonable in the following sections.

B. Determinations

Ms. Valdes seeks $32,048.49 in attorneys' costs. The primary, but not exclusive components, are a cost for Dr. Shoenfeld ($15,200.00), Dr. Geier / MedCon ($8,600), and Dr. Greenspan ($5,125.00). Pet'r Mot. at 16-17. Respondent objects to these three items. In addition, respondent objects to one item of cost incurred by Ms. Valdes personally.

1. Dr. Shoenfeld

Dr. Shoenfeld prepared a report in which he opined that the hepatitis B vaccine triggered rheumatoid arthritis in Ms. Valdes. Exhibit 41 at 11-12. He initially sought compensation in the amount of $15,200, which represents 38 hours of work at an hourly rate of $400 per hour. Dr. Shoenfeld claims to have spent 22 hours reviewing Ms. Valdes's records and another 16 hours preparing and revising his report. Pet'r Mot. at pdf page 37. After respondent challenged Dr. Shoenfeld's hourly rate, Ms. Valdes agreed to revise his hourly rate to $350 per hour. Pet'r Reply at 8.

The amount of time charged by Dr. Shoenfeld is unreasonable. Part of the problem is that according to discussions with Ms. Valdes's attorneys "it appears [that] the work he performed was concurrent and organic, rather than separated, i.e. his review of the literature was conducted during the course of the review of the records and therefore he was unable to 'break it up'." Pet'r Reply at 8.

Dr. Shoenfeld's method of recording time is not acceptable. Billing in large blocks prevents a detailed review. See Broekelschen v. Sec'y of Health & Human Servs., No. 07-137V,

2008 WL 5456319 *4-5 (Fed. Cl. Spec. Mstr. Dec. 17, 2008) (citing cases); Jeffries v. Sec'y of Health & Human Servs., No. 99-670V, 2006 WL 3903710 *7-8 (Fed. Cl. Spec. Mstr. Dec. 15, 2006).

Ms. Valdes does not argue that Dr. Shoenfeld's method of recording his time should be excused because Dr. Shoenfeld did not know any better. Such an argument, if it had been offered, would have been unpersuasive. As an experienced attorney, Mr. Shoemaker knows how experts should record their time and it was incumbent upon Mr. Shoemaker to explain this method to Dr. Shoenfeld. Furthermore, Ms. Valdes's assertion that Dr. Shoenfeld "was unable to 'break it up'" is not accurate. Dr. Shoenfeld was able to record his time with more detail. He just did not.

Although Dr. Shoenfeld did not provide nearly as much detail as appropriate, Dr. Shoenfeld did group his work into two different tasks: reviewing medical records (22 hours) and writing his report (16 hours). The amount of time in these broad categories is unreasonable.

The collection of records in Ms. Valdes's case was relatively typical. Her case is neither particularly short nor particularly long. Therefore, Dr. Shoenfeld should have been able to review her medical records in less than 22 hours, which is nearly three eight-hour days. By way of contrast, Dr. Greenberg completed his review of the medical records and created a chronology in approximately eight hours. Pet'r Mot. at pdf 30. Legal Nurse Associates, in 2003, spent 10.5 reviewing medical records, identifying missing records, and completing a case information summary. In 2001, Dr. Geier spent 8.5 hours reviewing exhibits 1-20.

A reasonable amount of time for reviewing Ms. Valdes's medical records is 12 hours. This amount of time includes the time necessary to prepare a chronology.

The second category of tasks was for Dr. Shoenfeld to prepare and to edit his report. He seeks a total of 16 hours. This amount of time is unreasonable.

Dr. Shoenfeld should have prepared his report in much less time. Dr. Shoenfeld's report is approximately 15 pages in length with another four pages of citations. Approximately ten pages present the chronology of Ms. Valdes's medical history, a task largely accounted for in Dr. Shoenfeld's review of medical records. The analysis for Ms. Valdes follows in the remaining five pages. Spending approximately 16 hours to write five double-spaced pages is not reasonable.[4]

A reasonable amount of time for Dr. Shoenfeld to spend writing a report in Ms. Valdes's case is 10 hours. The total amount of time is 22 hours.

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[4] Although Ms. Valdes asserts that Dr. Shoenfeld spent time reviewing the literature, Dr. Shoenfeld did not list this task on his invoice.

Ms. Valdes has modified her request for Dr. Shoenfeld's hourly rate to $350 per hour. For this case, Dr. Shoenfeld's rate is approved. However, petitioners are placed on notice that evidence supporting the reasonableness of Dr. Shoenfeld's rate may be required in the future.[5]

Consequently, a reasonable amount of compensation for Dr. Shoenfeld is $7,700 (22 * $350).

2. Dr. Geier

Dr. Geier submitted four invoices, which appear at pdf pages 33-36. With one exception noted below, Dr. Geier charged $200 per hour for different activities.

Summary of Dr. Geier's Activities		
Date	Task	# Hours
Jan. 2001	Review medical records	8.5
March 2001	Research reactions to hepatitis B vaccine	10.0
April 2001	Research using VAERS and CDC (charge $250 per hour)	6.0
July 2001	Summary of Ms. Valdes's Case	6.0
Feb. 2002	Research potential expert witnesses	2.0

[5] The undersigned decided the first case in which Dr. Shoenfeld received compensation. Sabella v. Sec'y of Health & Human Servs., No. 02-1627V, 2008 WL 4426040 (Fed. Cl. Spec. Mstr. Sept. 23, 2008). Mr. Sabella, who was represented by Mr. Shoemaker, did not submit any evidence regarding the reasonableness of Dr. Shoenfeld's hourly rate. Although respondent raised this particular concern, Mr. Sabella did not fill this gap. Nevertheless, without having any evidence about the hourly rates for doctors practicing in Tel Aviv, Israel, the undersigned awarded Dr. Shoenfeld compensation by comparing Dr. Shoenfeld to an immunologist, Dr. Bellanti, who practices in Washington, D.C. The undersigned also deducted $50 per hour to reflect a difference between the two cities. Id. at *34-35.

On appeal, a judge at the Court of Federal Claims reversed the deduction of $50 per hour as being arbitrary and capricious. Sabella, __ Fed. Cl. ___, 2009 WL 539880 *22.

Other decisions have followed Sabella in awarding Dr. Shoenfeld $350 per hour. However, there has not been any evidence submitted to show what the reasonable rate of compensation is for a doctor in Tel Aviv, Israel. Petitioners, especially petitioners represented by Mr. Shoemaker, should be aware that they will be expected to present evidence about the reasonableness of Dr. Shoenfeld's hourly rate in future cases.

Summary of Dr. Geier's Activities		
Date	Task	# Hours
Feb. 2002	Prepare publication on adverse reactions to hepatitis B vaccine	4.0
March 2002	Summarize materials for meeting with Mr. Shoemaker	3.0
March 2002	Meeting with Mr. Shoemaker	2.0
TOTAL		41.5

Retaining Dr. Geier was not reasonable. A lengthy explanation is not necessary because many other decisions have refrained from compensating Dr. Geier.

At best, Ms. Valdes argues that employing Dr. Geier to review Ms. Valdes's case was reasonable because the hepatitis B cases were relatively new. (This argument overlooks the fact that Ms. Valdes's case was filed in May 1999, and Dr. Geier was not engaged until January 2001.) While Ms. Valdes's argument has some superficial appeal, the argument is not persuasive.

Like many other petitioners, Ms. Valdes fails to explain what in Dr. Geier's background makes him a reasonable person to consult. Dr. Geier does not specialize in immunology, the field best suited to explain how a person might react to an immunization. Dr. Geier does not specialize in epidemiology, the field best suited to conduct research using databases. By 2001, when Dr. Geier was initially retained, many special masters had already found his opinions unpersuasive and called into question Dr. Geier's credibility. E.g., Sabella, 2009 WL 539880 *20 (affirming special master's decision not to compensate Dr. Geier); Ormechea v. Sec'y of Health & Human Servs., No. 90-1683V, 1992 WL 151816 *7 (Cl. Ct. Spec. Mstr. June 10, 1992) ("Because Dr. Geier has made a profession of testifying in matters to which his professional background (obstetrics, genetics) is unrelated, his testimony is of limited value.")

In short, if a well-informed, hypothetical client were asked to pay for Dr. Geier's services in 2001-2002, the reasonable response from the client would have been to refrain from retaining Dr. Geier. Consequently, Ms. Valdes's request for the Vaccine Injury Compensation Trust Fund to pay for Dr. Geier's work is rejected. Hours spent by Ms. Valdes's attorneys in working with Dr. Geier are also rejected. The total amount deducted is $1,025.00. See Resp't Resp. at 7 n.3 (citing time entries).

3. Dr. Greenspan

Beginning in June 2006, Dr. Greenspan claims to have spent 17 hours on Ms. Valdes's case. His primary activities were preparing a summary of Ms. Valdes's medical history and working with an unnamed expert. (Presumably, this expert is Dr. Shoenfeld). Dr. Greenspan charges $300 per hour for most work with 0.75 hours charged at $325 per hour. The total cost sought for Dr. Greenspan is $5,125.00. Dr. Greenspan's invoice appears at pdf page 30-31.

The primary problem with Dr. Greenspan's work is that Ms. Valdes does not explain why it is necessary. For example, respondent particularly challenged the amount of time that Dr. Greenspan spent summarizing medical records. Respondent notes that a nurse-consultant had prepared a medical summary in 2003. Dr. Shoenfeld also spent time summarizing medical records. Resp't Resp. at 11. Yet, Ms. Valdes's reply fails to engage this issue. See Pet'r Reply at 6-7.

Instead, Ms. Valdes contends that one portion of her attorney's work (or her consultant's work) cannot be taken out of the case. Pet'r Reply at 6-7. This argument lacks merit. Petitioner bears the burden of showing the reasonableness of activities on a line-by-line basis. Mares v. Credit Bureau of Raton, 801 F.2d 1197, 1210 (10th Cir. 1986). Ms. Valdes does not offer any argument how specifically Dr. Greenspan's work advanced her case. His work appears to duplicate work performed by Mr. Shoemaker, other attorneys working for Mr. Shoemaker, or Dr. Shoenfeld. Without some concrete explanation that Dr. Greenspan did something that was not being done by someone else, Ms. Valdes has failed to meet her burden of establishing the reasonableness of engaging Dr. Greenspan. Consequently, Ms. Valdes's request for compensation is denied.

Denying compensation for Dr. Greenspan's work is consistent with other decisions. Sabella, 2009 WL 539880*27 (Feb. 10, 2009) (affirming denial of a portion of Dr. Greenspan's fees); Savin, 85 Fed. Cl. at 313 (affirming denial of a portion of Dr. Greenspan's fees); Wadie v. Sec'y of Health & Human Servs., No. 99-493V, 2009 WL 961217 *7-8 (Fed. Cl. Spec. Mstr. Mar. 23, 2009) (denying most of charges sought by Dr. Greenspan). Ms. Valdes has not distinguished these cases from her case.

Mr. Shoemaker's work with Dr. Greenspan totals $2,527.85. Ms. Knickelbein's work totals $220.50. See Resp't Resp. at 7 n.4 & n.5. Thus, $2,748.35 of the requested attorneys' fees are not reasonable.

4. Ms. Valdes's Costs

Ms. Valdes seeks reimbursement of $741.59, which includes a cost of $400 for sending blood samples to William Hildebrandt, Ph.D. Pet'r Mot. at 20-21.[6] Apparently, Ms. Valdes's

[6] The last name is also spelled Hildebrand (without the terminal "t").

former attorney believed that having Mr. Hildebrandt evaluate a sample of Ms. Valdes's blood would advance her case. Pet'r Reply at 8.

Ms. Valdes has failed to meet her burden of explaining why this cost was reasonable. (In this regard, Ms. Valdes may be hampered by a failure of communication between her current attorney and her former attorney. But, Ms. Valdes, ultimately, is responsible for her attorneys' acts. See Pioneer Investment Servs. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 396 (1993); Link v. Wabash R.R. Co., 370 U.S. 626, 633-34 (1962)). Numerous petitioners who claimed that the hepatitis B vaccine harmed them have sought compensation without having an evaluation of their blood performed. The timing of the request is especially troubling. Ms. Valdes received the hepatitis B vaccination in 1996 and 1997. Ms. Valdes has presented no evidence to show why a blood test performed in August 1998, 1-2 years later, would provide meaningful information. Finally, Ms. Valdes provides no information about Mr. Hildebrandt and why he could advance her case. Consequently, Ms. Valdes's request for reimbursement of this item is denied. She is awarded **a total of $341.59** ($741.59 - $400).

IV. Conclusion

Ms. Valdes has established that some portion of her requested attorneys' fees and costs are reasonable. The reasonable portion is presented in the following tables.

Summary of Determinations for Attorneys' Fees	
Attorneys' fees (originally)	$32,257.27
Attorneys' fees reply brief	$600.00
Deduction Mr. Shoemaker's General Activities	($85.00)
Deduction Ms. Knickelbein's Paralegal Work	($808.50)
Deduction Attorneys' Work with Dr. Geier	($1,025.00)
Deduction Attorneys' Work with Dr. Greenspan	($2,748.35)
TOTAL ATTORNEYS' FEES	$28,190.42

Summary of Determinations for Attorneys' Costs	
Attorneys' Costs (Original Amount)	$32,048.49
Deduction for Dr. Geier	($8,600.00)
Deduction for Dr. Greenspan	($5,125.00)
Deduction for Dr. Shoenfeld	($7,500.00)
TOTAL ATTORNEYS' COSTS	$10,823.49

Ms. Valdes is awarded $28,190.42 in attorneys' fees, $10,823.49 in attorneys' costs, and $341.59 in costs for herself.

A status conference to discuss this decision will be held on **Wednesday, May 6, 2009 at 3:30 P.M.**

IT IS SO ORDERED.

S/ Christian J. Moran
Christian J. Moran
Special Master