

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-483V

Filed: May 20, 2011

For Publication

JORGE ALBERTO CARCAMO, *

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Petitioner, *

*

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v. *

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Attorneys' Fees and Costs;

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Reasonable Fee, Hours Expended;

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Vague, unspecified billing

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

*

*

Respondent. *

*

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Dale K. Galipo, Woodland Hills, CA, for petitioner.

Michael P. Milmo, Glenn A. Macleod, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

On June 29, 2007, petitioner Jorge Carcamo and his wife Elsa filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that Jorge's flu vaccination caused his transverse myelitis. Because Elsa had no standing to sue under the Vaccine Act since Jorge is not deceased, disabled, or a minor, 42 U.S.C. §300aa-11(b)(1)(A), the undersigned issued an Order dated August 6, 2007 dismissing Elsa from the petition.

This case never went to hearing but was resolved by settlement after petitioner obtained expert reports, and filed medical records, and depositions taken when the case was a civil action against the vaccine manufacturer and administrator. On September 30, 2009, the undersigned

¹ Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to 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.

issued a damages decision based on the parties' stipulation, and judgment entered on October 15, 2009.

On July 16, 2010, petitioner filed a petition for award of attorneys' fees and costs, requesting \$100,450.00 in attorneys' fees, and \$3,414.00 in costs. On September 15, 2010, respondent filed her Opposition to Petitioner's Petition for Fees and Costs, alleging that the rates petitioner seeks are unreasonable, the hours excessive and unsupported, and the costs without documentation. On November 1, 2010, petitioner filed a reply to respondent's Opposition, along with supporting documents and affidavits. On November 19, 2010, respondent filed a Sur-Reply to Petitioner's Petition for Fees and Costs, stating among other things, that 211 hours of attorney time to resolve this case is unreasonable. R Sur-Reply, p. 4.

Since petitioner's counsel Dale K. Galipo and Zipora Kohanim requested hourly rates of \$500.00 and \$400.00 respectively on the basis that this was a complex case both on liability and damages (P Reply to R Opposition to P Petition for Attorney Fees, etc., p. 1), and the Federal Circuit was determining in three cases issues about what attorneys' fees are applicable in the Vaccine Program and whether vaccine litigation is complex so as to justify an enhanced hourly rate, the undersigned waited until the Federal Circuit issued those three opinions. Now those opinions are published.

Petitioner interpreted the Federal Circuit opinion in *Avera v. Sec'y of HHS*, 515 F.3d 1343 (Fed. Cir. 2008), to mean that local market rates apply in awarding attorneys' fees and costs. P Reply to R Opposition to P Petition for Attorney Fees, etc., p. 3 ("The lodestar is the presumptive reasonable rate amount.") This is the opposite of what the Federal Circuit held in *Avera*.

The Federal Circuit stated in *Avera*, 515 F.3d at 1348 that the forum, i.e., DC, rate generally applies in vaccine cases unless an attorney has not spent the bulk of his or her time in DC on the case and the local geographic market rate for the attorney is very significantly below the DC rate. This is known as the *Davis* exception from *Davis County Solid Waste Management and Energy Recovery Special Service District v. United States Environmental Protection Agency*, 169 F.3d 755, 758 (DC Cir. 1999). *Avera*, 515 F.3d at 1349. Petitioners' attorney in *Avera* was Robert Moxley of Cheyenne, Wyoming. 515 F.3d at 1346. Initially, petitioners in *Avera* requested \$200.00 per hour for Mr. Moxley's fee. In an amended fee petition, petitioners requested *Laffey* Matrix fees for Mr. Moxley amounting to \$574.00 to \$598.00 per hour. The *Laffey* Matrix is based on hourly rates allowed by the U.S. District Court for the District of Columbia in *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354, *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (DC Cir. 1984), *overruled by Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516 (DC Cir. 1988) ("We do not intend, by this remand, to diminish the value of the fee schedule compiled by the District Court in *Laffey*. Indeed, we commend its use for the year to which it applies.").

The Federal Circuit held that Mr. Moxley's local geographic market rate was very significantly below the DC rate and, therefore, the *Davis* exception applied since the bulk of Mr. Moxley's activities was outside DC. In *Davis*, the attorney whose fees were at issue practiced in

Salt Lake City, Utah. 515 F.3d at 1349. The Federal Circuit stated in *Avera* that, assuming petitioners' filings were accurate, the local rate for Cheyenne was \$200 based on petitioners' original fee request, and the forum rate was approximately \$600 based on petitioners' amended fee request. This meant that the local geographic market rate for Cheyenne was one-third of or very significantly less than the forum rate. 515 F.3d at 1349-50.

In *Rodriguez v. Sec'y of HHS*, 632 F.3d 1381 (Fed. Cir. 2011), petitioner's counsel practices in New York City, and sought Laffey Matrix fees. He was awarded forum rates because he did not fall under the *Davis* exception to the rule of *Avera* that the forum rate applies to attorneys' fees. *Id.* at 1383, 1384. The Federal Circuit stated that vaccine litigation is not analogous to complex federal litigation. *Id.* at 1385. If a vaccine case were particularly challenging, the Federal Circuit stated that would be reflected in the number of hours expended. *Id.* "The Vaccine Act provides petitioners with an alternative to the traditional civil forum, applies relaxed legal standards of causation, and has eased procedural rules compared to other federal civil litigation. Vaccine Act proceedings, ... involve no discovery disputes, do not apply the rules of evidence, and are tried in informal, streamlined proceedings before special masters well-versed in the issues commonly repeated in Vaccine Act cases...." *Id.*

In *Masias v. Sec'y of HHS*, 634 F.3d 1283 (Fed. Cir. 2011), Robert Moxley, the same attorney who appeared for petitioners in *Avera*, returned to the Federal Circuit to argue on behalf of his client that *Avera* was wrong. *Id.* at 1288. Petitioner had been awarded an hourly rate of \$160-\$220 for Mr. Moxley in *Masias*. *Id.* at 1286. The Federal Circuit held that the decision in *Avera* is thorough and well-reasoned. *Id.* at 1288. The Federal Circuit rejected Mr. Moxley's argument on behalf of his client that vaccine attorneys should be compensated at a "federal specialty" rate because of the assertion that Vaccine Act litigation is complex. *Id.* at 1289-90.

In *Hall v. Sec'y of HHS*, ___F.3d ___, 2011 WL 1204399 (Fed. Cir. Apr. 1, 2011), Richard Gage, a former partner of Robert Moxley and also a practitioner in Cheyenne, Wyoming, argued on behalf of his client that he was wrongly awarded the local hourly rate instead of the forum rate. He had initially requested an hourly rate of \$175 to \$200 for work performed from August 2002 to December 2005. *Id.* at *1. The Federal Circuit rejected petitioner's arguments and affirmed the local rate award. *Id.* at *3, 4. The Federal Circuit compared the forum hourly rate of \$350 to Mr. Gage's local hourly rate of \$220 to \$240 and found the special master's decision that this was a very significant difference to be within the special master's discretion. *Id.* at *6.

The Federal Circuit thus holds that there is no federal specialty rate in litigating Vaccine Act cases, that Vaccine Act cases are not complex civil litigation, and that the forum rate applies unless the local market rate is very significantly lower than the forum rate. In the instant action, Los Angeles's market rate is not very significantly lower than the forum rate. Therefore, Mr. Galipo and Ms. Kohanim receive the forum rate, not the Los Angeles rate.

The parties have raised three issues: (1) the appropriate hourly rate, (2) the number of hours expended, and (3) costs.

I. Determining fees

(a) Applicable law

Special masters may use their experience in Vaccine Act cases to determine whether the hourly rate and the hours expended are reasonable. *Wasson v. Sec’y of HHS*, No. 90-208V, 24 Cl. Ct. 482, 483 (1991), *aff’d*, 988 F.2d 131 (Fed. Cir. 1993) (Table) (special masters have broad discretion in calculating fees and costs awards). If a rate is unreasonable, the undersigned not only has the authority, but also the obligation to reduce a requested award to reach a “reasonable amount.” *Perreira v. Sec’y of HHS*, 27 Fed. Cl. 29, 34 (1992), *aff’d*, 33 F.3d 1375 (Fed. Cir. 1994). “To be ‘reasonable,’ the method for calculating a fee award must be not merely justifiable in theory but also objective and non-arbitrary in practice.” Justice O’Connor’s concurrence in *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 483 U.S. 711, 732 (1987).

Petitioner has the burden to demonstrate that the hourly rate requested is reasonable. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984) (“the burden is on the fee applicant to produce satisfactory evidence--in addition to the attorney’s own affidavits--that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.”). A fee application is not an exercise in vagueness and unsubstantiated demands. Rather, a petitioner bears the burden to file documentation adequately substantiating the requested fees and costs incurred over the course of the litigation. *Saunders v. Sec’y of HHS*, 26 Cl. Ct. 1221, 1226 (1992), *aff’d*, 25 F.3d 1031 (Fed. Cir. 1994). A request for fees “must be complete when submitted.” *Duncan v. Sec’y of HHS*, No. 99-455V, 2008 WL 4743493, at *1 (Fed. Cl. 2008).

(b) Analysis

As petitioner was awarded compensation in this case, he is entitled to an award of reasonable attorneys’ fees and costs. § 300aa-15(e)(1)(A). The first issue here is what hourly rate is reasonable for attorneys’ fees in this case.

The bulk of petitioner’s attorneys’ work was performed not in Washington, DC (i.e., the forum), but in Woodland Hills, California. Woodland Hills is part of the San Fernando Valley and the Los Angeles metropolitan area. The prevailing rate in Los Angeles is not very significantly lower than the rate in Washington. Therefore, the forum rate, i.e., Washington DC, applies.² *See Avera*, 515 F.3d at 1349 (quoting *Davis*, 169 F.3d at 758).

Petitioner seeks \$500.00 per hour for Mr. Galipo and \$400.00 per hour for Ms. Kohanim, which are allegedly the local rates typically billed for work performed in Woodland Hills. In support of these rates, both Mr. Galipo and Ms. Kohanim filed declarations detailing their reasons

² *Avera* and *Davis* did not discuss other fora, such as Los Angeles, having higher local rates than the Washington, DC forum. The *Davis* exception was crafted to prevent “windfalls inconsistent with congressional intent.” 169 F.3d at 759. *Avera* makes clear that when a significant *downward* deviation and resulting windfall are not at issue, “a court in general should use the forum rate in the lodestar calculation.” 515 F.3d at 1349.

for receiving such rates. Many, although not all, of these statements are relevant to the calculation of their rates here. Mr. Galipo graduated law school in 1984, was admitted to the California bar in 1989, and has managed his own law firm since 1991. Mr. Galipo has tried approximately 100 civil cases through verdict, and has won the majority of his civil jury trials. He also has substantial criminal litigation experience, less relevant here, but still worthy of consideration as litigation experience.

Ms. Kohanim provided fewer facts in her declaration. She graduated from law school in 1998, and has managed her own law firm specializing in personal injury cases since 1999.

Petitioner also filed, as exhibit 1 to P Reply to R Opposition to P Motion, a copy of an order from the U.S. District Court for the Central District of California. In that order, Judge Virginia A. Phillips found that in that particular federal civil rights action, Mr. Galipo was entitled to a reasonable rate of \$500.00 per hour in attorneys' fees. This is some evidence that Mr. Galipo is an attorney of considerable experience and skill. The undersigned notes that this order concerns a civil rights (Section 1983) claim, in which attorneys' fees are available only for successful plaintiffs. In light of the Federal Circuit's decision in *Avera*, however, the local rates are not what petitioners' counsel receive as a general rule in vaccine cases. They receive the forum rate.

1. Forum Rate.

The *Laffey* Matrix, although inapplicable to awarding hourly rates in vaccine cases, is useful because it employs the Consumer Price Index or CPI to determine what percentage increase is appropriate over time and reflects an increase in hourly rate dependent upon the number of years an attorney has been in practice.

Dale K. Galipo has been admitted to practice law in the State of California for 21 years. According to petitioner's briefs, Ms. Kohanim has been practicing law for 12 years. Pet. Rep., p. 4. However, since this is Mr. Galipo's and Ms. Kohanim's first Vaccine Act case, their experience does not directly extend to Vaccine Act cases. The undersigned has taken into account their significant experience litigating in both state and federal courts as well as their inexperience with Vaccine Act cases in arriving at their hourly rates.

Mr. Galipo's experience with over two decades in state and federal courts would normally put him at the highest end of the range for attorneys with substantial experience. However, the market rate for an attorney without Vaccine Act experience is logically somewhat lower. Although petitioner's counsel were able to obtain a favorable result for petitioner, an experienced vaccine practitioner likely would have been able to do so more efficiently, thus justifying a less than maximum rate for Mr. Galipo and Ms. Kohanim compared to an attorney experienced in vaccine litigation in the forum.

Relying on *Rodriguez*, the undersigned finds that the forum rate for an attorney with substantial experience in Vaccine Act litigation is between \$275.00 and \$360.00 per hour for work performed in 2006 and beyond. *Rodriguez*, 2009 WL 2568468, at *15; see also *Schueman v.*

Sec'y of HHS, 2010 WL 3421956, at *4 (Fed. Cl. Spec. Mstr. Aug. 11, 2010). The CPI reflected in the *Laffey* Matrix used an increase of 4.9% from 2005 to 2006, 3.4% from 2006 to 2007, 3.5% from 2007 to 2008, and stayed stable from 2008 to 2011. The undersigned incorporates these increases into Mr. Galipo's and Ms. Kohanim's rates but reduces the hourly rate from the peak award to vaccine attorneys because of counsel's inexperience in vaccine cases.

The undersigned reduces the high end of the previously awarded scale of experienced counsel rate from \$360.00 per hour by 15% to \$306.00 per hour. This is Mr. Galipo's rate for 2006. His 2005 rate is 4.9% lower, at \$291.00 per hour. The undersigned increases by the *Laffey*-suggested 3.4% rate for 2007, and arrives at a rate of \$316.00. The undersigned increases the award by 3.5% to arrive at Mr. Galipo's 2008 and 2010 rate of \$327.00.

Ms. Kohanim's experience level would qualify her for a rate in 2007 equal to 88.2% of Mr. Galipo's rate. In his petition for attorneys' fees and costs, petitioner requested \$400.00 per hour for Ms. Kohanim, equal to 80% of the \$500.00 per hour requested for Mr. Galipo. This is 8.2% different than the percentage difference suggested by the *Laffey* Matrix. Because the *Laffey* Matrix takes into account increases in the CPI and the general state of the economy, rather than the billing practices of only one law firm, it better represents the state of the legal market, and is thus more persuasive in finding the proper rate in the Vaccine Program forum. Under this guidance, Ms. Kohanim's 2005 rate is 88.2% of Mr. Galipo's \$291.00 per hour, or \$256.00. Her 2006 rate is increased by 4.9%, to \$268.00. Her 2007 rate is increased by 3.4%, to \$278.00. Her 2008-10 rate is increased by 5.6%, to \$293.00.

According to these reasonable market rates for attorneys of substantially similar experience and skill, the undersigned calculates the total amounts according to the number of billable hours requested.

Mr. Galipo requested the following hours now multiplied by the correct rates: 49.5 hours in 2005 x \$291.00/hr.; 13 hours in 2006 x \$306.00/hr.; 26 hours in 2007 x \$316.00/hr.; 44.67 hours in 2008 x \$327.00/hr.; 24.33 hours in 2009 x \$327.00/hr.; and 4 hours in 2010 x \$327.00/hr. for a total of **\$50,469.50**.

Ms. Kohanim requested the following hours now multiplied by the correct rates: 14 hours in 2005 x \$256.00/hr.; 7 hours in 2006 x \$268/hr.; 9 hours in 2007 at \$278.00/hr.; 8.5 hours in 2009 at \$293.00/hr.; and 12 hours in 2009 at \$293.00/hr. for a total of **\$13,968.50**.

The total amount, at the requested number of hours and correct rates is **\$64,438.00**. This amount will be adjusted downwards by the number of unbillable hours in the next section.

II. Number of Hours Expended

In determining the number of hours reasonably expended, a court must exclude hours that are "excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice is ethically obligated to exclude such hours from his fee submission." *Hensley v. Eckerhart*, 461 U.S. 424, 434

(1983). “[H]ours that were not reasonably expended” should be excluded from the initial lodestar calculation. *Id.*

Respondent first objects to the number of hours billed by petitioner’s counsel on the grounds that there are no detailed billing records presented, and the hours routinely billed are only in one-hour, and sometimes half-hour, increments.

The undersigned agrees that petitioner’s counsel’s billing methods are highly problematic. Special masters have traditionally been critical of billing in large increments, including 15-minute blocks. *Isom v. Sec’y of HHS*, No. 94-770, 2001 WL 101459, at *2 (Fed. Cl. Spec. Mstr. Jan. 17, 2001); *Winters v. Sec’y of HHS*, No. 91-04V, 1993 WL 114646, at *1 (Fed. Cl. Spec. Mstr. Apr. 1, 1993). Billing in half-hour and 10-minute increments, but in practice mainly in one-hour time blocks, may grossly misstate the time actually spent on billable tasks, and conflate billable time with unbillable time. The undersigned doubts the accuracy of billing in five- or six-hour blocks, when it is customary to bill in .1 hour (six-minute) intervals, not only in the Vaccine Program, but in private practice in general. As another example, Mr. Galipo consistently bills exactly one hour for every status conference and the preparation that went into it. Given that status conferences routinely range from two to 30 minutes, the undersigned finds the prospect that Mr. Galipo spent exactly 60 minutes on each status conference unlikely.

Petitioner is required to maintain contemporaneous, specific billing records to aid the special master in determining the reasonableness of the tasks performed. See *Guidelines for Practice Under the National Vaccine Injury Compensation Program* (Office of Special Masters, United States Court of Federal Claims, Rev. Ed. Nov. 2004), Section XIV.A.3, at 19 (“Each task should have its own line entry indicating the amount of time spent on that task. Several tasks lumped together with one time entry frustrates the court’s ability to assess the reasonableness of the request.”); *Broekelschen v. Sec’y of HHS*, No. 07-137V, 2008 WL 5456319, at *4 (Fed. Cl. Spec. Mstr. Dec. 17, 2008) (“‘block billing’ is not preferred”). Because of the vagueness of petitioner’s billing records, and the dearth of information available, even after petitioner was given the opportunity to reply and did reply to respondent’s brief, the undersigned applies discretion in finding a reasonable number of hours for each task based on the undersigned’s experience.

Mr. Galipo spent a total of 16 hours on legal research. Ms. Kohanim spent 3 hours on legal research. The undersigned does not find this amount to be excessive; particularly because it helped result in a successful negotiation with respondent’s counsel.

Mr. Galipo billed 21.5 hours for meeting with petitioner. Ms. Kohanim billed 22 hours for meeting with petitioner. Petitioner did not need two attorneys present at every meeting, and billing for two attorneys’ time for meeting with a client is duplicative. Although petitioner or his counsel undoubtedly requested this large amount of time in meetings over the course of the litigation, it was unreasonable to have two attorneys attend every meeting for a total of 43.5 hours spent on meeting with a client, particularly when the case hinged on medical records and expert reports and testimony, not on client testimony. The undersigned reduces half of the hours of the lower-billing Ms. Kohanim for a total of 11 hours. Since it is not clear which meetings may have

necessitated the attendance of Ms. Kohanim, the undersigned multiplies 5.5 (half of 11) by her average billing rate of \$274.00, for a total of **\$1,507.00**.

On 9/17/2005 for two hours, on 1/11/2006 for two hours, on 1/27/2006 for 1.5 hours, on 8/13/2007 for 2 hours, on 5/8/2008 for 1.5 hours, on 3/25/2009 for 2 hours, on 5/23/2009 for 1.5 hours, and on 7/31/2009 for one hour, Mr. Galipo and Ms. Kohanim each billed for meeting with one another. Since petitioner has not provided any details of the purpose of these meetings, the undersigned is unable to conclude whether any of these meetings was necessary or excessive. The undersigned reduces Ms. Kohanim's total of 13.5 hours at her corresponding yearly rates. This amounts to 2005 billings at \$256.00 x 2; 2006 billings at \$268.00 x 3.5; 2007 billings at \$278.00 x 2; and 2008-09 billings at \$293.00 x 6 for a total of **\$3,764.00**.

Further problems arise with Mr. Galipo's various methods of billing for reviews. On August 4, 2005, he billed 5 hours for "Review [of] Existing File." On August 6, 2005, September 5, 2005 and September 6, 2005, he billed for Review of Medical Records and Review of Depositions. Thorough review of the depositions (from the previously filed and dismissed civil suit) and medical records was warranted. However, it is far from clear what exactly reviewing the client's file entails if it is separate from legal research, talking to the client, reviewing medical records, reviewing court orders, reviewing vaccination records, reviewing letters, reviewing documents, preparation for status conferences, reviewing respondent's report, reviewing expert reports, reviewing correspondence, reviewing a physician's statement, or reviewing a judgment. Each of the foregoing was one or more billing entries used by Mr. Galipo for a "review." The undersigned should not have to guess what file review might be if it is not for one of the foregoing. Therefore, the undersigned reduces the award for each instance of unspecified and unsubstantiated file review. This occurred on 8/4/2005 (5 hours at billing rate of \$291.00/ hr.); 10/5/2005 (2 hours at \$291.00/ hr.); 1/7/2006 (2 hours at \$306.00/hr.); 5/15/2007 (2 hours at \$316.00); 6/29/2007 (1 hour at \$316.00/ hr.); 7/30/2007 (ostensibly .5 hour at \$316.00/ hr.); 3/5/2008 (1 hour at \$327.00/hr.); and 10/14/2008 (2 hours at \$327.00/ hr.). This reduction amounts to **\$4,736.00**

Ms. Kohanim, to a lesser extent, bills for unspecified "Review of File." The undersigned reduces this billing as well. These reviews occurred on 8/9/07 (1 hour at \$278.00/hr.); 3/24/2009 (1 hour at \$293.00/hr.); and on 11/09/2009 and 12/02/2009 (1 hour collectively at \$293.00). This reduction amounts to **\$864.00**.

Respondent also objects to petitioner's counsel's total billing, stating that 211 hours of attorney time is *per se* excessive. While a number of duplicative, unspecified, and excessive hours have been reduced here, the undersigned is not aware of any authority dictating what is *per se* excessive, and does not find occasion to establish such a bright line rule here.

Finally, respondent objects to Ms. Kohanim's hours *in toto*. The basis is the duplicative nature of having two attorneys work on a case, which the undersigned has dealt with above. Respondent also bases this objection on the fact that respondent's counsel did not directly deal with Ms. Kohanim. This argument is unpersuasive since an attorney for petitioner is not required to deal with respondent's counsel directly if there is more than one counsel working on the case.

As respondent knows, per Vaccine Rule 14(b)(1), only one petitioner's counsel is recorded as counsel of record, but it is not unusual to have junior counsel assisting on a case. Beyond the reductions noted above, the undersigned rejects respondent's *in toto* argument.

The total amount of reductions is **\$10,871.00**.

III. Costs

Respondent initially objected to all costs as being undocumented. In response, petitioner provided a listing of the six costs claimed. In reply, respondent maintained only one objection: to \$2,000.00 for "Retaining Dr. Okhavat." While respondent is correct in noting that petitioner did not provide a detailed explanation of the cost, this was a case where an expert was appropriate since the impetus was to achieve a settlement. Moreover, both Mr. Galipo and Ms. Kohanim do detail that they spent three hours in consultation with Dr. Okhavat (two hours on September 13, 2005 and one hour on December 11, 2008). Moreover, since Mr. Galipo listed reviewing Dr. Okhavat's reports on December 9, 2008, the undersigned must assume that Dr. Okhavat wrote at least two reports. Hours for attorney Dale K. Galipo, pp. 1, 8; Hours for attorney Zipora Kohanim, pp. 1, 2. The cost of \$2,000.00 for Dr. Okhavat's activities seems reasonable. The undersigned therefore awards the total costs requested, or **\$3,414.00**.

Conclusion

Petitioner has requested \$100,450.00 in attorneys' fees. The undersigned finds that petitioner's requested attorney hourly rates are erroneous in light of *Avera* and the hours requested are excessive. The undersigned has calculated the attorneys' fees according to the forum rate for each attorney, in accordance with their experience, for each year from 2005 through 2010. The undersigned then reduced the total amount, of \$64,438.00, by the number of duplicative, excessive, unspecified or otherwise unbillable hours multiplied by each attorney's respective rate. By subtracting the total reductions, or \$10,871.00, from \$64,438.00, the undersigned comes to a final figure of \$53,567.00.

In the recent case of *Perdue v. Kenny A.*, the United States Supreme Court found that the presumptive lodestar fee should be enhanced or reduced only in extraordinary circumstances, which were not present in that case. 130 S. Ct. 1662, 559 U.S. ____ (2010). The Court stated that the lodestar may be enhanced only when "specific evidence" shows "that the lodestar fee would not have been 'adequate to attract competent counsel.'" 130 S. Ct. at 1674 (quoting *Blum*, 465 U.S. at 896). In this case, the undersigned finds no reason based on the Federal Circuit's decisions in *Masias* and *Rodriguez* to award an enhanced rate because the Federal Circuit has held that vaccine litigation is not complex civil litigation and petitioner's counsel do not receive a federal specialty rate. The amount awarded reflects the forum rate: **\$53,567.00**.

Pursuant to General Order #9, petitioner states that he has incurred no costs in this matter.

The undersigned awards the full costs requested in the amount of **\$3,414.00**. Together

with fees, the total is **\$56,981.00**.

The undersigned awards a total of **\$56,981.00**, representing reimbursement for attorneys' fees and costs. The award shall be in the form of one check made jointly payable to petitioner and the Law Offices of Dale K. Galipo in the amount of **\$56,981.00**.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

Dated: _____

Laura D. Millman
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.