

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SHADI WADIE, *

Petitioner, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

No. 99-493V
Special Master Christian J. Moran

Filed: March 23, 2009

Attorneys' fees and costs; client
communication, retention of experts
and consultants

Clifford Shoemaker, Esq., Shoemaker & Associates, Vienna, VA, for Petitioner;
Althea Walker Davis, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

PUBLISHED DECISION AWARDING ATTORNEYS' FEES AND COSTS*

Mr. Wadie and the respondent agreed to resolve his claim alleging that the hepatitis B vaccine caused him to suffer autoimmune hepatitis. Mr. Wadie now seeks an award for his attorneys' fees and costs. He is awarded \$22,520.77 in attorneys' fees and \$3,973.52 in attorneys' costs.

I. Procedural History

Mr. Wadie filed his first motion for attorneys' fees and costs on September 16, 2008. In this motion, he sought approximately \$25,500 in attorneys' fees. He also sought approximately

* 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).

\$5,500 in attorneys' costs. The list of costs included two items that are discussed in this decision, a cost for services performed by Dr. Mark Greenspan, and a cost for work performed by Dr. Mark Geier. Pet'r Mot., filed Sep. 16, 2008, at 13. Mr. Wadie's original motion noted that it did not include a request for work performed by Dr. Marcel Kinsbourne, and any costs incurred by him, personally. Pet'r Mot.

Mr. Wadie filed a supplemental motion on October 9, 2008. He clarified that he did not incur any costs personally. He also submitted an invoice from Dr. Kinsbourne, in which Dr. Kinsbourne sought \$3,035.00 in compensation.

Respondent objected to several items. In particular, respondent challenged the reasonableness of some of the activities performed by the attorneys, especially those relating to interactions between an attorney and Dr. Geier, Dr. Kinsbourne, or Dr. Greenspan. In terms of Mr. Wadie's requests for costs, respondent made similar objections to work performed by Dr. Geier, Dr. Kinsbourne, and Dr. Greenspan.

Mr. Wadie filed a reply that provided additional information, and responded to the pending objections. Mr. Wadie also included a request for compensation for work performed in drafting the reply. The motion is now 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 Mr. Wadie. See Attachment to Pet'r Reply. 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 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

Respondent argues that several discrete tasks performed by the attorneys were not reasonable. Respondent’s primary objection challenges the reasonableness of the attorneys’ decision to engage three experts. The resolution of this objection is deferred until section III below, which discusses the reasonableness of the decision to retain those experts. After this issue is set aside, other topics remain.

1. Communication with Client

Respondent challenges the reasonableness of Mr. Shoemaker’s activities in having many phone calls with his client to provide information about the status of the case when very little activity was being performed. The docket sheet shows that between April 4, 2000 (when Mr. Wadie was ordered to file an expert report) and February 8, 2006 (when the case was reassigned to a different special master), petitioner filed four documents. Mr. Shoemaker seeks compensation for 11.8 hours for conferences with his client during this approximately six-year

period.¹ Because Mr. Shoemaker's hourly rate is \$250, the total requested for conferring with Mr. Wadie is \$2,950.

Mr. Wadie has two separate responses to respondent's objection. Mr. Wadie, first, points out that the docket sheet may not reflect all the activity that is happening in a case. This point is legitimate. An attorney may be performing work not reflected on the docket sheet. But, no evidence indicates that this possibility became reality. If an attorney were developing Mr. Wadie's case, the attorneys' time sheets do not record the activity. For example, the attorneys were not gathering medical records. With the exception of Dr. Geier (discussed below), the attorneys were not consulting experts. Because Mr. Wadie has provided no details in his reply brief and the attorneys' time records provide no substantive information, it is very difficult to understand what work was being done. Furthermore, although Mr. Wadie seems to suggest that the resumption of the case in early 2006 was triggered by the attorneys' development of the case, Pet'r Reply at 3; that suggestion is not correct. The transfer of this case to a newly appointed special master caused the case to resume, not some undefined action of Mr. Wadie's attorneys. Ultimately, although Mr. Wadie's first argument is potentially valid, he fails to substantiate the assertion that more was being done than meets the eye.

Mr. Wadie's second point fares about the same. Mr. Wadie argues that "he has the right to call his attorney whenever he wants to [call] for updates on his case, without his attorney being concerned about not getting paid beyond the ten minute mark. These are complex medical and legal issues – they are not sound bites." Pet'r Reply at 4.

"Reasonable communication with the client presents a mettlesome issue." Corder v. Sec'y of Health & Human Servs., No. 97-125V, 1999 WL 1427753 *8 (Fed. Cl. Spec. Mstr. Dec. 22, 1999) (refraining from compensating 20 of 57.15 hours claimed by petitioner's counsel for communicating with his client). The two competing concerns are readily apparent. On one hand, attorneys are ethically obligated to keep their clients informed about the status of their case. On the other hand, in the Vaccine Program, clients do not pay their attorney whenever they ask for an update. If clients were aware that each inquiry generates a bill, clients would probably be more selective about contacting their attorney. Carter v. Sec'y of Health & Human Servs., No. 04-1500V, 2007 WL 2241877 *7 (Fed. Cl. Spec. Mstr. July 13, 2007) (citing cases and refraining from compensating 7 of approximately 24 hours claimed by petitioner's counsel).

¹ During this period, the Office of Special Masters with assistance from attorneys representing petitioners who alleged that they were harmed by the hepatitis B vaccine and attorneys from representing respondent was attempting to develop a system for resolving the numerous cases involving the hepatitis B vaccine. Mr. Wadie's attorney of record, Mr. Shoemaker, participated in this process. Mr. Shoemaker has sought compensation for this effort, which ultimately did not succeed, in a separate case. Mr. Wadie, however, does not refer to these proceedings as a justification for any client conferences.

Here, the information that Mr. Wadie presents – either in the form of the attorneys’ time records or in the reply brief – provides no explanation about how the communications between counsel and client advanced the case. Almost all of Mr. Shoemaker’s entries from April 2000 to February 2006 say, essentially, “phone call with client” or “phone call with client about status.” From the sparse record, it is difficult to imagine what information was communicated because it appears that the case has not changed. From September 29, 2000 to November 21, 2002, Mr. Shoemaker has 17 entries. All, except one, are communications with the client. There appears to be no development; there appears to be nothing to communicate to the client.

Under these circumstances, Mr. Wadie has failed to demonstrate that all time was reasonable. An appropriate amount of time for communicating with the client, when nothing else was happening for approximately six years, is three hours. The remaining 8.8 hours at \$250 per hour (\$2,200) are eliminated as unreasonable.

2. Ghada Anis

Respondent has challenged 0.7 hours for work charged by Ghada Anis, who was an associate attorney with Mr. Shoemaker’s office. Resp’t Resp. at 4-5. In May 2001, Ms. Anis was determining the “injury group” to which this case belonged.

Mr. Wadie will receive all the compensation requested for Ms. Anis’s work, which totals \$112. Respondent raises a fair question about whether Ms. Anis’s work was duplicative or the task took an unreasonable amount of time. But, Mr. Wadie’s reply gives a reasonable explanation. Although spending more than 30 minutes on categorizing a case would probably be excessive for an experienced attorney such as Mr. Shoemaker, Ms. Anis’s relatively low hourly rate (\$160 per hour) suggests that she had less experience. Thus, her time might be longer, yet still reasonable.

3. Discussion with Other Attorneys Having Very Similar Cases

After Mr. Wadie’s case became active, it was transferred to the undersigned and grouped with six other cases in which the petitioners alleged that the hepatitis B vaccine caused them to suffer autoimmune hepatitis. In addition to receiving the same vaccine and alleging the same injury, these petitioners were also relying upon the same expert. Therefore, all parties agreed for the undersigned to hear the cases together, even though the seven petitioners were represented by a total of three law firms.

One advantage to bringing the seven cases together was the increased efficiency in that the experts would testify only once. Another advantage was that the attorneys from different firms could work together to present a stronger case than would have been made if each attorney worked separately. Here, the attorneys did consult each other. See, among others, time entries for 3/02/07, 3/08/07, 3/26/07, 5/29/07 (Email from Ron [Homer, another attorney] re progress in

[identifying] GI expert), 5/30/07 (PC with Mark [Greenspan] re GI doc; review CV; email to Ron [Homer] re potential expert). Respondent has not objected to any of these activities.

Before the hearing was scheduled to commence, Mr. Wadie and respondent agreed, in principle, to resolve Mr. Wadie's case. Order, filed Aug. 29, 2007. Except for certain relatively minor administrative matters and the process of seeking attorneys' fees and costs, the attorneys' work in prosecuting Mr. Wadie's case ended.

However, on two dates within two weeks of the agreement in principle, Mr. Shoemaker consulted with an attorney representing other autoimmune hepatitis petitioners, whose hearing remained scheduled. In total, Mr. Shoemaker spent 0.80 hours (or \$248.00). Entries for 9/10/07 and 9/12/07. Respondent has objected to these entries on the ground that they did not advance Mr. Wadie's case. Resp't Resp. at 4.

Although Mr. Wadie's reply omits any discussion of this particular issue, Mr. Wadie is still awarded compensation for Mr. Shoemaker's time for several reasons. First, the time spent is relatively minimal – less than one hour. Second, it was anticipated that Mr. Wadie's case would have been tried at the same time as these other cases. Therefore, Mr. Wadie's case was strongly connected to these other cases. It is reasonable to believe that after Mr. Wadie consented to joining the team of autoimmune hepatitis cases, Mr. Wadie would also compensate his attorney for some limited assistance given to other parts of this team. Third, respondent appears to suggest that Mr. Shoemaker's time may have been compensable if Mr. Shoemaker had made this request in those other cases that were tried. If so, then respondent's objection seems to elevate form over substance in that Mr. Shoemaker could be paid in those other cases. However, in the circumstances of this case, it is not necessary for Mr. Shoemaker to go to the trouble of seeking fees in one of the other autoimmune hepatitis cases. Such a process almost certainly would take more time than the amount at issue here.

Respondent's remaining objections to the reasonableness of an attorney's time are tied to the attorneys' work with particular experts or consultants. These objections are addressed in the following section.

III. Costs

A. Standards for Adjudication

Mr. Wadie is entitled to an award for the reasonable costs incurred by his 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 Mr. Wadie (for example, his 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 into 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. Dr. Mark Geier

Mr. Wadie seeks compensation for time spent by his attorneys in consulting with Dr. Mark Geier and compensation for the cost of Dr. Geier's work. The attorneys list the following activities as related to Dr. Geier:

Attorneys' Activities Relating to Dr. Geier					
Date	Staff	Description	Hours	Rate	Charge
5/22/00	JBH	conference w/ CJS; conference with Geier's office	0.50	\$195.00	\$97.50
8/4/00	CJS	PC with Dr. Geier	0.50	\$250.00	\$125.00
3/9/04	CJS	Discuss case during meeting with Dr. Geier	0.50	\$250.00	\$125.00
3/12/04	CJS	Phone Conference with client re meeting with Dr. Geier	0.30	\$250.00	\$75.00
12/11/06	CJS	Review draft of a report from Dr. Geier	0.40	\$300.00	\$120.00
		TOTAL			\$542.50

Dr. Geier lists a single activity on his invoice. Dr. Geier states that on July 23, 2000, he consulted with Mr. Horn, an attorney who formerly worked with Mr. Shoemaker, and reviewed literature. Dr. Geier has charged \$200.00. Pet'r Mot. at 18.

Mr. Wadie's request for compensation for activities related to Dr. Geier is denied. Mr. Wadie presents little explanation for why consulting with Dr. Geier was reasonable. Actually, Mr. Wadie merely describes the work performed by Dr. Geier. Pet'r Reply at 6. Summarizing Dr. Geier's work is not the same as explaining how the Dr. Geier's work advanced Mr. Wadie's case.

Numerous decisions from special masters have described Dr. Geier's background. None of them indicate that Dr. Geier possesses the background to opine that the hepatitis B vaccine caused autoimmune hepatitis. Dr. Geier does not specialize in diseases of the gastrointestinal system or the liver. He also is not an immunologist. Before Dr. Geier was retained, a reasonable client who was informed about Dr. Geier's qualifications would recognize that any work performed by Dr. Geier would almost certainly be superfluous to work that would be performed by a specialist in one of these fields and whom the client would need to retain to prosecute his case. Consequently, the consultation with Dr. Geier is not reasonable and will not be

compensated. See Sabella v. Sec’y of Health & Human Servs., ___ Fed. Cl. ___, 2009 WL 539880 * 20 (Feb. 10, 2009) (affirming special master’s decision not to compensate Dr. Geier).

C. Dr. Mark Greenspan

Mr. Wadie seeks compensation (in an amount that slightly exceeds \$1,000) for work his attorneys performed in consulting with Mark Greenspan. Mr. Wadie also seeks compensation for Dr. Greenspan’s activities, which is nearly \$2,000.

According to the attorneys’ time records and Dr. Greenspan’s invoices, Dr. Greenspan performed tasks in three periods. December 2006, May to July 2007, and January 2008. Pet’r Mot. at 19-20. In December 2006, Dr. Greenspan was apparently writing a report. In May to July 2007, Dr. Greenspan was searching for a pediatric gastroenterologist willing to opine about causation. In January 2008, Dr. Greenspan was reviewing records. Of these, only the second period is reasonable.

In the first period (December 2006), Dr. Greenspan was reviewing records and apparently writing a report. It is only apparent that Dr. Greenspan was writing a report because no report from Dr. Greenspan was submitted. It was not necessary for Dr. Greenspan to review records and to write a report because Dr. Bellanti, an immunologist who eventually submitted a report for Mr. Wadie, was performing the same tasks. Although respondent challenged all of the fees associated with Dr. Greenspan, Mr. Wadie has not explained why the engagement of Dr. Greenspan to write a report in December 2006 was reasonable. See Pet’r Reply at 6 (stating “Dr. Greenspan was engaged when the issue of the necessity of a pediatric gastroenterologist’s opinion may [have been] necessary”). Consequently, Mr. Wadie has failed to meet his burden and compensation is not awarded for activities related to Dr. Greenspan in December 2006. See Sabella, ___ Fed. Cl. at ___, 2009 WL 539880 * 27 (affirming reduction in compensation for Dr. Greenspan), Savin v. Sec’y of Health & Human Servs., No. 99-537V, 2008 WL 2066611 *4 (Fed. Cl. Spec. Mstr. April 22, 2008), aff’d 85 Fed. Cl. 313 (2008).

Mr. Wadie, however, presents a reasonable explanation for Dr. Greenspan’s activities in May to July 2007. By May 2007, the undersigned was encouraging all autoimmune hepatitis petitioners to consider obtaining a report of a pediatric gastroenterologist or a hepatologist to address issues about autoimmune hepatitis. Order, filed May 8, 2007. Therefore, efforts by Mr. Wadie and his counsel to locate a pediatric gastroenterologist willing to offer an opinion in this case were reasonable. Implicitly, respondent recognizes that the search was reasonable. But, respondent contends that the search should have been done by someone other than Dr. Greenspan, or, at least, not at the rate sought by Dr. Greenspan. Resp’t Resp. at 6-7.

Because the search for a pediatric gastroenterologist was reasonable, the question becomes who should perform the search. The options include Mr. Shoemaker or one of Mr. Shoemaker’s associates. Respondent suggests that it could have been Dr. Bellanti, although asking a testifying expert to assist could raise concerns. Eventually, someone (probably Mr.

Shoemaker) requested that Dr. Greenspan search for the gastroenterologist. Assigning this task to Dr. Greenspan was reasonable, in part, because there was no duplication in work.

Respondent argues that even if Dr. Greenspan were appropriate, then the rate for his services should be reduced. Resp't Resp. at 6-7. For searching for an expert – actually for all of his services, Dr. Greenspan charged \$350 per hour. Pet'r Mot. at 20.

Dr. Greenspan will be compensated at the rate he requested for the task of searching for an expert. If Mr. Shoemaker had performed this task, Mr. Shoemaker would have charged \$310 per hour. Dr. Greenspan's stature as a medical doctor increases the likelihood that a gastroenterologist would consider reviewing the case. Dr. Greenspan's background adds something to the process and is worth a premium.² Therefore, Dr. Greenspan will be compensated for 1.25 hours at \$350 per hour for a total of \$437.50. Mr. Shoemaker will also be compensated for his work in engaging Dr. Greenspan.

Dr. Greenspan has included a charge for work performed in January 2008. Dr. Greenspan states that he reviewed a "file at request of Mr. Shoemaker. Email to him with results of rapid review of all data." However, Mr. Shoemaker's entries in January 2008 consist of reviewing the parties' stipulation, which is a routine document, and reviewing the decision adopting the stipulation, which is also a routine document. Because Dr. Greenspan was not needed on this case in January 2008, his request for compensation is denied.

Finally, there are two entries relating to obtaining an invoice from Dr. Greenspan. One task was performed by a staff member and Mr. Shoemaker spent a short amount of time reviewing the invoice. These are allowed as reasonable as well.

This chart summarizes the information pertaining to Dr. Greenspan. For their work with Dr. Greenspan, the attorneys are allowed \$559.42.

Attorneys' Activities Related to Dr. Greenspan						
Date	Staff	Description	Hours	Rate	Charge	Allowed
9/7/06	CJS	Email to Mark	0.20	\$300.00	\$60.00	\$60.00
12/8/06	RJG	Prepared rec's for MG review	0.25	\$200.00	\$50.00	\$0.00
12/11/06	CJS	Email from Mark Greenspan re Wadie report	0.20	\$300.00	\$60.00	\$0.00

² Searching for an expert should be contrasted with summarizing medical records. Paralegals and nurses often can summarize medical records at a much lower cost than Dr. Greenspan. See Sabella, ___ Fed. Cl. at ___, 2009 WL 539880 * 27.

Attorneys' Activities Related to Dr. Greenspan						
Date	Staff	Description	Hours	Rate	Charge	Allowed
12/11/06	CJS	Email to Mark re report	0.10	\$300.00	\$30.00	\$0.00
12/11/06	CJS	Emails to and from Mark re issues in the case	0.20	\$300.00	\$60.00	\$0.00
12/13/06	CJS	Review Greenspan medical-legal analysis of case and discuss with him	0.60	\$300.00	\$180.00	\$0.00
12/13/06	CJS	Review further materials from Dr. Greenspan; email questions to Dr. Bellanti	0.30	\$300.00	\$90.00	\$0.00
5/29/07	CJS	PC with Dr. Greenspan re progress in IDing a GI doc	0.20	\$310.00	\$62.00	\$62.00
5/30/07	CJS	PC with Mark re GI doc; review CV; email to Ron re potential witness	0.40	\$310.00	\$124.00	\$78.00
5/30/07	CJS	Review email and materials from Dr. Greenspan re research on autoimmune hepatitis after Hep B	0.50	\$310.00	\$155.00	\$155.00
5/30/07	CJS	Review two articles from Dr. Greenspan and email to Ron	0.50	\$310.00	\$155.00	\$155.00
4/29/08	GAS	Discuss getting updated invoice from Mark Greenspan . . . review updated invoice 404	0.25	\$55.00	\$13.75	\$13.75
5/6/08	CJS	Review Mark Greenspan MD JD PLLC 20080429 updated invoice 404	0.11	\$324.26	\$35.67	\$35.67
		TOTAL			\$1,075.42	\$559.42

D. Dr. Marcel Kinsbourne

Mr. Wadie also requested compensation for work performed by or associated with Dr. Kinsbourne. Dr. Kinsbourne is a pediatric neurologist, who frequently testifies in the Vaccine Program for petitioners. Dr. Kinsbourne did not submit a report.

Respondent has challenged the reasonableness of engaging Dr. Kinsbourne. Respondent argues that Dr. Kinsbourne's work was not necessary because there was no evidence to support that Mr. Wadie suffered from any neurological problems. Rather, Mr. Wadie's claim sought compensation for autoimmune hepatitis. Resp't Resp. at 9-10.

Despite respondent's objection, Mr. Wadie has not provided any substantiation for a claim that Mr. Wadie suffered neurological problems. At best, Mr. Wadie states "In fact neurological issues can result from the medications that Mr. Wadie was taking for his autoimmune hepatitis – while not directly related to causation, it is directly related to issues of sequelae, which could be an issue for an expert." Pet'r Reply at 5 n.3.

There are several flaws with Mr. Wadie's argument. First, Mr. Wadie provides no evidence for the assertion that Mr. Wadie's medication could, in theory, cause neurological side effects. At a minimum, Mr. Wadie could have produced and should have produced relevant entries from an easily available source, such as an excerpt from the drug manufacturer's website or an excerpt from the Physician's Desk Book. Second, even if the medications could produce neurological side effects, Mr. Wadie has not demonstrated that he did actually suffer any neurological problems. Given that respondent objected on this ground, it was incumbent on Mr. Wadie to cite to some evidence showing a neurological problem. Third, Mr. Wadie recognizes that even under his theory, the issue would have been relevant to damages only. As an experienced attorney, Mr. Shoemaker is aware that expenditures about damages should be made only after entitlement is found. For these reasons, no compensation will be awarded for Dr. Kinsbourne or attorneys' activities related to Dr. Kinsbourne.

Between June 2006 and January 2007, Mr. Wadie's attorneys spent time amounting to \$641.00 for work associated with Dr. Kinsbourne. This amount will be deducted.

IV. Summary

The following table summarizes information with regard to attorneys' fees.

Item	Amount
Original Request	\$25,460.27
Adjustment - client communication	(\$2,200.00)
Adjustment - Dr. Geier	(\$542.50)
Adjustment - Dr. Greenspan	(\$516.00)
Adjustment - Dr. Kinsbourne	(\$641.00)
Reply for Attorneys' Fees and Costs	\$960.00
TOTAL	\$22,520.77

The following table summarizes information with regard to attorneys' costs.³

Item	Amount
Original Request	\$5,662.65
Adjustment - Dr. Geier	(\$200.50)
Adjustment - Dr. Greenspan	(\$1,488.63)
Adjustment - Dr. Kinsbourne	\$0.00
TOTAL	\$3,973.52

The Clerk's Office is instructed to enter judgment for \$22,520.77 in attorneys' fees and \$3,973.52 in attorneys' costs. Mr. Wadie incurred no costs personally.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

³ Mr. Wadie's original request for attorneys' fees and costs did not include an invoice from Dr. Kinsbourne. Because Mr. Wadie is awarded zero compensation for Dr. Kinsbourne, it is not necessary to adjust the calculation.