In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-1399V

Filed: September 21, 2012

KIMBERLY WARFLE, a minor, by and through her mother and next friend, MELISSA GUFFEY, Petitioner, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	)	TO BE PUBLISHED Attorneys' fees and costs; reasonable hourly rate; forum rate; local rate; Laffey Matrix; Davis exception; reasonable hours expended; adequacy of evidence; costs for experts; reimbursement for attorney travel; legal research; conferring with outside attorneys; medical research; conferring with client; conferring with doctors

Petitioner appears Pro se;[1]
Melonie J. McCall, United States Dep't of Justice, Washington, D.C. for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS [2]

LORD, Special Master.[3]

I. INTRODUCTION AND OVERVIEW

On December 30, 2005, Melissa Warfle ("Petitioner") filed a Petition in the National Vaccine Injury Compensation Program on behalf of her daughter, Kimberly Warfle ("Kimberly").[4] Petitioner sought compensation for unspecified injuries allegedly

[1] Until November 10, 2009, Petitioner was represented by Paul Dannenberg, Esq., of Huntington, VT.

[2] In accordance with Vaccine Rule 18(b), a petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Rules of the United States Court of Federal Claims ("RCFC"), Appendix B, Vaccine Rule 18(b). Redactions ordered by the special master, if any, appear in the document as posted on the United States Court of Federal Claims' website.

[3] This case was originally assigned to Special Master Abell, who issued the decision on entitlement and the order denying interim fees. On February 15, 2011, following Special Master Abell's retirement, the case was reassigned to my docket.

[4] The National Vaccine Injury Compensation Program (hereinafter "Program" or "Act") comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (2006) (hereinafter "Vaccine Act" or "the Act").

sustained by Kimberly as a result of Diphtheria-tetanus-acellular pertussis ("DTaP"), Measles Mumps and Rubella ("MMR"), and Inactivated Poliovirus ("IPV") vaccines administered on January 27, 2003. Petition ("Pet.") at 1. Ultimately, Petitioner alleged that the DTaP vaccine administered to Kimberly on January 27, 2003, caused her to suffer from chronic urticaria. Transcript ("Tr.") at 11.[5] An evidentiary hearing on the issue of vaccine causation was held on December 18, 2008, in Nashville, Tennessee.

On February 12, 2009, Petitioner moved for interim attorneys' fees and costs in the amount of $86,089.13. Interim Pet. Fees and Costs, ECF No. 59. Special Master Abell denied the application because it did not comply with the "plain language of General Order #9." Warfle v. Sec'y of Dep't of Health & Human Servs., No. 05-1399V, 2009 WL 1322579, at *1 (Fed. Cl. Spec. Mstr. Apr. 22, 2009). On May 21, 2009, Petitioner moved for review of the denial of her interim fees in the United States Court of Federal Claims, seeking a finding of compliance with General Order No. 9. Mot. for Review, ECF No. 69. The Motion was assigned to Judge Francis Allegra, who required the parties to file memoranda of law "addressing whether this court has jurisdiction to review, at this time, the Special Master's denial of an interim fee award." Order, June 8, 2009, ECF No. 70.

While the matter was pending review, Petitioner's counsel, Paul S. Dannenberg, moved to withdraw as attorney for Petitioner. Mot., Oct. 5, 2009, ECF No. 78. In his Motion, Mr. Dannenberg stated that Petitioner "has substantially failed to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that lawyer will withdraw unless the obligation is fulfilled." Id. On November 10, 2009, Judge Allegra granted Mr. Dannenberg's Motion. Order, ECF No. 81. On January 27, 2010, Mr. Dannenberg filed a "Motion For Leave To File Final Attorney Fees and Costs" out of concern that "he could be barred from seeking attorney's fees and costs." Mot., ECF No. 82. Judge Allegra issued an order deferring resolution of the Motion to Special Master Abell. Order, Feb. 3, 2010, ECF No. 83.[6] On February 19, 2010, the Court of Federal Claims dismissed Petitioner's Motion for Review for lack of jurisdiction, holding that "the ruling in question cannot be considered under a version of the collateral order doctrine." Warfle ex rel. Guffey v. Sec'y of Dep't of Health & Human Servs., 92 Fed Cl. 361, 367 (2010).

On June 15, 2010, Special Master Abell issued a decision dismissing the Petition and denying entitlement. Warfle v. Sec'y of Dep't of Health & Human Servs., No. 05-1399V, 2010 WL 2671504 (Fed. Cl. Spec. Mstr. June 15, 2010). The decision was not appealed and judgment entered on July 30, 2010.

[5] Urticaria is "a vascular reaction in the upper dermis, usually transient, consisting of localized edema caused by dilation and increased capillary permeability with wheals." Dorland's Illustrated Medical Dictionary (32nd ed. 2012) at 2011. Chronic urticaria is classified simply as urticaria that is "continuous or develops over a period of six weeks or more." Id. at 2012.

[6] The record does not reflect any additional action.

On January 20, 2011, Mr. Dannenberg, as Petitioner's former attorney, filed a timely application for fees and costs requesting a total award of $191,542.51. Respondent objected to Mr. Dannenberg's request of $177,118.50 in fees as "unsupported and facially excessive," of $14,374.01 in costs as "unreasonable," and of $50.00 in litigation costs for Petitioner as "undocumented." Resp't's Resp. Fee Pet., Mar. 1, 2011, ECF No. 94.[7] On April 11, 2011, Mr. Dannenberg filed an amended fees application requesting a revised total award of $160,311.18 ($145,817.00 in fees, $14,444.18 in costs, $50 Petitioner's litigation cost). Am. Fee Pet., ECF No. 96. Respondent filed a response to Mr. Dannenberg's amended fees application on June 10, 2011, objecting to the amended request for the reasons raised previously against the original fees petition. Resp't's Resp. Am. Pet. Fee Pet., ECF 98. On July 6, 2011, Mr. Dannenberg replied to Respondent's response and included an amended request of an additional $5,083.53 ($5,054.00 in fees and $29.53 in costs) for the "additional time and costs required to draft this reply and other services to date." Pet'r's Reply at 9, ECF No. 101. Mr. Dannenberg's request now totals $165,394.71. Id.[8]

This decision reviews the pertinent factual and procedural background, the law pertaining to awards of fees and costs in the Vaccine Program, as well as recent decisions by other special masters awarding fees and costs to Mr. Dannenberg. The decision follows the established framework in Vaccine Act cases. Since the bulk of the work was performed outside the forum of Washington, D.C., and the local rate was significantly lower than the forum rate, the local rate was used to calculate Mr. Dannenberg's reasonable hourly rate.

To determine the number of hours that would be compensated, I examined Mr. Dannenberg's time sheets to assess the reasonableness of the number of hours claimed. After a thorough review of the record and consideration of Respondent's objections and Mr. Dannenberg's responses, I found the hours claimed to be excessive and unreasonable.

Mr. Dannenberg has requested $150,871 in attorneys' fees for 410.2 hours (91 hours x $325 per hour; 319.2 hours x $380 per hour), and $14,473.71 in costs. Based on the law and the facts, the appropriate award for Mr. Dannenberg was calculated as $59,038.20 in attorneys' fees for 295.2 hours and $11,205.47 in costs.

II. STATUTORY BACKGROUND

The Vaccine Act was enacted both to ensure that the nation had a stable supply of safe, effective vaccines and to provide injured persons with compensation "quickly,

[7] Mr. Dannenberg's states that "Costs in this matter are $12,969.01." Fee Pet. at 3. Mr. Dannenberg's billing records, however, disclose that his requested costs totaled $14,374.01, a difference of $1,405. I assume that this is a simple arithmetic error and that he intended to claim $14,374.01, based on his billing records. All figures herein are derived from the billing records.

[8] Total attorneys' fees requested **$150,871.00** (410.2 total hours claimed: 91 hours x $325 per hour = $29,575; 319.2 hours x $380 per hour = $121,296); total costs requested **$14,473.71** (costs $5603.71; expert fees $8,870); Petitioner's requested litigation costs: **$50.00**.

easily, and with certainty and generosity." H.R. Rep. No. 99-908, at 1. It was intended that the speed, low transaction costs, and relative certainty and generosity of the Vaccine Program would make it an attractive alternative to the tort system. Id. at 10. In designing the Act, Congress sought to spare injured persons, who often have mounting health expenses, from delays, court payments, and the expense of attorneys' fees. Id. at 4. To further that goal, the Vaccine Act forbade an attorney from charging a petitioner a fee, and instead permitted the court to award reasonable attorneys' fees and costs both to successful and unsuccessful petitioners. 42 U.S.C. § 300aa-15(e); H.R. Rep. No. 99-908, at 20. While Congress mandated an attorneys' fee award for a successful petitioner, it left to the special masters' discretion the award of attorneys' fees to an unsuccessful petitioner. H.R. Rep. No. 99-908, at 20. Congress's intent was to ensure that petitioners could obtain qualified assistance, but to limit attorneys' fees to cases that were filed in good faith and with a reasonable basis. Id.; see § 15(e).

III. FACTUAL AND PROCEDURAL HISTORY

A. Proceedings on Entitlement

This case was marked by numerous delays, largely due to Petitioner's counsel's own requests. The facts and legal arguments bearing on the question of entitlement are set forth in detail in the decision on entitlement. Warfle v. Sec'y of Dep't of Health & Human Servs., No. 05-1399V, 2010 WL 2671504 (Fed. Cl. Spec. Mstr. June 15, 2010). Below, I summarize the facts and procedural history pertinent to a determination of fees and costs.

Petitioner filed a Petition on December 30, 2005, alleging her minor daughter, Kimberly, sustained unspecified injuries as a result of receiving DTaP, MMR, and IPV vaccines on January 27, 2003. Pet. at 1.

On February 21, 2006, a status conference was convened at which Petitioner's counsel indicated that "certain medical records and perhaps some affidavits remain outstanding." Order, Feb. 23, 2006, ECF No. 6. Petitioner was instructed to contact the Court to request authorization to issue a subpoena if Petitioner encountered any difficulties in acquiring the medical records. Id. A follow up status conference was set for April 7, 2006, and Respondent's Rule 4(c) Report was ordered held in abeyance pending receipt of the medical records. Id.

At Petitioner's request, the status conference scheduled for April 7, 2006, was reset for April 24, 2006. Order, Apr. 4, 2006, ECF No. 7. Petitioner stated that she had encountered difficulties in obtaining the outstanding medical records.

The status conference was again reset for April 28, 2006, but ultimately cancelled. Instead, a schedule was set ordering Petitioner to file, by close of business June 16, 2006, "the outstanding medical records," "fact witness affidavit(s)," and "a supplemental affidavit to the petition averring there is no pending civil action concerning the alleged vaccine-related injury." Order, May 1, 2006, ECF No. 11. A status

conference was set for August 23, 2006. Id. Additionally, the special master issued an order authorizing Petitioner's counsel to sign and serve a subpoena "for all medical records" pertaining to Petitioner. Order, May 1, 2006, ECF No. 10.

On May 11, 2006, a status conference was held at which time Petitioner's counsel indicated that he "has encountered some difficulty in contacting the Petitioner." Order, May 12, 2006, ECF No. 12. Counsel was urged to "utilize all means at his disposal to track down his clients." Id. During the conference Petitioner requested authorization to issue a subpoena for Kimberly's school records. Special Master Abell instructed Petitioner to file a motion for the authorization and indicated it would "likely be granted." Id.[9] Petitioner's counsel was ordered to file a status report "detailing his efforts at locating the Petitioner" prior to the next status conference, which was set for May 26, 2006. Id.

On May 18, 2006, Petitioner filed Motion for Subpoena to obtain Kimberly's educational records "to discover updated and current contact information" for Petitioner "as her previous telephone number and address are no longer valid." Mot., ECF No. 13. Petitioner's counsel stated that he "has been unsuccessful in his attempts to contact the parents of the petitioner." Id. A list of "all of the elementary schools where petitioner could be possibly attending in the Paris, Tennessee area" was attached to the Motion, and Petitioner's counsel requested authorization to obtain records from any of them. Id. The Motion was granted on May 23, 2006.

On May 26, 2006, a status conference was convened as scheduled. Petitioner's counsel tardily submitted a status report by fax on the same day.[10] In the status report, Petitioner's counsel detailed his efforts to locate Petitioner and stated that subpoenas for Kimberly's medical and educational records "are being prepared and will be sent for service today." Status Rep., May 30, 2006, ECF 16. An order issued on May 31, 2006, reaffirming the Court's "intent to maintain the previously set schedule with medical records and affidavits" due on June 16, 2006, and Respondent's Rule 4(c) Report due on August 16, 2006. Order, ECF 15. A status conference was set for June 13, 2006.

On June 13, 2006, a status conference was held. Petitioner's counsel informed the Court that he had located his client and was in the process of obtaining the "additional medical records and fact witness affidavits" previously due by June 16, 2006. Order, ECF No. 17. The Court granted an enlargement, ordering Petitioner to file "the medical records, fact-witness affidavits and a supplement to the original petition" before the next status conference. Id. A status conference was set for July 14, 2006.

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[9] The order noted that "counsel has already been granted authorization to pursue certain medical records," and reminded Petitioner's counsel of the previous order to file those medical records along with the outstanding affidavits by close of business on June 16, 2006. The order stated that the status conference previously scheduled for August 23, 2006, "will remain on track."

[10] The faxed status report was accepted by leave of the special master on May 26, 2006, and filed in the record on May 30, 2006.

On July 14, 2006, a status conference was held. Petitioner's counsel reported that, with the exception of prenatal records, the outstanding medical records and affidavits had been filed. Respondent was ordered to file a status report by July 28, 2006, as to whether she was prepared to submit a Rule 4(c) Report. Order, July 17, 2006, ECF. No 19. The Order set a tentative date of September 1, 2006, for Respondent to submit her Rule 4(c) Report and set a status conference for September 8, 2006. Id.

On September 1, 2006, Respondent filed a Rule 4(c) Report and Motion to Dismiss. Respondent argued that the Petitioner "failed to provide sufficient evidence to fulfill the threshold requirements" under the Act, "alleged no specific injury," and "has provided no medical opinion to establish actual causation." Rule 4(c) Rep. and Mot. to Dismiss, ECF No. 20.

On September 8, 2006, the special master conducted the Rule 5 status conference, at which he acknowledged Respondent's Motion to Dismiss but declined to rule on it. Instead, the special master afforded Petitioner "additional time to shore up the evidentiary record." Order, Sept. 8, 2006, ECF No. 21. Petitioner was ordered to file any outstanding medical records, a response to the Motion to Dismiss, and an expert medical opinion with attendant documentation within 90 days. Id. The Order concluded,

> [I]t is noted that this case has already undergone significant delay, and it is acknowledged that there are patent issues on the face of the pleadings and medical records as indicated in Respondent's report. Therefore, the Court indicated that, should the case have proceeded no further than it stands at present, meaning if medical records remain outstanding and no medical expert opinion has been presented or is on the verge of being presented, then the Court will strongly consider ruling on Respondent's motion to dismiss.

Id. (emphasis added). A follow-up status conference was set for December 8, 2006.

On December 8, 2006, the scheduled status conference was convened, at which Petitioner was afforded an additional week to file a response to Respondent's Motion to Dismiss and 30 days to file outstanding medical records. Order, Dec. 22, 2006, ECF No. 24. Petitioner filed her response on December 14, 2006. Resp., ECF No. 23. The Court noted that it "received and reviewed Petitioner's response regarding the pending Motion to Dismiss," but would "await the filing of the school nurse records before issuing a ruling." Order, ECF No. 24.

On January 8, 2007, Petitioner filed nurse records from the Henry County Board of Education. The records consisted of two documents titled "Health History/Permission to Treat Form," which contained little more than emergency contact numbers, the name of Kimberly's physician, and notes that Kimberly is allergic to pollen and chocolate milk. Pet'r's Ex. 12. On the same date, Petitioner moved for an enlargement, until February

9, 2007, to "file additional documents," specifically, records from an elementary school Kimberly attended, including nurse records and an affidavit from her first-grade teacher. Mot., Jan. 8, 2006, ECF No. 25. Respondent did not object and the Motion was granted. Order, Jan. 10, 2007, ECF No. 27. A status conference was set for February 20, 2007, "in order to confirm that all filings have been made such that the record is ripe for the Court to rule on Respondent's motion to dismiss." Id.

On February 8, 2007, Petitioner filed the affidavit of Beverly Reid, Kimberly's first grade teacher, but did not file any nurse records. Pet'r's Ex. 13.

Following a status conference on February 20, 2007, the Court denied Respondent's Motion to Dismiss. The Court stated that in light of Petitioner's supplemental filings, it "considered the record sufficient to rule on Respondent's Motion to Dismiss." Order at 1, Feb. 22, 2007, ECF No. 29. In denying the Motion in its entirety, the Court held that Respondent "has neither shown (a) that the facts alleged by Petitioner herself do not evince a reading which would support a decision in her favor; nor (b) that there are no material facts remaining, such that summary judgment is warranted." Id. at 3. The Court, however, was "quick to remind Petitioner that future hurdles will require more of her, and that serious matters of fact are yet to be articulated and proven in this case." Id. Petitioner was ordered to acquire a medical expert and file an expert report along with a curriculum vitae ("CV") and the medical literature relied upon in composing the report. Id. Finally, Petitioner was reminded of her obligation to supplement the filings with any newly discovered records. A status conference was set for April 18, 2007, to discuss the parties' preparations for a hearing on entitlement to compensation.

At a status conference on April 18, 2007, Petitioner updated the Court on her efforts to obtain a medical expert and file an expert report, which Petitioner expected to file by May 21, 2007. Petitioner also brought to attention some additional medical records, which would be filed promptly. Petitioner was ordered to complete the filings by May 21, 2007, and a status conference was set for June 5, 2007. Order, Apr. 20, 2007, ECF No. 31.

On May 29, 2007, Petitioner moved for an enlargement of her deadline to file an expert report, until June 20, 2007. Mot., ECF No. 32. Respondent raised no objection and the Motion was granted. Order, June 6, 2007, ECF No. 33. The status conference was reset for June 29, 2007.

On June 19, 2007, Petitioner filed medical literature, but the deadline for filing the expert report passed without submission. On June 29, 2007, a status conference was convened as previously scheduled. At the conference, Petitioner requested and was granted authorization to issue a subpoena to recover additional medical records. In its subsequent order, the Court noted that Petitioner declined the opportunity to file a medical expert report and informed the parties that "[o]nce those records have been filed by Petitioner, Respondent will be given an opportunity to file a medical expert

report in opposition to the Petition." Order, June 29, 2007, ECF No. 37.[11] A status conference was scheduled for August 8, 2007.

On August 8, 2007, a status conference was convened at which Petitioner reported that her efforts to obtain medical records by subpoena had been rebuffed by the custodians of records. The Court entertained discussion on what remedial steps should be taken towards recovering those records. All concerned agreed that Respondent would work with Petitioner to obtain those records. The Court stated that once the records were filed, Respondent would be afforded an opportunity to file a medical expert report in opposition to the Petition. A status conference was set for August 23, 2007. Order, Aug. 9, 2007, ECF No. 38.

On August 27, 2007, an impromptu status conference was held at which Petitioner informed the Court that the subpoena issue had been resolved. During the conference Petitioner gave notice that she had changed her mind and had decided to file an expert report. Petitioner was ordered to file a medical expert report, along with CV and annotated copies of all medical literature referenced in the report, by September 28, 2007. The Court again stated that Respondent would have an opportunity to file a medical expert report in opposition to the Petition once Petitioner filed the medical records and medical expert opinion materials. Order, Aug. 29, 2007, ECF No. 39. A status conference was set for October 3, 2007.

On October 1, 2007, Petitioner moved for a two-week extension of time to file medical records and her medical expert report and associated articles. Mot., ECF No. 40. The Motion was not formally acted upon.

On October 22, 2007, Petitioner filed the report of her medical expert, Dr. Oscar L. Frick, M.D., which was styled as an affidavit, and his CV. Additionally, Petitioner filed medical records from Telfair County Division of Family and Children Services. Pet'r's Ex. 16-17.

On November 21, 2007, Respondent was ordered to file a report in opposition by February 1, 2008. A status conference was set for February 11, 2008. Order, ECF No. 42.

On January 30, 2008, Respondent moved for an additional 60 days to file its expert report, stating that there "are factual issues that need to be addressed" before an expert opinion can be rendered. Mot., ECF No. 43. Respondent attempted to contact counsel for Petitioner before preparing the motion, but was unable to reach him. Id.

On February 19, 2008, the Court convened a status conference to discuss Respondent's Motion for Enlargement of the deadline to file an expert report. At the conference, Respondent challenged "whether the injury alleged by the Petitioner persisted for more than six months," but was uncertain whether "the issue was a

[11] On August 27, 2007, Petitioner notified the Court and Respondent that she had changed her mind and would file an expert report. See infra.

medical one, best addressed [by] expert medical opinion, or whether it is purely a factual issue," appropriately "resolved by the Court before submitting the factual record to the experts for their perusal and comment." Order, Feb. 20, 2008, ECF No. 44. Finding "the issue as it was raised appeared to sound more in the scientific medical field," the Court ordered "Respondent to file an expert report on that issue and on the larger issue of causation" on or before April 18, 2008. Id.

On April 25, 2008, Respondent filed its medical expert report and associated medical literature.

A status conference was convened on May 2, 2008, to discuss the scheduling of a hearing. At the conference, Respondent noted that fact witness testimony would likely be unnecessary. Petitioner moved to postpone the scheduling of the hearing until after she made a decision on whether to submit a supplemental expert report in reply to the one filed by Respondent. The Court ordered Petitioner to note her election at the next status conference on May 9, 2008. Order, May 5, 2008, ECF No. 46.

A status conference was convened on May 8, 2008. During the conference Petitioner stated that she did not "plan" to file a supplemental expert report in rebuttal to Respondent's expert report, but "may wish to do so." Order, May 13, 2008, ECF No. 48. The Court ordered Petitioner to file whatever rebuttal she desired, "provided that she does so posthaste." Id. Respondent was ordered to file the CV of Dr. Shelby H. Josephs to complement the Rule 4(c) Report previously filed. Id.[12] The Court also stated that "[g]iven the factual issues in this case, arising from disparities and gaps in the documentary evidence filed herein relating to onset and duration of injury, the entitlement hearing in this case seems to necessitate fact witness testimony, requiring a live hearing." Id. The Court provided several potential hearing dates in July and August and ordered the parties to confirm a hearing date after consulting with their witnesses. Id. No additional status conference was scheduled, but Petitioner was ordered to contact the Court to schedule one if no hearing date was confirmed within 30 days. Id.

On December 4, 2008, a Prehearing order issued setting the date for an evidentiary hearing to address the issue of entitlement to compensation on December 18, 2008, in Nashville, Tennessee. Prehearing Order, ECF No. 49. The parties were ordered to file their prehearing memoranda by December 12, 2008. Respondent filed a prehearing memorandum on December 12, 2008. Petitioner's memorandum was filed on December 16, 2008, two days before the hearing. [13]

[12] Respondent filed the CV on May 9, 2008.

[13] On the same day, Respondent moved to exclude evidence. Mot., Dec. 16, 2008, ECF No. 52. Respondent argued for "Dr. Frick's testimony [to] be excluded" because his expert report "raises questions as to whether his theory on causation meets the Daubert requirements for reliability." Mot. at 5. On January 30, 2009, Petitioner submitted a Reply to Respondent's Motion to Exclude Evidence. Reply, ECF No. 57. The docket does not reflect a ruling on Respondent's Motion; however, Dr. Frick's testimony was considered in Special Master Abell's Ruling on Entitlement. See Warfle, 2010 WL 2671504, at *8-15.

On December 18, 2008, a Hearing on the issue of entitlement was held in Nashville, Tennessee. On January 5, 2009, an Order issued setting forth a time line for post-hearing submissions. Order, ECF No. 53. This time line was amended on January 28, 2009, upon written motion by Petitioner and without objection from Respondent. Order, ECF No. 56. The new schedule set the date for Petitioner's closing brief as March 2, 2009; Respondent's responsive closing brief as April 1, 2009; and a surresponsive reply brief as April 15, 2009, if necessary. Id.

On February 9, 2009, Petitioner moved for an enlargement of 30 days to file her closing brief, stating she had not yet received the hearing transcript. Mot., ECF No. 58. Respondent did not object. Although not indicated on the docket, it appears that the request was granted, as Petitioner filed her closing brief on March 12, 2009. Post-Hr'g Br., ECF No. 62.[14]

On June 15, 2010, Special Master Abell issued a decision on entitlement dismissing Petitioner's Petition, holding that Petitioner failed to "prove[] to a preponderance of evidence that Kimberly suffered an injury that was actually caused by a vaccine." Warfle, 2010 WL 2671504, at *32. The decision was not appealed.

B. Proceedings Regarding Petitioner's Interim Fee Applications

On February 12, 2009, Petitioner filed an application for interim attorneys' fees and costs. Pet. Interim Fees and Costs, ECF No. 59. Petitioner requested interim fees and costs in the amount of $86,089.13, but provided no reason for the interim request. See Avera v. Sec'y of Dep't of Health & Human Servs., 515 F.3d 1343 (Fed. Cir. 2008).

On February 26, 2009, Respondent moved to suspend proceedings. Respondent stated that "it is not clear from the current record that petitioner is a proper petitioner under the Vaccine Act with standing to bring this [claim]." Mot. at 3, ECF. No. 60. Respondent stated that the issue was noted in her prehearing report and maintained that it is a "jurisdictional matter that must be resolved before additional proceedings may take place in the case." Id. Respondent requested that the Court suspend all proceedings, "including adjudication on Petitioner's request for an interim award of attorneys' fees and costs, until Petitioner files proof that she meets the requirements of 42 U.S.C. § 300aa-11(b)(1)(A) and qualifies as the current legal representative of Kimberly Warfle." Id. at 4.

On March 12, 2009, Petitioner replied to Respondent's Motion to Suspend Proceedings. Petitioner stated that Respondent's "motion is now moot, as petitioner has filed the Court Orders of the Juvenile Court of Telfair County, State of Georgia, . . . attesting to the fact that Melissa Guffey now has legal custody of Kimberly Warfle." Reply to Resp't's Mot., ECF No. 61. Petitioner also argued that there is "no merit" to

[14] In a Motion for Enlargement filed on March 13, 2009, Petitioner requested an additional 10 days to file the post-hearing brief; however, it is unclear why this was necessary since the brief was filed on March 12, 2009. See Mot., ECF No. 63.

Respondent's Motion with regard to Petitioner's pending Motion for Interim Fees, "as this is a separate proceeding." Id.

Petitioner moved on March 24, 2009, for a finding of compliance with General Order No. 9, which requires a signed statement from a petitioner stating whether or not the petitioner incurred any personal litigation expenses. Mot., ECF No. 64. General Order No. 9 was issued to protect petitioners' interests by ensuring that their out-of-pocket expenses are included with an attorneys' fee request. In a few cases prior to the Order, "petitioners' counsel . . . submitted cost applications which inadvertently omitted the cost items paid by petitioners themselves." General Order No. 9, July 24, 1995. Parties are now required to submit a "statement signed by petitioners and counsel which clearly delineates which costs were borne by counsel and which costs were borne by petitioners, including the amount of any retainer." Id. Mr. Dannenberg stated that he had been unable to obtain the statement from Petitioner. Id.

On April 2, 2009, a status conference was convened to discuss Respondent's Motion to Suspend Proceedings and Petitioner's Motion for a Finding of Compliance with General Order No. 9. On April 22, 2009, the Court issued an order in accordance with the discussion at the status conference. The Order noted that "Petitioner filed materials sufficient to satisfy Respondent's query, and, by the agreement of the parties, that motion was rendered moot." Warfle, 2009 WL 1322579, at *1. The Order then addressed the pending interim fee application, denying Petitioner's Motion for a Finding of Compliance with General Order No. 9. The Order stated that the Court "was not persuaded" by Petitioner's argument that the requirements of General Order No. 9 "were met with regard to their underlying purpose, and therefore did not require actual compliance with the Order's plain wording." Id. As a result, the Court considered the interim fee application to be incomplete. Id. The Court then amended the briefing schedule, making mention of the fact that the parties were yet in the process of briefing the issue of entitlement following the entitlement hearing. Id. Respondent was ordered to file a responsive closing brief by May 5, 2009. Petitioner was afforded the opportunity to file a surresponsive reply brief by May 19, 2009.

On May 5, 2009, Respondent timely filed a closing brief, and Petitioner filed a response on May 19, 2009.

On May 21, 2009, Petitioner filed, nunc pro tunc, a Motion for Review of Special Master Abell's denial of her Motion for a Finding of Compliance with General Order No. 9. Mot. for Rev., ECF No. 69. Judge Allegra was assigned the Motion for Review and required the parties to submit a memorandum of law regarding jurisdiction to review. The order stated that the "Proceedings on the merits of the underlying dispute, now pending before the Special Master, shall continue unabated, but all other filings with respect to the pending petition are hereby stayed until further order." Order, June 8, 2009, ECF 70.

On June 17, 2009, Petitioner requested an enlargement of the memorandum deadline, which was granted on June 25, 2009. Petitioner timely filed the memorandum

on August 17, 2009. On September 8, 2009, Petitioner moved for leave to file a supplemental memorandum. The request was granted on September 9, 2009, and Petitioner filed the supplemental memorandum the same day. Respondent filed a response on September 14, 2009.

On October 5, 2009, in the midst of the proceeding before Judge Allegra, Mr. Dannenberg filed a Motion to Withdraw as attorney for Petitioner. Mr. Dannenberg stated "that Melissa Guffey has substantially failed to fulfill an obligation to the lawyer regarding the lawyer's services and has been given a reasonable warning that the lawyer will withdraw unless the obligation is fulfilled." Mot. to Withdraw, ECF No.78. In an order issued October 20, 2009, Judge Allegra stated that the "court is concerned about the impact of withdrawal on the pending motion for review." Order, ECF No. 79. Mr. Dannenberg was ordered to file a supplemental memorandum indicating what impact, if any, withdrawal would have on Petitioner's pending Motion for Review. Id. On November 5, 2009, Mr. Dannenberg timely filed the memorandum. Second Supp. Memo re Mot. to Withdraw, ECF No. 80. Judge Allegra granted Mr. Dannenberg's Motion to Withdraw on November 10, 2009. Order, ECF No. 81.

On January 27, 2010, Mr. Dannenberg filed a Motion for Leave to File Final Attorney Fees and Costs. In his Motion, Mr. Dannenberg stated that, as the underlying proceeding on entitlement is ongoing, "Petitioner's former counsel has a legitimate claim for final attorney's fees and costs in this matter." Mot., ECF No. 82. Mr. Dannenberg continued:

> Former counsel believes that this stay referred only to the pending petition for interim attorney's fees. However, in due respect for the court, counsel felt it appropriate to request leave to file this notice. Former counsel is concerned that if the petition on the merits is ruled upon and he does not receive timely notice, he could be barred from seeking attorney's fees and costs. Former counsel is under extreme financial hardship, and unable to pay expert witnesses, including immunologist Dr. Frick, in this case, who is very aged. This financial hardship may shortly prevent former counsel from representing other petitioners in the program. He is currently financing his cases with limited credit cards and personal savings.
>
> Whether this is the intention of respondent to financially debilitate petitioner's counsel by refusing to agree to reasonable requests for attorney's fees, former counsel can only surmise. However, the fact remains, that former counsel has a legal right to protect his future request for final attorney's fees and costs.

Id.

On January 27, 2010, Judge Allegra issued an order on the motion stating that "[t]hese materials do not appear relevant to the matter pending before the undersigned."

Instead, Judge Allegra "defer[red] to Special Master Abell regarding the resolution of [Mr. Dannenberg's request]." Order, ECF No. 83.

On February 19, 2010, Judge Allegra issued an order denying Petitioner's Motion for Review of Special Master Abell's Order, "conclud[ing] that it lack[ed] jurisdiction to review the order in question." Warfle ex rel. Guffey, 92 Fed. Cl. at 363.

C. Proceedings Regarding Final Fee Application

On January 20, 2011, Mr. Dannenberg filed an application for attorneys' fees and costs. Fee Pet., ECF No. 89. Respondent requested an enlargement, until March 1, 2011, to review the application and supporting documentation and prepare a response. Mot., Feb. 3, 2011, ECF No. 90. Respondent's Motion was granted on February, 15, 2011. Order, ECF No. 91.

On March 1, 2011, Respondent timely filed her response, objecting to Mr. Dannenberg's requested hourly rate and the number of hours claimed. Resp't's Resp. Fee Pet., ECF No. 94.

On April 5, 2011, a status conference was convened to discuss Mr. Dannenberg's application for fees and costs. During the conference I discussed with the parties three recent Federal Circuit cases bearing on the issue of attorneys' fees within the Vaccine Program and of particular applicability to Mr. Dannenberg's request.[15] The cases addressed the appropriate method for determining attorneys' reasonable hourly rates. Based on these cases, and the outcome in Schueman ex rel. Schriver v. Secretary of the Department of Health & Human Services, No. 04-693V, 2010 WL 3421956 (Fed. Cl. Spec. Mstr. Aug. 11, 2010), another decision awarding attorneys' fees to Mr. Dannenberg, I encouraged the parties to resolve their differences and come to an agreement in this case. I stated that failure to agree on a reasonable hourly rate would result in the issuance of a full decision applying the logic and analysis in Schueman. The following day I issued an order instructing the parties "to endeavor to reach an agreement using the framework set forth in Schueman." The Order stated that another status conference would be convened in 30 days if an agreement was not reached.

On April 11, 2011, having failed to reach an agreement, Mr. Dannenberg filed an Amended Fees Petition. A status conference was convened on May 11, 2011. In accordance with what was discussed at the status conference, I issued an order requiring Respondent to file a response to the Amended Fees Petition, followed by a reply by Mr. Dannenberg, if any. Order, May 16, 2011, ECF No. 98. The Order stated that following completion of briefing, "the record on fees will be closed, and I will make a decision." Id.

[15] See Rodriguez v. Sec'y of Dep't of Health & Human Servs., 632 F.3d 1381 (Fed. Cir. 2011); Masias v. Sec'y of Dep't of Health & Human Servs., 634 F.3d 1283 (Fed. Cir. 2011); Hall v. Sec'y of Dep't of Health & Human Servs.,640 F.3d 1351 (Fed. Cir. 2011).

On June 10, 2011, Respondent timely filed a response to Mr. Dannenberg's Amended Fees Petition. On July 6, 2011, after being afforded a 14 day enlargement, Mr. Dannenberg filed a reply to Respondent's response. ECF No. 101. The issue now before me is the amount of fees and costs due Petitioner's former attorney, Paul S. Dannenberg.

IV. LAW PERTAINING TO AWARDS OF FEES AND COSTS

A. The Legal Framework for Fees and Costs Awards

The Vaccine Act permits the award of reasonable attorneys' fees and costs to petitioners. 42 U.S.C. § 300aa-15(e)(1). Unlike most fee-shifting statutes, the Vaccine Act does not require that a petitioner prevail to receive a fee and costs award, but only that the claim be brought in good faith and with a reasonable basis. Id. When entitlement to compensation is established, an award of reasonable attorneys' fees and other costs is mandated. Id.; Saxton ex rel. Saxton v. Sec'y of Dep't of Health & Human Servs., 3 F.3d 1517, 1520 (Fed. Cir. 1993).

The payment of reasonable attorneys' fees and costs is within the discretion of the special master when a petitioner does not prevail, however. Saxton, 3 F.3d at 1520 (citing Perreira v. Sec'y of Dep't of Health & Human Servs., 27 Fed. Cl. 29, 31 (1992), aff'd, 33 F.3d 1375 (Fed. Cir. 1994)). Even if good faith and a reasonable basis are found in such cases, an award is not mandatory. 42 U.S.C. § 300aa-15(e)(1); Di Roma v. Sec'y of Dep't of Health & Human Servs., No. 90-3277V, 1993 WL 496981, *1 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). Furthermore "[b]ecause public policy concerns warrant against an attorneys' fees proceeding escalating to the level of full litigation, the special master is given 'reasonably broad discretion' to determine the proper amount of an award." Carrington ex rel. Carrington v. Sec'y of Dep't of Health & Human Servs., 85 Fed. Cl. 319, 322-23 (2008) (quoting Wasson v. Sec'y of Dep't of Health & Human Servs., 24 Cl. Ct. 482, 483 (1991), aff'd per curiam, 988 F.2d 131 (Fed. Cir. 1993) (unpublished table decision)).

The requirements of good faith and reasonable basis generally have been interpreted liberally by special masters. See Schueman, 2010 WL 3421956, at *3 (citing Savin v. Sec'y of Dep't of Health & Human Servs., 85 Fed Cl. 313, 317-19 (2008)). Respondent has not challenged good faith or reasonable basis, and Special Master Abell denied a motion to dismiss. The case proceeded to a hearing with testimony by a medical expert. Warfle v. Sec'y of Dep't of Health & Human Servs., No. 05-1399V, 2010 WL 2671504 (Fed. Cl. Spec. Mstr. June 15, 2010).[16] Under these circumstances, I find that the claim was brought in good faith and with a reasonable basis.

[16] Although Respondent filed a Motion to Dismiss early in this proceeding, see Rule 4(c) Rep. and Mot. Dismiss, Sept. 1, 2006, ECF No. 20, Special Master Abell ultimately denied the Motion in its entirety, finding that Respondent "has neither shown (a) that the facts alleged by Petitioner herself do not evince a reading which would support a decision in her favor; nor (b) that there are no material facts remaining, such that summary judgment is warranted." Order at 1, Feb. 22, 2007, ECF No. 29. The special master, however, was "quick to remind Petitioner that future hurdles will require more of her, and that serious

To determine reasonable attorneys' fees, this Court traditionally has used the lodestar approach. Avera, 515 F.3d at 1347 (endorsing the lodestar approach in Vaccine Act cases). This approach involves two steps. First, a court "determines an initial estimate . . . by 'multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.'" Id. at 1347-48 (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)). Second, that initial calculation is adjusted "upward or downward . . . based on other specific findings." Id. at 1348.

"The preeminent question . . . with all requests for Attorney's Fees and Costs[] is one of reasonableness." Kuperus v. Sec'y of Dep't of Health & Human Servs., No. 01-0060V, 2006 WL 3499516, at *3 (Fed. Cl. Spec. Mstr. Nov. 17, 2006). The reasonable hourly rate is "the prevailing market rate," which has been defined as the rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum, 465 U.S. at 896 n.11. Petitioners bear the burden of "produc[ing] satisfactory evidence" that the hourly rate requested is reasonable. Id. (noting "courts properly have required prevailing attorneys to justify the reasonableness of the requested rate or rates").

In Vaccine Act cases, the prevailing market rate is determined using the forum rule rather than the geographic rule. Avera, 515 F.3d at 1349. For cases brought under the Vaccine Act, the applicable forum is Washington, D.C.; but, to prevent windfalls to attorneys practicing in less expensive legal markets, the Federal Circuit in Avera also adopted the Davis County exception ("Davis exception"). Id. (citing Davis County Solid Waste Management and Energy Recovery Special Service District v. U.S. Environmental Protection Agency, 169 F.3d 755 (D.C. Cir. 1999)). The Davis exception is applied in cases where the "bulk" of an attorney's work occurs outside the forum and the forum rate is very significantly higher than the local rate. Id.

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 ethically is obligated to exclude such hours from his fee submission." Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). Stated simply, the "guiding principle in determining whether hours are reasonable [is]: '[h]ours that are not properly billed to one's client are not properly billed to one's adversary pursuant to statutory authority.'" Riggins v. Sec'y of the Dep't of Health & Human Servs., 406 F. App'x 479, 481 (Fed. Cir. 2011) (quoting Hensley, 461 U.S. at 434 (emphasis omitted)). Special masters need not undertake "a line-by-line evaluation of the [fees] petition," Wasson, 24 Cl. Ct. at 483, and may use their "experience and judgment" to determine the reasonableness of the hours expended. Saxton, 3 F.3d at 1521.

Just as a request for attorneys' fees must be reasonable under the Vaccine Act, "so must any request for reimbursement of costs." Perreira, 27 Fed. Cl. at 34 ("The conjunction 'and' conjoins both 'attorneys' fees' and 'other costs' and the word 'reasonable' necessarily modifies both.").

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matters of fact are yet to be articulated and proven in this case." Id. No argument questioning the reasonable basis of the claim was made.

A special master may reduce a request for fees and costs that is not reasonable sua sponte, without regard for whether the respondent objected to a particular request. See Sabella v. Sec'y of Health & Human Servs., 86 Fed. Cl. 201, 208-09 (2009). "The Vaccine Act compels each special master to determine independently whether a particular request is reasonable. This obligation is not suspended—nor the sound discretion and common sense that underlie it rendered inoperable—merely because respondent fail[s] to object to a particular fee item." Savin, 85 Fed. Cl. at 318. Further, a special master need not provide petitioner an opportunity to explain an unreasonable request. Sabella, 86 Fed. Cl. at 209. Instead, it is the petitioner's burden to demonstrate in the first instance "that the hours claimed are reasonable" and that "proper documentation . . . has been submitted" to support the claim. Id. at 210 (citing Hensley, 461 U.S. at 433, 437); see also Duncan ex rel. Duncan v. Sec'y of Dep't of Health & Human Servs., No. 99-455, 2008 WL 4743493, at *1 (Fed. Cl. Aug. 4, 2008) ("The request for fees must be complete when submitted.").

The Supreme Court recently reminded parties that "the determination of fees [under a fee-shifting statute] 'should not result in a second major litigation.'" Fox v. Vice, -- U.S. --, 131 S. Ct. 2205, 2210 (2011) (quoting Hensley, 461 U.S. at 437). Trial courts need not, "and indeed should not, become green-eyeshade accountants," Id. at 2216, and have discretion to achieve "rough justice." Id. at 2210.

V. DISCUSSION

A. Reasonable Hourly Rate

The framework for determining a reasonable hourly rate in Vaccine Act cases is well established. The analysis begins with a determination of the forum rate. If the bulk of the work was performed outside the forum, it is necessary to determine the applicable local market rate for where the work was performed, "to determine if the Davis exception to the forum rule applies." Rodriguez v. Sec'y of the Dep't of Health & Human Servs., No. 06-559V, 2009 WL 2568468, at *10 (Fed. Cl. Spec. Mstr. July 27, 2009), aff'd, 632 F.3d 1381 (Fed. Cir. 2011).

1. Forum Rate

Under this framework, the special master first determines the forum rate—the reasonable hourly rate "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Avera, 515 F.3d at 1348 (internal quotation marks omitted) (citing and quoting Blum, 465 U.S. at 896 n.11). The applicable forum for cases brought pursuant to the Vaccine Act is Washington, D.C., the seat of the Court of Federal Claims. Avera, 515 F.3d at 1348. To establish the reasonable hourly rate in the forum, the party seeking attorneys' fees "must submit evidence supporting the . . . rates claimed." Hensley, 461 U.S. at 434.

In his initial petition for attorneys' fees and costs, Mr. Dannenberg requested an hourly rate of $465 for all work performed from his first billable contact with Petitioner on

February 10, 2003, to the date he mailed his petition for fees to the Court on January 17, 2011. Fee Pet. Ex. 3. He contended that he should be paid at this rate for all time spent on the case (2003-2011) "to compensate for the delay in payment of attorneys fees." Fee Pet. at 8. Mr. Dannenberg asserted that $465 per hour is "the Washington, D.C. forum rate . . . as of 2010," Fee Pet. at 5, a rate derived from the Laffey Matrix, which "indicat[es that] the rate for attorneys with over 20 years of experience such as [himself], is $465.00 per hour for 2010." Fee Pet. at 2; see Fee Pet. Ex. 6 (Laffey Matrix).[17] He supports this assertion by citing to Walmsley v. Secretary of the Department of Health & Human Services, No. 06-270V, 2009 WL 4064105 (Fed. Cl. Spec. Mstr. Nov. 6, 2009), a special master's decision awarding fees that found the Laffey Matrix to be "the proper guide [for] determin[ing] the hourly rate for vaccine act litigation." Fee Pet. at 4.[18]

In addition to the Laffey Matrix, Mr. Dannenberg submitted two other pieces of evidence to support the claimed forum rate: the Adjusted Laffey Matrix as of April 21, 2010, Fee Pet. Ex. 7, and the Bureau of Labor Statistics Consumer Price Index ("CPI") for the Washington/Baltimore area for the years 2000-2010, Fee Pet. Ex. 9.[19] According to Mr. Dannenberg the Adjusted Laffey Matrix, which indicates an hourly rate of $686 for attorneys with over 20 years of experience, was provided to show the upper range of fees "he is entitled to under the Program." Fee Pet. at 4 ("between $465 and

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[17]

> The Laffey Matrix is based on the hourly rates allowed by the U.S. District Court for the District of Columbia in Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354, 371 (D.D.C. 1993), rev'd on other grounds, 756 F.2d 4 (D.C. Cir. 1984) (rejecting use of the matrix rates in that particular case. The Court of Appeals for the District of Columbia Circuit later approved of applying Laffey Matrix rates (see, e.g., Covington v. District of Columbia, 57 F.3d 1101, 1109 (D.C. Cir. 1995)), and now the matrix is maintained by the U.S. Attorney's Office for the District of Columbia. It includes a chart of hourly rates for attorneys, based on the number of years in practice. Yearly updates to the original hourly rates allowed by the district court are based on annual increases in the Consumer Price Index.

Schueman, 2010 WL 3421956, *4 n.12.

[18] In Hocraffer v. Secretary of the Department of Health & Human Services, No. 99-533V, 2011 WL 3705153 (Fed. Cl. Spec. Mstr. July 25, 2011), aff'd, 2011 WL 6292218 (Fed. Cl. Nov. 22, 2011), a recent fees decision involving Mr. Dannenberg, the special master noted that "to his knowledge, [Walmsley] was the only Vaccine Act case to award Laffey Matrix rates. Id. at *9 (citing Schueman, 2010 WL 3421956, at *4, n.14). Although the special master in Walmsley awarded fees based on the Laffey Matrix, that special master noted that "[w]here there are other sources of evidence to better approximate the market rate in a community, the matrix should be avoided." Walmsley, 2009 WL 4064105, at *12.

[19] The Adjusted Laffey Matrix "was developed by Michael Kavanaugh, who submitted an affidavit in Masias. The difference between the two matrices is that the official Laffey matrix is adjusted by the Consumer Price Index, for the Washington, D.C. metropolitan area, while the adjusted Laffey matrix uses the legal services component of the nationwide consumer price index." Hall v. Sec'y of Dep't of Health & Human Servs., 2009 WL 3423036, at *9 n.5 (Fed. Cl. Spec. Mstr. Oct. 6, 2009) (citing Woodland v. Viacom, Inc., 255 F.R.D. 278, 279 (D.D.C. 2008), aff'd, 93 Fed. Cl. 239 (2010)), aff'd, 640 F.3d 1351 (Fed. Cir. 2011).

$686 per hour"). The CPI was provided to show that between November 1996 and September 2010 the "Consumer Price Index in the Washington, DC area has risen 42.738%." Fee Pet. at 7. Mr. Dannenberg suggests the Court use the CPI

> to calculate the present value of the hourly rate of the only private practitioner from Washington, D.C. to represent a vaccine act petitioner, . . . who requested $300 per hour for work performed between 2001 and 2003, the present value would be $379.52 per hour based on the Consumer Price Index from 2003 to present (a 26.524% increase.) Aside from the Laffey Matrix, this is also some evidence of the prevailing market rate in Washington, D.C. for vaccine act litigation, although based upon only one attorney.

Fee Pet. at 7 (citing Flannery v. Sec'y of Dep't of Health & Human Servs., No. 99-963V, 2004 WL 2397590 (Fed. Cl. Spec. Mstr. Oct. 12, 2004)).[20]

Additionally, Mr. Dannenberg requested that I "take judicial notice" of information contained in an article published in The National Law Journal providing a sampling of billing rates from six Washington, D.C. area law firms in late 2007. Fee Pet. at 7. The article was not submitted as evidence in the instant case, but in Rodriguez, where the special master concluded that it "d[id] not provide sufficient detail concerning the nature of these law firms' practice areas to offer much guidance on the forum rate in Vaccine Act cases." 2009 WL 2568468, at * 13. Nevertheless, Mr. Dannenberg directed my attention to the Court of Federal Claims' decision "[f]or additional support . . . where Judge Sweeney cited evidence from the National Law Journal of a 2007 sampling of law firm billing rates specific to the Washington, D.C. area showing hourly rates for partners ranging from $300 per hour to $1000 per hour." Fee Pet. at 7 (citing Rodriguez v. Sec'y of Dept' of Health & Human Servs., 91 Fed. Cl. 453, 466 n. 11 (2010)). Mr. Dannenberg urged "the court [to] take judicial notice of this evidence as it is relevant in this matter." Id. After reviewing the decision, I take notice of Judge Sweeney's finding that

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[20] The Flannery citation is to an Order to Show Cause, which is discussed in Rodriguez, 2009 WL 2568468, at * 7, where the special master found that the Order "provide[d] some additional evidence regarding the forum rate for Vaccine Act cases, at least for work performed in 2004 and earlier by a highly experienced tort attorney." The Flannery Order instructed Respondent to "SHOW CAUSE why petitioner's counsel should not receive an hourly fee of $300.00." Flannery, 2004 WL 2397590, at *2. The special master in Rodriguez ultimately determined

> that the 'forum rate' for an attorney with more than 20 years of experience, and one with considerable specialized expertise in Vaccine Act cases or litigation of similar or greater complexity, is in the range of $275-360.00 per hour, with work performed in earlier years at the lower end of this range and work performed more recently at the higher end of this range. This rate is reflective of the rate requested in Flannery. Although the Flannery order does not indicate the amount ultimately awarded, the special master's comments in the order indicate that she considered the request[ed] rate appropriate.

Rodriguez, 2009 WL 2568468, at *15.

> the special master did not err in concluding that [the] nationwide survey of law firm billing rates lacked the details necessary to determine whether the services provided by the included law firms could be compared favorably with Vaccine Act litigation; the survey is devoid of any information about the types of litigation handled by the law firms.

Rodriguez, 91 Fed. Cl. at 477-78.

Two recent Federal Circuit opinions have addressed the appropriateness of the Laffey Matrix for establishing the forum rate in Vaccine Act litigation. In Rodriguez Sec'y of Dep't of Health & Human Servs., 632 F.3d 1381 (Fed. Cir. 2011), the Circuit considered whether the forum rate in Vaccine Act cases "should be determined by applying the Laffey Matrix, or whether the rate should be determined by considering a variety of factors, which may or may not include the Laffey Matrix"—a question "expressly" not reached in Avera. Rodriguez, 632 F.3d at 1384. Similar to the instant case, the petitioner in Rodriguez sought fees based on the Laffey Matrix and the Adjusted Laffey Matrix, contending that the matrices "provided prima facie evidence of the forum rate for Vaccine Act cases." Id. The special master found that using the matrices was not justified because Vaccine Act litigation is not comparable to complex federal litigation—the type of litigation for which the Laffey Matrix was designed. See Rodriguez, 2009 WL 2568468, at *11-12.

Affirming the decision, the Circuit agreed that "Vaccine Act litigation, while potentially involving complicated medical issues and requiring highly skilled counsel, is not analogous to 'complex federal litigation' as described in Laffey so as to justify use of the Matrix instead of considering the rates charged by skilled Vaccine Act practitioners." Id. at 1385. The Circuit concluded that Vaccine Act proceedings "are different from the complex type of litigation the Laffey Matrix is designed to compensate," as vaccine cases "involve no discovery disputes, do not apply the rules of evidence, and are tried in informal, streamlined proceedings." Id. Additionally, Vaccine Act litigation differs from cases compensated under other fee-shifting statutes that apply the Laffey Matrix in that "a party need not 'prevail' under the Vaccine Act in order to receive an award of attorneys' fees;" the cases need only be brought in "good faith" and with "a reasonable basis." Id. (quoting 42 U.S.C. § 300aa-15(e)(1)). Accordingly, "it is appropriate to take account of the fact that Vaccine Act attorneys are practically assured of compensation in every case, regardless of whether they win or lose and of the skill with which they have presented their clients' cases." Id. Not to do so would result in "Vaccine Act attorneys [being] more favorably compensated than [those] who take cases under fee-shifting statutes [where they] are only paid . . . if their clients' claims are meritorious and they [have] skillfully prosecute[d] those claims." Id. The Circuit found that the special master "considered appropriate evidence, including the Laffey Matrix" and did not err in declining to use the Laffey Matrix in her determination of the forum rate. Id.

In Masias v. Secretary of the Department of Health & Human Services, 634 F.3d 1283 (Fed. Cir. 2011), the Circuit again approved rejection of Laffey Matrix rates by a special master. In his decision, the special master compared the petitioner's case with

the litigation described in Laffey and determined that the litigation in Masias "was less complex, did not present any novel issues of law, and did not require appellate review on the merits." Id. The special master also noted the relaxed procedural attributes of Vaccine Act litigation, specifically that the Federal Rules of Evidence do not apply and that cases are not presented to a jury. Id. Ultimately, the special master found that the petitioner had "failed to establish the similarity between the skills in Laffey and the skills in a Vaccine Program case." Masias v. Sec'y of Dep't of Health & Human Servs., No. 99-697V, 2009 WL 1838979, at *19 (Fed. Cl. Spec. Mstr. June 12, 2009). The Court of Federal Claims denied review and affirmed the special master's decision. Masias v. Sec'y of Dep't of Health & Human Servs., No. 99-697V, slip op. at 11 (Fed. Cl. Dec. 10. 2009). Petitioner sought review by the Circuit, which found "that the special master considered the relevant evidence, drew plausible inferences, and articulated a rational basis for his finding" that the petitioner, under Blum, did not establish that his attorney provided "'similar services' to those provided by the attorneys in Laffey." 634 F.3d at 1290. The Circuit concluded that "[h]aving failed to establish this, [the petitioner] effectively failed to establish that he deserved . . . [the] rates awarded in complex federal litigation." Id.

Here, Respondent objected to the requested $465 hourly rate, but melded a number of arguments in her analysis. Respondent stated that "Mr. Dannenberg, whose office is located in Huntington, Vermont, seeks to be awarded an hourly rate equivalent to an attorney of similar experience litigating complex litigation cases in Washington, D.C." Resp't's Resp. Fee Pet. at 4. Respondent argued that Mr. Dannenberg is not entitled to the forum rate because, "none of the work . . . was performed in Washington, D.C. In fact, with the exception of participating in [] the one-day entitlement hearing . . . in Nashville, Tennessee, all of [his] work . . . was performed in Huntington, Vermont." Id. Further, while the Laffey Matrix "may be considered along with other appropriate evidence," the Federal Circuit in Rodriguez "specifically found that the Laffey Matrix does not constitute prima facie evidence of the appropriate forum rate in Vaccine Act cases." Id. at 7. Moreover, contrary to Mr. Dannenberg's argument and supporting citation to Walmsley, the Davis exception is applicable to the instant matter "based upon the evidence submitted . . . [as] there appears to be a very significant difference in compensation" between Washington, D.C. and Huntington, Vermont. Id. at 4; see also id. at 7 n.1. "[R]eliance on the local rates of Huntington, Vermont [is] appropriate here." Id. at 5.

Additionally, Respondent asserts that Mr. Dannenberg is "factually and legally incorrect" in arguing that application of the $465 hourly rate to all time spent on the case is justified. Id. at 8. "[T]o the extent that this case has been 'delayed,' it is due to [Mr. Dannenberg's] numerous motions, appeals, and overall procedural handling of this case." Id. As a legal matter, "in a case against the United States, a court cannot increase a fee award because of a delay in payment." Id. (citing Applegate v. United States, 52 Fed. Cl. 751, 770 (2002) (citing Library of Congress v. Shaw, 478 U.S. 310, 311 (1986)).

In response, Mr. Dannenberg filed an Amended Fees Petition, wherein he acknowledged the Circuit's decision in Rodriguez, which issued subsequent to the filing of his initial fees application. See Am. Fee Pet. at 1-2. In light of that decision, Mr. Dannenberg "amend[ed] his requested hourly forum rate to $380.00 per hour," which he asserts

> is the Washington, D.C. forum rate determined to be reasonable in the Rodriguez case, adjusted for inflation by the Washington, D.C., consumer price index from the Bureau of Labor Statistics, as of September, 2010. This evidence was also found appropriate to consider in Rodriguez, and was used in that case to determine the current forum rate.

Am. Fee Pet. at 2.[21]

As an apparent concession, Mr. Dannenberg then requested, based on my comments during the April 5, 2011, status conference, and "to expedite this matter," that he be awarded "the forum rate of $325 per hour for work performed from 2003-2006, and $380 per hour for work performed in 2007 and beyond." Am. Fee Pet. at 2.[22]

Responding to Mr. Dannenberg's amended request, Respondent again objected, reiterating her previous arguments and noting that although Mr. Dannenberg avers that he has litigated "a number of cases in the Vaccine Program since 1987," to Respondent's knowledge he "has not been awarded the hourly rate requested here." Resp't's Resp. Am. Fee Pet at 2. "More importantly, he has not provided sufficient

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[21] Mr. Dannenberg quoted from the special master's decision in Rodriguez, where she

> conclude[d] that the 'forum rate' for an attorney with more than 20 years of experience, and one with considerable specialized expertise in Vaccine Act cases or litigation of similar or greater complexity, is in the range for $275-360.00 per hour, with work performed in earlier years at the lower end of this range and work performed more recently at the higher end of this range.

Rodriguez, 2009 WL 2568468, at *15. The special master indicated that "[t]his rate is reflective of the rate requested in Flannery." Id.

[22] Mr. Dannenberg stated that, during the status conference, I "indicated that the Davis exception did not apply to this case, and that the forum rate was applicable in this matter, citing Schueman." Am. Fee Pet. at 2. As noted previously, I issued an order on April 6, 2011, following the status conference, wherein I instructed the parties to "to endeavor to reach an agreement using the framework set forth in Schueman v. Secretary of Department of Health & Human Services, No 04-693V, 2010 WL 3421956 (Fed. Cl. Spec. Mstr. Aug. 11, 2010)." In Schueman, the special master determined based on the evidence that she "need not apply the Davis exception." Id. at *5.

My comments during the status conference on April 5, 2011, were intended to promote a negotiated resolution of the matter, as my order dated April 6, 2011 indicated. In any event, after the status conference, Respondent sought reconsideration. Respondent noted that both Masias and Rodriguez had held that the Laffey Matrix did not apply, an issue that had yet to be decided by the Federal Circuit when Shueman was issued. Based on the reasoning set forth in Masias, Rodriguez and Hocraffer, which also was issued after Schueman, I now am persuaded, for the reasons discussed herein, that the correct result is that the Laffey Matrix does not apply and the Davis exception does apply.

evidence that the rates requested . . . are appropriate in this case." Id. Respondent also urged me to reconsider my earlier position that the Davis exception would not apply,

> submit[ting] that the analysis in Schueman, the Vaccine Act, and binding Federal Circuit precedent require the Special Master to determine the local attorney hourly rate, determine the forum attorney hourly rate, compare them to determine if there is a very significant difference between the two, and if appropriate, apply the Davis County exception.

Resp't's Resp. Am. Fee Pet. at 3 (citing Schueman, 2010 WL 3421956, at *3; Hall v. Sec'y of Dep't of Health & Human Servs., 640 F.3d 1351, 1356-57 (Fed. Cir. 2011); Masias v. Sec'y of Dep't of Health & Human Servs., 634 F.3d 1283 (Fed. Cir. 2011); Rodriguez, 632 F.3d 1381).

In his reply, Mr. Dannenberg offered no meaningful argument to support the requested forum rate, but "reminds the court that the Washington D.C. forum rate is the presumed rate to be applied in this matter unless the Davis exception applies pursuant to Avera." Pet'r's Reply at 1. He asserted that the Davis exception should not be applied, since I "orally ruled" on the matter at the status conference on April 5, 2011, stating that the exception would not apply. Pet'r's Reply at 1. See note 22, supra.

Ultimately, Mr. Dannenberg submitted little or no evidence in support of his claimed Washington, D.C. forum rates. While he initially relied on the Laffey Matrix and Adjusted Laffey Matrix as evidence of the forum rate, he abandoned the matrices in his amended application for fees. Later, he unequivocally stated that he "is not requesting Laffey Matrix rates." See Pet'r's Reply at 4. The only other "evidence" was the CPI, which Mr. Dannenberg suggested should be used to calculate a present value of the hourly rate requested in the Flannery show cause order, which was considered as "some additional evidence" by the special master in Rodriguez. The CPI alone, however, is not evidence of the forum rate for attorneys practicing in the Vaccine Program. It is simply a tool, which I will use to adjust the final awarded rate to account for inflation.

A similar situation was faced by the special master in Hocraffer, where Mr. Dannenberg presented insufficient evidence to support his stated forum rate. Hocraffer v. Sec'y of Dep't of Health & Human Servs., No. 99-533V, 2011 WL 3705153, at *14, (Fed. Cl. Spec. Mstr. July 25, 2011), aff'd, 2011 WL 6292218 (Fed. Cl. Nov. 22, 2011). The special master in Hocraffer found that the forum rate "would be approximately $300 per hour." Id.[23]

[23] The special master wrote:

> Ultimately, Mr. Eisen's affidavit and the Matrices are the only evidence in the record of a forum rate. The special master was faced with the same situation in Schueman. In Schueman, the case involving the same petitioner's counsel, the special master found forum rates for experienced Vaccine Act attorneys to range from $275 to $360 per hour. Schueman, 2010 WL 3421956, *4 (citing Rodriguez, 2009 WL 2568468, *15); Rodriguez

Given that Mr. Dannenberg has failed to carry his burden to produce sufficient evidence to support the claimed forum rate, I agree with the analysis and findings of the special master in Hocraffer concerning the appropriate forum rate. I therefore find that the Washington, D.C. forum rate for an attorney comparable to Mr. Dannenberg would be approximately $309 per hour, referencing the rates found by the special masters in Rodriguez, Masias, and Hocraffer, and adjusting for inflation.[24]

2. Bulk of the Work Prong

Having decided the forum rate, I must now determine whether the bulk of Mr. Dannenberg's work was performed outside of the forum. This is the first of two steps in determining the applicability of the Davis exception. As already discussed, the Davis exception is applied in cases where the "bulk" of an attorney's work occurred outside the forum and the forum rate is very significantly higher than the local rate. Avera, 515 F.3d at 1349.

Respondent asserts that this prong of the Davis analysis is easily answered because "none" of Mr. Dannenberg's work was performed in Washington, D.C. Resp't's Resp. Fee Pet. at 4. "In fact, with the exception of participating in [] the one-day entitlement hearing before the special master in Nashville, Tennessee, all of the work . . . was performed in Huntington, Vermont." Id.; see also id. at 6.

In his Amended Fees Petition, Mr. Dannenberg neither addressed the "bulk of work" component of the Davis exception nor made any argument in response to Respondent's assertions. See Am. Fee Pet. In her subsequent brief, Respondent renewed her previous objections, maintaining that "the bulk of the work in this matter was done outside the forum." Resp't's Resp. Am. Fee Pet. at 3. Again, Mr. Dannenberg made no argument or rebuttal.

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v. Sec'y of the Dept. of Health & Human Servs., No. 06–559V, 2009 WL 2568468, at *15 (Fed.Cl.Spec.Mstr. Jul. 27, 2009) (finding the "'forum rate' for an attorney with more than 20 years experience ... is in the range of $275–360.00 per hour"). As was also noted in Schueman, another special master calculated similar forum rates. Masias v. Sec'y of the Dept. of Health & Human Servs , No. 99–697V, 2009 WL 1838979, at *25 (Fed. Cl. Spec. Mstr. June 12, 2009) (finding a "reasonable range for attorneys with ten or more years of experience providing services in the Vaccine Program in Washington, D.C. is $250 to $375 per hour."); see also Adde v. United States, 98 Fed. Cl. 517, 2011 WL 2144706, at *10 (Fed.Cl.2011) (discussing an appropriate rate for counsel considering their performance before the court and comparing to rates awarded in the Vaccine Program, citing Rodriguez, 2009 WL 2568468, at *13, n. 43). The undersigned accepts these findings as evidence of the appropriate forum rate and finds the forum rate for petitioner's attorney would be approximately $300 per hour by referencing the rates found by the special masters in Rodriguez and Masias.

[24] The $300 forum rate found in Hocraffer was based on the year 2010. See Hocraffer, 2011 WL 3705153, at * 17 n.25. I have adjusted the rate to a 2011 value utilizing the Consumer Price Index online inflation calculator, an electronic version of the CPI submitted by Mr. Dannenberg. See Bureau of Labor Statistics, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 17, 2012).

As there is no evidence to indicate that Mr. Dannenberg performed any work within the District of Columbia, and he did not argue to the contrary, I find that the bulk of the work in this case occurred outside the forum. Accordingly, the first prong of the Davis exception is met.

3. Local Market Rate Prong

Because the bulk of the work was performed outside the forum—in Huntington, Vermont—I must turn to the second prong of the Davis exception to determine the local market rate for an attorney of similar tenure and experience as Mr. Dannenberg. Once I have determined the local market rate, I will compare it with the forum rate, determined above, to determine whether the Davis exception applies.

Determination of the local market rate involves a comparison of rates charged by attorneys of similar "skill, experience, and reputation." Avera, 515 F.3d at 1348 (citing Blum, 465 U.S. at 888). A petitioner must "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." Blum, 465 U.S. at 896 n.11.

Mr. Dannenberg submitted four affidavits as evidence of the local market rate for attorneys in his area—his own and those of three attorneys who practice in Vermont. See Fee Pet. Exs. 1, 2.; Int. Fee Pet. Ex 2. Mr. Dannenberg's affidavit, which is dated January 18, 2011, states that he has practiced law since 1986 and his "present practice is limited to vaccine injury litigation." Fee Pet. Ex. 1. He asserts that his "local hourly rate for vaccine injury litigation is presently $325.00 per hour." Id.[25] The affidavit of James W. Spink, a Vermont attorney admitted to practice in that state in 1980, attests to an hourly rate in the range of $185 to $250 per hour as of May 22, 2007, and indicates a practice focused "in the fields of plaintiff and defense general tort litigation and mediation/ADR." Fee Pet. Ex. 2. The affidavit of Gordon E. R. Troy, an attorney admitted to practice in Illinois in 1986, and Vermont in 1994, states that as of June 21, 2010, his standard hourly rate is $325 per hour. Id. Mr. Troy, whose office is located in a small Vermont town near Huntington, "practices in the federal areas of trademark, copyright, unfair competition, Internet, computer law, general intellectual property counseling and litigation." Fee Pet. at 3. Mr. Troy states that "[t]hese areas similarly involve complex federal litigation." Id. The affidavit of Roger Kohn, an attorney admitted to practice in Vermont in 1972, states he is a general practitioner in the "northwestern part of Vermont" and has "substantial litigation experience, particularly on behalf of plaintiffs." Int. Fee Pet. Ex. 2 at 2.[26] Mr. Kohn states that his "usual hourly rate is presently either $195 or $225 per hour" as of May 17, 2007. Id.

[25] I agree with Respondent's objection, noted at various points in the course of this protracted controversy, that since Mr. Dannenberg represents only Vaccine Program petitioners, it is unclear what basis he has for stating that he charges any client $325 per hour.

[26] Mr. Dannenberg argues that Mr. Kohn's affidavit should not be considered.

> Respondent cites evidence not submitted in this matter, specifically the four-year-old affidavit of attorney Roger Kohn. This was filed with the interim petition for fees and

To facilitate comparison, I adjust the above rates to 2011 values utilizing the Consumer Price Index online inflation calculator, an electronic version of the CPI submitted by Mr. Dannenberg.[27] Mr. Spink's adjusted rate is $201 to $271 per hour. Mr. Troy's adjusted rate is $335 per hour. Mr. Kohn's adjusted rate is $212 to $244 per hour.

Respondent argues that only Mr. Kohn's and Mr. Spink's affidavits "are of significant probative value," as their work appears similar to that of Mr. Dannenberg's in representing petitioners in the Vaccine Program. Resp't's Resp. Am. Fee Pet. at 5. Mr. Troy's affidavit, however, should be "discounted" because his work areas "are not particularly similar" to Vaccine Program litigation. Resp't's Resp. Am. Fee Pet. at 5 (citing Fee Pet. at 2). Respondent rebuts Mr. Dannenberg's assertion that "Mr. Troy's affidavit supports his requested hourly rate because Mr. Troy's practice areas 'similarly involve complex federal litigation.'" Id. (quoting Fee Pet. at 3). Additionally, the affidavit states a rate outside of the period in which the bulk of the work was completed. Id.

Mr. Dannenberg rebuts that Mr. Troy's affidavit is probative because it shows the rate of a Vermont attorney engaged in "complex federal litigation," similar to litigation in the Vaccine Program. Mr. Dannenberg, however, has made no showing or meaningful argument to support this assertion. See Pet'r's Reply 2-6. As discussed, the Federal Circuit has found that there are significant differences between complex federal litigation and Vaccine Act litigation. See Rodriguez, 632 F.3d at 1384-85; Masias, 634 F.3d at 1288 n.6. The proper comparison is of similar services by lawyers of reasonably comparable skill, experience, and reputation.

Although Mr. Dannenberg's affidavit states that he has "handled numerous vaccine cases since 1987," it offers no other description or evidence of his skill, experience, and reputation. See Fee Pet. Ex. 1. With respect to the other three affidavits, Mr. Spink's indicates in broad terms the focus of his practice, which is somewhat analogous to Vaccine Program litigation, but similarly offers no statement or description of his skill or reputation. Mr. Troy's affidavit likewise addresses neither his skill nor his reputation, providing only that his practice is concentrated on intellectual property, unfair competition, Internet, and computer law—practice areas that do not seem comparable to Mr. Dannenberg's work in the Vaccine Program. See Fee Pet. Ex. 2. Mr. Kohn's affidavit, too, fails to address his skill and reputation, and stated "substantial litigation experience, particularly on behalf of plaintiffs," but gives no indication of the nature or difficulty of the litigation. Taken together, this evidence does very little to assist me in determining whether these attorneys offer similar services to

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> costs in this matter almost two and a half years ago. No decision regarding fees and costs was ever issued regarding this interim petition.

Pet'r's Reply at 2. Mr. Dannenberg is mistaken in arguing that Mr. Kohn's affidavit is not evidence in this matter. The document was never stricken from the record and therefore remains evidence. It is of no consequence that it was not considered in an interim fees decision.

[27] See Bureau of Labor Statistics, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 17, 2012).

those of Mr. Dannenberg or are of reasonably comparable skill, experience, and reputation. Moreover, Mr. Dannenberg fails to explain the reason that his claimed 2011 rate of $325 per hour is notably higher than those claimed by two of the attorneys, both of whom have practiced six to fourteen years longer.[28]

In Hocraffer, Mr. Dannenberg provided very similar evidence in the form of affidavits from Mr. Spink, Mr. Kohn, and Mr. Troy. After reviewing the affidavits, the special master stated that he found Mr. Troy's affidavit "carrie[d] little persuasive value" because of the dissimilarity between his and Mr. Dannenberg's practice areas. Hocraffer, 2011 WL 3705153, at *16. He also found the "conclusory assertions" that Mr. Dannenberg and Mr. Troy perform complex litigation to be unsupported by evidence or argument. Id. As for Mr. Spink's and Mr. Kohn's affidavits, the special master stated they were "devoid" of the information necessary to make "the legally appropriate comparison . . . between counsel of comparable skill, experience and reputation." Id. The evidence only allowed for a comparison "as to the attorneys' years in practice." Id. The special master ultimately found the local market rate for attorneys similar to Mr. Dannenberg to be $200 per hour. Id.

Respondent in this case also invited me to consider the "October 21, 2010, 'Ruling on Disputed Issues Pertaining to Attorneys' Fees and Costs'" issued by former Special Master Abell in Langland v. Secretary of the Department of Health & Human Services, No. 07-0036V, slip op. at 4 (Fed. Cl. Spec. Mstr. Oct. 21, 2010), a matter which involved Mr. Dannenberg. Resp't's Resp. Am. Fee Pet. at 6. Respondent stated that the "evidence on the prevailing local hourly rate presented in Langland was also almost identical to that presented in the instant matter." Id. In line with my assessment of Mr. Spink's affidavit, Special Master Abell noted that "tort litigation was similar to the type of work performed by Mr. Dannenberg in representing petitioners in Vaccine Act matters." Id. Special Master Abell, however, found "that the affidavit from Mr. Troy 'is not very helpful because it does not address what Mr. Troy charged in 2006, 2007, and 2008, which was the relevant period for the issue at bar.'" Id. (citing slip op. at 4). "After considering other factors, . . . Special Master Abell determined that $200 to $250 an hour was an appropriate range for Mr. Dannenberg." Id.

Mr. Dannenberg argues that the ruling in Langland "only set parameters for party negotiations," and states that he "does not agree with the correctness of the hourly rates determined." Pet'r's Reply at 6. But see, Hocraffer, 2011 WL 6292218, at *11 (in affirming the $200 local rate, the Court of Federal Claims notes that Mr. Dannenberg relied on the above-stated Langland ruling).

I note that Special Master Golkiewicz in Hocraffer, and Special Master Abell in Langland, addressed very similar evidence to that submitted by Mr. Dannenberg in this case and concluded that the appropriate local for an attorney comparable to Mr. Dannenberg was between $200 and $250 per hour. I agree with their analysis and the result. Therefore, based upon my review of the evidence, including the submitted

[28] See Hocraffer, 2011 WL 3705153, at *16 (noting the same disconnect between Mr. Dannenberg's rate and those of more experienced attorneys).

affidavits and Mr. Dannenberg's years of experience and performance in this case, I find, consistent with the findings of Special Masters Abell and Golkiewicz, the local rate for petitioner's attorney to be $206 per hour, adjusted for inflation.[29]

Having determined the local market rate, I must now examine the difference between the forum rate and local market rate to determine whether the Davis exception applies. A comparison of the forum rate of $309 per hour to the local market rate of $206 per hour discloses that the forum rate is 50% greater than the local market rate, which I find to be very significantly different. See Hall, 640 F.3d at 1357 (a special master, having identified cases with a percentage difference of 46% to 60%, did not abuse his discretion in finding 59% was a very significant difference).[30]

Therefore, because the bulk of the work was done outside the forum in Vermont, and there is a very significant difference between the local market rate and forum rate in favor of the forum, the Davis exception must be applied. See Hall, 640 F.3d at 1356 (it "would be incorrect as a matter of law" for a special master not to apply the Davis exception "where he or she has found that the bulk of the work was performed outside the forum and the difference between local and forum hourly rates is very significantly different"). Mr. Dannenberg is awarded $206 as an hourly rate in 2011, which will be discounted utilizing the Consumer Price Index to determine an appropriate rate for prior years. Accordingly, Mr. Dannenberg is awarded the following hourly rates: 2009-2011 at $206 per hour; 2006-2008 at $197 per hour; and 2003-2005 at $179 per hour.[31]

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[29] The $200 local rate found in Hocraffer was based on the year 2010. See Hocraffer, 2011 WL 3705153, at * 17 n.25. I have again adjusted the rate to a 2011 value utilizing the Consumer Price Index online inflation calculator, an electronic version of the CPI submitted by Mr. Dannenberg. See Bureau of Labor Statistics, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 17, 2012).

[30] The special master in Hocraffer, addressing the different result from obtained in Schueman wrote:

> In Schueman, the special master found there was not a very significant difference between the forum rate and the local rate despite the bulk of the work being performed outside of the forum, and awarded petitioner the attorney rate of $300 per hour. Schueman, 2010 WL 3421956, at *5. The undersigned is mindful of my colleague's decision but reaches a different result based upon the evidence before me. As discussed above, petitioner's affidavits support the lower local rate of $200. Compared to the forum rate of $300 per hour, there is a significant difference implicating the Davis exception. Thus, the local rate of $200 per hour is awarded here. In addition, it is noted that $200 per hour compares favorably with rates awarded to much more skilled attorneys who also practice in lower costs areas comparable to counsel at issue. E.g., Hammitt v. Sec'y of the Dept. of Health & Human Servs., No. 07–170V, 2011 WL 1827221, *1 (awarding a local rate of $240 per hour for an attorney with approximately 27 years of experience), Hall, 640 F.3d at 1354 (awarding a local rate of $240 for an attorney of approximately 21 years of experience).

Hocraffer, 2011 WL 3705153, at *17 n.24. I concur with his statement.

[31] I utilize the Consumer Price Index online inflation calculator, an electronic version of the CPI submitted by Mr. Dannenberg. See Bureau of Labor Statistics, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 17, 2012). Using the $206 hourly rate

4. Current Hourly Rate for Past Work

In his initial fees petition, Mr. Dannenberg contended that he should be paid the same rate for all time spent on the case (2003-2011) "to compensate for the delay in payment of attorneys fees," which "has been substantial." Fee Pet. at 8. Mr. Dannenberg cites Missouri v. Jenkins, 491 U.S. 274 (1989) and Savoie v. Merchants Bank, 166 F.3d 456 (2d Cir. 1999), but provides no analysis applying these cases to the facts of this matter, or any coherent argument concerning them. Id.

Respondent objected to Mr. Dannenberg's complaint stating that "to the extent that this case has been 'delayed,' it is due to petitioner's numerous motions, appeals, and overall procedural handling of this case." Resp't's Resp. Fee. Pet. at 8. As for his claim, Respondent asserted that "in a case against the United States, a court cannot increase a fee award because of a delay in payment." Id. (citing Applegate, 52 Fed. Cl. at 770 (citing Shaw, 478 U.S. at 311)). Such compensation would "be equivalent to paying interest on attorneys' fees, and 'interest cannot be recovered in a suit against the Government in the absence of an express waiver of sovereign immunity from an award of interest.'" Id. (quoting Applegate, 52 Fed. Cl. at 770 (quoting Shaw, 478 U.S. at 311)). For additional support, Respondent also cited Edgar v. Secretary of the Department of Health & Human Services, 29 Fed. Cl. 339, 343-44 (1993); as well as Silver v. Secretary of the Department of Health & Human Services, No. 99-426V, 2009 WL 2950503 (Fed. Cl. Spec. Mstr. Aug. 24, 2009), which notes that "interest has been held not to be available to augment an award of attorneys' fees and costs under the Act." Id. at *10 n.12.

In response, Mr. Dannenberg made no attempt to rebut Respondent's argument; instead, he amended his application seeking one rate for work performed from 2003-2006, and another for work performed in 2007 and beyond. See Am. Fee Pet. at 2.

Although Mr. Dannenberg apparently has abandoned his claim to compensation at the same hourly rate for all hours claimed in this case, I note that he made the same claim in Hocraffer, where he offered enough argument and analysis for the special master to fully address the issue. See Hocraffer, 2011 WL 3705153, at *17-19. After lengthy analysis and discussion, the special master rejected Mr. Dannenberg's claim and awarded him "rates in relation to the years in which the work was performed." Id. at *19.

Consistent with Hocraffer, Mr. Dannenberg will be compensated at the rates set forth above, which give no remuneration for any delay.

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in year 2011 as the benchmark, I adjust the hourly rate downward every three years. I generously assign the deflated rate in the last year of each of the three years (e.g., awarding Mr. Dannenberg the 2011 rate for years 2009, 2010, and 2011; the 2008 rate for years 2006, 2007, and 2008, etc.). See Hocraffer, 2011 WL 3705153, at *17 n.25 (utilizing the same framework).

5. Full Hourly Rate for Travel

Mr. Dannenberg claimed entitlement to full hourly rates during travel, stating that his "practice is now limited to vaccine program cases and all his cases are now charged full hourly rates for travel." Fee Pet. at 6-7 (citing Gruber ex rel. Gruber v. Sec'y Dep't of Health & Human Servs., 91 Fed. Cl. 773 (2010) (finding that awarding full attorney rates for travel may be appropriate where a petitioner's attorney presents a basis for such an award)).

Respondent objected to Mr. Dannenberg's request as "unsubstantiated" and questioned how he could effectively work on the case while simultaneously driving to the hearing. Resp't's Resp. Fee Pet. at 9-10 [32] Respondent argued that Gruber, which is not binding precedent, ultimately "conclude[d] that special masters have discretion to award a reduced rate for travel time, as well as a full rate, depending on the facts and circumstances of the case." Id. at 9. In any event, the full travel rate is "limited to cases in which counsel could provide proof that they regularly charge their paying clients for travel time and that the rates charged are prevailing community rates." Id. (citing Crumbaker v. Merit Sys. Prot. Bd., 781 F.2d 191 (Fed. Cir. 1986)). Mr. Dannenberg "has submitted no evidence that he regularly charges his paying clients for travel time. In fact, [he] presumably does not have paying clients, as his practice is limited to Vaccine Program cases." Id. at 9. Mr. Dannenberg made no rebuttal argument and submitted no additional evidence.

It is the practice of some special masters to compensate attorneys in the Vaccine Program for travel time at 50% of their awarded billing rate. See Hocraffer, 2011 WL 3705153, at *24; Rodriguez, 2009 WL 2568468, at *21 (citing Carter v. Sec'y of Dep't of Health & Human Servs., No. 04–1500V, 2007 WL 2241877 (Fed. Cl. Spec. Mstr. July 13, 2007); Scoutto v. Sec'y of Dep't of Health & Human Servs., No. 90–3576V, 1997 WL 588954 (Fed. Cl. Spec. Mstr. Sept. 5, 1997)). Counsel may be awarded the full hourly rate if sufficient evidence is provided to establish the amount of time spent during travel working on the case. See Hocraffer, 2011 WL 3705153, at *24 (citing Kuttner v. Sec'y of Dep't of Health & Human Servs., No. 06-195V, 2009 WL 256447, at * 10 (Fed. Cl. Spec. Mstr. Jan. 16, 2009) ("the fact of traveling by itself is not determinative"); Rodriguez, 2009 WL 2568468, at *21 (awarding half-rate to an attorney who travelled by car because, while he "may have been thinking about the hearing during his travel, he was not working")).

Here, Mr. Dannenberg has provided no evidence beyond his statement that "all his cases are now charged full hourly rates for travel," and his citation to Gruber.[33] Fee Pet. at 6-7. Gruber did not mandate payment of the full travel rate, but left it to the

[32] Mr. Dannenberg claimed 15 hours of attorney time for travelling by car between Vermont and Tennessee. See Fee Pet. Ex. 3 at 30.

[33] Again, all Mr. Dannenberg's cases are in the Vaccine Program. See Fee Pet. Ex. 1 (affidavit). It is meaningless to assert that he charges full hourly rates for travel in all his cases, since he has no cases other than those in the Vaccine Program.

discretion of the special master, who may award it "if presented with sufficient documentation." Gruber, 91 Fed. Cl. at 791. The Court cautioned that attorneys "should not automatically assume that it is reasonable to assess any and all travel time to a client-based destination as billable to that client." Id. The Court stated that "[e]ven an automatic 50% award may be too high for an undocumented claim." Id.

The special master in Hocraffer faced identical circumstances, stating that the "petitioner relies on Gruber and [Mr. Dannenberg's] assertion that he exclusively practices under the Vaccine Act and all of his clients will be billed at full hourly rates for travel. Petitioner provided no other documentation to substantiate the full hourly rate during travel." Hocraffer, 2011 WL 3705153, at *25. The special master concluded that "without evidence or argument, [the Court] cannot find it reasonable to award the full hourly rate for travel time," and awarded travel at 50% rate. Id.

As discussed, Mr. Dannenberg has not submitted sufficient documentation to establish that he worked on this case during his travel to and from the hearing in Nashville, Tennessee. Furthermore, he has provided no evidence, beyond his statement, that he regularly charges his paying clients for travel time or that this practice is one that prevails in his community. A paying client, in any event, would not find it reasonable to be billed 15 hours for time spent driving more than two thousand miles to and from the hearing, when flying would have gotten him to Nashville in a fraction of that time. Accordingly, Mr. Dannenberg is awarded travel at the 50% rate.

B. Number of Hours To Be Compensated

1. In general

Under the lodestar method, the reasonable hourly rate is multiplied by "the number of hours reasonably expended on the litigation." Avera, 515 F.3d at 1348 (internal quotation marks omitted) (quoting Blum, 564 U.S. at 888). A fee request must include contemporaneous and specific billing entries identifying the service performed, the person who performed the service, and the time expended. See Savin, 85 Fed. Cl. at 316-17. Counsel must exclude "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." Hensley, 461 U.S. at 434. In considering the request, "[i]t is well within the special master's discretion to reduce the hours to a number that, in his experience and judgment, [is] reasonable for the work done." Saxton, 3 F.3d at 1521. A special master may also reduce a request for fees and costs that is not reasonable sua sponte, regardless of whether the respondent objected to a particular request, or petitioner was warned or afforded an opportunity to respond. See Sabella, 86 Fed. Cl. at 208-09; see also Duncan, 2008 WL 4743493, at *1 ("The Special Master has an independent responsibility to satisfy himself that the fee award is appropriate and [is] not limited to endorsing or rejecting respondent's critique.").

The ability to assess the request's reasonableness is frustrated by billing records that contain cryptic notations, are grouped with other activities, or are otherwise unclear.

Such "defects constitute[] an independent basis for reducing the hours claimed." Savin, 85 Fed. Cl. at 316-17 (noting billing entries that "lacked specificity, lumped together various activities into single entries . . . [or] were obviously not entered contemporaneously").

With respect to the specificity requirement, an acute problem in the instant case, the court in Savin cited several decisions affirming a reduction in hours where the request included vague descriptions. See 85 Fed. Cl. at 316 n.2 (citing Lipsett v. Blanco, 975 F.2d 934 (1st Cir. 1992); In re Donovan, 877 F.2d 982 (D.C. Cir. 1989); Tomazzoli v. Sheedy, 804 F.2d 93 (7th Cir. 1986)). In Lipsett, the district court substantially discounted a fee request that included "several entries containing only gauzy generalities," which "[we]re so nebulous . . . they fail[ed] to 'allow[] the paying party to dispute the accuracy of the records as well as the reasonableness of the time spent.'" 975 F.2d at 938 (quoting Calhoun v. Acme Cleveland Corp., 801 F.2d 558, 560 (1st Cir. 1986) (alteration in original)). The court in In re Donovan was "compel[led] to exclude" entries that were "not sufficiently documented," noting instances where the described services were "confined to 'legal issues,' 'conference re all aspects' or 'call re status.'" 877 F.2d at 995. Such "description fails to provide the court with any basis to determine with a high degree of certainty that the hours billed were reasonable." Id. (internal quotation marks omitted). And in Tomazzoli, the district court was found to have appropriately reduced the hours awarded because "some of the research time billed was 'particularly vague.'" 804 F.2d at 97 (noting entries on the fee application that "simply refer to 'research'" without further specificity).

In the present matter, Respondent raised objections to the overall number of hours claimed, as well as to specific instances of concern. Respondent argued that Mr. Dannenberg's initial request for 380.9 hours for "litigating this straight-forward case" was "excessive" and "facially 'unreasonable' especially given Mr. Dannenberg's experience with the Vaccine Program since 1987, and his averment that he devote[d] his practice exclusively to vaccine litigation." Resp't's Resp. Fee Pet. at 11. Respondent objected specifically to more than 90 of the hours claimed, including 39.6 for legal research and 21.4 hours spent in communications with his client and her father. Id.

Mr. Dannenberg rebutted Respondent's objections in his Amended Fees Petition in which he made no reduction in the hours claimed, but added 16 hours "for the additional time and costs required to draft this reply and other services to date," raising the total request to 396.9 hours. Am. Fee Pet. at 7.

Respondent filed a response to Mr. Dannenberg's amended fees application, renewing her objections to his request. Resp't's Resp. Am. Fee Pet. Mr. Dannenberg replied to Respondent's arguments, adding another 13.3 hours for preparing his reply to Respondent's response to his amended application. See Pet'r's Reply. Mr. Dannenberg requested a total of 410.2 hours of attorney time.

After evaluating the history and complexity of this case, thoroughly reviewing the billing records, and considering Respondent's specific objections, I find that Mr.

Dannenberg's fees application contains numerous instances of hours that are excessive and unreasonable.

Mr. Dannenberg has been criticized in other Vaccine cases for the number of hours billed. In Schueman, the special master noted that the number of "hours initially claimed . . . far exceed[ed] those claimed in any similarly postured case." 2010 WL 3421956, at *5. Even after subtracting hours claimed "for tasks that are not appropriate for compensation by the Vaccine Program," the special master still found the remaining total hours claimed "inordinately high, particularly for an attorney with over 20 years experience in the Vaccine Program and whose practice is limited to Vaccine Act cases." Id.[34]

In another case the special master noted that a review of Mr. Dannenberg's billed hours "disclose[d] incredible numbers of entries that [we]re either unproductive time, activities not related to this case, or tasks insufficiently described, making it impossible to determine whether or not the time should be compensated as part of the proceedings on the Petition in this matter." Hocraffer, 2011 WL 3705153, at *21. The special master addressed at length numerous instances of overbilling and ultimately made "significant" reductions. Id. at *20.

2. Respondent's specific objections

a. Legal research

Respondent objects to 39.6 of the 54.6 hours requested by Mr. Dannenberg for time spent on legal research of topics unrelated to Petitioner's case, including "Tennessee power of attorney, jurors, the supremacy clause, business administration, and Rule 11." Resp. to Fees Pet. at 11.

Mr. Dannenberg explained these entries: The "research on the supremacy clause concerned a significant custody question in this matter" and necessarily involved research "concerning federal and state custody regulations." Am. Fee Pet. at 3-4. The entry marked "legal research: B. Adm." stands for "Buckley adm.," not "business administration," as interpreted by Respondent, and "probably refer[s] to research about the Henry County School District in Tennessee, where the vaccinee was attending school and where witnesses were interviewed." Id. at 4. The Rule 11 research was prompted by Respondent's Daubert motion. Id. And the entry marked "jurors" was a mistake that "should have read 'legal research, juris.', meaning jurisdiction." Id.

[34] The special master stated that "Mr. Dannenberg was simply not as efficient in performing the tasks required as most attorneys of his level of experience." Schueman, 2010 WL 3421956, at *8. The special master concluded "that a reasonably efficient attorney with Mr. Dannenberg's tenure in the legal profession and experience in the Vaccine Program should not have expended beyond 140 hours of effort in a case of this complexity and procedural posture." Id. Petitioner in Schueman claimed 251.7 hours. Id. at *5.

In response, Respondent asserted that the fee applicant bears the burden of "submit[ting] evidence sufficient to support the number of hours expended." Resp't's Resp. Am. Fee Pet. at 7 (internal quotation marks omitted) (quoting Plott v. Sec'y of Dep't of Health & Human Servs., No 92-633V, 1997 WL 842543, at *8 (Fed. Cl. Spec. Mstr. Apr. 23, 1997). Respondent renewed her objection to "no fewer than 39.6 hours of attorney time spent for legal research on issues unrelated to petitioner's [claim]," arguing that Mr. Dannenberg has not met this burden. Id. Pointing to Mr. Dannenberg's explanation of "B. Adm." and "jurors" as illustrative of this failure, Respondent questioned how the special master is to discern the meaning of an entry if "Mr. Dannenberg is unsure of what the entry is for." Id. [35]

In reply, Mr. Dannenberg maintained that his time "was properly spent on case related issues, and respondent's objections are without merit," specifically noting the protracted motion for review, which "requir[ed] extensive legal briefings" and "considerable legal research" on the issue of jurisdiction. Pet'r's Reply at 7.[36]

Mr. Dannenberg's explanations, however, addressed less than half of the hours—only 18.5—objected to by Respondent. He did not explain the numerous entries in this category that are insufficiently described to determine whether compensation is appropriate.[37]

The Vaccine Guidelines direct counsel to maintain

> [c]ontemporaneous time records that indicate the date and specific character of the service performed, the number of hours (or fraction thereof) expended for each service, and the name of the person providing such service. 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.

Guidelines for Practice Under the National Vaccine Injury Compensation Program (2004) at 19.

Mr. Dannenberg's billing records contained multiple entries for time spent on legal research that are insufficiently documented, have vague descriptions, or appear unrelated to Petitioner's case. Additionally, some of the entries are lumped with other activities, making an assessment of the request's reasonableness exceedingly difficult.

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[35] See Am. Fee Pet. at 4 ("probably referred to," "was a typo").

[36] A total of 17.2 hours is requested for researching "jurisdiction"—nearly one-third of the 54.6 hours billed for legal research. See Fee Pet. Ex. 3 (entries dated 7/6/09, 8/10/09, 8/11/09, 8/12/09).

[37] See, e.g., Fee Pet. Ex. 3 (entries dated 1/31/06, 6/9/06, 1/25/07, 4/20/07, 7/3/07, 5/19/09 marked "legal research" with no additional notation; 2/10/03 marked "Legal research, statutes"; 6/7/06 marked "Legal research, Fed DPPA"; 12/12/06 marked "Legal research, H School"; 2/27/09 marked "Legal research, Mike Johnson"; 4/23/09 marked "Legal research, St. Mike Library").

See, e.g., Fee Pet. Ex. 3 (entry dated 5/25/06, block billing 1.0 hour for "Legal research TN service, Legal research sheriff off, Draft subpoena form, Legal research USCFC rules/forms"; entry dated 7/25/07, block billing 1.5 hours for "Legal research, GA, Draft form, Draft letter to Melissa, Draft pet cost statement, Draft trust acct statement, Rev trust acct"). Respondent rightly objects, "not[ing] that Mr. Danneberg's time records contain at least 13 instances of block billing, making it difficult to determine the number of hours spent on any given task. This practice has been consistently disallowed in Vaccine Act cases." Resp't's Resp. Fee Pet at 12 (citing Long v. Sec'y of Dep't of Health & Human Servs., No. 91-326V, 1995 WL 774600 (Fed. Cl. Spec. Mstr. Dec. 21, 1997); Plott v. Sec'y of Dep't of Health & Human Servs., No. 92-633V, 1997 WL 842543 (Fed. Cl. Spec. Mstr. Apr. 23, 1997)).

While I appreciate that this case might have involved issues that were new, complex, or novel to Mr. Dannenberg, based on my knowledge and experience in the Vaccine Program, the total number of hours claimed here for legal research was excessive.

b. Conferring with other attorneys

Respondent objected to "no fewer than 3.3 hours (22 entries) of attorney time spent conferring with other attorneys." Resp. to Fees Pet. at 11.[38] Mr. Dannenberg countered that Respondent's objections are "without merit," explaining they were "either conferences with Tennessee attorneys concerning vaccinee's state custody and access to records" or pertained to the "search for an appropriate expert, . . . the application for attorneys fees, or case related advice." Id.

Time spent conferring with other attorneys has been found reasonable in limited circumstances. See Chen Bou v. Sec'y of Dep't Health & Human Servs., No. 04-1329V, 2007 WL 924495, at *18 (Fed. Cl. Spec. Mstr. Mar. 9, 2007) (finding reasonable approximately four hours billed by two former attorneys for communicating with each other and other counsel to "determine how to proceed with a non-English speaking client"). Communicating with other attorneys for the purpose of educating oneself on basic areas of law or "elementary procedures of the court" is, however, "not compensable under the Program." Calise v. Sec'y of Dep't of Health & Human Servs., No. 08-865V, 2011 WL 2444810, at *8 (Fed. Cl. Spec. Mstr. June 13, 2011). If an attorney finds "it necessary to consult with more experienced Program attorneys, the cost of doing so should be absorbed by his firm." Carter v. Sec'y of Dep't of Health & Human Servs., No. 04-1500V, 2007 WL 2241877, at *5 (Fed. Cl. Spec. Mstr. July 13, 2007).

In another case, Anderson v. Secretary of the Department of Health & Human Services, No. 06-168V, WL 4527545, at *2 (Fed. Cl. Spec. Mstr. Dec. 7, 2007), the special master denied compensation for two hours and ten minutes billed for time spent

[38] The undersigned's review of the billing records identified at least 4.1 hours of attorney time spent conferring with outside attorneys. See infra, note 39.

conferring with other Vaccine Program attorneys. There the respondent objected because "counsel [did] not provide[] an explanation for why that time should be compensable." Id. Petitioner's counsel explained that this was his first case in the Vaccine Program and the conferences were with experienced practitioners "about specific matters concerning the case." Id. Petitioner's counsel argued "that he [wa]s 'entitled to consult with any outside counsel of his choosing and it is not respondent's prerogative to dictate these choices.'" Id. In denying compensation the request, the special master wrote:

> While it is true that petitioner's counsel may consult with outside counsel due to his inexperience in the Vaccine Program, it does not follow that he should be compensated for this time. It is unethical for an inexperienced attorney to bill his client 'to learn about an area of the law in which he is unfamiliar.' Carter v. Sec'y of Dep't of Health & Human Servs., No. 04-1500V, 2007 WL 2241877, at *5 (Fed. Cl. Spec. Mstr. July 13, 2007). Similarly, an inexperienced attorney may not bill the Vaccine Program for this time either.

Id.

While there are instances where communication with outside attorneys is reasonable and thus compensable, a determination of reasonableness is possible only where the applicant's billing records provide sufficient detail to make such an evaluation. Here, Mr. Dannenberg's records fail to provide even a basic level of detail about the reasons for the conferences.

According to the records submitted, Mr. Dannenberg—who does not claim to be an inexperienced Vaccine Program practitioner—conferred with no fewer than nine outside attorneys.[39] In all but two entries, noted below, the descriptions consist of "call to," "conf with," "email to," and the like, followed by the attorney's name or abbreviation thereof. Such bare entries give no indication of the purpose of the communication. When afforded an opportunity to clarify the entries, Mr. Dannenberg provided only summary explanations, which do little to aid me in determining whether the time spent was reasonable in the context of this case. Explanations in the form of broad generalities by definition fail the specificity requirement. As for his statement that some conferences pertained to locating an expert, I note that Mr. Dannenberg has billed

[39] See, e.g., Fee Pet. at Ex. 3 (conference with Steve Harrison, Esq., dated 12/19/06; correspondence with Paul Goldstein, Esq., dated 4/24/07; conference with "atty Gallagher," dated 7/3/07; conferences and correspondence with Mike Johnson, Esq., dated 8/8/07, 8/9/07, 8/10/97, 8/13/07, 8/23/07, 8/24/07, 10/17/07, 10/19/07, 11/20/08, 3/2/09, 3/3/09, 3/4/09; correspondence with R. Kohn, Esq., dated 1/19/09; correspondence with J. Spink, Esq., dated 1/19/09, 1/20/09; conferences and correspondence with Kevin Conway, Esq., dated 5/4/09, 6/12/09; correspondence with Ronald Homer, Esq., dated 5/7/09; correspondence with Michael McLaren, Esq., dated 06-09-09). In only two instances does Mr. Dannenberg indicate the purpose of the conference: "Conf with atty, re: experts," dated 2/21/07; "Email to Homer, Esq., re: Newby," dated 5/7/09. These two entries total 0.3 hours out of the total 4.1 hours claimed.

separately for such time. See, e.g., Fee Pet. Ex. 3 (entries dated 2/1/07 "Expert search, Dr. Alan Levin"; 4/16/07 "Expert research, Dr. Loube"; 5/7/07 "Med expert research").

In two entries Mr. Dannenberg provided additional notation—0.1 hour claimed for "Conf with atty, re: experts" on 2/21/07, and the 0.2 hour claimed for "Email to Homer, Esq., re: Newby" on 5/7/09. These descriptions are only slightly more informative. Beyond these two exceptions, however, Mr. Dannenberg has failed to submit sufficient evidence to indicate how the time claimed for these numerous communications with outside counsel was used to further the case.

c. Medical Research

Mr. Dannenberg performed and billed for medical research, of which Respondent objects to "no fewer than 8.6 hours." Resp. to Fees Pet. at 11. Mr. Dannenberg made no rebuttal argument.

A Vaccine Program attorney is expected to develop a familiarity with his client's medical conditions and injuries; however, "it is the expert that is in the best position to identify the relevant medical literature." Hocraffer, 2011 WL 3705153, at *26. The expert is to "perform the primary research as . . . required to provide a reliable medical opinion," while the attorney is to "study and understand" the identified literature "for application to the case." Id. See also Hammitt v. Sec'y of Dep't of Health & Human Servs., No. 07-170V, 2011 WL 1827221, at *5 (Fed. Cl. Spec. Mstr. Apr. 7, 2011) (noting that unlike medical experts, "most attorneys are not qualified to actually conduct the research on medical issues"). It is permissible for an attorney to "assist the expert 'by offering supervision, conducting research for the expert, or even drafting portions of his or her report,' [however,] the ultimate question is reasonableness of the efforts and time claimed." Hocraffer, 2011 WL 3705153, at *27 (quoting Gruber, 91 Fed. Cl. at 792).

Whether the 8.6 hours objected to by Respondent was spent appropriately on research intended to increase Mr. Dannenberg's familiarity with his client's medical condition, or was spent inappropriately on activities better conducted by his experts, is not easily answered on the record before me. The billing entries identified for "medical research" give little insight into the nature, value, and appropriateness of the hours claimed, providing only the barest of details. Additionally, Mr. Dannenberg's records contain separate entries for time spent consulting with medical experts and reviewing medical literature, making it difficult to ascertain what actually occurred or whether the activities were duplicative.[40] All of this is exacerbated by numerous instances of

[40] See, e.g., Fee Pet. Ex. 3 ("Med research, Dr. Seltzer," dated 11/16/06; "Email to Seltzer," dated 11/18/06; "Rev email from Dr. Seltzer," dated 12/8/06; "Conf with Seltzer," dated 4/24/07). See, e.g., Fee Pet. Ex. 3 ("Rev med articles, re: additives," dated 3/22/05; "rev Schwal med article" and "Rev MMR article, Trotter," dated 12/07/06; "Rev med articles," dated 06/15/07; "Rev article Am J. Vet Res," dated 6/15/07; "Rev 'Immo E in dogs' Ex 18" and "Rev articles Ex 14, 15," dated 12/13/08; "Rev chapter on urticaria, def Ex A," "Rev Ex 20 Ana. Reactions 2001," "Rev Ex 21 Ige reactivity 2004," and "Rev Ex 22 definitions," dated 12/17/08).

"lumping," which completely frustrate my efforts to determine the reasonableness of time spent in any particular category.

In Schueman, the special master evaluated Mr. Dannenberg's efforts in this area and concluded that he "conducted a considerable amount of medical research, some of which had little or no bearing on the issues in this case, such as . . . a vaccine never administered to [the vaccinee]." 2010 WL 3421956, at *7.

And in Hocraffer, Mr. Dannenberg requested fees for conducting nearly 40 hours of medical research. In his decision, the special master, noting that "primary medical research is performed appropriately by the experts, not counsel," questioned why Mr. Dannenberg thought it necessary to undertake such research when he "consulted a number of experts . . . and billed for those contacts." 2011 WL 3705153, at *26 (citing Riggins v. Sec'y of Dep't of Health & Human Servs., No. 99–382V, 2009 WL 3319818, at *10 (Fed. Cl. Spec. Mstr. Jun. 15, 2009), aff'd 406 Fed. App'x. 479 (Fed. Cir. 2011) (citing Ray v. Sec'y of the Dep't of Health & Human Servs., No. 04–184V, 2006 WL 1006587 (Fed. Cl. Spec. Mstr. Mar. 30, 2006) (discussing the role of an expert consultant in performing research))).

While an exact accounting of the time spent by Mr. Dannenberg conducting "medical research" is not possible with the evidence submitted, it does not appear to rise to the level of that noted in Hocraffer, nor does 8.6 hours seem an excessive amount of time for an attorney to spend engaged in this activity.

d. Conferring with client

Respondent objected to "no fewer than 21.4 hours of time calling, writing, reviewing letters or calls from, or conferring with Petitioner and/or Kimberly's father." Resp. to Fees Pet. at 11. Mr. Dannenberg rejoins that the objection is meritless, as "[c]ommunication with one's client is highly important in any legal matter." Am. Fee Pet. at 4.

The importance of attorney-client communication is self-evident. Not only must attorneys work closely with their clients to build their case, but attorneys are obligated by rules of professional conduct to communicate with their clients regularly, respond to requests for information, and keep them informed on the progress of their cases.[41] The amount of time spent communicating with a client, however, must be reasonable and "is decided on a case-by-case basis" with consideration given to the complexity of the legal issues involved. Carter, 2007 WL 2241877, at *7 (citing Daly v. Hill, 790 F.2d 1071, 1080 n.12 (4th Cir. 1986)). While "attorney time reasonably spent with clients in preparing a case should be part of the hours compensated," Daly 790 F.2d at 1079, the burden is on the fee applicant to prove that the time spent communicating with the client

[41] See, e.g., ABA Rules of Professional Conduct (2010) Rule 1.4 Communication, available at www.americanbar.org.

should be compensated. Carter, 2007 WL 2241877, at *7 (citing Lilienthal v. City of Suffolk, 322 F.Supp.2d 667, 673 (E.D. Va. 2004)).

Mr. Dannenberg's application contains no fewer than 79 entries for communications with Petitioner by telephone, letter, and e-mail.[42] The majority of these entries simply state "Conf with Melissa," "Call to Melissa," or "Letter to Melissa," without any further explanation or indication of the purpose for the communication.[43] Moreover, as discussed supra, the records submitted by Mr. Dannenberg contain numerous instances of block billing, further complicating the reasonableness determination. Rather than supplementing the record on this point, Mr. Dannenberg simply argued Respondent's objections "are without merit." Am. Fee Pet. at 4. Thus, neither the billing records nor Mr. Dannenberg's statements shed any light on how these numerous communications "may have aided preparation of the case." Id. (citing Lilienthal, 322 F.Supp.2d at 673.

Special masters have reduced the number of hours claimed by attorneys for client communication where the applicant failed to carry the burden of establishing the reasonableness of those hours. In Carter, the special master reduced the number of hours requested by almost one-third "based upon the time entries where no explanation for the communication is given." 2007 WL 2241877, at *7. In Wadie v. Secretary of the Department of Health and Human Services, No. 99-493V, 2009 WL 961217, at *3 (Fed. Cl. Spec. Mstr. Mar. 23, 2009), the special master awarded only three of 11.8 hours requested because the applicant failed to explain "either in the form of the attorneys' time records or in the reply brief . . . how the communications between counsel and client advanced the case."

Here, Mr. Dannenberg has made no attempt to establish the reasonableness of the time spent communicating with his client. While I recognize the importance of attorney/client communication, based on my experience and judgment, I find the amount of time claimed in this category to be excessive and unreasonable.

e. Conferring with physicians

Respondent objected to "no fewer than 16.6 hours of time between February 10, 2003 and May 21, 2007 writing, calling, or conferring with some 19 different physicians, including a number [who] were not Kimberly's treaters and did not serve as petitioner's expert or medical consultant." Resp. to Fees Pet. at 11.

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[42] This number includes only entries indicating a communication involving "Melissa." The number would be greater if communications with Melissa's father, Blaine, were included.

[43] See, e.g., Fee Pet. Ex. 3 (entries dated 3/11/03, 10/11/06, 11/13/06, 12/1/06, 12/19/06, 12/21/07, 2/27/07, 11/30/07, 12/15/08, "Conf with Melissa;" 8/5/03, 8/7/03, 8/8/03, 10/22/03, 10/28/03, 2/21/06, 5/16/06, 11/13/06, 5/2/07, 8/27/07, 4/16/09, "Call to Melissa;" 8/12/03, 2/21/06, 3/23/06, 6/9/06, 7/2/07, 9/26/08, "Letter to Melissa").

Mr. Dannenberg responded that "[o]bjections relating to the search for an appropriate expert are without merit." Am. Fee Pet. at 4. "Qualified experts are critical to presenting any case in the vaccine program." Id.

As discussed, the fee applicant bears the burden to "submit evidence sufficient to support the number of hours expended." Plott, 1997 WL 842543, at *8. "The failure to submit evidence can justify the denial of an award of fees and costs." Doe/11 ex rel. Doe v. Sec'y of Dep't of Health & Human Servs., No. XX-XXXV, 2010 WL 529425 (Fed. Cl. Spec. Mstr. Jan. 29, 2010).

Here, Mr. Dannenberg provided no evidence to explain these numerous contacts and made no attempt to establish the reasonableness of the hours claimed. As is true throughout his entire billing record, Mr. Dannenberg's entries in this area offer little to no insight into the purpose, value, and appropriateness of the time spent. The timesheet descriptions in this category largely consist of "call to," conf with," "email to," and the like, followed by the name of a doctor.[44] Mr. Dannenberg submitted no documentation or billing records from the various physicians contacted that might shed light on the purpose of the consultation or how the time was used to advance Petitioner's case.

While I am cognizant of the importance of retaining qualified experts and medical consultants, as well as the need to zealously represent one's client, time spent pursuing those goals must be clearly explained. Mr. Dannenberg has failed to make any showing here to support the hours claimed in this area.

3. Hours Claimed by Phase

I have carefully reviewed the procedural history, considered the evidence submitted by Mr. Danneberg in support of his request for attorneys' fees and costs, and addressed the specific objections made by Respondent in the above discussion. Following the framework used in Hocraffer, I now divide the case into four phases, based on its progression, to assess a reasonable number of hours to be compensated. See Hocraffer, 2011 WL 3705153, at *27 (citing Fox, 131 S. Ct. at 2216 ("trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time"); Wasson, 24 Cl. Ct. at 483 (in awarding fees "the special master may rely upon both her own general experience and her understanding of the issues raised")). I find this framework necessary given Mr. Dannenberg's poor record-keeping, a problem faced by two other special masters. See Hocraffer, 2011 WL 3705153, at *27 (quoting Schueman, 2010 WL 3421956, at*7) ("My colleague encountered a similar issue in addressing Mr. Dannenberg's fees, finding it 'difficult to pinpoint just what tasks resulted in the excessive number of hours claimed.'"). The following assessments are based upon my own experience and judgment, as well as my knowledge of the attorneys' fees and costs paid in other Vaccine Program cases.

[44] See e.g., Fee Pet. Ex. 3 ("Letter to J. Bellanti, MD," "Email to Bellanti," dated 11/15/06; "Call to Anne Yates, MD," "Letter to Yates," dated 11/28/06; "Conf with Dr. Yates off," dated 11/29/11).

a. Initial Development of the Record to Respondent's Rule 4(c) Report

Mr. Dannenberg billed for 50.0 hours from his initial billable contact with Petitioner on February 10, 2003, to September 1, 2006, when Respondent filed her Rule 4(c) Report. See Fee Pet. Ex. 3 at 1-8. For what typically takes "a few months at the start of the case," took Mr. Dannenberg over three and one-half years. Hocraffer, 2011 WL 3705153, at *28 (citing Kantor v. Sec'y of Dep't of Health & Human Servs., No. 01-679V, 2007 WL 1032378, at *10 (Fed. Cl. Spec. Mstr. Mar. 21, 2007) (holding that less than 20 hours is reasonable to prepare a petition including fact witness affidavits and medical records); Broekelschen v. Sec'y of Dep't of Health & Human Servs., No. 07–137V, 2008 WL 5456319, at *7 (Fed. Cl. Spec. Mstr. Dec. 17, 2008) (holding that 38 hours is reasonable for preparing and filing the petition along with all relevant medical records and an expert report)).

Here, Mr. Dannenberg billed 50 hours of attorney time spanning a period of three and one-half years to prepare the petition and collect medical records, some of which were still outstanding when Respondent filed the Rule 4(c) Report. Between his first billable contact with Petitioner and the filing of the Petition, a period of more than two and one-half years, Mr. Dannenberg billed 21.9 hours—a reasonable amount of time for initial preparation of the case, collection of medical records and affidavits, and filing a petition. For this time, however, Mr. Dannenberg only filed the petition and incomplete medical records. At this point, the record should have been sufficiently complete for Respondent to write her Rule 4(c) Report, but it was not. Another eight months would pass, and 28.1 hours billed, before the case could pass this initial step. It was also during this period that Mr. Dannenberg lost contact with his client.[45]

Based on my experience and judgment, and referencing Kantor and Broekelschen, I find 50 hours to be an unreasonable amount of time for what was produced. For this period, 20 hours is deducted. Petitioner is generously awarded 30 hours for this period.

b. Respondent's Rule 4(c) Report to Hearing on Entitlement

Mr. Dannenberg billed for 187.0 hours for the period following the filing of Respondent's Rule 4(c) Report on September 1, 2006, to the Hearing on Entitlement, which was held on December 18, 2008. See Fee Pet. Ex. 3 at 8-31.

During this period, Mr. Dannenberg should have been focused on retaining an expert, filing an expert report, and preparing for and participating in the entitlement hearing. Instead, his efforts were side-tracked with obtaining additional medical records and responding to Respondent's Motion to Dismiss, which Respondent argued should be granted based on Petitioner's "fail[ure] to provide sufficient evidence to fulfill the

[45] At the May 11, 2006, status conference Mr. Dannenberg indicated he "has encountered some difficulty in contacting the Petitioner." See Order, ECF No. 12.

threshold requirements" under the Act. Rule 4(c) Rep. and Mot. to Dismiss, Sept. 1, 2006, ECF No. 20.

After numerous delays Mr. Dannenberg completed his filing of medical records in October 2007. As for retaining a medical expert, Mr. Dannenberg, having been put on notice by the Court "that future hurdles will require more of her, and that serious matters of fact are yet to be articulated and proven in this case," Order at 3, Feb. 22, 2007, ECF No. 29, twice sought and received additional time to file a report, only to miss the submission deadline without explanation. At a status conference convened 10 days after the missed deadline, Mr. Dannenberg notified the Court that Petitioner would not be filing an expert report. See Order, June 29, 2007, ECF No. 37. On August 27, 2007, during an impromptu status conference, Mr. Dannenberg stated that she had changed her mind and would file an expert report. Mr. Dannenberg was afforded 30 days to file, but again delayed, requesting a two-week extension to file the report and associated articles. Mot. Oct. 1, 2007, ECF No. 40. The report was submitted on October 22, 2007. After identifying "factual issues that need to be addressed" before an expert opinion can be rendered, Respondent requested additional time to file her expert report. Mot. Jan. 30, 2008, ECF No. 43. The Court granted the extension and Respondent timely filed her on April 25, 2008.

At a status conference convened on May 2, 2008, to discuss setting a date for the hearing, Petitioner moved to postpone its scheduling until she decided whether to submit a supplemental expert report in reply to the one filed by Respondent. The Court gave Mr. Dannenberg a week to make the decision. At a status conference convened on May 8, 2008, Petitioner stated that she did not "plan" to file a supplemental expert report, but "may wish to do so." See Order, May 13, 2008, ECF No. 48. The Court ordered Petitioner to file whatever rebuttal she desired, "provided that she does so posthaste." Id. Petitioner ultimately decided not to file a supplemental report.

Having set the hearing for December 18, 2008, the parties were ordered to file their prehearing memoranda by December 12, 2008. Respondent timely filed her memorandum, but with no explanation noted in the record, Mr. Dannenberg filed his on December 16, 2008, two days before the hearing.

As shown, this phase witnessed numerous delays, significant mismanagement of time, disregard for the Court's orders, and the expenditure of many of the hours objected to by Respondent. The time records for this period, which number in excess of 20 pages, are filled with entries claiming time for conferences and communications with other attorneys, Petitioner and her father, and unknown parties. Numerous other entries billed for time spent reviewing emails, calls, and correspondence, writing notes to the file, and reviewing medical records. While all of these activities can be compensated when done efficiently, effectively, and within a reasonable amount of time, such was not the case in the present matter.

It is evident from Mr. Dannenberg's overall handling of this case that the hours requested are excessive and unreasonable. Echoing the special master in Schueman,

"[i]t is difficult to pinpoint just what tasks resulted in the excessive number of hours claimed," however, a precise determination of "what entries caused the excessive number of hours" is unnecessary; "Mr. Dannenberg was simply not as efficient in performing the tasks required as most attorneys of his level of experience." 2010 WL 3421956, at*7-8. Accordingly, based on my experience with Vaccine Act cases, as well as what is required in comparable litigation, I find the hours billed to be excessive and unreasonable. Wasson, 24 Cl. Ct. at 483. For this period, 50 hours is deducted. Petitioner is awarded 137 hours.

c. Post-Hearing to End of Briefing for Appeal of Interim Fees

Mr. Dannenberg billed for 124.5 hours for the period beginning after the Hearing on Entitlement held on December 18, 2008, to the conclusion of his briefing on November 5, 2009, for the appeal of the special master's order denying his Motion for a Finding of Compliance with General Order No. 9.

During this phase, Mr. Dannenberg's efforts were rightly focused on drafting the post-hearing submissions. The original deadline, however, was enlarged twice at Petitioner's request, with her closing brief being filed on March 12, 2009.

On February 12, 2009, Petitioner filed an application for interim fees and costs. On March 24, 2009, Petitioner moved for a finding of compliance with General Order No. 9. On April 2, 2009, the Court issued an order stating that it "was not persuaded" by Petitioner's arguments with regard to her compliance with General Order No. 9, and denied the Motion. Warfle, 2009 WL 1322579.

The Court then amended the post-hearing briefing schedule, making note that the parties were yet in the process of briefing the issue of entitlement. Both Respondent and Petitioner timely filed their remaining briefs.

On May 21, 2009, Petitioner filed, nunc pro tunc, a Motion for Review of Special Master Abell's denial of her Motion pertaining to General Order No. 9. Judge Allegra ordered the parties to submit a memorandum of law regarding the Court's jurisdiction to review Special Master Abell's Order. Order, June 8, 2009, ECF No. 70. The entitlement portion of the case, however, was to "continue unabated." Id. On June 17, 2009, Petitioner requested a 60-day enlargement of the memorandum deadline, which was granted on June 25, 2009. Petitioner timely filed on August 17, 2009. On September 8, 2009, Petitioner moved for leave to file a supplemental memorandum, which was granted. Petitioner filed the supplemental memorandum the same day.

On October 5, 2009, in the midst of the proceeding before Judge Allegra, Mr. Dannenberg moved to withdraw as attorney for Petitioner. Mr. Dannenberg was ordered to file a supplemental memorandum discussing what impact, if any, withdrawal would have on Petitioner's pending Motion for Review. On November 5, 2009, Mr. Dannenberg timely filed the memorandum. Judge Allegra granted Mr. Dannenberg's request on November 10, 2009.

On February 19, 2010, Judge Allegra issued an order denying Petitioner's Motion for Review. Warfle, 92 Fed. Cl. at 363. No interim fees decision was issued.

During this period, Mr. Dannenberg was engaged in writing post-hearing briefs, his interim fee application, and briefs in response to Judge Allegra's orders. There are numerous time entries for drafting, legal research, corresponding with outside attorneys, contacting Petitioner and her father, and calling the Court. To an extent, the hours expended are understandable. However, Mr. Dannenberg's continuing requests for enlargements of time, meritless appeals, and failure to abide by Vaccine Program guidelines, show plainly that Petitioner's claims were not efficiently prosecuted. Counsel's time therefore is reduced by 20 hours. Mr. Dannenberg is awarded 104.5 hours for this phase.

d. Withdrawal to Present

Mr. Dannenberg billed for 48.7 hours from his withdrawal as counsel on November 10, 2009, through his final filing on July 6, 2011. The 48.7 hours billed included:

- 19.4 hours incurred between November 10, 2009 and January 17, 2011 for drafting his fees petition, which took 8.2 hours, various drafting activities, and time spent reviewing letters, notes, memos, emails, and Special Master Abell's decision on entitlement.

- 16.0 hours incurred between March, 10 2011 and April 7, 2011 for drafting his amended fees application/reply, which took 11.1 hours, legal research, emails and letters to Respondent, calls to my law clerk, drafting a motion for enlargement and certificate of service, and a status conference.

- 13.3 hours incurred between May 4, 2011 and July 2, 2011 for drafting his reply to Respondent's response to his amended fees application, which took 7.3 hours to produce a 9 page reply consisting mainly of block quotes from previous decisions, with little analysis; time spent reviewing Respondent's settlement offer (one-tenth of an hour), conducting legal research (2.0 hours), drafting a motion for enlargement and certificate of service, correspondence with Respondent, and a status conference.

The majority of this time was expended on litigation of Petitioner's application for fees and costs. That litigation would have been unnecessary if Mr. Dannenberg had kept good records and complied with Vaccine Program guidelines concerning billing. Further, review of the pleadings filed by Mr. Dannenberg indicates that his level of performance falls below that expected of a practitioner with his experience. The pleadings often are, as Judge Allegra found, irrelevant, as well as incoherent. Much of the time spent preparing them, in short, was wasted. There is no reason why the Vaccine Program should pay for hours expended in legal practice that does not conform to a reasonable standard. See Hensley (same standards apply as for paying clients).

Accordingly, I deduct 25 hours for this phase of the litigation, leaving 23.7 compensable hours. See, e.g., Torday v. Sec'y of Dep't of Health & Human Servs., No. 07-732V, 2011 WL 2680687, at *3 (Fed. Cl. Spec. Mstr. April 7, 2011) (awarding 11 attorney hours and 7 paralegal hours for preparing an interim and a final fee application, both of which were accompanied by briefs); Savin ex rel. Savin v. Sec'y of Dep't of Health & Human Servs., No. 99-537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008) (awarding four attorney hours for preparing a fees and costs application).

The Amended Petition requested $150,871 in attorneys' fees for 410.2 hours (91 hours x $325 per hour; 319.2 hours x $380 per hour). Based on the foregoing, I award $59,038.20 for 295.2 attorney hours, which in my experience as a special master, is reasonable attorney compensation for a case that went to hearing.

Table A: Attorneys' Fees			
Period	**Hours Awarded**	**Rate**	**Total**
2/10/03 to 9/1/06	30	$188 [46]	$5,640.00
9/1/06 to 12/18/08	137	$197	$26,989.00
12/18/08 to 11/5/09	104.5	$206	$21,527.00
11/10/09 to 7/6/11	23.7	$206	$4,882.20
Total Awarded Fees	**295.2**		**$59,038.20**

B. Reasonable Costs

The reasonableness standard, which applies to attorneys' fees requested under the Vaccine Act, likewise applies to "any request for reimbursement of costs." Perreira, 27 Fed. Cl. at 34 ("The conjunction 'and' conjoins both 'attorneys' fees' and 'other costs' and the word 'reasonable' necessarily modifies both."). Respondent makes several objections to costs claimed by Mr. Dannenberg, which are addressed below. See Resp't's Resp. to Fee Pet. at 12-16.

1. Petitioner's Costs

Mr. Dannenberg requests reimbursement of $50.00 on behalf of Petitioner as an out-of-pocket litigation expense. Fee Pet. at 3.[47] Respondent objects to this claim as "undocumented and unexplained." Resp't's Resp. Fee Pet. at 15. Because the "fee application does not state for what petitioner spent $50.00," Respondent argued, "there is no way to assess the reasonableness of the request." Id. at 15-16. In reply, Mr. Dannenberg stated that the amount "was used to offset miscellaneous costs, such as

[46] This figure is the average of the rate for two time periods that are spanned by these dates (i.e., $179 + $197 = $376/2 = $188).

[47] Petitioner's former counsel has been unable to obtain a petitioner and counsel statement in compliance with General Order No. 9, as petitioner has failed to respond to his requests to sign and return such a statement. Fee Pet. Ex. 8 (affidavit of Mr. Dannenberg concerning General Order No. 9).

postage and copying." Am. Fee Pet. at 7. Respondent renewed her objection. Resp't's Resp. Am. Fee Pet. at 1.

While Petitioner may be reimbursed for reasonably incurred costs, she bears the burden of proving the reasonableness of those costs. Here, Petitioner's former counsel provided an explanation unsupported by documentation or linked to specific expenditures. As these costs are neither documented nor explained, I cannot compensate Petitioner. See Gardner-Cook v. Sec'y of Dep't of Health & Human Servs., 99-480V, 2005 WL 6122520, at *5 (Fed. Cl. Spec. Mstr. June 30, 2005) (declining to compensate a petitioner for undocumented expenses).

2. Attorney's Costs

Respondent generally objected to $12,989.18 in attorney costs—nearly the entire amount claimed by Mr. Dannenberg. Resp. Am. Fee Pet. at 1.[48] Additional costs were added with the filing of his Amended Fees Petition ($70.17) and his final Reply ($29.53), bringing the total to $14,473.71. Respondent's specific objects are addressed below.

Mr. Dannenberg claimed $817.26 for photocopying. Fee Pet. Ex. 3. Respondent objected to the photocopying rate of 13 to 24 cents claimed by Mr. Dannenberg as excessive, arguing that "eight to ten cents per page has been determined to be reasonable in Vaccine Act cases." Resp't's Resp. Fee Pet. at 14 (citing Guy v. Sec'y of Dep't of Health & Human Servs., 38 Fed. Cl. 403, 407 (1997)). In response, Mr. Dannenberg states that there "are no costs greater than $.20 per page," with the majority at $0.15 per page. Am. Fee Pet. at 6.[49] Pointing to contemporary decisions, Mr. Dannenberg argues that such rates are within an acceptable range and should be allowed. Id. (quoting Mueller v. Sec'y of Dep't of Health & Human Servs., 06-775V, slip op. (Fed. Cl. Spec. Mstr. May 27, 2010) (finding $0.20 per page reasonable) (citing English v. Sec'y of Dep't of Health & Human Servs., No. 00-0061V, 2006 WL 3419805, at * 15 (Fed. Cl. Spec. Mstr. Nov. 9, 2006) (finding $0.25 per page reasonable))).[50] I find Mr. Dannenberg's copying rate reasonable. Accordingly, the copying costs are allowed in full.

Mr. Dannenberg claimed $135.00 in charges for sending and receiving facsimiles at $0.50 per page. Fee Pet. at Ex. 3. Respondent objected to this charged rate as unreasonable, arguing that the "cost of sending and receiving facsimiles has

[48] See note 7, supra

[49] Petitioner stated that a typographical error resulted in the $0.24 rate objected to by Respondent. "The charge for $7.20 for 30 copies on 5-30-08 . . . . should read 36 copies, as found on the handwritten timesheets." Am. Fee Pet. at 6.

[50] The finding in English that $0.25 per page was a reasonable rate was based on petitioners' counsel "use [of] a scanner to make electronic records of documents," which the special master stated was "cost-effective," as it reduced the need for paper copies "to be continually made." English, 2006 WL 3419805 at * 15. Such technology was not used by Mr. Dannenberg.

traditionally been disallowed as overhead." Resp't's Resp. Fee Pet. at 14.[51] Mr. Dannenberg made no argument in support of the claimed rate or total charge.

Facsimiles are generally considered non-reimbursable "overhead" expenses that are "subsumed in the hourly rate." Ceballos ex rel. Ceballos v. Sec'y of Dep't of Health & Human Servs., No. 99-97V, 2004 WL 784910, at *14 (Fed. Cl. Spec. Mstr. Mar. 25, 2004) (citing Wilcox v. Sec'y of Dep't of Health & Human Servs., No. 90-46V, 1997 WL 101572, at *2 (Fed. Cl. Spec. Mstr. Feb. 14, 1997)). In Ceballos, the special master indicated a "willingness to consider facsimiles as a compensable cost so long as the attorney requesting compensation supplies reasonable evidence as to the actual, out-of-pocket costs involved in using the facsimile." Id. at *14. The special master, however, denied reimbursement of the charges because the petitioners' counsel "provided no evidence as to how . . . the charges were computed." Id. The special master in Wilcox likewise stated that the court was "willing to consider telefaxes as a cost item, as opposed to overhead," but required "justification . . . to understand why a significant cost component is involved in sending [and receiving] telefaxes." Wilcox, 1997 WL 101572, at *2. The special master denied the charges because the petitioners failed to "establish the need for such item" and "provided no information, other than the charge itself, to support this cost item." Id.

Similarly, the special master in Berry v. Secretary of the Department of Health & Human Services, No. 97-0180V, 1998 WL 481882, at *2 (Fed. Cl. Spec. Mstr. July 27, 1998), declined to reimburse $1.00 per page for outgoing facsimiles because the petitioners did not present "adequate evidence" showing their request bore "any relationship to the actual cost of the facsimiles." The charge instead appeared "merely arbitrary." Id.; but see English, 2006 WL 3419805, at *15 (Fed. Cl. Spec. Mstr. Nov. 9, 2006) (reimbursed the expense where petitioners provided only the number of pages faxed, but no "explanation as to how counsel derived the cost per page;" charge reduced by fifty percent because the requested rate was excessive). The special master indicated facsimile charges could be reimbursed if a petitioner presented an appropriate method of calculating the actual expense attributable to the facsimile, e.g., "a claim for long-distance telephone charges related to outgoing facsimiles and for a per-page amount related to incoming facsimiles that is closely aligned to the rate that special masters for photocopies." 1998 WL 481882, at *2 n.2.

More recently, the special master in Schueman, refused to reimburse Mr. Dannenberg for fax charges because "the amount claimed appear[ed] to be a 'ballpark estimate,' rather than the result of any record keeping." 2010 WL 3421956, at *9. The

[51] In support of her argument, Respondent cited Isom v. Sec'y of Dep't of Health & Human Servs., No 94-770V, 2001 WL 101459 (Fed. Cl. Spec. Mstr. Jan. 17, 2001); Barnes v. Sec'y of Dep't of Health & Human Servs., No. 90-1101V, 1999 WL 797468 (Fed. Cl. Spec. Mstr. Spec. 17, 1999); Sims v. Sec'y of Dep't of Health & Human Servs., No. 90-1514V, 1993 WL 277090 (Fed. Cl. Spec. Mstr. July 9, 1993); Cain v. Sec'y of Dep't of Health & Human Servs., No. 91-817V, 1992 WL 379932 (Fed. Cl. Spec. Mstr. Dec. 3, 1992); Grice v. Sec'y of Dep't of Health & Human Servs., No. 94-410V, 1996 WL 16055 (Fed. Cl. Spec. Mstr. Jan. 3, 1996); but see Wilcox v. Sec'y of Dep't of Health & Human Servs., No. 90-46V, 1997 WL 101572 (Fed. Cl. Spec. Mstr. Feb. 14, 1997).

special master also noted "that many long distance service plans do not charge individually for long distance calls." Id.

Here, Mr. Dannenberg provided the number of pages faxed, but did not explain how he arrived at the 50 cents per page charge. While there are undoubtedly costs associated with receiving faxes, such as toner and paper, it is unknown from the record before me whether there is a telephone charge associated with the transmission. As the special master noted in Schueman, Mr. Dannenberg may have a service plan that does not charge for individual long distance calls. Here, Mr. Dannenberg has presented no evidence that his claimed charge bears any relationship to the actual cost, nor has he provided an appropriate method of calculating the actual expense attributable to sending and receiving faxes. As stated, I do recognize that there are costs associated with faxing, which are similar to those incurred with photocopies. Accordingly, I will reimburse Mr. Dannenberg for 270 faxes at 20 cents per page, the rate he is receiving for photocopies. Therefore $81.00 (270 x .30) will be deducted from the claimed costs.

Respondent also objected to Mr. Dannenberg's requests for reimbursement for costs associated with traveling to and from a FedEx shipping location. Resp't's Resp. Fee Pet. at 15. Respondent represented that Mr. Dannenberg "bills for traveling more than 140 miles for this activity at a cost of more than $72.00." Id. This cost item "is expensive and unnecessary," Respondent argues, as "Federal Express is not the only means by which counsel could have forwarded documents" to the parties, witnesses, and the Court. Id. Such items "should be considered non-reimbursable overhead." Id.

While travelling 140 miles to and from a FedEx shipping location may appear excessive on its face, I also recognize that Mr. Dannenberg lives in rural Vermont, where the conveniences available to those in metropolitan areas are fewer or unavailable altogether. Although the U.S. Postal Service was an option, its mailing services may not have been able to meet the deadlines required by Mr. Dannenberg. Whatever the reason for Mr. Dannenberg's choice, I find the claimed cost to be reasonable under the circumstances. It is granted in full.

Respondent also noted that Mr. Dannenberg requested "approximately $116.00 for meals on December 18, 2008." Resp't's Resp. Fee Pet. at 15. Respondent stated that the amount is "excessive," as "it appears that [this] amount is for meals for Mr. Dannenberg solely," and for a single day. Id. Mr. Dannenberg countered that Respondent was mistaken, as "[a] review of the timesheets indicates that only $35.01, including tips, was paid and billed" for meals on December 18, 2008." Am. Fee Pet. at 7 (citing Fee Pet. Ex. 3 at 30, Ex. 4).

Mr. Dannenberg is correct that his timesheets specifically noted only $35.01 in food charges for December 18, 2008; however, he also claimed a $455.50 "Hotel" charge on the timesheets that included three additional food-related charges dated 12/18/2008. See Fee Pet. Ex. 3 at 30, Ex. 4 (12/18/08 "Rm Svc $21.28," "Prime 108 Lounge $28.00," and "Prime 108 Lounge $4.92"). Mr. Dannenberg stated that the "[r]eceipts in Exhibit 4 reflecting additional charges include items for other parties beside

counsel, which were not billed or claimed as costs in the fee application." Am. Pet. at 7. A review of the hotel receipt referenced by Mr. Dannenberg at Exhibit 4 totals $455.50, the amount claimed on the timesheets, and includes the above-listed room charges. He made no deduction for the "additional charges" for other parties, which total $54.74, as he claims. Therefore, contrary to Mr. Dannenberg's assertion, he is billing and claiming meal costs beyond the $35.01 specifically detailed on the timesheets. While the $89.75 in food costs billed for the day is less than the $116.00 calculated by Respondent, and not unreasonable, the $54.74 in charges identified by Mr. Dannenberg as being incurred for other parties must be deducted from his claimed costs.

3. Expert Fees

The reasonableness standard that applies to attorneys' fees likewise applies to the fees of experts. Crossett v. Sec'y of Dep't of Health & Human Servs., No. 89-73V, 1990 WL 293878 (Cl. Ct. Spec. Mstr. Aug. 3, 1990). Similarly, "[e]xpert fees will be decided on a case-by-case basis." Chen Bou, 2007 WL 924495, at *16 n.24 (citing Perreira v. Sec'y of Dep't of Health & Human Servs, No. 90–847V, 1992 WL 164436, at *4 (Cl. Ct. Spec. Mstr. June 12, 1992), aff'd, 33 F.3d 1375 (Fed. Cir. 1994)).

Petitioner's former counsel requested reimbursement for $8,870 in expert witness fees. Specifically, Mr. Dannenberg requested $6,820 for Oscar Frick, M.D., and $2,050 for Bernard Cohen, M.D. Fee Pet. at 3. The billing records show that Dr. Frick billed for 9.5 hours at a rate of $400 per hour, and 5 hours at a rate of $600 per hour when giving testimony. Fee Pet. Ex. 5 at 2. Dr. Cohen, who did not testify in this case, received a $1,300 retainer and billed for 1.5 hours at a rate of $500 per hour for "consultation and review of records." Fee Pet. at 3 n.3; Fee Pet. Ex. 5 at 1. Respondent objected to these requested hourly rates as unreasonable, arguing that "Petitioner has not demonstrated that either physician provided exceptional services, or possesses unusual qualifications that justify [the] higher than usual hourly rate[s]," Resp't's Resp. Fee Pet. at 13, which "are higher than what has typically been awarded . . . in other Vaccine Act cases." Id. at 12. Respondent requested that I deny the requested rates and "set an appropriate hourly rate . . . based on the submitted evidence and [my] experience in other Vaccine Act cases." Id. at 14.

a. Petitioner's Expert, Dr. Oscar Frick

Respondent objected specifically to Dr. Frick's requested hourly rates, arguing that "there is no evidence that [they] are reasonable." Resp't's Resp. Fee Pet. at 13. Respondent also notes that "Dr. Frick bills a higher rate for giving testimony than he does for performing other tasks," which "is not allowed" in the Vaccine Program. Id. (citing Long, 1995 WL 774600; Castillo v. Sec'y of Dep't of Health & Human Servs., No. 95-652, 1999 WL 1427754 (Fed. Cl. Spec. Mstr. Dec. 17, 1999)).

Mr. Dannenberg responded, stating that "Dr. Frick is a highly qualified immunologist who . . . is very efficient and deserves to receive his requested hourly rates." Am. Fee Pet. at 4. "He was required to do medical research and draft a detailed

report regarding petitioner's unique injuries, and discuss at length in the hearing in this matter complex medical theories." Id.

While Dr. Frick may indeed be a highly qualified and efficient immunologist, I must decide whether his claimed hourly rate is reasonable based on his work as an expert in this case. To make this evaluation, I have considered the parties' arguments, read Dr. Frick's expert report, and reviewed Special Master Abell's decision on entitlement wherein he discussed the value of his testimony at hearing. Additionally, I rely on the rates commonly paid to experts in other Vaccine Program cases, as well as my own experience in the Vaccine Program.

Dr. Frick's expert report consisted of four pages, the first page of which outlined his medical credentials, the second summarized Kimberly's medical history, the third stated basis for his medical opinion, and the fourth listed citations to eight scientific articles.

Although Dr. Frick's expert report served its purpose, it is hardly remarkable in composition or level of research and detail. I also note that Respondent moved to exclude Dr. Frick's testimony because his expert report "raise[d] questions as to whether his theory on causation [met] the Daubert requirements for reliability." Mot., Dec. 16, 2008, ECF No. 52. Although the record does not reflect a ruling on Respondent's Motion, Special Master Abell commented in his decision denying entitlement on Dr. Frick's research, stating that most of "the medical literature . . . included in support of his expert medical opinion . . . was general in nature, and described either urticaria or adverse reactions to the DTaP vaccine, but not both." Warfle, 2010 WL 2671504, at *12. Later, in evaluating the evidence, Special Master Abell noted that "none" of the articles in "Dr. Frick's selection of medical literature" supported or explained the theory he advanced. Id. at *27.[52]

[52] Special Master Abell wrote:

> [I]t is clear that Petitioner's expert, Dr. Frick, has never witnessed, let alone treated, someone suffering chronic urticaria lasting over several months, which had been causatively linked to a DTaP vaccination. Likewise, Dr. Frick could not call to mind 'any case reports or case studies showing DTaP vaccine caused chronic urticaria.

Warfle, 2010 WL 2671504, at *27

Special Master Abell continued:

> Dr. Frick did not explain a coherent theory of how a reaction to DTaP could persist for months or years. . . . If Dr. Frick had proffered an articulable, plausible theory as to how an allergic reaction could persist long after the vaccine components themselves would have been metabolized, the Court might yet have found an anchor upon which to place probative weight. However, Dr. Frick's testimony left out important—if not critical—portions of explanation and analysis.

Id. at *28.

I conclude from this review of Dr. Frick's expert report and testimony that his claimed rates are unusually high for his efforts in this case. Dr. Frick requested compensation at a rate of $400 per hour for time spent reviewing the medical record, searching for medical literature, drafting his report, and for a phone conference, and a rate of $600.00 per hour when testifying. These requested rates are unreasonable, as experts in the Vaccine Program are commonly paid between $300 and $350 per hour. See, e.g., Fragoso v. Sec'y of Dep't of Health & Human Servs., No. 98-236V 2011 WL 300139 (Fed. Cl. Spec. Mstr. Jan. 6, 2011) (awarding $350 per hour instead of the requested rate of $500 because petitioners failed to submit evidence to support the claimed rate); Doe/11 v. Sec'y of Dep't of Health & Human Servs., 2010 WL 529425, at *11 (awarding $300 per hour to an expert immunologist); Kuperus, 2006 WL 3499516, at *1 (awarding $350 per hour to an expert with 35 years of experience and who "is one of the only doctors in the world, not to mention the course of human history" with his credentials). Therefore, based on my review of the record, expert rates in previous Vaccine Act cases, and my own experience in the Vaccine Program, I find that $325 per hour is a generous but reasonable hourly rate for Dr. Frick in this case.

As for Dr. Frick's increased hourly rate for testifying, special masters have consistently held that it is inappropriate for medical experts to receive a higher fee for trial testimony. Gardner-Cook, 2005 WL 6122520, at *4 (citing Plott, 1997 WL 842543, at *6; Salimian v. v. Sec'y of Dep't of Health & Human Servs., No. 91–1140V, 1992 WL 185710, *3 (Cl. Ct. Spec. Mstr. July 17, 1992); Gonzalez v. Sec'y of Dep't of Health & Human Servs., No. 91–905V, 1992 WL 92200, at *3 (Cl. Ct. Spec. Mstr. Apr. 10, 1992)). Given that Mr. Dannenberg provided no reason for the increased fee, Dr. Frick will be compensated for testifying at the rate of $325 per hour. Therefore, Dr. Frick will receive $4,712.50 ($325 x 14.5 hours) for his work in this case.

b. Petitioner's Medical Consultant, Dr. Bernard Cohen

Similarly, Respondent objected to Dr. Cohen's requested hourly rate of $500 for his work as an expert medical consultant. Resp't's Resp. Fee. Pet. at 13. Respondent also noted that Dr. Cohen's credentials were unknown, as Mr. Dannenberg failed to submit his CV for review. Id. Respondent argues that it is "entirely petitioner's burden to substantiate the requested items in their **initial** fee application." Id. (citing Saunders v. Sec'y of Dep't of Health & Human Servs., 26 Cl. Ct. 1221, 1226 (1992), aff'd, 25 F.3d 1031 (Fed. Cir. 1994); Wasson, 24 Cl. Ct. at 484 n.1).

Mr. Dannenberg argued that "Dr. Cohen's request is reasonable for a pediatric neurologist," noting that Dr. Kinsbourne, a regularly appearing expert consultant in Vaccine Program cases, has been paid the same $500 per hour rate requested here. Am. Fee Pet. at 4-5. Mr. Dannenberg filed Dr. Cohen's CV as an appendix to his Amended Fees Petition. Am. Fee Pet. Ex. 10.

In response, Respondent renewed her objection, again arguing that the claimed $500 per hour rate was unjustified. Resp't's Resp. Am. Fee Pet. at 7-8. Respondent acknowledged that Dr. Kinsbourne was awarded $500 an hour for his services as an expert in Simon v. Secretary of the Department of Health & Human Services, No. 05-

941V, 2008 WL 623833 (Fed. Cl. Spec. Mstr. Feb. 21, 2008), but noted that the high rate was unusual. Id. at 8. Respondent stated that the "special master made clear that Dr. Kinsbourne's high hourly rate was limited to Dr. Kinsbourne and was based on his specific 'experience, qualifications, publications, academic affiliations, and active participation in Vaccine Program cases since its inception,'" which combined, "'entitle him to charge and receive a higher hourly rate than most petitioners' experts.'" Id. (quoting Simon, 2008 WL 623833, at *6). Respondent then noted that for his work as a consultant in Simon, Dr. Kinsbourne was only awarded $300 per hour, "which the special master found did not require the utilization of 'the specialized knowledge and experience which justifies an expert's hourly rate.'" Id. (quoting Simon, 2008 WL 623833, at *8). Further, he "has not been awarded $500 per hour for his work as an expert in all subsequent cases," including a recent one with the same special master. Id. at 8-9 (citing Hammit, 2011 WL 1827221, at *7 (awarding Dr. Kinsbourne $300 per hour as an expert because the $500 per hour rate was not justified in that particular case)).

In response, Mr. Dannenberg made the policy-based argument that "expert fees in the program have been historically below market rates," but made no other meaningful rebuttal. Pet'r's Reply at 7 (citing Chen Bou, 2007 WL 924495).

Petitioner must carry the burden of "producing evidence, not just argument," to support Dr. Cohen's requested rate and to establish its reasonableness. Doe/11, 2010 WL 529425, at *11. Special masters have declined compensation in cases where "petitioners fail[ed] to meet their burden of proof, such as by not submitting appropriate documentation." Fragoso, 2011 WL 300139, at *2 (citing Gardner-Cook, 2005 WL 6122520, at *4). The single piece of evidence submitted on this point is Dr. Cohen's CV, which was filed only after Respondent objected to his claimed hourly rate. Before that point, Mr. Dannenberg had submitted nothing to substantiate that Dr. Cohen's work as a consultant deserved the exceptionally high rate of $500 per hour. And apart for Dr. Cohen's invoice, which bills for "Phone discussion, literature review and preparation of report," there is no meaningful evidence showing the work Dr. Cohen actually performed in this case. See Fee Pet. Ex. 5.[53] Other than Dr. Cohen's CV, which I accept as evidence, I have nothing upon which to evaluate the value of his work. Accordingly, it is clear that Mr. Dannenberg has failed to submit sufficient evidence to support the requested hourly rate of Dr. Cohen.

It is within my discretion to deny all compensation for Dr. Cohen's work, as "failure to submit evidence can justify the denial of an award of fees and costs." Doe/11, 2010 WL 529425, at *11 (citing Naporano Iron and Metal Co. v. United States, 825 F.2d 403, 404 (Fed.Cir.1987); Presault v. United States, 52 Fed. Cl. 667, 670, 679 (2002); Gardner-Cook, 2005 WL 6122520, at *4). Because Mr. Dannenberg has failed to submit sufficient evidence to support the requested hourly rate for Dr. Cohen, I compensate Dr. Cohen at a rate of $250 per hour. In determining this rate, I reviewed Dr. Cohen's CV, relied on the rates commonly paid to experts in other Vaccine Program

[53] See also Fee Pet. at 2 ("consultation and review of records").

cases, including those discussed above, and my own experience in the Vaccine Program. Therefore, Dr. Cohen will receive $1,025 ($250 x 4.1 hours) for his work in this case. [54]

Table B: Costs & Expert Fees	
Total Requested (Costs & Expert Fees)	$14,473.71
Petitioner's Costs	
Costs Requested	$50.00
Reduction	-$50.00
Award	0
Attorneys' Costs & Expert Fees	
Costs Requested	$5,603.71
Reduction (faxes)	-$81.00
Reduction (meals)	-$54.74
Award	**$5,467.97**
Expert Fees Requested (Dr. Frick)	$6,820.00
Reduction	-$2,107.50
Award	**$4,712.50**
Expert Fees Requested (Dr. Cohen)	$2,050.00
Reduction	-$1,025.00
Award	**$1,025.00**
Total Awarded Costs & Expert Fees	**$11,205.47**

VI. CONCLUSION

Pursuant to Vaccine Rule 13, Petitioner is awarded a total of 295.2 attorney hours in this case. The Court hereby awards Petitioner attorneys' fees in the amount of $59,038.20 and costs in the amount of $11,205.47.

Specifically, Petitioner is awarded a lump sum of $70,243.67 in the form of a check payable jointly to Petitioner and Petitioner's former attorney, Paul S. Dannenberg.

[54] The 4.1 hours was calculated as follows: $1300 + $750 = $2,050 / $500 hourly rate = 4.1 hours.

In the absence of a timely motion for review filed pursuant to Vaccine Rule 23, the Clerk is directed to enter judgment according to this decision.[55]

IT IS SO ORDERED.

Dee Lord
Special Master

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