

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 00-778V

Filed: March 29, 2006

TO BE PUBLISHED

DANIELLE CARR, *
by her Mother and Next Friend, *
MARTHA CARR, *

* Attorney's Fees; Hourly Rates
* for Boston Community
*

v. *

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

* Respondent. *

Ronald Homer, Conway, Homer & Chin-Caplan, Boston, Massachusetts, for Petitioner.

James Reistrup, United States Department of Justice, Washington, D.C., for Respondent.

ATTORNEYS' FEES AND COSTS DECISION¹

GOLKIEWICZ, Chief Special Master

On June 23, 2005, petitioner filed an application for \$60,368.79 in attorneys' fees and costs, which was subsequently amended to reflect attorneys' fees and costs in the amount of \$78,123.67. Respondent opposed petitioner's initial request for attorneys' fees and costs, as well

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

as her amended request for attorneys' fees and costs. After much discussion, the parties have approached the Court with the parties' view of what the evidence produced indicates the hourly rates for the petitioner's law firm, Conway, Homer, and Chin-Caplan, P.C. (CHCC) should be. This Decision ensues. Before discussing the agreed upon hourly rates, there are several points the parties wish discussed.

One seemingly novel aspect of what the parties have proposed is a schedule of anticipated future hourly rates for the attorneys in question, based on projections as derived from the evidence. The undersigned obviously cannot decide future hourly rates as that issue is not ripe. However, to the extent that the parties are requesting that this Decision address the issue as a means of memorializing the parties' view of the evidence as it relates to what future rates should be for CHCC, this Decision will reflect that. In addition, it is noted that courts have provided guidance to parties as to the period for which rates prospectively ought to apply, as Judge Miller did in Rupert v. Secretary of HHS, 55 Fed. Cl. 293, 306 (2003). Thus, to the extent the parties find value in such guidance, the Court will do as requested and address CHCC's projected hourly rates.

The parties have emphasized that the schedule of fees incorporated in this Decision is specific to the firm of CHCC only,² and is derived from evidence relevant to the lodestar analysis of attorneys' fees. See Hensley v. Eckerhart, 461 U.S. 424 (1983). Determining the lodestar is a two-step process consisting of establishing the lodestar, and then adjusting the resulting amount to keep the fee in line with the nature of the services rendered in the particular case. Blanchard v. Bergeron, 489 U.S. 87 (1989). An hourly rate is normally reasonable when it is in line with the prevailing market rate, defined as the rate prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. Blum v. Stenson, 465 U.S. 886, 897 (1984).

Another point clearly made is that resolution of appropriate hourly rates does not end the inquiry as to what is appropriate total compensation for fees and costs in a particular case. Other factors work into the analysis of what compensation is reasonable, most notably, the number of

² It is likely that other vaccine litigators will argue that this Decision supports their requested hourly rates. Quite frankly, the rates contained herein are higher than those paid in past cases, including those paid to the CHCC firm. In the undersigned's view, the parties in this case should be commended for their efforts, including their willingness to review the objective data and to agree to rates commensurate with that data. However, it cannot be emphasized strongly enough that the rates found herein are based upon evidence adduced for the Boston area and as such apply only to attorneys practicing in that relevant community. While the undersigned is hopeful and strongly encourages respondent and other petitioners to develop a settlement grid representing agreed upon hourly rates for the nationwide vaccine Bar, this Decision may be helpful to such an effort, but it cannot be used or interpreted as evidence for attorneys outside of the Boston community.

hours that would be appropriate under the circumstances. The case law related to determining the number of hours reasonably spent on litigating the petition is quite clear. The court must exclude those “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.” Hensely v. Eckerhart, 461 U.S. 424, 434 (1983). In making reductions, the special master is not necessarily required to base his or her decisions on a line-by-line evaluation of the fee application. Wasson v. Secretary of HHS, 24 Cl. Ct. 482, 484 (1991). Moreover, the special masters may rely on their experience with the Vaccine Act and its attorneys to determine the reasonable number of hours expended. Wasson, 24 Cl. Ct. At 486, aff’d, 988 F.2d 131 (Fed. Cir. 1993); Saxton v. Secretary of HHS, 3 F.3d 1517, 1521 (Fed. Cir. 1993)(“It is well within the special master’s discretion to reduce the hours to a number that, in his experience and judgment, was reasonable for the work done.”) The number of attorneys’ hours spent are not at issue in this case.

The parties note that although they have agreed to appropriate hourly rates for CHCC in this and future cases, they reserve all respective rights with regard to establishing or challenging as reasonable under the Vaccine Act, all other aspects of a petition for attorneys’ fees and costs. That is to say the determination of the hourly rates set forth on pages 5-6, *infra*, are independent of other issues that must be determined in deciding the allowability and reasonableness of attorneys’ fees and costs, for example, jurisdictional issues, number of hours spent and appropriate costs. These collateral areas of attorneys’ fees and costs, exclusive of the agreed upon hourly rates for CHCC set forth by the Court in the above-captioned case, shall continue to be evaluated for appropriateness and reasonableness on a case-by-case basis consistent with the Vaccine Act.

Respondent specifically requested that this Decision reflect two important qualifications. First, respondent expressly reserves all rights with regard to other attorneys’ and/or firms’ fees and costs. That is to say that this Decision is determining the appropriate hourly rate for the CHCC firm based upon evidence adduced for the Boston area. Second, and more specifically, in proposing the fee schedule for CHCC addressed in this Decision, respondent does not consider itself bound, barred, or estopped with regard to the rates of other firms. As discussed above, this Decision cannot bind other attorneys in other cases. See Althen v. Secretary of HHS, 418 F.3d 1274, 1280 (Fed. Cir. 2005)(“The special master’s role is to apply the law.”) Thus, the undersigned agrees that the parties’ proposed schedule of fees for CHCC is not prepared nor intended as evidence or proof of prevailing rates for any other law firm or for attorneys other than those listed herein and other vaccine lawyers practicing in the relevant community. Thus, respondent’s qualifications merely clarify that these fee schedules may not prove useful in comparison with other attorneys and law firms with Vaccine Act cases. However, the undersigned sincerely hopes that the methodology employed in reaching agreement with the CHCC firm will be pursued with other vaccine litigators. To that end, the fee schedules contained herein could prove helpful.

CHCC has produced evidence of an appropriate lodestar rate, and the parties have reached an understanding concerning the effect of the evidence. Noting the foregoing, the parties indicated that they anticipate and agree that the rates set forth in this Decision will apply between the involved parties in all Vaccine Act cases for the time period indicated. Thus, the parties have expressly requested that the Court issue a Decision for CHCC rates to be used for the time periods indicated. As stated previously, any precedential value of this Decision is restricted to the named attorneys and paralegals of CHCC, and other vaccine lawyers practicing in the relevant community of Boston.

The Court has considered the parties' respective pleadings, evidence, and representations regarding an award of reasonable attorneys' fees available as part of compensation pursuant to 42 U.S.C. § 300aa-15(e) for CHCC and paralegals at CHCC. Considering that information, together with the Court's review of the law regarding the availability of compensation of reasonable of attorneys' fees in claims adjudicated under the Vaccine Act, the Court orders the following:

In accordance with the Court of Federal Claims in Rupert v. Secretary of HHS, 55 Fed. Cl. 293 (2003), the appropriate billing rates for CHCC for calendar years up to and including 2004 are:

Mr. Kevin Conway	\$250 per hour,
Ms. Sylvia Chin-Caplan	\$220 per hour,
Mr. Ronald Homer	\$210 per hour, and
Firm paralegals	\$ 85 per hour.

For time billed by CHCC from January 1 to December 31, 2005, the following hourly rates shall apply:

Mr. Kevin Conway	\$295 per hour,
Ms. Sylvia Chin-Caplan	\$260 per hour,
Mr. Ronald Homer	\$250 per hour, and
Firm paralegals	\$ 90 per hour.

As noted previously, the parties requested that the Court memorialize their views on what future rates ought to apply for CHCC firm based on the evidence. The following schedule sets forth their joint views on the matter. For time billed by CHCC from January 1 to December 31, 2006, the following hourly rates shall apply:

Mr. Kevin Conway	\$300 per hour,
Ms. Sylvia Chin-Caplan	\$270 per hour,
Mr. Ronald Homer	\$260 per hour, and
Firm paralegals	\$ 95 per hour.

For time billed by CHCC on or after January 1, 2007, the following hourly rates shall apply:

Mr. Conway's hourly rate of \$300 will be adjusted annually consistent with the national consumer price index ("NCPI").

Mr. Homer's hourly rate will increase annually by \$10 per hour, until such time (if at all) that his hourly rate reaches \$300 per hour, after which time, his hourly rate will be adjusted annually consistent with the NCPI.

Ms. Chin-Caplan's hourly rate will increase annually by \$10 per hour, until such time (if at all) that her hourly rate reaches \$300 per hour, after which time, her hourly rate will be adjusted annually consistent with the NCPI.

The Firm paralegals' hourly rate of \$95 will be adjusted annually consistent with the NCPI.

The undersigned would like to note that, though applicable only to CHCC, the Court applauds the parties' ability to reach a unitary and durable solution to the admittedly vexing matter of attorneys' fees and costs under the Vaccine Act. As a basis for the rate structure, the parties amassed critical evidence for the lodestar analysis, and synthesized from that some base rates that form an appropriate rate applicable to an attorney practicing a similar type of law, with similar levels of experience, and within a fee-shifting structure. From those current rates, the parties have anticipated a predictable series of increases reflecting levels of experience, and referencing annually consulted cost-growth indicators. The resultant schedule appears to the Court reasonably to anticipate future rates.

Accordingly, the Court finds that these hourly rates set forth herein reflect the evidence concerning the applicable market rates, with an appropriate adjustment for the unique fee provisions of the Vaccine Act. Finally, as noted at the outset, the Court's ruling applies only to CHCC and only for the period during which fees accrued in this case. Nevertheless, the Court offers its general view that the approach taken by the parties, and their future planned rate schedule for the CHCC firm, results in rates that are reasonable for attorneys and paralegals of that firm. The Court finds that the rates as contained herein are fair and reasonable.

Regarding other matters raised in the above-captioned case, respondent withdraws his former objections to costs sought by petitioner on behalf of her expert, Dr. Maertens. Thus, the Court awards as reasonable costs, the amount of \$3,600.00.

Further, respondent withdraws his previous objections to costs associated with other areas of contention to include mailings, travel, and telephone charges.³

Lastly, several issues were raised regarding the life care planner's fees. The undersigned resolved those issues in a Ruling, filed March 29, 2006.

Accordingly, petitioner is hereby awarded a total of **\$69,150.30 in attorneys' fees** and **\$17,352.14 in attorneys' costs**.⁴ The award shall be made payable jointly to petitioner and her attorneys. Additionally, an award of **\$100.66 in petitioner's costs** is appropriate. The award shall be made payable solely to petitioner. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment according to this decision.⁵

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

³ This includes respondent's not objecting to petitioner's request for reimbursement of out-of-pocket expenses in the amount of \$100.66.

⁴ This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991).

⁵ 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.