

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-670V

Filed: December 15, 2006

To Be Published

ERIC JEFFRIES,

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Petitioner,

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v.

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Attorneys' Fees
and Costs; Attorneys' hours;
Expert hours; General costs;
Compensation claimed for
non-vaccine cases.

Clifford J. Shoemaker, Vienna, VA, for petitioner.

Robin L. Brodrick, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

I. PROCEDURAL HISTORY AND BACKGROUND

On August 6, 1999, Mr. Eric Jeffries (“petitioner”) filed a petition for compensation on his own behalf under the National Childhood Vaccine Injury Act of 1986. *See* Petition, filed August 6, 1999. Mr. Jeffries alleged that he suffered chronic fatigue syndrome (“CFS”) due to a hepatitis B vaccine. An entitlement hearing was held on April 14-15, 2003 and the special

¹ The Court encourages the parties to review Vaccine Rule 18, which affords each party 14 days to object to disclosure of (1) trade secrets or commercial or financial information that is privileged or confidential, or (2) medical information that would constitute “a clearly unwarranted invasion of privacy.”

master issued a written decision denying entitlement.² Petitioner filed a motion for review on November 4, 2004. Following oral arguments, a U.S. Court of Federal Claims judge, the Honorable Francis M. Allegra, remanded the case for further proceedings and clarification of the medical records on April 19, 2005. In a decision on remand, the undersigned held that neither of the two additional articles filed as evidence by petitioner impacted upon or warranted modification of the special master's findings and conclusions in this case.

On March 6, 2006, petitioner filed an Application for Attorneys' Fees & Costs ("P. App.") requesting \$340,835.45 for attorneys' fees and costs, and \$1,000.00 in personal costs incurred in this case. Respondent filed an Opposition to Petitioner's Application for Fees and Costs ("R. Opp.") on April 5, 2006, and raised objections to aspects of petitioner's claimed attorneys' hours, attorneys' rates, expert hours and costs. *See* R. Opp. Specifically, respondent objected to: (1) petitioner's reliance on the *Laffey* matrix³ in determining the hourly rates for Mr. Clifford Shoemaker and Ms. Renee Gentry; (2) the claimed hours for Mr. Shoemaker, Mr. Michael Roberts, and Mr. James R. Matthews; and (3) the rates and hours for Dr. Byron M. Hyde, Dr. Charles Poser, and Dr. Mark Geier. *See generally id.* The parties have been able to negotiate what they both believe represents reasonable hourly rates for Shoemaker & Associates

² The entitlement decision was issued in redacted form and will therefore not be directly quoted from or referred to in this decision.

³ "This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees."
http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_3.html, n. 1.

in this, and several other vaccine cases. Therefore, the hourly rates for Mr. Clifford Shoemaker and Ms. Renee Gentry are no longer at issue in this case. *See* R. Reply at 1-2.

On April 13, 2006, petitioner filed Petitioner's Statement Regarding Retainers and Expenses, in compliance with General Order #9 ("P. Statement"), in which he asserted that he has not filed or paid any retainer, and confirmed that he incurred \$1,000.00 in personal expenses in pursuing this case.

On April 26, 2006, the undersigned issued an order instructing petitioner to respond to the objections raised in respondent's opposition to petitioner's application for attorneys' fees and costs. On May 12, 2006, the undersigned gave respondent a deadline by which to file a response to petitioner's reply to respondent's opposition to petitioner's application for attorneys' fees and costs.

Petitioner filed Petitioner's Reply to Respondent's Opposition to Petitioner's Application for Attorneys' Fees and Costs ("P. Reply R. Opp.") on May 15, 2006. Subsequently, in an order dated May 31, 2006, the undersigned suspended the deadline for respondent's filing, in light of the parties having informed the court that they would be participating in mediation to settle the dispute over the hourly rates of Mr. Shoemaker and Ms. Renee Gentry.

On June 8, 2006, petitioner filed an Amended Application for Attorneys' Fees and Costs ("P. Amended App."), in light of the parties' having reached an hourly rate agreement for Mr.

Clifford Shoemaker and Ms. Renee Gentry.⁴ Petitioner now requests a total of \$313,426.20⁵ in attorneys' fees and costs, and \$1,000.00 in personal costs. *See* P. Amended App. at 2.

Respondent filed a Reply to Petitioner's Amended Application for Attorneys' Fees and Costs ("R. Reply") on June 23, 2006, renewing the objections to Mr. Roberts' hourly rates, the number of attorney hours, the expert rates and number of expert hours, and certain aspects of petitioner's claimed costs. *See* R. Reply at 2. Respondent also requested that the undersigned instruct petitioner to file a second amended application because petitioner's application included fees and costs incurred in two civil cases. *See id.*

On August 4, 2006, the undersigned ordered petitioner to respond to respondent's Reply to Petitioner's Amended Application for Attorneys' Fees and Costs. Specifically, the undersigned instructed petitioner to:

- 1) Address how the costs incurred in the litigation in the United States District Court for the Southern District of Ohio and the civil action against Center Life Insurance Company and Disability Management Services are related to petitioner's vaccine case,
- 2) Break down the costs incurred for the services performed by Dr. Byron Hyde so that it is possible to ascertain how these costs were incurred and which of the costs are attributable to work conducted in petitioner's non-vaccine cases and which in this case,
- 3) Provide a reasonable explanation for why Dr. Hyde should be reimbursed for ending his trip to Europe in order to appear for a hearing that he was aware of ahead of time,

⁴ *Id.*

⁵ The undersigned notes that counsel erroneously lists 9.5 hours instead of 10.25 hours for the work performed by Mr. James R. Matthews. *See* P. Amended App. The undersigned's law clerk has confirmed that this figure was a clerical error and petitioner's fee award has been adjusted accordingly.

- 4) Provide evidence regarding Mr. Roberts' years of practice and the reasonable hourly rates for attorneys practicing in Cincinnati, Ohio,
- 5) Explain the claimed expert costs, including but not limited to a proper delineation of the flat fee requested by Dr. Charles Poser, a further explanation of why Dr. Mark Geier has billed petitioner for hours related to the preparation of his own literature, and
- 6) Distinguish between the fees and costs incurred in petitioner's non-vaccine cases and in this case, and ***consider filing an amended fee petition.*** (emphasis added).

On October 13, 2006, petitioner filed Petitioner's Response to Respondent's Reply to Petitioner's Amended Application for Attorneys' Fees and Costs ("P. Resp. R. Reply").

Petitioner asserted that his client's alleged reaction to the hepatitis A and B vaccinations he received "destroyed his life." P. Resp. R. Reply at 1. The reaction rendered him unable to continue working, and resulted in his pursuing the case at hand, in addition to long-term disability benefits under policies sold to him by Prudential Insurance Company ("Prudential") and Massachusetts Casualty Insurance Company (n/k/a Center Life) ("Center Life"), respectively. *See id.* at 2.

Counsel states that the policy through Prudential was governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), requiring petitioner to undergo a "2+ year, adversarial, 4-step 'administrative review' process before he could pursue litigation in Federal Court." P. Resp. R. Reply at 2. Further, counsel states that the Center Life policy was governed by laws of the State of Ohio. *See id.* Petitioner argues that the two civil cases, along with the vaccine case, required the use of medical records and expert testimony, and resulted in "great time and expense." *Id.*

In distinguishing petitioner's two civil cases from the current proceeding, counsel asserts that the Vaccine Program gave petitioner the additional burden of proving that his vaccinations

“more than likely caused” his injury, while the civil cases only required that he prove a disability. P. Resp. R. Reply at 2. Petitioner’s counsel argues that this additional burden resulted in “additional legal cost and expense.” *Id.* Prevailing in the civil lawsuits was “highly important” to the current proceeding, since “any money recovered in those cases would reduce the amount of damages that had to be claimed under the program.” *Id.* at 3.

Regarding attorneys’ hours and fees, petitioner argues that aside from legal work that directly relates to “the particular procedural rules of the different courts or laws,” none of the time expended by the attorneys in the three cases (i.e. the two civil cases and the vaccine case at hand) can be “compartmentalized.” P. Resp. R. Reply at 3. Petitioner further argues that even discrete assignments created work product that was used in all three cases. *See id.* Petitioner states that while the same work product was sometimes used in all three cases, the time spent was never billed twice. *See id.*

Regarding petitioner’s claimed costs, counsel explains that co-counsel in this case assigned costs among the three matters in the same way that they were handled for attorneys’ time and fees. *See P. Resp. R. Reply at 3.*

Petitioner’s counsel argues that his client’s choice to manage his three matters simultaneously has benefitted the Vaccine Program, since he would not have otherwise been able to “‘borrow’ the knowledge, opinions, and work product” billed in the two civil cases for “the benefit of the Vaccine matter/program.” P. Resp. R. Reply at 3. Without this ability to “borrow,” the attorneys’ fees and costs for the current case would have been “substantially greater.” *Id.*

Counsel also discusses the effect of burdens of proof on the overall fees and costs for this case. *See* P. Resp. R. Reply at 4. He argues that since petitioner’s burden in the present case was “materially greater” than in the civil cases, petitioner’s overall costs and expenses in the three cases were “escalated substantially.” *Id.* Petitioner then poses the question “what costs incurred in the insurance disputes did not relate to the vaccine program” and states that “obviously” any additional concerns held by this Court regarding any discrete expenses would be explained upon request. *Id.*

Petitioner’s counsel includes a table in which he separates the fees and costs for each of the three cases over the past seven years as follows:

Matter	Fees Billed	Costs
MCIC/Center Life	\$291,927.00	\$43,193.92
Prudential	\$117,446.00	\$21,842.64
Vaccine	\$60,179.50	\$16,583.00

Counsel provides this table as “evidence that the [V]accine [P]rogram was assigned just a small percentage of the overall fees/costs of the 3 matters since 1999.” P. Resp. R. Reply at 4. Petitioner argues that the work performed in the two civil cases could be “justified as legitimate expenses for the vaccine claim.” *Id.* Counsel tried “very hard” to settle the two civil cases in time to lessen the amount required to settle this present case, but was unsuccessful. *Id.* at 5.

Petitioner also includes a declaration from Mr. Roberts regarding his years of practice and involvement in this case, and Mr. Roberts’ biography as provided on his firm’s website. *See* P. Resp. R. Reply, Ex. 1 at 6. Finally, petitioner discusses respondent’s objections to the expert fees claimed for Drs. Hyde, Poser, and Geier. *See* P. Resp. R. Reply at 5-8.

Petitioner did not file a second amended application for attorneys' fees and costs with his response.

On November 2, 2006, respondent filed a Sur-Reply to Petitioner's Amended Application for Attorney's Fees and Costs ("R. Sur-Reply"). While respondent withdrew the objection to Mr. Roberts' claimed hourly rates, in light of the additional information filed by petitioner in response to the undersigned's August 4, 2006 Order, he renews the objections to petitioner's claimed attorneys' hours, expert hourly rates, expert hours, and portions of the claimed costs. *See* R. Sur-Reply at 2.

Regarding petitioner's explanation for asking this Court to award attorneys' fees and costs for the two civil cases before the U.S. District Court for the Southern District of Ohio, respondent argues that these fees and costs do not "constitute costs incurred in any proceeding on his petition for compensation under the Vaccine Act" and should not be compensated. R. Sur-Reply at 4.

Respondent asserts that petitioner pursued attorneys' fees and costs in both civil cases⁶, and argues that this is evidence that "petitioner himself apparently did not believe those costs were recoverable under the Vaccine Act." R. Sur-Reply at 5-6. For example, petitioner received a \$2,000,000.00 settlement in his case against Center Life, and respondent's review of the case's docket entries suggests that the parties meant for petitioner to use the settlement proceeds to pay for his attorneys' fees and costs. *See* R. Sur-Reply at 5 (citing as an example the Motion to Seal Case and Enforce Settlement Agreement in *Jeffries v. Center Life Ins. Co., et al.* (SD OH), where

⁶ Petitioner was denied attorneys' fees and costs in both cases. *See* R. Sur-Reply at 5.

petitioner “sought attorneys’ fees for the time period between the settlement and the subject motion”). Respondent argues that if this Court reimburses petitioner for any attorneys’ fees and costs incurred in the Center Life case, it will result in an “unintended windfall” for petitioner and his attorneys. *See id.*

Regarding the Prudential case, respondent notes that in denying petitioner’s application for attorneys’ fees and costs, the magistrate judge observed that “while plaintiff obtained an award of past due disability benefits after his lawsuit was filed, the Court’s decisions in this case reveal that plaintiff’s litigation positions pursued thereafter were ultimately without merit.” R. Sur-Reply at 5, citing *Jeffries v. Prudential Ins. Co.*, Case No. 1:01-cv-00680 (SD OH), Magistrate’s Decision at 17. Respondent states that the magistrate’s finding seems to indicate that “petitioner no longer had a good faith and reasonable basis to proceed with the litigation after he received past due disability benefits.” R. Sur-Reply at 5, n. 5.

With regard to petitioner’s argument that his alleged vaccine injury “necessitated” the other two cases, respondent argues that this claim “lacks any basis and is irrelevant to the issue of fees and costs in the vaccine case.” R. Sur-Reply at 6. Respondent points out that in the entitlement Decision the special master held that petitioner was not entitled to compensation under the Vaccine Act. *See id.* Therefore, there is no basis with which petitioner can argue that his alleged vaccine injury required that he pursue civil actions against the disability insurance companies. *See R. Sur-Reply at 7.*

Respondent also disagrees with petitioner’s claim that it is impossible to “compartmentalize” the work done in each of the three separate cases. R. Sur-Reply at 7. As an example, respondent discusses counsel’s assertion that “but for the vaccine case, [petitioner]

would likely have never retained Dr. Geier, and therefore, although some of the Geier expense was recorded to the insurance matters, it would have all been assigned to the Vaccine matter had there been no insurance case.” *Id.*, citing P. Resp. R. Reply at 4. Respondent argues that the expert fees in the Vaccine case are “already excessive” on their own. R. Sur-Reply at 7. Respondent asserts that proof that petitioner’s experts provided reports and deposition testimony in the civil cases is inconsequential to a determination of reasonableness for attorneys’ fees and costs here, unless it is used to show that petitioner has “not billed for work performed in the other cases to the vaccine case.” R. Sur-Reply at 7-8.

Respondent also objects to petitioner’s failure to clarify Dr. Hyde’s bill and “adequately explain the claimed costs of Dr. Poser and Dr. Geier.” R. Sur-Reply at 8–9. In conclusion, respondent argues that given petitioner’s failure to amend his application, the disputed fees and costs should be denied. *See id.* at 12.

II. AGREED ON ITEMS

A. Hourly Rates

Petitioner requests the following hourly rates:

Shoemaker & Associates

ATTORNEYS

Clifford Shoemaker

1999-2004	\$250.00/hour
2005	\$275.00/hour
2006	\$300.00/hour

Renee J. Gentry

2003	\$175.00/hour
2005	\$185.00/hour

2006 \$200.00/hour

Legal Assistants

2003-2004 \$55.00/hour

Graydon Head & Ritchey LLP

Michael A. Roberts⁷

2001 \$190.00/hour

2002 \$200.00/hour

2003 \$230.00/hour

2004 \$245.00/hour

2005 \$260.00/hour

Keating, Meuthing & Klekamp PLL

James R. Matthews

1999 \$175.00/hour

Respondent does not object to these hourly rates. *See* R. Reply at 1; R. Sur-Reply at 2.

The undersigned finds the hourly rates requested by petitioner to be reasonable.

B. *Hours Expended by Ms. Renee Gentry*

Petitioner requests a total of 22.5 hours (1.5 hours at \$175.00/hour, 5.5 hours at \$185.00/hour, and 15.50 hours at \$200.00/hour) for work performed by Ms. Gentry. *See* P. Amended App. at 13. Respondent does not object to these hours. The undersigned finds the hours to be reasonable and awards Ms. Gentry \$4,380.00 in attorney's fees.

⁷ *See* P. Resp. R. Reply, Ex. 1 at 3, n. 1.

C. *Mr. James R. Matthews' Expenses*

Petitioner requests \$390.63 as reimbursement for expenses incurred by Mr. Matthews. *See P. App.* Respondent does not object to these expenses. The undersigned, therefore awards petitioner \$390.63 for Mr. Matthews' costs.

III. ITEMS IN DISPUTE

A. *Hours Expended*

1. *Legal Assistants*

Petitioner requests a total of 2.8 hours for the combined work of legal assistants Gretchen A. Shoemaker, Kristina Price, and Robin C. Buther, billed at a rate of \$55.00/hour. *See P. Amended App., Synapsis of Fees & Costs.*

Respondent objects to these hours, arguing that the billing entries are identical, and therefore do not help in determining whether the work performed is reasonable. *See R. Reply at 9.*

The undersigned finds respondent's argument regarding the hours requested for the legal assistants to be without merit. While it is true that the billing entries are identical and do not specify the work performed, the undersigned finds the 12.5 hours spent by the three legal assistants to be reasonable. The Court therefore awards petitioner \$154.00 as reimbursement for the total hours billed by the legal assistants at Shoemaker & Associates.

2. *Mr. James R. Matthews*

Petitioner requests 10.25 hours for work performed by Mr. Matthews at the rate of \$175.00/hour. *See P. Amended App.* Of these hours, respondent objects to the three hours of

work Mr. Matthews performed on August 3, 1999, arguing that they relate to “general knowledge and are not specific to this case.” R. Reply at 11. Petitioner’s counsel counters that these hours are allowed under the Act, as they consisted of researching the possibility of bringing a vaccine claim, discussing the information with the client and drafting the petition. *See P. Reply R. Opp.* at 14.

A review of Mr. Matthew’s fee invoice indicates that all but 0.75 of the hours billed relate to petitioner’s vaccine case.⁸ *See P. App.* at 82. The undersigned disagrees with respondent’s objections to the three hours billed on August 3, 1999, and finds it reasonable that Mr. Matthews spent that amount of time researching the Vaccine Program, discussing his findings with petitioner, and working on a draft petition. The undersigned, therefore, reduces Mr. Matthews’ claimed hours from 10.25 hours to 9.5 hours, and awards him \$1,662.50 in attorney’s fees.

3. *Mr. Clifford Shoemaker and Mr. Michael Roberts*

Petitioner’s Position

Petitioner requests 240.05 and 286.2 attorney hours for the work performed by Clifford Shoemaker and Michael Roberts, respectively, in all three cases. *See P. Amended App.*

The requested hours include those billed for work conducted in the civil proceedings against Prudential and Center Life, respectively. *See supra* pp. 5-7. Petitioner believes that his request is reasonable and argues that the hours cannot be “compartmentalized” and most of the

⁸ Mr. Matthews billed 0.50 hours for a “[t]elephone call from [petitioner] regarding potential claims against FDA fund and disability insurer” and 0.25 hours for a “[l]etter to [petitioner] regarding Ohio cases on disability policies.” *See P. App.* at Ex. 6.

work product was used in all of petitioner's cases. *Id.* For these reasons, petitioner's counsel argues that he cannot provide the Court with information regarding the amount of time spent pursuing the Vaccine case only, even though he has listed attorneys' fees of \$60,179.50 for the vaccine case.

Petitioner argues that respondent's objection to Mr. Shoemaker's hours stems from a "disdain for [p]etitioner's ability to communicate with [his] lawyer" as "reflected in several recent pleadings filed by [r]espondent." P. Reply R. Opp. at 14. Counsel asserts that it is not improper for him to discuss the scientific issues involved in this case with his client. *See id.* Regarding respondent's objections to Mr. Shoemaker's "block bill citing," petitioner argues that each individual billing entry contains multiple tasks, and each item listed is reasonable and billable. *Id.* at 16.

Petitioner argues that Mr. Roberts' billing entries are not "cryptic", as described by respondent, and are instead "straightforward", "in plain language", and "reasonable on their face." P. Reply R. Opp. at 17, citing R. Opp. at 13. Petitioner further argues that, as lead counsel at the time, Mr. Roberts was allowed to meet with the client, work with the experts involved in the case and meet with co-counsel. *See* P. Reply R. Opp. at 17.

Respondent's Position

Respondent argues that petitioner seeks an "excessive" and therefore unreasonable amount of attorney time that should be reduced. R. Opp. at 9. Specifically, respondent objects to the hours billed by both attorneys for work relating to petitioner's civil cases. *See* R. Reply at 2; *supra* pp. 7-10.

Respondent contends that Mr. Shoemaker's hours should be reduced because they are excessive, include non-lawyer tasks billed at lawyer rates, and the billing entries are "vague" with many of the entries consisting of multiple tasks "clumped together." It is difficult to determine which of Mr. Shoemaker's hours were reasonably billed in the current case. *See R. Reply* at 11-12. Additionally, a number of Mr. Shoemaker's billing entries are not supported by contemporaneous records as required in the Vaccine Guidelines. *Id.* at 12. As an example, respondent discusses an entry where Mr. Shoemaker states "[e]mails to and from Mike re settlement discussions and putting together a package (yesterday and today – about 4 or 5 emails each)." *Id.* at 12, citing P. Amended App. Ex. 1 at 5.

Mr. Roberts also bills his entries in blocks, making them difficult to review for reasonableness. *See R. Reply* at 12. Respondent also asserts that both attorneys bill hours for reviewing the same documents and preparing for the same hearing. *See id.*

Applicable Case Law

The Vaccine Act provides clear language regarding what is reimbursable where, as is in this case, a special master holds that petitioner is not entitled to compensation. Specifically, 42 U.S.C. § 300aa-15(e)(1) provides that in such situations, special masters may make a discretionary award of attorneys' fees and costs "to cover petitioner's **reasonable** attorneys' fees and other costs **incurred in any proceeding on such petition** if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for which the petition was brought." (emphasis added). *See also Tucker v. Secretary of HHS*, No. 89-44V, 1990 WL 293387 (Fed.Cl.Spec.Mstr. Dec. 7, 1990) (special master denied reimbursement request for hours incurred in petitioner's prior civil case, finding that "in the absence of an

underlying award, [special masters] do not have the authority to award ... fees or costs relating to a prior civil action”); *Ceballos v. Secretary of HHS*, No. 99-97V, 2004 WL 784910 (Fed.Cl.Spec.Mstr. Mar. 25, 2004) (chief special master found petitioners’ testimony before Congress to be unrelated to the petition and denied compensation).

In assessing the number of hours reasonably expended in a case, courts 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).

A special master is not required to base his or her decision on a line-by-line analysis of the fee application. *See Wasson v. Secretary of HHS*, 24 Cl.Ct. 482, 484 (1991), *aff’d*, 998 F.2d 131 (Fed. Cir.1993); *Castillo v. Secretary of HHS*, No. 95-652V, 1999 WL 1427754, at *3 (Fed.Cl.Spec.Mstr. Dec. 17, 1999) (“where counsel have failed to establish the reasonableness of the hours spent, it is the [Chief Special Master’s] practice to reduce counsel’s hours by a percentage, normally 25%”). Further, a special master may rely on his or her experience with the Vaccine Act and its attorneys when determining the reasonable number of hours expended. *Wasson*, 24 Cl.Ct. at 483 (1991). Where a special master deems the claimed rates, hours or both to be unreasonable, he or she is authorized and obligated to reduce the award to a “reasonable amount.” *Guy v. Secretary of HHS*, 38 Fed.Cl. 403, 406 (1997).

Regarding billing entries, attorneys should not bill large blocks of time since they do not allow for proper review of the specific tasks completed. *See Plott v. Secretary of HHS*, No. 92-633V, 1997 WL 842543, at *5 (Fed.Cl.Spec.Mstr. April 23, 1997) (special master noted a review of “each and every entry to assess its reasonableness would be fruitless, as in many cases

[counsel] has lumped together several tasks, rendering it impossible to assess the reasonableness of any particular task”); *Guidelines* at Section XIV(A)(3) (each task should “have its own entry indicating the amount of time spent on each task”, and “[s]everal tasks lumped together with one time entry frustrates the court’s ability to assess the reasonableness of the request”).

Analysis of Hours Expended

The undersigned finds respondent’s objections to petitioner’s claimed hours to have merit. Specifically, the Court finds it unreasonable that petitioner requests compensation for hours billed in the two civil cases. As indicated above, petitioner is entitled only to reimbursement for attorneys’ hours that were billed in the present case. Therefore, the work performed in the civil cases is not compensable under the Vaccine Act.

The attorneys’ use of vague block entries, coupled with counsel’s refusal to file a second amended petition in response to the undersigned’s August 4, 2006 Order, make it impossible for the Court to determine which hours were reasonably incurred in petitioner’s vaccine case, and which in the two civil cases. Even a line-by-line analysis of the respective billing entries has not been fruitful. In fact, the only guidance that petitioner provides regarding what fees and costs were incurred in the vaccine case is in the form of a table, which is included only for the purpose of arguing that petitioner had done the court a service by allocating less hours to the vaccine proceeding.⁹ While the table indicates that the vaccine case was “assigned” \$60,179.50 and \$16,583.00 in attorneys’ fees and costs, respectively, the undersigned notes that petitioner seeks compensation for hours billed in all three cases. *See supra* p. 7.

⁹ P. Resp. R. Reply at 4.

Since the billing entries render it impossible to determine what work was conducted in the present case, the undersigned will assume that Mr. Shoemaker and Mr. Roberts did not duplicate each other's work, and will award Mr. Shoemaker 132 hours and Mr. Roberts 120 hours. The hours will be divided by the total number of years each attorney spent working on this case, in order to estimate the number of hours spent per year. The Court considers this to be a reasonable reduction considering the nature of this case and the number of filings. Petitioner's attorneys are lucky to be receiving awards of any amount given their failure to specify which fees were incurred in the current case and consider filing a second amended petition, despite being instructed to do so by this Court.

Mr. Shoemaker's billing entries indicate that he worked on this case from August 1999 to the present, for a total of approximately seven and a half years. Mr. Roberts billing entries indicate that he worked on this case from January 2001 to September 2005, for a total of approximately four and three quarter years.

Therefore, Mr. Shoemaker and Mr. Roberts shall be awarded the following compensation amounts:

	<u>Year(s)</u>	<u>Hourly rate</u>	<u>Hours</u>	<u>Fees</u>
<u>Mr. Shoemaker</u>	1999-2004	\$250.00	100	\$25,000.00
	2005	\$275.00	16	\$4,400.00
	2006	\$300.00	16	\$4,800.00
<u>Mr. Roberts</u>	2001	\$190.00	25	\$4,750.00
	2002	\$200.00	25	\$5,000.00
	2003	\$230.00	25	\$5,750.00
	2004	\$245.00	25	\$6,125.00
	2005	\$260.00	20	\$5,200.00

The total attorneys' fees awards for Mr. Shoemaker and Mr. Roberts are \$34,200.00 and \$26,825.00, respectively, for a total of \$61,025.00.

B. *Costs*

Petitioner seeks reimbursement for \$184,825.45 in total costs and other related expenses for all three cases. *See* P. Amended App. The costs can be broken down as follows:

<u>Shoemaker & Associates</u>	
Expenses	\$6,263.26
Dr. Mark Geier	\$29,330.50
Dr. Poser	\$11,322.25
<u>Mr. Roberts</u>	
Expenses	\$16,469.65
Vocational Economics	\$6,920.34
Dr. Byron Hyde	\$114,128.82
<u>Mr. Matthews</u>	\$390.63 ¹⁰
<u>Petitioner's Personal Expenses</u>	\$1000.00

Petitioner acknowledges that the requested costs include those incurred in the two civil cases, and that the “responsible attorney ... assign[ed] the expense to the most relevant matter.” P. Resp. R. Reply at 3. Therefore, while it is true that most costs could have been assigned to a particular case, some costs had “relevant value across the spectrum of cases ...” *Id.*

Respondent argues that costs incurred in the civil cases before the United States District Court for the Southern District of Ohio are not considered part of the costs incurred by petitioner in this proceeding under the Vaccine Act. *See* R. Sur-Reply at 4. Respondent refers to

¹⁰ Mr. Matthews' expenses are undisputed and will, therefore, not be discussed in this section of the Decision.

petitioner's reasoning for seeking compensation and asserts that the fact that petitioner's alleged adverse reaction to his vaccinations required him to stop working and pursue "long-term disability benefits under two insurances policies" is not a sufficient reason for the undersigned to reimburse those costs. *Id.* at 4, citing P. Reply R. Opp. at 1.

Applicable Case Law

The special masters' guidelines provide that in applying for costs, a petitioner should explain the expenses "sufficiently to demonstrate their relationship to the prosecution of the petition." *Guidelines* at 32. In considering applications for attorneys' fees and costs, 42 U.S.C. § 300aa-15(e)(1)(A) instructs special masters to award an amount that covers "(A) *reasonable* attorneys' fees, and (B) other costs" (emphasis added). The fee applicant bears the burden of submitting evidence that is "sufficient to support the number of hours expended and the hourly rates claimed." *Plott*, 1997 WL 842543, at *8.

The reasonableness standard applies not only to attorneys' fees but also to petitioner's expert costs. *Crossett v. Secretary of HHS*, No. 89-73V, 1990 WL 293878, at *4 (Fed.Cl.Spec.Mstr. Feb. 24, 2005). Petitioner must, therefore, provide proper substantiation for all fees and costs claimed with regard to experts by painting "a clear and complete picture" that enables the court to "see and understand how and why the expert spent the claimed hours." *Wilcox v. Secretary of HHS*, No. 90-991V, 1997 WL 101572, at *4 (Fed.Cl.Spec.Mstr. Feb. 14, 1997). Petitioner must satisfy this burden of "substantiat[ing] costs expended with supporting documentation such as receipts, invoices, cancelled checks, etc." *Ceballos*, 2004 WL 784910, at *13 (Fed.Cl.Spec.Mstr. Mar. 25, 2004).

In reviewing the number of hours for an expert, “[t]he question [for the special master] is not whether [an expert has] expended the number of hours claimed, but whether it was necessary or reasonable for him to do so.” *Wasson*, 1991 WL 135015, at *3 (“[t]he special master did not abuse her discretion in substantially reducing compensation for attorney fees using her considerable experience with the Vaccine Act, her knowledge of the issues in this case, and comparison with awards in similar cases”). As with attorneys’ fees, a special master need not base his or her decision on a line-by-line analysis of the claimed experts’ costs. *See Castillo*, 1999 WL 1427754, *3. The Court has reduced expert costs where petitioners have failed to substantiate the costs in question. *Heckler v. Secretary of HHS*, No. 01-319V, slip. op. *3, 6 (Fed.Cl.Spec.Mstr. Mar. 10, 2006). Further, petitioners have consistently not been reimbursed for flat fees charged by experts. *See Gonzales v. Secretary of HHS*, No. 91-905V, 1992 WL 92200, at *5, n.5 (Cl.Ct.Spec.Mstr. Apr. 10, 1992) (“[e]xperts are compensated for their actual time spent at a specific hourly rate ... [f]lat fees are unacceptable”).

1. *Petitioner’s Personal Costs*

Petitioner requests a total of \$1,000.00 as compensation for money paid to Dr. Geier. *See* P. App. at 4. As proof of payment, petitioner filed a photocopy of the check with the initial fee application. *See id.*

Respondent objects to petitioner’s request in light of the fact that both Mr. Jeffries and Mr. Roberts seek compensation for \$1,000.00 paid to Dr. Geier on separate occasions. *See* R. Reply at 15, citing Fee App. Ex. 1 at 2, Ex. 5 at 48. Petitioner has not addressed this objection in any of his filings.

The undersigned has reviewed the associated billing entries and notes that both Mr. Jeffries and Mr. Roberts do indicate that they have each incurred costs for \$1,000.00 paid to Dr. Geier. While respondent's objection makes sense on its face, a closer look indicates that petitioner's check to Dr. Geier is dated August 10, 2005, while Mr. Roberts' billing entry indicates that he paid Dr. Geier on November 8, 2002. *See* P. App. Ex. 1 at 2, Ex. 5 at 48. Petitioner does not specify why he paid Dr. Geier the \$1,000.00, and therefore the undersigned will not assume that the reimbursement request is a duplicate. The Court disagrees with respondent's objection and awards petitioner \$1,000.00 in personally incurred costs.

2. *Shoemaker & Associates' General Expenses*

Petitioner requests \$6,263.26 in total expenses incurred by Shoemaker & Associates. This amount does not include the expert fees paid to Dr. Poser and Dr. Geier. In support of this request, petitioner provides a summary of expenses. *See* P. App. Ex. 1 at 11-12. Petitioner does not provide receipts, photocopied checks, or any other additional documentation to substantiate these costs. *See* P. App.

Respondent objects to those portions of petitioner's claimed costs that do not appear on their face to relate to the current case. *See* R. Reply at 2-3. For example, respondent objects to costs billed by Mr. Shoemaker on January 28, 2004 for his stay at the Westin Hotel. Respondent points out that the corresponding billing entry indicates that Mr. Shoemaker appeared on petitioner's behalf in the Center Life case on January 29, 2004, indicating that the costs do not relate to this case. *See id.* at 3, citing P. App. Ex. 1 at 11. Respondent raises a similar objection to the photocopying and printing costs claimed on February 21, 2006. *See id.* at 13. Further, respondent objects to the \$138.73, \$204.65, and \$333.41 in costs requested by Mr. Shoemaker to

cover meals with experts in this case, and the three Federal Express charges. *See id.* (arguing that petitioner should not be reimbursed for the regular use of overnight delivery services).

The undersigned finds the costs requested to be excessive, unsubstantiated, and therefore unreasonable. For example, \$2,447.00 of petitioner's claimed costs cover the printing of 24,470 sheets of paper on February 21, 2006. Additionally, petitioner seeks reimbursement for \$807.50 incurred on February 21, 2006 for photocopying 8,075 pages. This is an unusually high amount of printing and photocopying for the given time period. Judgment in this case was entered on August 19, 2005, the undersigned issued an Order instructing petitioner to file an application for attorneys' fees and costs on September 7, 2005, and petitioner filed his 82-page application on March 6, 2006. It is, therefore, impossible for the undersigned to believe that these printing and photocopying costs were reasonably incurred in a case that had already been concluded.

While petitioner is entitled to reimbursement for costs, he bears the burden of proving that these costs are, in fact, reasonable. Petitioner cannot receive compensation for costs that are undocumented, and, therefore, unexplained, especially given his refusal to specify which costs relate to the current case.

The undersigned reduces the claimed costs to \$1,267.04. This amount excludes costs that the Court has determined were not incurred in the present proceeding, as well as costs that have not been substantiated by petitioner.

3. *Mr. Roberts' General Expenses*

Petitioner requests \$16,469.65 in total expenses incurred by Mr. Roberts. This amount does not include the expert fee paid to Dr. Hyde and the cost for Vocational Economics, Inc.

Mr. Roberts provides a summary of his costs in the application, but does not provide any additional documentation to substantiate his request. *See* P. App. Ex. 5.

Again, respondent objects to the costs incurred in petitioner's non-vaccine cases. *See* R. Reply at 2-3. For example, petitioner requests costs associated with the deposition of a Ms. Eileen Sweeney on December 4, 2003. Respondent notes that this deposition does not appear to be related to the vaccine case. *See* R. Reply at 4. Respondent also renews objections to the regular use of overnight delivery services, and copying costs that also do not relate to the current case. *See id.* at 13.

The undersigned agrees with respondent's objections. Given that Mr. Roberts' chart in support of his claimed costs does not provide any information regarding which costs were incurred in petitioner's vaccine case, the undersigned will reduce his total costs by one-third. The Court, therefore, awards Mr. Roberts general costs in the amount of \$10,979.77.

4. *Dr. Mark R. Geier*

Petitioner's Position

Petitioner requests \$29,330.50 as compensation Dr. Geier's total fees and costs. *See* P. App. at 23. In support of this request, petitioner has filed a one-page invoice describing the 117.20 hours of work performed by Dr. Geier at an hourly rate of \$250.00, and a \$30.50 parking fee. *See id.* at 24-31.

Petitioner states that Dr. Geier has provided "extensive" work, reports, and research for this case, on which he based his testimony at hearing, which was "relevant to the instant case." P. Reply R. Opp. at 18. Petitioner further asserts that the hours billed by Dr. Geier for preparing

his own personal medical literature are proper since “work accepted for publication in peer-reviewed journals have [sic] an even higher standard of citation and documentary support than a typical expert report, and therefore potentially a greater asset to the Court for review.” *Id.* In responding to the Court’s request for an explanation as to why Dr. Geier billed petitioner for these hours, petitioner asserts that Dr. Geier spent the 13 hours in question reviewing charts and tables included in his own publications in order to determine whether said material was relevant to petitioner’s case. *See* P. Resp. R. Reply at 8. Petitioner also states that the articles in question had already been published at the time of Dr. Geier’s review. Therefore, Dr. Geier could not have been writing the articles. *See id.*

Respondent’s Position

Respondent argues that Dr. Geier’s fee is unreasonable especially in light of the special master’s finding in the entitlement phase that Dr. Geier’s testimony in this case was not probative. *See* R. Sur-Reply at 11.

Respondent states that \$3,500.00 of the requested costs have been billed as both petitioner’s costs and Mr. Roberts’ costs. *See* R. Reply at 15, citing P. App. Ex. 1 at 2, Ex. 5 at 48, 49. Further, respondent objects to the 10 hours and 18 hours claimed for “physician consultation” and “lawyer consultations,” respectively. R. Reply at 15 (quoting P. App. Ex 4 at 27, 30-31).

Respondent also objects to Dr. Geier’s billing 13 hours to prepare his own authored literature, finding that petitioner’s argument that Dr. Geier spent these hours “reviewing charts and tables included in his own publications (as well as materials developed in preparing the

articles but not included in the published articles) to determine the relevance of the data to [petitioner's] case" is without merit. R. Sur-Reply at 11 (quoting P. Reply R. Opp. at 8).

Respondent also disagrees with Dr. Geier's hourly rate, arguing that \$250/hour is "excessive" given his "minimal qualifications," and the time period during which the work was performed. R. Reply at 15.

Analysis

Dr. Geier is board-certified in obstetrics and genetics. *See Weiss v. Secretary of HHS*, No. 03-190V, 2003 WL 22853059, at *1 (Fed.Cl.Spec.Mstr. Oct. 9, 2003). He is not, however, an epidemiologist, and does not have any formal training in that field. Therefore, Dr. Geier does not satisfy the American Medical Association ("AMA") guidelines and minimal requirements for an expert witness in this case, which emphasize that in order to testify, a doctor must be an expert in the field for which he opines. *See American Medical Association, Policy Compendium* (1999). The undersigned notes that the present case is not the only one in which Dr. Geier has provided an "expert" opinion in an area for which he has no expertise. *Weiss*, 2003 WL 22853059, at *2, n. 1 (the undersigned found that Dr. Geier was not qualified to give an opinion as to the child's neurological condition, indicating that "he is ... a professional witness in areas for which he has no training, expertise, and experience").

Dr. Geier's testimony has been given little to no weight in other vaccine cases. *See Thompson v. Secretary of HHS*, No. 99-436V, 2003 WL 21439672, at *20 (Fed.Cl.Spec.Mstr. May 23, 2003) (where the undersigned found Dr. Geier to be "unqualified", and observed that his testimony was "filled with speculation [that was] directly contrary to the conclusions reached in well-respected and numerous epidemiologic and medical studies ranging over two decades");

Raj v. Secretary of HHS, No. 96-294V, 2001 WL 963984 (Fed.Cl.Spec.Mstr. July 31, 2001) (chief special master Gary Golkiewicz found that Dr. Geier is “wholly unqualified to testify concerning the two major issues in [the] case” due to his lack of board certification and formal training in pediatrics and pediatric neurology); *Marascalco v. Secretary of HHS*, No. 90-1571V, 1993 WL 277095, at *5 (Fed.Cl.Spec.Mstr. July 9, 1993) (special master John Edwards rejected Dr. Geier’s testimony and found an affidavit filed by the doctor to be “seriously intellectually dishonest”, noting that Dr. Geier had “quoted selectively” from the medical records).

Since Dr. Geier did not possess the necessary expertise to testify in this case, the Court will reduce his hourly rate from \$250.00/hour to \$200.00/hour. Petitioner will not be compensated for costs that can be directly attributed to Dr. Geier’s original publications, attorney/lawyer consultations, and physician consultations. Additionally, the work billed for petitioner’s civil cases is not compensable.

Dr. Geier provided the following documents in this case: (1) a 33-page expert report, 6-page CV, and accompanying medical literature, filed on December 3, 2002, (2) a 4-page supplemental affidavit, 9-page CV, and 16 pages of medical literature and other text, filed on March 31, 2003, (3) a 6-page second supplemental affidavit with 26 pages of medical literature attached, filed on May 16, 2003, (4) a 3-page third supplemental affidavit with 2 pages of medical literature attached, filed May 16, 2003, and (5) a 4-page fourth supplemental affidavit, filed on May 30, 2003.

The 33-page report includes 10 pages of actual review, with the remaining pages consisting of Dr. Geier’s standard boilerplate. The undersigned will, therefore, award Dr. Geier 16 hours for the work associated with this expert report. In supplemental affidavits 1-3, Dr.

Geier reviews medical literature. The undersigned will, therefore, award 2 hours each for the work associated with these reports. In supplemental affidavit 4, Dr. Geier reviews more medical literature and also provides an opinion in response to respondent's experts. Therefore, the undersigned awards 3 hours for this work. Therefore, the court awards \$5,000.00 for Dr. Geier's 5 reports (25 total hours x \$200.00/hour).

The undersigned awards Dr. Geier \$3,520.00 for his testimony at the hearing. This amount includes 1.6 hours of trial testimony¹¹ and 15 hours for preparation billed at \$200.00/hour, and 2 hours of travel time billed at half his hourly rate.¹²

The Court awards petitioner a total of \$8,520.00 for Dr. Geier's expert fee and costs.

5. *Dr. Byron Hyde*

Petitioner's Position

Petitioner requests \$114,128.82 dollars for work done by Dr. Hyde. P. App at 2. Since petitioner's bill does not include Dr. Hyde's total number of hours and an hourly rate, the undersigned has determined that Dr. Hyde's bill includes approximately (1) \$66,420 for 312.5 hours of work mostly billed at \$200.00/hour¹³, (2) \$34,518.82 for costs, and (3) \$26,660.00 for

¹¹ The April 14, 2003 hearing began at 9:53 a.m. and ended at 6:27 p.m. There was a 15-minute break and an 8-minute break. Therefore, the approximate total time at trial for the first day was 8 hours. The hearing transcript consists of 301 pages, and Dr. Geier's testimony spans 59 pages. Fifty-nine pages is approximately 20% of 8 hours, or 1.6 hours. None of petitioner's experts testified on the second day of trial.

¹² Dr. Geier resides in suburban Washington, DC, and it is reasonable to estimate that he spent a total of 2 hours traveling to and from the hearing location.

¹³ While most of Dr. Hyde's hours appear to be billed at a rate of \$200.00/hour, some tasks are billed at other rates. For example, on December 23, 2003, he charged \$14,350.00 for 41 hours of work performed at a rate of \$350.00/hour. See P. App. at 74.

other miscellaneous entries that cannot be definitively categorized as fees or costs¹⁴. Dr. Hyde indicates that petitioner has already reimbursed him for portions of this bill. *See* P. App. at 54, 58.

Petitioner considers Dr. Hyde's invoice to be "extensively detailed", relating to "every aspect of his performance as an expert" in the case. P. Reply R. Opp. at 17. Petitioner further asserts that Dr. Hyde has not inflated his hours and presents his real expenses and costs "as clearly as he is able." *Id.*

Petitioner's relationship with Dr. Hyde was initially that of a doctor and patient. *See* P. Resp. R. Reply at 5. Petitioner then employed Dr. Hyde as an expert in all three cases (i.e., the vaccine case and the two civil cases). *See id.* Counsel asserts that the majority of Dr. Hyde's work "assisted in the advancement of each of Mr. Jeffries' 3 cases." *Id.* Counsel further states that while most of Dr. Hyde's work benefitted all three cases, he was mainly hired in order to establish causation in the vaccine proceeding. *See id.*

Regarding Dr. Hyde's request that he be reimbursed for prematurely ending a trip to Europe in order to testify at the entitlement hearing in this case, counsel concedes that reimbursement should be provided only for costs that are covered in the Act. *See* P. Resp. R. Reply at 6.

¹⁴ Dr. Hyde's invoice is often unclear as to how he billed his work for this case. For example, he billed a total of \$6,000.00 at a rate of \$1,000.00/day for "[w]ork on final account for medical-legal work done on E. Jeffries" on April 20-29, 2004. *See* P. App. at 79. Additionally, on April 15-19, 2004, he billed \$10,000.00 at a rate of \$2,000.00/day for "5 days' review of 3,400 pages of documentation from Thursday morning to Monday afternoon, in preparation for the court hearing on 23 Apr. 2004." *Id.* at 78.

Respondent's Position

Respondent points out that while more than half of Dr. Hyde's bill can clearly be attributed to the two non-vaccine cases, the remaining entries are difficult to categorize. *See* R. Reply at 8. Dr. Hyde's own notes indicate that his costs were not broken down according to case. R. Reply at 8. Dr. Hyde expressed concern that he would not be paid by the Vaccine Court for his work in this case, stating: "so much of [the] information that [he was] gathering and reviewing [referred] to all three legal actions on Eric's behalf and on any follow-ups to any of [the] three cases." *Id.* quoting P. App. Ex. 5 at 67. Petitioner assured him that "he [would] be paid by the court in Washington D.C." *Id.* at 8.

Respondent goes on to argue that Dr. Hyde's overall fee is unreasonable, and assuming that his work can be attributed to the vaccine case, he should not be reimbursed for hours spent "tracking down leads from the petitioner" that according to Dr. Hyde's own conclusions were neither helpful nor relevant to the vaccine case. R. Reply at 16. Respondent cites conclusions in Dr. Hyde's bill regarding a June 25, 2002 review of petitioner's emails and references for which he charged \$1,200.00. *See id.* Dr. Hyde made the following observations: "nothing in [the] document to assist...", "does not give significant additional information", and "none of these documents are of any use." *Id.* citing P. App. Ex. 5 at 63-64.

Respondent also objects to aspects of Dr. Hyde's claimed cost that appear to have been incurred for medical care and counseling provided to petitioner. *See* R. Reply at 16. Respondent asserts that petitioner is not entitled to reimbursement for these costs because he did not prevail in this case. *See id.* Respondent provides the following billing entries as examples:

- \$400.00 billed on May 31, 2000 for a review and discussion of clinical trials with petitioner. P. App. Ex. 5 at 54.

- \$400.00 billed on May 31, 2000 for arranging petitioner's appointments with other physicians. *Id.*
- \$200.00 billed on June 7, 2000 for scheduling appointments. *Id.*
- \$1,600.00 billed on June 8, 2000 for 8 hours of "personal consultation" with petitioner. *Id.*

Respondent argues that the \$2,127.43 billed for Dr. Hyde's attendance at the National Vaccine Conference in Washington, DC is unreimbursable because it cannot be solely attributed to petitioner, as required by 42 U.S.C. § 300aa-15(e)(1). R. Reply at 17, citing P. App. Ex. 5 at 58.

Petitioner's refusal to break down Dr. Hyde's costs as required by the undersigned August 4, 2006 Order "has put the Court in the position of having to determine which of Dr. Hyde's claimed costs are both reasonable and incurred in the proceeding on the petition." R. Sur-Reply at 8-9. Respondent directs the court to his break-down of Dr. Hyde's alleged costs totaling over \$60,000.00, which he states "appear on their face to be unrelated to the vaccine case." *Id.* at 9.

Respondent suggests that the undersigned deny "reimbursement for any work that was clearly performed in support of the other cases, any time billed for medical care, and any time billed for generalized knowledge and/or research." R. Sur-Reply at 10. Respondent further suggests that the costs claimed by Dr. Hyde for following leads are excessive and unreasonable and should therefore be significantly reduced. *Id.* With regard to the remaining hours billed by Dr. Hyde, which cannot be attributed to a particular case, respondent suggests that the undersigned either deny reimbursement completely, or in the alternative, apply a two-thirds reduction to the costs since they are unreasonable and cannot be attributed to any one particular case. *Id.*

Analysis

Dr. Hyde is not board-certified in any area. *See Gardner-Cook v. Secretary of HHS*, No. 99-480V, 2003 WL 21439667, at *1 (Fed.Cl.Spec.Mstr. April 28, 2003), *aff'd*, 59 Fed. Cl. 38 (July 25, 2003), *aff'd*, 97 Fed. Appx 332, 2004 WL 1153657 (Fed. Cir. 2004). In 1984, after serving for seventeen years as a family practitioner, he began studying “poorly-defined diseases such as chronic fatigue syndrome ... and fibromyalgia.” *Id.* He is not a treating physician and considers himself to be an “investigative physician” and a “technologist.” *Id.* at *2, 8. In *Gardner-Cook*, the undersigned noted that Dr. Hyde’s testimony in the case “strongly [suggested] that he is alone against the mainstream of the medical establishment, a status he regards as a mark of honor.” *Id.* at *8. The Court ultimately found Dr. Hyde to be unqualified, with an opinion that was “highly suspect” and “outside contemporary medical opinion.” *Id.* at *8, 10.

Dr. Hyde, in the present case, made frequent references to his published book, but respondent’s cross-examination revealed that the book was self-published through the Nightingale Foundation, an organization founded and chaired by Dr. Hyde. *See* Tr. at 71.

Dr. Hyde provided the following documents in this case: (1) a 4-page report dated October 29, 2000 letter, and filed on August 13, 2001, in which he gives a partial opinion as to petitioner’s condition because he had not yet finished reviewing the medical records, and (2) a 22-page report and accompanying CV, filed on August 13, 2001.

In the October 29, 2000 report, Dr. Hyde stated that he had not completed his review of petitioner’s records. The undersigned estimates that Dr. Hyde spent 5 hours reviewing the records and preparing this initial report.

The 22-page report includes a thorough review of petitioner's records, and Dr. Hyde's opinions as to the medical significance of the records. The undersigned estimates that Dr. Hyde spent 18 hours preparing this report.

The Court, therefore, awards petitioner \$4,600.00 for the costs associated with Dr. Hyde's expert reports (23 hours x \$200.00/hour).

The undersigned awards petitioner \$3,320.00 for the fees and costs associated with Dr. Hyde's appearance at the hearing. This includes 1.6 hours of trial testimony¹⁵ and 10 hours for preparation both billed at a rate of \$200.00/hour, and 10 hours of travel time billed at half the hourly rate¹⁶.

The court awards Dr. Hyde \$7,920.00.

6. *Dr. Charles M. Poser*

Petitioner's Position

Petitioner requests \$11,322.25 as compensation for partial fees billed by Dr. Poser, and provides a letter in support of this claim. *See* P. App. Ex. 4. The requested amount includes \$10,000.00 for a court appearance, \$1,000.00 for a "conference" and \$322.25 for travel expenses. *Id.* Dr. Poser's bill does not list the number of hours he spent on this case or the hourly rate at which he billed his work. *See id.*

Petitioner asserts that the time billed is reasonable since Dr. Poser is a "well-regarded expert" who provided a report, testified, and contributed significantly to the case. P. Reply R.

¹⁵ Dr. Hyde testified for 58 out of the 301 transcript pages, which is approximately 20% of 8 hours or 1.6 hours.

¹⁶ Dr. Hyde resides in Ontario, Canada.

Opp. at 18. Petitioner argues that Dr. Poser's travel to DC in order to appear for two days of testimony cost him two full days of work at the office, considerable travel time, and the time spent preparing for the hearing. *See id.* He testified only the first day.

Respondent's Position

Respondent objects to the flat rate billed by Dr. Poser. *See R. Reply* at 14. Respondent argues that petitioner has failed properly to delineate the costs and does not provide documentation to support the bill's reasonableness. *See id.* at 11.

Analysis

Dr. Poser specializes in adult and pediatric neurology. *See Saunders v. Secretary of HHS*, No. 97-808, 2001 WL 1135035, at *3 (Fed.Cl.Spec.Mstr. Sept. 4, 2001). His expertise with CFS is limited to diagnosing correctly patients who are sent to him after being misdiagnosed with multiple sclerosis when they in fact have CFS. *See Tr.* at 100. Therefore, like Drs. Geier and Hyde, Dr. Poser's qualifications in this case are severely lacking.

Dr. Poser's "bill" consists of a one-page letter to Mr. Shoemaker in which he lists his fees. P. App. Ex. 4. He charges a flat fee of \$10,000.00 for his 1-day court appearance in Washington, DC. *Id.* Petitioner does not provide any additional documentation to substantiate his request for reimbursement, and instead asserts that Dr. Poser "sets his own compensation terms for service as an expert" and that neither counsel nor his client required that Dr. Poser set his flat fee. P. Resp. R. Reply at 8. Dr. Poser's letter includes \$1,000.00 for "conference" fees, and it is unclear whether these fees relate to the vaccine case.

The undersigned finds petitioner's request to be unreasonable. An award of \$10,000.00 for little more than an hour's testimony on one day would be unreasonable. Further, petitioner has made no attempt to explain Dr. Poser's \$1,000.00 "conference" fee.

A review of the hearing transcript indicates that Dr. Poser testified for 41 out of the 301 pages, which is approximately 14% of 8 hours or 1.12 hours. The Court hereby reduces Dr. Poser's total fee to \$3,224.00, which represents 1.12 hours of testimony time and 10 hours of preparation time billed at the rate of \$200.00/hour, and 10 hours of travel time¹⁷ billed at half the hourly rate.

7. *Vocational Economics, Inc.*

Petitioner requests reimbursement \$6,920.34 billed by Vocational Economics, Inc. *See* P. App. at 53. This cost includes a \$1,745.34 finance charge applied by Vocational Economics to the total outstanding bill of \$5,175.00. *See id.*

Respondent objects to the \$1,745.34 included with these costs. *See* R. Reply at 15. Respondent reasons that the \$1,745.34 is the equivalent of interest and asserts that in the absence of a waiver of sovereign immunity, "interest cannot be assessed against the United States." *Id.* at 15, citing *Library Congress v. Shaw*, 478 U.S. 310, 317 (1986) (finding that adjustments to the lodestar rate to compensation in order to accommodate delays in receipt of attorneys' fees payments constitutes an impermissible award of interest against the Government).

The undersigned finds respondent's objection to be reasonable and therefore reduces the Vocational Economics costs by the \$1,745.34 interest amount to \$5,175.00.

¹⁷ Dr. Poser resides in Boston, Massachusetts.

III. CONCLUSION

The undersigned awards petitioner \$67,221.50 in attorneys' fees and \$37,476.44 in attorneys' costs. Additionally petitioner is awarded \$1,000.00 as compensation for his personal costs. The award can be summarized as follows:

FEES:

Clifford Shoemaker	\$34,200.00
Renee Gentry	\$4,380.00
Michael Roberts	\$26,825.00
James Matthews	\$1,662.50
Legal Assistants	\$154.00

COSTS:

Clifford Shoemaker	
Expenses	\$1,267.04
Dr. Poser	\$3,224.00
Dr. Geier	\$8,520.00
Michael Roberts	
Expenses	\$10,979.77
Dr. Hyde	\$7,920.00
Vocational Economics	\$5,175.00
James Matthews	\$390.63

The clerk shall enter judgment for \$105,697.94. The award shall be made in the form of four checks. The first check shall be made jointly payable to petitioner and Mr. Clifford Shoemaker in the amount of \$51,745.04. The second check shall be made jointly payable to petitioner and Mr. Michael Roberts in the amount of \$50,899.77. The third check shall be made jointly payable to petitioner and Mr. James Matthews in the amount of \$2,053.13. The fourth check shall be made payable to petitioner in the amount of \$1,000.00. This decision shall be mailed to Mr. Roberts and Mr. Matthews at the following addresses:

Michael Roberts, Esq.
Graydon, Head & Ritchey, LLP
1900 Fifth Third Center
Cincinnati, OH 45202

James Matthews, Esq.
Keating, Muething & Klekamp PLL
1400 Provident Tower
One East Fourth Street
Cincinnati, OH 45202

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.¹⁸

IT IS SO ORDERED.

Dated: December 15, 2006

/s/ Laura D. Millman

Laura D. Millman
Special Master

¹⁸ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.