

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**OFFICE OF SPECIAL MASTERS**

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FRANK PICCIOTTI, \* No. 99-506V  
\* Special Master Christian J. Moran  
Petitioner, \*

v. \* Filed: September 14, 2010

SECRETARY OF HEALTH \* Attorneys' fees and costs,  
AND HUMAN SERVICES, \* good faith and reasonable basis;  
\* paralegal work done by an attorney;  
\* duplicative billing; expert fees as  
Respondent. \* costs, expenses for meals.

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Clifford A. Shoemaker, Shoemaker & Associates, Vienna, VA, for petitioner;  
Heather L. Pearlman, United States Dep't of Justice, Washington, DC, for respondent.

**PUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS\***

Mr. Picciotti alleged that the hepatitis B vaccine caused him to develop chronic fatigue syndrome. Pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., he sought compensation for his injuries. Mr. Picciotti was found not to be entitled to compensation.

Mr. Picciotti now seeks an award for his attorneys' fees, his attorneys' costs, and his own costs. Mr. Picciotti is awarded \$30,111.47 in attorneys' fees, \$9,742.50 in attorneys' costs, and \$1,591.83 in costs for himself.

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\* Because this published decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

## **I. Procedural History**

On July 26, 1999, Frank Picciotti filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program. The case did not proceed swiftly. One reason for the delay in adjudicating this case was an attempt to resolve cases in bulk. Years ago, counsel for Mr. Picciotti, who also represented other petitioners who claimed that the hepatitis B vaccine caused them an injury, and counsel for respondent attempted to establish a structure for resolving the many cases involving the hepatitis B vaccine. Despite good faith efforts over several years, this attempt was not successful. This case was reassigned in 2006, and a stay was lifted. Since its reassignment, this case generally moved at about the same pace as other cases in which a group of petitioners alleged that the hepatitis B vaccine caused them to suffer from various injuries.

The other factor contributing to the duration of this litigation was the process of filing medical records. Mr. Picciotti did not file any medical records with the petition. The first medical records were filed in March 2002 and additional medical records were filed over the years.

When the process of collecting medical records concluded, Mr. Picciotti obtained an expert report from Dr. Joseph Bellanti. Dr. Bellanti opined that the hepatitis B caused chronic fatigue syndrome. In his report, Dr. Bellanti accepted as accurate representations about Mr. Picciotti's health that were made in affidavits submitted by Mr. Picciotti and Mr. Picciotti's mother, such as Mr. Picciotti's alleged ill health after receiving the first and second doses of the hepatitis B vaccine. Exhibit 26.

Respondent, in turn, obtained a report from Dr. Alan Brenner. Dr. Brenner disagreed with Dr. Bellanti's ultimate conclusion that the hepatitis B vaccine adversely affected Mr. Picciotti's health. Dr. Brenner opined that Mr. Picciotti's diagnosis of chronic fatigue syndrome was not supported by the medical records. Dr. Brenner also asserted that the medical records did not mention that Mr. Picciotti was ill following the first two hepatitis B vaccinations. Exhibit A at 6.

Because the experts assumed a different set of facts, a hearing was held to obtain testimony to resolve these factual disputes. Mr. Picciotti and his mother both testified. Findings of fact were issued. These findings of facts generally did not credit much of Mr. Picciotti's testimony. Following the findings of fact, Mr. Picciotti filed a motion to dismiss his case, which was granted in September 2009.

In April 2010, Mr. Piciotti filed the pending motion for attorneys' fees and costs. Respondent filed a response. Mr. Picciotti filed a reply. Mr. Picciotti's motion for attorneys' fees and costs is now ready for adjudication.

## II. Attorneys' Fees

### A. Entitlement to Attorneys' Fees and Costs

The preliminary question is whether Mr. Picciotti is entitled to any attorneys' fees and costs. The denial of compensation means that Mr. Picciotti is not entitled to an award of attorneys' fees and costs as a matter of right. Petitioners, including Mr. Picciotti, who do not receive compensation may be awarded their reasonable attorneys' fees and costs "if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought." 42 U.S.C. § 300aa-15(e)(1). The term "reasonable basis" is not defined in the statute and has been the subject of relatively few appellate cases.<sup>1</sup>

Mr. Picciotti's case satisfies the good faith and reasonable basis standard for several reasons. One supporting reason is that respondent has not challenged either the good faith or reasonable basis. See Resp't Br., filed May 10, 2010. Although this lack of objection from respondent does not resolve the issue because a special master may evaluate a fee request independently, see Savin v. Sec'y of Health & Human Servs., 85 Fed. Cl. 313, 318 (2008); respondent's lack of opposition is worth some consideration. In addition to the lack of opposition from the respondent, Mr. Picciotti also submitted reports to support his allegation that the hepatitis B vaccine can cause chronic fatigue syndrome or a condition like chronic fatigue syndrome. See exhibit 32 (Dr. Geier's report), exhibit 33 (Dr. Poser's report), and exhibit 34 (Dr. Shoenfeld's report). Finally, Mr. Picciotti submitted two reports from Dr. Bellanti about his specific case. Exhibit 26 and exhibit 39. Collectively, these reports constitute some evidence on each of the three factors identified in Althen v. Sec'y of Health & Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). If all the opinions in these reports had been found to be persuasive, Mr. Picciotti may have been entitled to compensation.

Under these circumstances, Mr. Picciotti has established that his petition is supported by good faith and reasonable basis. Thus, Mr. Picciotti is eligible for an award of attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e)(1). Because this preliminary issue is resolved in Mr. Picciotti's favor, the next question is the amount to which Mr. Picciotti is entitled.

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<sup>1</sup> The leading case is Perreira v. Sec'y of Health & Human Servs., 33 F.3d 1375 (Fed. Cir. 1994), which affirmed a partial denial of attorneys' fees and costs when special master found that the expert's opinion lacked a reasonable basis and the petitioner's attorney should have discovered that the expert's opinion lacked any scientific support.

## **B. Quantifying the Reasonable Amount of Attorneys' Fees**

### **1. Standards for Adjudication**

Like other litigation allowing a shift in attorneys' fees and costs, awards for attorneys' fees and costs in the Vaccine Program must be "reasonable." 42 U.S.C. § 300aa-15(e)(1) (2006). Reasonable attorneys' fees are determined using the lodestar method – "multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1347-48 (Fed. Cir. 2008) (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)).

Here, with one exception, one variable in the lodestar calculation is not disputed. The parties have agreed to the reasonable hourly rate for attorneys representing Mr. Picciotti except for an attorney performing the duties of a paralegal. Thus, the predominant question is the reasonable number of hours.

The second factor in the lodestar formula is the reasonable number of hours. Quoting a decision by the United States Supreme Court, the Federal Circuit has explained some of the limits of the number of hours for which compensation may be sought.

The [trial forum] also should exclude from this initial fee calculation hours that were not "reasonably expended." . . . Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority."

Saxton v. Sec'y of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993) (emphasis in original) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433-34 (1983)). A trial court "is somewhat of an expert in the time that is required to conduct litigation." Case v. Unified School Dist. No. 233, Johnson County, Kansas, 157 F.3d 1243, 1256 (10th Cir. 1998).

### **2. Determinations**

In the initial fee application, for work performed by her counsel of record, Mr. Shoemaker, and associated attorneys, including Mr. Greenspan, Mr. Picciotti sought \$36,948.18 in attorneys' fees. This amount requires adjustment in two respects. First, charges for Mr. Greenspan (\$3,875.00) are more appropriately categorized as costs, rather than attorneys' fees. Second, Mr. Picciotti has requested an additional \$1,668.29 for work performed after his fee petition was filed. Thus, the total amount requested is \$31,404.89 (\$36,948.18 - \$3,875.00 +

\$1,668.29). To the requested amount, respondent has raised objections with respect to work performed by Mr. Shoemaker and one associate, Ms. Knickelbein.

**a. Mr. Shoemaker**

Mr. Shoemaker has been Mr. Picciotti's counsel of record throughout the case. His work constitutes the bulk of the claim for attorneys' fees. Respondent objected to 4.2 hours of Mr. Shoemaker's time on the grounds that (a) Mr. Shoemaker lumped several tasks into one entry, (b) Mr. Shoemaker sought compensation for all the time that he spent traveling, rather than billing at one-half his hourly rate, and (c) Mr. Shoemaker has already received compensation in other cases for activities that he maintains that he performed in Mr. Picciotti's case. Resp't Resp. at 6-9.

Respondent's strongest point is the last one. Mr. Picciotti's case is one of several cases in which Mr. Shoemaker's clients asserted that the hepatitis B vaccine caused them to suffer chronic fatigue syndrome or a condition like chronic fatigue syndrome. For these cases, Mr. Shoemaker's billing records do not readily distinguish tasks that were performed to benefit the group of cases from tasks that were performed to benefit one individual case. The problem with the billing records is particularly acute for activities performed in early 2004. As Mr. Shoemaker submits more fee applications for more clients, respondent collects more information showing that Mr. Shoemaker has performed the same activity for exactly the same amount of time on the same (or similar) date.

The issue of potential double-billing was discussed in Drost v. Sec'y of Health & Human Servs., No. 01-502V, 2010 WL 3291933, at \*4-5 (Fed. Cl. Spec. Mstr. July 30, 2010). Drost concluded that the petitioner had not demonstrated that two hours of Mr. Shoemaker's time were performed to advance her case specifically. Instead, the overall circumstances indicated that Mr. Shoemaker's activities benefitted the group of cases involving chronic fatigue syndrome as a whole and that Mr. Shoemaker was compensated for those activities in other cases. The same result is reached here. See Saxton, 3 F.3d at 1521. Two hours will be deducted from Mr. Picciotti's request.

Resolving the issue of duplicative entries also generally disposes of respondent's objection that Mr. Shoemaker block-billed his work. This is so because respondent's objections to entries that allegedly were block-billed are generally the same entries that respondent argues were billed in other cases. The two-hour reduction for duplication in billing across more than one case makes additional deduction for any lack of specificity unnecessary.

Finally, respondent's objection for travel time is not persuasive. Mr. Shoemaker stated that he billed at only one-half time for travel. See Pet'r Reply at 5-6. Consequently, other than the deduction of two hours for work (at \$250.00 per hour) that was performed and paid for in other cases, Mr. Shoemaker's work was reasonable.

**b. Ms. Knickelbein**

Ms. Knickelbein is an attorney associated with Shoemaker & Associates. Mr. Picciotti requests that Ms. Knickelbein be compensated at rates ranging from \$155.00 per hour to \$195.00 per hour. Pet'r Appl'n at pdf 40-52.

Respondent objects to using those rates for Ms. Knickelbein's work. Respondent argues that Ms. Knickelbein performed tasks that could have been performed by a paralegal and, therefore, Ms. Knickelbein's hourly rate should be the rate for a paralegal. Resp't Resp. at 12-14.

The appropriate billing rate for Ms. Knickelbein was resolved before Mr. Picciotti submitted his motion for attorneys' fees on April 22, 2010. In a decision issued on September 30, 2009, the Court of Federal Claims found a special master did not abuse his discretion in finding that Ms. Knickelbein should be compensated at paralegal rates. Valdes v. Sec'y of Health & Human Servs., 89 Fed. Cl. 415 (2009).

In reply, Mr. Picciotti argues that Ms. Knickelbein's hourly rate should not be reduced because of Ms. Knickelbein's efficiency. Mr. Picciotti asserts that "Ms. Knickelbein, as an attorney, can and does perform the work faster than a paralegal." Thus, according to Mr. Picciotti's argument, the amount of money charged for a task performed by Ms. Knickelbein is reasonable. A paralegal, who would have charged a lower rate, would have spent more time, so that the resulting charge would approximately equal what Ms. Knickelbein has charged. Pet'r Reply at 8-9.

Mr. Picciotti's argument is unpersuasive for several reasons. First, there is little support for the assertion that Ms. Knickelbein works faster than a paralegal. Mr. Picciotti provides no specific examples of tasks that Ms. Knickelbein arguably would have done more quickly than a paralegal. A reasonably competent paralegal could have performed at least some (perhaps even all) of the tasks performed by Ms. Knickelbein in approximately the same amount of time, or even faster. Examples include:

<b>Examples of Entries by Ms. Knickelbein</b>		
Date	Activity	Time
4/7/04	Prepare exhibits 7-14 for filing; prepare notice of filing documents; pull docket from pacer and review; prepare notice of filing document.	1.00
5/24/04	Reviewed Order from Court and put deadlines on calendar.	0.30
7/12/04	Reviewed letter from Dr. McKenna regarding medical records.	0.20
4/11/05	Prepared and sent out medical request letters and subpoenas to two additional providers; put provider information into TM	0.50
12/13/05	Prepared Motion for ECF	0.30

<b>Examples of Entries by Ms. Knickelbein</b>		
3/12/07	Prepared for filing and electronically filed EXH 23, Prepared a Table of Contents; Pulled docket from Pacer and Reviewed; Prepared and electronically filed a Notice of Filing Documents; notes to TM.	0.40
8/22/07	Reviewed the Court's Order of 20070821 regarding deadline to file expert report; noted deadline on the calendar and discussed with Cliff.	0.10

This list, which is not exhaustive, includes items such as reviewing an order to add deadlines to a calendar (5/24/04) and preparing a motion to convert the case to electronic case filing (12/13/05) that a paralegal probably could have done in less time than charged by Ms. Knickelbein.

Second, to a large extent, Mr. Picciotti's argument has already been addressed in Turpin v. Sec'y of Health & Human Servs., No. 99-535V, 2008 WL 5747914, at \*7 (Fed. Cl. Spec. Mstr. Dec. 23, 2008). When Ms. Knickelbein was found to be performing work appropriate for a paralegal to perform, a reasonable rate for work performed before 2005 was set at \$105 per hour. The analysis stated that \$105 per hour "may be a little high for paralegal work performed before 2006. But, a slightly higher rate is appropriate because Ms. Knickelbein either may have performed some duties more quickly than a paralegal or may have done some work that is truly the work of an attorney." Id.

Consequently, Ms. Knickelbein will be compensated at rate lower than the rate requested.

<b>Adjustments for Ms. Knickelbein's Billing</b>					
Time Period	Number of Hours	Rate Requested	Amount Requested	Rate Awarded	Amount Awarded
through 12/31/05	47.6	\$155	\$7,378.00	\$105	\$4,998.00
2007	11.3	\$175	\$1,977.50	\$125	\$1,412.50
2008	19.8	\$185	\$3,663.00	\$135	\$2,673.00
2009	3.9	\$195	\$760.50	\$145	\$565.50
TOTAL			\$13,779.00		\$9,649.00
DIFFERENCE					\$4,130.00

This difference (\$4,130.00) will be deducted from the amount Mr. Picciotti requested.

**c. Summary For Attorneys' Fees**

<b>Summary of Determinations for Attorneys' Fees</b>	
Amount of Attorneys' Fees As Requested Originally	\$36,948.18
Transfer of Expense for Dr. Greenspan to Costs	(\$3,875.00)
Reply Brief	\$1,668.29
Adjustment for Mr. Shoemaker	(\$500.00)
Adjustment for Ms. Knickelbein	(\$4,130.00)
<b>TOTAL</b>	<b>\$30,111.47</b>

### **III. Costs**

#### **A. Standards for Adjudication**

Because Mr. Picciotti had a reasonable basis and good faith belief for his petition, Mr. Picciotti may be awarded his reasonable costs. 42 U.S.C. § 300aa-15(e). The reasonable amount of an expert's compensation is determined using the same lodestar method used to determine the reasonable amount of compensation for an attorney. Simon v. Sec'y of Health & Human Servs., No. 05-941V, 2008 WL 623833, at \*1 (Fed. Cl. Spec. Mstr. Feb. 21, 2008); Kantor v. Sec'y of Health & Human Servs., No. 01-679V, 2007 WL 1032378, at \*4-8 (Fed. Cl. Spec. Mstr. Mar. 21, 2007).

“Reasonableness” may be evaluated from a paying client’s perspective. The United States Supreme Court stated that “[h]ours that are not properly billed to one's **client** also are not properly billed to one's **adversary** pursuant to statutory authority.” Hensley, 461 U.S. at 433-34 (emphasis in original). If a hypothetical yet reasonable client would be willing to pay for an expert’s report, then it is appropriate to award compensation for that expert’s report. Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany and Albany County Bd. of Elections, 522 F.3d 182, 184 (2d Cir. 2008) (stating a trial court “must act later to ensure that the attorney does not recoup fees that the market would not otherwise bear. Indeed, the district court (unfortunately) bears the burden of disciplining the market, stepping into the shoes of the reasonable, paying client, who wishes to pay the least amount necessary to litigate the case effectively”); Goos v. National Ass'n of Realtors, 68 F.3d 1380, 1386 (D.C. Cir. 1995) (phrasing the question as “would a private attorney being paid by a client reasonably have engaged in similar time expenditures”); Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292, 1302 (11th Cir. 1988) (recognizing that “in the private sector the economically rational person engages some cost benefit analysis.”); Presault v. United States, 52 Fed. Cl. 667, 680 (2002). The client must be pictured hypothetically because individual attributes of Mr. Picciotti (for example, his wealth or poverty) should not determine whether the cost is reasonable. Furthermore, it must be assumed that the client would have to pay for the expert because the

client's self-interest would lessen the likelihood that the client would invest money in the expert needlessly.

One aspect of the general rule that costs must be reasonable to be compensable is that costs are not awarded for work that is not necessary work. Duplicative work is presumptively unnecessary. Attorneys are not entitled to compensation for performing work that is not necessary. Hensley, 461 U.S. at 434. The same principle restricts experts. Kantor, 2007 WL 1032378, at \*4-8.

As the party requesting an award of costs, petitioners bear the burden of establishing their reasonableness. Presault, 52 Fed. Cl. at 670. When petitioners fail to meet their burden of proof, such as by not submitting appropriate documentation, special masters have refrained from awarding compensation. See, e.g., Gardner-Cook v. Sec'y of Health & Human Servs., No. 99-480V, 2005 WL 6122520, at \*4 (Fed. Cl. Spec. Mstr. June 30, 2005). This practice is consistent with how the Federal Circuit and the Court of Federal Claims, two courts that review decisions of special masters, have interpreted other fee-shifting statutes. See Naporano Iron and Metal Co. v. United States, 825 F.2d 403, 404 (Fed. Cir. 1987) (the Equal Access to Justice Act); Presault, 52 Fed. Cl. at 679 (the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970). On the other hand, special masters have also compensated experts when the petitioner failed to submit information about the expert's hourly rate. See, e.g., English v. Sec'y of Health & Human Servs., No. 01-61V, 2006 WL 3419805, at \*16 (Fed. Cl. Spec. Mstr. Nov. 9, 2006). These principles are the basis for evaluating whether the cost for a specific person is reasonable in the following sections.

## **B. Determinations**

Mr. Picciotti sought \$7,617.50 in attorneys' costs and \$2,042.27 in his own costs. Pet'r Mot. at 1. In addition, for reasons explained below, the amount requested for Dr. Greenspan (\$3,875.00) is properly treated as a cost. Thus, the total requested in attorneys' costs is \$11,492.50. Within the category of attorneys' costs, respondent has objected to costs for Dr. Greenspan, Dr. Bellanti, and costs for printing and photocopying.

### **1. Dr. Mark Greenspan**

Mark Greenspan is both an attorney and a doctor, whose speciality is surgery. Special masters are familiar with his work in other cases. Dr. Greenspan has represented at least one petitioner as an attorney. See Dobrydneva v. Sec'y of Health & Human Servs., No. 04-1593V, 2010 WL 2143481 (Fed. Cl. Spec. Mstr. Mar., 12, 2010), motion for review granted, \_\_\_ Fed. Cl. \_\_\_, 2010 WL 3258317 (July 30, 2010). Dr. Greenspan has also assisted Shoemaker & Associates.

In previous cases with Shoemaker & Associates, Dr. Greenspan's work has been treated as an item of "cost," rather than part of the attorneys' fees. See, e.g., Riggins v. Sec'y of Health & Human Servs., No. 99-382V, 2009 WL 1949120, at \*14 (Fed. Cl. Spec. Mstr. June 15, 2009),

motion for review denied (Dec. 10, 2009) (unpubl.), appeal docketed, No. 2010-5078 (Fed. Cir. Feb. 17, 2010); Valdes v. Sec’y of Health & Human Servs., 99-310V, 2009 WL 1456437 \* (Fed. Cl. Spec. Mstr. Apr. 30, 2009), aff’d in part, reversed in part, and remanded, 89 Fed. Cl. 415 (2009); Wadie v. Sec’y of Health & Human Servs., No. 99-493V, 2009 WL 961217, at \*7 (Fed. Cl. Spec. Mstr. Mar. 23, 2009). There appears to be no reason to categorize Dr. Greenspan’s work differently in this case. At best, Mr. Picciotti states in his reply that Dr. Greenspan “became a member of Shoemaker & Associates as of Counsel and he is stated as such on the Shoemaker and Associates letterhead.” Reply at 12. Even if this statement is accurate, Dr. Greenspan was not “of Counsel” in 2005, when he performed the work in Mr. Picciotti’s case.<sup>2</sup> Consequently, Dr. Greenspan’s invoice will be treated as a cost.<sup>3</sup>

Mr. Picciotti seeks compensation for 15.5 hours of activities performed by Dr. Greenspan between September 2005 and February 2006. Dr. Greenspan’s billing rate is \$250.00 per hour, making the total amount requested for Dr. Greenspan \$3,875.00. Pet’r Appl’n at 39-40. Respondent has objected to the amount billed for Dr. Greenspan’s work entirely. Resp’t Resp. at 8-12.

The majority of time billed by Dr. Greenspan was spent reviewing pleadings and medical records, creating a chronology, and analyzing the case in September 2005. In total, Dr. Greenspan spent 13.5 hours on these tasks. Pet’r Appl’n at pdf 39-40. Respondent objects because two attorneys (Mr. Shoemaker and Ms. Knickelbein) and one doctor (Dr. Bellanti) were already working on this case. Therefore, according to respondent, Dr. Greenspan’s work was “entirely unreasonable.” Resp’t Resp. at 12.

Respondent has not presented a persuasive argument that Dr. Greenspan’s work in preparing a chronology was redundant. Before Dr. Greenspan created a chronology in September 2005, Ms. Knickelbein spent some time entering data and creating a chronology. The amount of detail contained in Ms. Knickelbein’s chronology is not known. Additionally, although Dr. Bellanti had done some work on this case, Dr. Bellanti did not conduct much substantive work until April 2007, when Dr. Bellanti states that he “review[ed] extensive summary of records.” Pet’r Appl’n at pdf 56. Therefore, Dr. Greenspan’s work in preparing a chronology and so forth in August 2005 advanced Mr. Picciotti’s case.<sup>4</sup>

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<sup>2</sup> Respondent asserted that her review of the websites for Shoemaker & Associates and for Dr. Greenspan do not show an affiliation between the law firm and Dr. Greenspan. It is unnecessary to determine Dr. Greenspan’s status. If such a determination were needed, it is likely that more substantial information, such as either W2s or 1099s, would be required.

<sup>3</sup> Ultimately, whether Dr. Greenspan’s work is categorized as an attorneys’ fees or as a cost does not affect the outcome. Mr. Picciotti bears the burden of showing the reasonableness of his requests, regardless of whether the item is part of the attorneys’ fees request or a cost.

<sup>4</sup> Mr. Picciotti’s case is distinguishable from Valdez, in which the undersigned originally found that Dr. Greenspan’s work duplicated work performed by the attorneys, a nurse-

After September 2005, Dr. Greenspan spent relatively little time on this case, only two hours. Most of this time was speaking to either Mr. Picciotti or his mother about the case. Pet'r Appl'n at pdf 40. The amount of time appears to be lengthy, but not excessively so. Thus, this time will be credited in full.

In sum, Mr. Picciotti has established that 15.5 hours were reasonably spent by Dr. Greenspan. The remaining question is the appropriate hourly rate.

Mr. Picciotti seeks compensation for Dr. Greenspan at an hourly rate of \$250.00. To support this hourly rate, Mr. Picciotti relies upon Carpenter v. Sec'y of Health & Human Servs., No. 99-463V (Fed. Cl. Spec. Mstr. Dec. 17, 2007). Pet'r Reply at 7.

Carpenter constitutes a persuasive reason for awarding Dr. Greenspan \$250.00 per hour. This decision is persuasive because the special master received evidence from four attorneys attesting to the reasonableness of Dr. Greenspan's hourly rate, which was \$350.00 per hour in those two cases. For the question of a reasonable hourly rate, special masters often consider decisions by other special masters as a way to facilitate resolution of requests for attorneys' fees and costs. See, e.g., Rodriguez, 2009 WL 2568468, at \*23 n.57. The Court has endorsed this approach when petitioners have not provided evidence to support a particular hourly rate. Sabella v. Sec'y of Health & Human Servs., 86 Fed. Cl. 201, 219 (2009) (affirming reduction in expert's rate from \$250 per hour to \$200 per hour). This practice has been adopted even though a special master's decision is not binding precedent. Hanlon v. Sec'y of Health & Human Servs., 40 Fed. Cl. 625, 630 (1998).

Consequently, Dr. Greenspan will be compensated for 15.5 hours of work at \$250.00 per hour. The total for Dr. Greenspan is \$3,875.00.

## **2. Dr. Bellanti**

Mr. Picciotti seeks compensation for work performed by Dr. Bellanti between 2004 and 2009. Dr. Bellanti indicates that he spent 19 hours on this case and has charged \$350.00 per hour for a total cost of \$6,650.00. Pet'r Appl'n at pdf 56-57. Dr. Bellanti produced one report, which was three pages; exhibit 26; and a second report, which was less than one full page. Exhibit 39.

Respondent objects to the amount of time that Dr. Bellanti requested on the ground that the requested amount is "excessive." Resp't Resp. at 15. Although Mr. Picciotti addressed this objection, his response summarizes Dr. Bellanti's work and does not explain why the amount of time was reasonable. See Pet'r Reply at 16.

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consultant, or a testifying expert. Valdez, 2009 WL 1456437, aff'd in relevant part and rev'd in relevant part, 89 Fed. Cl. at 424-25 (compensating Dr. Greenspan for half of his time).

Mr. Picciotti has not met his burden of demonstrating the reasonableness of all Dr. Bellanti's work. Dr. Bellanti's primary work product, exhibit 26, recites Mr. Picciotti's medical history. As a summary of medical records, Dr. Bellanti's work was based upon the work performed by Dr. Greenspan, which also has been compensated. Dr. Bellanti's report does not present any medical theory connecting the hepatitis B vaccine to Mr. Picciotti's alleged chronic fatigue syndrome. Dr. Bellanti's report also does not cite any medical articles. These conditions suggest that Dr. Bellanti could have accomplished essentially the same work in less time than he has charged.

Dr. Bellanti is compensated for 14 hours of work at \$350 per hour for a total of \$4,900.00. The difference between the amount requested (\$6,650.00) and the amount awarded (\$4,900.00) is \$1,750.00.

### **3. Other Costs for Attorneys**

In addition to the costs for Dr. Greenspan and Dr. Bellanti, the law firm incurred miscellaneous costs, such as for printing and copying. The law firm seeks reimbursement for these items:

Description	Quantity	Value
Printing Charges	5,329	\$532.90
Photocopies	1,562	\$156.20

Pet'r Appl'n at pdf 53. Respondent objected to the printing charges on the ground that no information about what was printed was provided. Respondent did not object to the proposed charge for photocopies. Resp't Resp. at 14.

In reply, Mr. Picciotti provided no information about what was printed specifically. Even without any specifics, Mr. Picciotti argued that the printing charges must be related to his case due to automation. Mr. Picciotti explained that his attorney "has an automatic print / charge billing system . . . that creates a charge back to the file. Attorneys and staff must select the client file or the documents will not print. The automated system is linked with the billing system and is incorporated into the invoice automatically. It is a fairly standard system." Pet'r Reply at 9.

Mr. Picciotti's explanation is persuasive. An automated system will count accurately the number of pages used by the law firm. In the absence of any suggestion of fraud, counsel's statement that the computer says this many pieces of paper were used is acceptable. See Sabella v. Sec'y of Health & Human Servs., No. 02-1627V, 2008 WL 4426040, at \*43-44 (Fed. Cl. Spec. Mstr. Sept. 23, 2008), aff'd in non-relevant part and rev'd in non-relevant part, 86 Fed. Cl. 201 (2009).

### **4. Summary**

<b>Summary of Determinations for Attorneys' Costs</b>	
Amount of Attorneys' Costs as Requested Originally	\$7,617.50
Costs awarded for Dr. Greenspan (transferred from attorneys' fees)	\$3,875.00.
Adjustment for Dr. Bellanti	(\$1,750.00)
<b>TOTAL</b>	<b>\$9,742.50</b>

### 5. Petitioner's Own Costs

Mr. Picciotti initially sought \$2,042.27 for his costs. Pet'r Mot. at 1 & pdf 3. Later, Mr. Picciotti amended his fee petition to request only \$1,864.99 in his costs because the initial submission contained some duplication. Pet'r Reply at 1-2. As modified, Mr. Picciotti's requests are presented in this table:

<b>Mr. Picciotti's Personal Costs</b>		
Item	Amount Requested	Amount Awarded
Medical Records	\$166.54	\$166.54
Postage	\$53.87	\$53.87
Hearing Expenses		
– Airfare	\$462.00	\$462.00
– Hotel	\$524.42	\$524.42
– Meals	\$593.16	\$320.00
– Taxi	\$20.00	\$20.00
– Parking	\$45.00	\$45.00
<b>TOTAL</b>	<b>\$1,864.99</b>	<b>\$1,591.83</b>

Mr. Picciotti documented these costs. Pet'r Appl'n at pdf 4-32. They are accepted as reasonable, except for the cost of meals.

Mr. Picciotti and his mother traveled to Washington, D.C. to attend the hearing. Their itinerary shows that they spent approximately 48 hours in Washington, D.C., which was spread over three calendar days. Pet'r Appl'n at pdf 15. During that time, Mr. Picciotti and his mother spent approximately \$600.00 on meals. Respondent argued that spending \$593.16 in 48 hours is "excessive." Resp't Resp. at 5.

The amount spent by the Picciottis is approximately twice as much as the government would have paid two employees traveling to Washington, D.C.<sup>5</sup> According to travel regulations issued by the United States General Services Administration, a government employee traveling to Washington, D.C. in September 2008 would have been awarded \$160.00 for meals and incidental expenses for 48 hours. (On the first and last day of the trip, the traveler would have \$48.00 per day and \$64.00 for other days.) GSA's travel regulations offer the advantage of not dictating the person's choices with regard to food and drink and also provide a reasonable limit on expenses. Thus, with regard to the cost of meals, the traveler on the government's business stands in the same place as Mr. Picciotti and his mother. Consequently, Mr. Picciotti will be reimbursed for \$320.00 for meals for his mother and him, not the \$593.16 as requested.

#### **IV. Conclusion**

Mr. Picciotti is awarded \$30,111.47 in attorneys' fees, \$9,742.50 in attorneys' costs, and \$1,591.83 in costs for himself. The Clerk's Office is instructed to enter judgment in accord with this decision unless a motion for review is filed.

IT IS SO ORDERED.

S/ Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>5</sup> Government employees are generally not awarded any special benefits from restaurants due to their status as government employees.