



entered on 5 May 1997.

On 23 May 1997 petitioner filed her request for attorney's fees and costs. Petitioner requested \$20,753.75 in attorney's fees and \$1,188.15 in costs for a total award of \$21,941.90. This request is further broken down in the chart below. Respondent filed her objections on 27 May 1997. Petitioner filed a reply on 30 May 1997.

| Attorney              | Requested Hourly Rate | Requested Number of Hours | Total       |
|-----------------------|-----------------------|---------------------------|-------------|
| J. Bradley Horn       | \$175.00              | 75.65                     | \$13,238.75 |
| Clifford J. Shoemaker | \$225.00              | 33.40                     | \$ 7,515.00 |
| Total Fees            |                       |                           | \$20,753.75 |
| Total Costs           |                       |                           | \$ 1,188.15 |
| Total Fees & Costs    |                       |                           | \$21,941.90 |

## I. FEES

The lodestar method is employed by this court to determine reasonable attorney's fees. *See Blanchard v. Bergerson*, 489 U.S. 87 (1989); *Blum v. Stenson*, 465 U.S. 886 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). "The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate." 489 U.S. at 94 (quoting *Blum*, 45 U.S. at 888). The court is given the discretion, however, to adjust the initial estimate if "a fee charged is out of line with the nature of the services rendered." *Pierce v. Underwood*, 487 U.S. 552, 581 (1988) (Brennan, J., concurring).

To determine the number of hours reasonably expended in a particular case, the court must "exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice is ethically obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434. The reasonableness of the attorney fee rate claimed "to be calculated according to the prevailing market rates in the relevant community . . ." *Blum*, 465 U.S. at 896. "The burden is on the fee applicant to produce satisfactory evidence -- in addition to the attorney's own affidavits -- that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonable comparable skill, experience, and reputation." *Id.* at 896 n.11.

### Hourly rate:

J. Bradley Horn, Esq.

Mr. Horn requests compensation at the rate of \$175 per hour. Mr. Horn graduated from law school in 1994. His excellent academic record earned him the position of law clerk to Special Master Wright in the Vaccine Program. He served in that capacity with distinction for two years. Upon the conclusion of his term in 1996, Mr. Horn joined Mr. Shoemaker, a veteran of vaccine injury litigation, in the practice

of law. Mr. Horn has subsequently assumed the lead counsel position in numerous cases before this court. In addition to his experience as a law clerk and as petitioner's counsel in the Vaccine Program, he cites his participation in lobbying for the betterment of the Program in support of his requested rate.

Respondent objected to the requested rate of \$175 as excessive. She recommended that a maximum hourly rate of \$85 would be reasonable for Mr. Horn. The polestar of respondent's argument for a lower hourly rate is Mr. Horn's relative lack of experience in Vaccine Program litigation, and for that matter, the practice of law in general.

The court agrees with respondent that Mr. Horn's experience in lobbying for the Vaccine Program is minimally probative in determining an hourly rate. This court determines hourly rates primarily based upon the quality of the attorney's work before the bench. There are, of course, other factors that call for upward or downward adjustments. For example, the relative expense of doing business in a particular geographical location will affect the rate.

While experience, particularly in the Vaccine Program, is important to the court's consideration, there is no immutable pecking order or seniority system determined by number of cases tried or years practiced in the Vaccine Program. The court adheres to a system more aptly described as a "meritocracy." Excellence will be rewarded accordingly, notwithstanding the number of notches on a particular attorney's Mont Blanc. Likewise mediocre performance, which deserves a modest award, cannot be overcome by length of service at the bar.

In determining an appropriate hourly rate, the court asks many questions about the attorney's litigative prowess. Does the attorney know the Vaccine Act and the rules of the court? Can the attorney precisely and concisely put forth his or her arguments? Does the attorney endeavor to zealously represent his or her client without engaging in visceral histrionics? Is the attorney cooperative with opposing counsel or is he or she contentious, captious and querulous -- devoted to caviling at the slightest hint of disagreement between parties? Does the attorney prepare for conferences before the court? Does the attorney demonstrate civility, professionalism and proper respect for the court?

As the Vaccine Program is designed to be a more expeditious forum than traditional litigation, the court also evaluates administrative capabilities. It is anticipated that more experienced attorneys will justify their relatively higher hourly rates by making efficient use of their somewhat expensive time. Thus, the court would inquire: Is the attorney expeditious and thorough in responding to the court's orders? Does the attorney promptly return telephone calls? Are the attorney's exhibits neatly filed in a logical order with clear referencing or are the facts of the case inextricably lost in a maze of haphazardly filed documents? Does the attorney actively pursue his or her cases in effort to resolve them *posthaste*, or does procrastination and neglect of dormant cases rule the day?

The qualitative component of experience can be as important as the quantitative. A lack of years does not necessarily denote nescience. Nor does a long résumé guarantee brilliant advocacy. If James Otis, John Randolph or William Jennings Bryan were to practice before this court with only a modicum of knowledge of the Vaccine Program, their respective hourly rates would reflect their comparable competence within the Program, not their legendary reputations. If a veteran of two hundred Vaccine Program cases remains average in performance despite this experience, he or she will be compensated with an average hourly rate.

The court has had the unusual opportunity of observing Mr. Horn's performance as a law clerk in the Vaccine Program. The court knows that he received excellent training from Special Master Wright and that he performed his duties with manifest professionalism and excellence. From the court's unique

perspective, it can confidently state that there are not many attorneys practicing in this program with greater knowledge of the Vaccine Act than Mr. Horn. Considering his unique experience and competence, Mr. Horn will receive a higher rate than most newcomers to vaccine law. Does Mr. Horn's past association with the court give him an unfair advantage over other young attorneys whose feet remain relatively moisture free in this Program? Maybe. But any advantage was secured by two years of diligent work exclusively in the Vaccine Program. He should not be penalized for researching countless vaccine-related issues, writing numerous memoranda, and generally learning all that he could about the Vaccine Act and Program procedure during his tenure as a law clerk. He simply came out of that experience greater equipped than other Program beginners and should be rewarded in kind.

In terms of his abilities at trial, Mr. Horn is perhaps a tad verdant. However, his litigative prowess compares favorably with the skill, or the lack thereof, displayed by many beginners, and unfortunately a few experienced attorneys that this court has witnessed. While the court has no doubt that he will improve in the trial setting, Mr. Horn's greatest asset at this time in his career is his administrative capability. His exhibits are models of organization and efficiency. He promptly responds to the court's orders and inquiries. He often voluntarily files status reports to alert the court to changes in circumstances that otherwise would not have come to the court's attention. He is accommodating in his scheduling and has generally worked well with opposing counsel. The court is confident that Mr. Horn's efficiency and attention to the expeditious resolution of his cases results in fewer hours billed.

From this court's perspective, there are no blots on Mr. Horn's escutcheon to date. His tour of duty with the Office of Special Masters has given him a head start over those of similar bar experience. While he has not yet reached the level of vaccine acumen deserving of the premium rate of \$175 per hour, he is certainly more capable than the average rookie. Comparisons to Tiger Woods or the Rt. Hon. William Pitt (the younger), may be excessively hyperbolic, however, Mr. Horn's level of competence achieved in such a short time deserves recognition. In addition, not insignificantly, he practices in a high cost area.

Respondent is correct in her assertion that the "goal of the Vaccine Program is to attract competent counsel who can effectively litigate" vaccine claims. However, respondent's suggestion of compensating quality attorneys in high cost areas at \$85 per hour, barely more than the paralegal rate, would act to dissuade rather than encourage their participation. The typical beginner would receive an hourly rate, with applicable adjustments, in the \$90 to \$120 per hour range. As stated, Mr. Horn is not the typical beginner. Accordingly, the court will award the hourly rate of \$135 to Mr. Horn.

Clifford J. Shoemaker, Esq.

Respondent objects to the requested rate of \$225 per hour for Mr. Shoemaker. She correctly cites this court's decision in *Betlach v. Secretary of HHS*, No. 95-3V, 1996 WL 749707, Fed. Cl. Spec. Mstr. Dec. 17, 1996), setting the premium hourly rate at \$175 per hour.<sup>(2)</sup> Respondent recommends that Mr. Shoemaker receive this premium rate. The court agrees. Mr. Shoemaker will be compensated at the rate of \$175 per hour.

### **Hours:**

Petitioner requests compensation for 109.05 hours at the attorney's rate. Respondent objects to the total amount of hours as excessive and recommends compensation for 60 hours of time spent on this case.

After a review of the record and the filings of the parties, the court finds respondent's recommendation to be a trifle penurious. This attorney's fees petition is well documented. The time sheets provided are meticulous and extensive. The hours will awarded as requested.

After a thorough review of the petition, and taking into consideration the length and relative difficulty of this case in comparison to Program precedent, the court finds that 109.05 total hours of time at the attorney rate is reasonable. Mr. Horn will be compensated for 75.65 hours at the rate of \$135 per hour (\$10,212.75). Mr. Shoemaker will be compensated for 33.40 hours at the rate of \$175 per hour (\$5,845). The court finds that an award for both attorneys' fees of \$16,057.75 is reasonable in this case.

## II. COSTS

Petitioner has requested \$1,188.15 in itemized costs. The following deduction is required. Petitioner requests \$264.60 for 2646 copies made at \$.10 per copy. Rule 39 of the Rules of Practice before the United States Court of Appeals for the Federal Circuit allows only \$0.08 per page for copying and collating materials. I have consistently awarded this rate and find no reason to change. I therefore reduce the amount requested by \$52.92.

The court finds an award of \$1,135.23 in itemized costs to be reasonable.

## III. CONCLUSION

Pursuant to §15(e) and Vaccine Rule 13, petitioner is hereby awarded \$16,057.75 in attorney's fees and \$1,135.23 in costs, for a total of \$17,192.98.<sup>(3)</sup> In the absence of a motion for review filed pursuant to RCFC, Appendix J, the clerk is directed to enter judgment accordingly.

**IT IS SO ORDERED.**

Richard B. Abell

Special Master

1. <sup>1</sup> The statutory provisions governing the Vaccine Act are found in 42 U.S.C.A. §§ 300aa-1 *et seq.* (West 1991 & Supp. 1997). Hereinafter, reference will be to the relevant subsection of 42 U.S.C.A. § 300aa.

2. Petitioner strenuously argues that the court should raise its premium rate. Petitioner's argument was well presented and the

court will consider such an action in the future. However, the court will not raise the premium rate at this time.

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