

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-0005V

LOREN G. HATHCOCK, *as Personal Representative of the Estate of*
BEVERLY HATHCOCK,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 22, 2025

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Mark Kim Hellie, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On January 3, 2020, Beverly Hathcock filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleged that she suffered a shoulder injury related to vaccine administration following an influenza vaccine she received on September 13, 2018.

¹Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petition, ECF No. 1. On June 21, 2021, I issued a ruling on entitlement finding the Petitioner entitled to compensation. ECF No. 30. On January 14, 2025, I issued a decision awarding compensation to Petitioner following briefing by the parties. ECF No. 70.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$84,384.71 (representing \$67,599.30 in fees plus \$16,249.18 in costs and \$536.23 in Petitioner out-of-pocket expenses). Application for Attorneys' Fees and Costs, filed July 10, 2025, ECF No. 75. Furthermore, Petitioner filed a signed statement representing that \$536.23 was incurred in personal out-of-pocket expenses. ECF No. 75 at 2.

Respondent reacted to the motion on July 24, 2025, indicating that he is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case. However, Respondent objects to the Petitioner requesting a higher expert hourly rate than what has typically been awarded in the past. Respondent requests that the court exercise its discretion and determine a reasonable award for attorney's fees and costs. Respondent's Response to Motion at 2-3, 3 n.2, ECF No. 76. On July 30, 2025, Petitioner filed a reply requesting that the amount of fees and costs listed in Petitioner's motion be awarded. ECF No. 77.

Having considered the motion along with the invoices and other proof filed in connection, I find reductions in the amount of fees and costs to be awarded appropriate, for the reasons set forth below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Hum. Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Hum. Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Hum. Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Hum.*

Servs., 102 Fed. Cl. 719, 729 (2011).

The petitioner “bears the burden of establishing the hours expended, the rates charged, and the expenses incurred.” *Wasson v. Sec’y of Health & Hum. Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner “should present adequate proof [of the attorney’s fees and costs sought] at the time of the submission.” *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner’s counsel “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.” *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

I have reviewed the billing records submitted with Petitioner’s request. The rates requested for work performed through 2025 are reasonable and consistent with our prior determinations and will therefore be adopted.

Regarding the time billed, I note this case required additional briefing regarding damages. I deem the inclusion of these briefing hours to be appropriate, but the *total* amount of time devoted to briefing damages to be excessive. See Petitioner’s Brief on Damages, filed Aug. 7, 2023, ECF No. 63, and Petitioner’s Reply to Respondent’s Response to Brief on Damages, filed Dec. 22, 2023, ECF No. 68. Petitioner’s counsel expended approximately 22 hours drafting the brief and 16.2 hours drafting the responsive brief, for a combined total of 38.2³ hours. ECF No. 75-1 at 15-20.

My above calculation does not include time spent preparing the initial demand which would have informed this later work, and I am therefore awarding fees associated with that task in full. ECF No. 75-1 at 7. Nor am I counting time spent communicating with Petitioner and preparing additional supporting documentation such as affidavits or signed declarations, which is also being awarded in full. *E.g.*, ECF No. 75-1 at 15 (entries dated 2/22/2023, 2/23/2023, and 3/8/2023).

It is unreasonable for counsel to spend so much time briefing the issue of damages in this case, where the issues presented are not complex. I have identified numerous

³ This total is calculated as follows: 38.2 hours billed on 3/21/2023, 3/24/2023, 8/5/2023, 8/7/2023, 12/6/2023, 12/19/2023, 12/20/2023, 12/22/2023 at a rate of \$358.00, ECF No. 75-1 at 15-20.

cases (which may reasonably be compared to time spent in this matter),⁴ in which attorneys have accomplished this task in about half the time.⁵

⁴ Special masters may use comparisons to attorneys performing similar tasks to determine if hours are excessive. See *Saxton v. Sec'y of Health & Hum. Servs.*, 3 F.3d 1517, 1518-1521 (Fed. Cir. 1993).

⁵ See, e.g., *Lang v. Sec'y of Health & Hum. Servs.*, No. 21-0972V (June 26, 2025) (12.3 and 7.6 hours billed for drafting a damages brief and responsive damages brief, respectively); *McClelland v. Sec'y of Health & Hum. Servs.*, No. 24-0605V (June 24, 2025) (9.7 and 11.2 hours billed for drafting a damages brief and responsive damages brief, respectively); *Blanco v. Sec'y of Health & Hum. Servs.*, No. 22-0559V (June 16, 2025) (4.2 and 8.0 hours billed for drafting a damages brief and responsive damages brief, respectively); *Moreno v. Sec'y of Health & Hum. Servs.*, No. 21-0433V (June 13, 2025) (7.3 and 4.0 hours billed for drafting a damages brief and responsive damages brief, respectively); *Boyd v. Sec'y of Health & Hum. Servs.*, No. 21-0850V (June 13, 2025) (13.3 and 10.9 hours billed for drafting a damages brief and responsive damages brief, respectively); *Perez v. Sec'y of Health & Hum. Servs.*, No. 21-0746V (June 12, 2025) (13.4 and 5.1 hours billed for drafting a damages brief and responsive damages brief, respectively); *Cohen v. Sec'y of Health & Hum. Servs.*, No. 23-1060V (June 11, 2025) (8.5 and 4.6 hours billed for drafting a damages brief and responsive damages brief, respectively); *Shaw v. Sec'y of Health & Hum. Servs.*, No. 22-1348V (January 30, 2025) (9.7 and 5.9 hours billed for drafting a damages brief and responsive damages brief, respectively); *Phillips v. Sec'y of Health & Hum. Servs.*, No. 21-0076V (January 10, 2025) (9.0 and 10.3 hours billed for drafting a damages brief and responsive damages brief, respectively); *Wirges v. Sec'y of Health & Hum. Servs.*, No. 19-1670V (Dec. 27, 2024) (16.8 and 7.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Tracy v. Sec'y of Health & Hum. Servs.*, No. 20-1312V (Dec. 27, 2024) (12.5 and 5.1 hours billed for drafting a damages brief and responsive damages brief, respectively); *Tappendorf v. Sec'y of Health & Hum. Servs.*, No. 20-1592V (Dec. 27, 2024) (14.1 and 7.9 hours billed for drafting a damages brief and responsive damages brief, respectively); *Stolze v. Sec'y of Health & Hum. Servs.*, No. 21-0964V (Nov. 22, 2024) (11.8 and 7.2 hours billed for drafting a damages brief and responsive damages brief, respectively); *Davidson v. Sec'y of Health & Hum. Servs.*, No. 20-1617V (Nov. 22, 2024) (14.9 and 3.8 hours billed for drafting a damages brief and responsive damages brief, respectively); *M.F. v. Sec'y of Health & Hum. Servs.*, No. 21-0970V (Nov. Apr. 9, 2024) (13 and 7.8 hours billed for drafting a damages brief and responsive damages brief, respectively); *Axelrod v. Sec'y of Health & Hum. Servs.*, No. 21-0980V (Mar. 29, 2024) (11.9 and 12.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Benz v. Sec'y of Health & Hum. Servs.*, No. 21-1197V (Mar. 26, 2024) (19.5 and 6.6 hours billed for drafting a damages brief and responsive damages brief, respectively); *Hansler-Point v. Sec'y of Health & Hum. Servs.*, No. 21-0045V (Mar. 26, 2024) (9.6 and 4.9 hours billed for drafting a damages brief and responsive damages brief, respectively); *Dulaney v. Sec'y of Health & Hum. Servs.*, No. 20-1488V (Mar. 26, 2024) (6.6 and 0.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Glanville v. Sec'y of Health & Hum. Servs.*, No. 19-1973V (Mar. 26, 2024) (8.7 hours billed for drafting a damages brief); *Stokes v. Sec'y of Health & Hum. Servs.*, No. 19-0752V (Feb. 29, 2024) (15.3 and 8.1 hours billed for drafting a damages brief and responsive damages brief, respectively); *Richardson v. Sec'y of Health & Hum. Servs.*, No. 20-0674V (Feb. 9, 2024) (9.2 and 6.3 hours billed for drafting a damages brief and responsive damages brief, respectively); *Edwards v. Sec'y of Health & Hum. Servs.*, No. 21-0056V (Feb. 5, 2024) (11.3 and 7.2 hours billed for drafting a damages brief and responsive damages brief, respectively); *Villa v. Sec'y of Health & Hum. Servs.*, No. 20-0569V (Feb. 5, 2024) (6.0 and 5.6 hours billed for drafting a damages brief and responsive damages brief, respectively); *Jackson v. Sec'y of Health & Hum. Servs.*, No. 20-0051V (Feb. 5, 2024) (15.4 and 7.7 hours billed for drafting a damages brief and responsive damages brief, respectively); *Mulloy v. Sec'y of Health & Hum. Servs.*, No. 19-1396V (Nov. 6, 2023) (19.7 and 9.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Gao v. Sec'y of Health & Hum. Servs.*, No. 21-1884V (Oct. 25, 2023) (16.5 and 9.4 hours billed for drafting a damages brief and responsive damages brief, respectively); *Knasel v. Sec'y of Health & Hum. Servs.*, No. 20-1366V (Oct. 25, 2023) (11.5 and 13.6 hours billed for drafting a damages brief and responsive damages brief, respectively); *Langdon v. Sec'y of Health & Hum. Servs.*, No. 20-1311V (Oct. 25, 2023) (12.5 and 12.8 hours billed for drafting a damages brief and

Of course, having prevailed in this case, a fees award is generally appropriate. Decision Awarding Damages, issued Jan. 14, 2025, ECF No. 70. And the briefing undoubtedly assisted the parties in informally resolving the issue of damages in this case. But the Act permits only an award of a *reasonable amount of* attorney's fees. Accordingly, I will reduce the sum to be awarded for entitlement damages briefing (**a total of 38.2 hours, or \$13,675.60**) by *thirty percent*. Such an across-the-board reduction (which I am empowered to adopt)⁶ fairly captures the overbilling evidenced by this work, without requiring me to act as a "green eye-shaded accountant" in identifying with specificity each objectionable task relevant to this one sub-area of work performed on the case. **This results in a reduction of \$4,102.68.**⁷

responsive damages brief, respectively); *Mantagas v. Sec'y of Health & Hum. Servs.*, No. 20-1720V (Oct. 17, 2023) (6.7 and 4.2 hours billed for drafting a damages brief and responsive damages brief, respectively); *Majerus v. Sec'y of Health & Hum. Servs.*, No. 20-1346V (Oct. 17, 2023) (11.0 and 4.6 hours billed for drafting a damages brief and responsive damages brief, respectively); *Cosden v. Sec'y of Health & Hum. Servs.*, No. 20-1783 (Aug. 8, 2023) (6.3 hours billed for drafting a damages brief); *Balch v. Sec'y of Health & Hum. Servs.*, No. 20-0872V (June 30, 2023) (18.7 hours billed for drafting a damages brief); *Kestner v. Sec'y of Health & Hum. Servs.*, No. 20-0025V (June 22, 2023) (6.00 and 4.10 hours billed for drafting a damages brief and responsive damages brief, respectively); *Juno v. Sec'y of Health & Hum. Servs.*, No. 18-0643V (June 14, 2023) (5.8 hours billed for drafting a damages brief); *Deutsch v. Sec'y of Health & Hum. Servs.*, No. 18-0527V (June 12, 2023) (7.4 and 4.4 hours billed for drafting a damages brief and responsive damages brief, respectively); *Edminister v. Sec'y of Health & Hum. Servs.*, No. 19-0184V (May 30, 2023) (15.3 and 3.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Aponte v. Sec'y of Health & Hum. Servs.*, No. 20-1031V (May 18, 2023) (6.9 hours billed for drafting a damages brief); *Gray v. Sec'y of Health & Hum. Servs.*, No. 20-1708V (May 18, 2023) (5 hours billed for drafting a damages brief); *Horky v. Sec'y of Health & Hum. Servs.*, No. 20-0239V (May 18, 2023) (5.8 hours billed for drafting a damages brief); *Thomson v. Sec'y of Health & Hum. Servs.*, No. 22-0234V (May 18, 2023) (9.5 and 2.5 hours billed for drafting a damages brief and responsive damages brief, respectively); *Rice-Hansen v. Sec'y of Health & Hum. Servs.*, No. 20-1338V (May 17, 2023) (12.9 and 6.1 hours billed for drafting a damages brief and responsive damages brief, respectively). These decisions can (or will) be found on the United States Court of Federal Claims website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc> (last visited August 4, 2024).

⁶ Special masters are permitted to employ percentage reductions to hours billed, provided the reduction is sufficiently explained. See, e.g., *Abbott v. Sec'y of Health & Hum. Servs.*, 135 Fed. Cl. 107, 111 (2017); *Raymo v. Sec'y of Health & Hum. Servs.*, 129 Fed. Cl. 691, 702-704 (2016); *Sabella v. Sec'y of Health & Hum. Servs.*, 86 Fed. Cl. 201, 214 (2009).

⁷ This amount is calculated as follows: (38.2 hrs. x \$358.00) x .30 = \$4,102.68.

ATTORNEY COSTS

Petitioner requests \$16,249.18 for costs, which includes \$9,000.00 for Dr. Srikumaran's review and summary of medical facts and preparation of an expert report. ECF No. 60. This expert associated cost requires more analysis.

In the Vaccine Program, expert work is reimbursed in the same manner as attorney's fees, using the lodestar method. See *Chevalier v. Sec'y of Health & Hum. Servs.*, No. 15-01V, 2017 WL 490426 (Fed. Cl. Spec. Mstr. Jan. 11, 2017 (applying the lodestar calculation to both attorneys' fees and expert costs)). There are numerous factors to be considered when determining an appropriate expert hourly rate: "(1) the witness' area of expertise; (2) the education and training required to provide the expert insight that is sought; (3) the prevailing rates for other comparably respected available experts; (4) the nature, quality, and complexity of the information provided; (5) the cost of living in the particular geographic area; and (6) any other factor likely to be of assistance to the court in balancing the interests implicated by the [Vaccine Act]." *Aycock v. Secretary of Health & Hum. Servs.*, No. 19-235V, 2023 WL 8869423, at *7 (Fed. Cl. Spec. Mstr. Nov. 8, 2023).

Although petitioners in other vaccine cases have been awarded the full amounts sought for Dr. Srikumaran's work, which were calculated using the same hourly rate as utilized in this case (\$1,000 per hour), these awards were based on factors such as Dr. Srikumaran's expertise, quality of work, and efficient use of time. See, e.g., *Aycock*, 2023 WL 8869423, at *10. I have adopted this reasoning in one other SPU case. See *Elmakky v. Sec'y of Health & Hum. Servs.*, No. 17-2032V, 2024 WL 3160506, at *4 (Fed. Cl. Spec. Mstr. May 22, 2024) (declining to set a prospective rate but reimbursing the full amount sought (\$6,050.00) based upon the reasonableness of the overall cost and invaluable contribution it made to efficiently resolving the case). However, special masters have determined that a reduced hourly rate for Dr. Srikumaran's work is sometimes warranted when his work was not as helpful or efficient as in other vaccine cases. See, e.g., *Durham v. Sec'y of Health & Hum. Servs.*, No. 17-1899V, 2024 WL 4369198, at *4 (Fed. Cl. Spec. Mstr. Sept. 6, 2024 (utilizing the average hourly rate for orthopedic surgeon cited by that petitioner (\$663) when Dr. Srikumaran's performance "was not necessarily substandard overall, [but did] not warrant a premium" (\$1,000 per hour) as that petitioner requested).

Accordingly, adopting the reasoning in *Durham*, I will calculate Dr. Srikumaran's expert costs utilizing that lower rate. I will award costs for Dr. Srikumaran's work in this

case at \$663.00 per hour. Dr. Srikumaran billed 9.0 hours in this case. Accordingly, I award \$5,967.00⁸ for his work. **This results in a reduction of \$3,033.00.**⁹

Furthermore, Petitioner has provided adequate supporting documentation for all non-expert claimed costs. ECF No. 75-2 at 3-24. Apart from Dr. Srikumaran's rate, the request appears reasonable, and I find no cause to reduce the requested costs and hereby award them in full.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT, in part, Petitioner's Motion for attorney's fees and costs. **Petitioner is awarded attorney's fees and costs in the total amount of \$77,249.03 as follows:**

A lump sum of \$76,712.80, representing reimbursement for attorney's fees and costs, to be paid through an ACH deposit to Petitioner's counsel of record: Leah V. Durant's IOLTA account for prompt disbursement; and

A lump sum of \$536.23, representing reimbursement for Petitioner's out of pocket costs, to be paid through an ACH deposit to Petitioner's counsel of record: Leah V. Durant's IOLTA account for prompt disbursement.

In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this decision.¹⁰

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁸ This amount is calculated as: \$663.00 x 9 hrs. = \$5967.00

⁹ This amount is calculated as: \$9,000.00 - \$5967.00 = \$3033.00

¹⁰ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.