

market rates, and must be reimbursed in full whether or not charges align with the 2002 Rate Directive or the Chancellor's Directive.

In a letter dated May 6, 2009, parties were directed by the Special Master to prepare for an evidentiary hearing by developing and presenting discovery plans. In a separate communication dated May 7, 2009, the Special Master directed Petties class counsel to facilitate the consolidation of discovery for Interdynamics Inc., and another plaintiff, Dicon Consultants, Inc ("Dicon") who had an identical claim against the defendant for a comparably large volume of invoices. Following a joint teleconference² held on June 8, 2009 parties' joint discovery schedule³ was circulated on June 26, 2009 by counsel for Dicon. By such schedule, proceedings involving Interdynamics occurred as follows:

Date	Event
2009/07/20	Joint Request for Admissions and Discovery Requests received from counsel for Dicon.
2009/09/04	Letter from counsel for Interdynamics requesting extension for submission of list of experts.
2009/09/09	Letter from Special Master granting thirty calendar day extension to Interdynamics for submission of list of experts.
2009/10/09	Letter from counsel for Interdynamics designating expert witnesses.
2009/11/12	Letter from the Office of the Special Master scheduling pre-trial conference for November 23, 2009.

A pre-trial conference⁴ was convened by the Special Master on November 23, 2009 to determine progress with discovery. By the conclusion of the meeting, parties had agreed to the formulation of the issue for adjudication: "Did DCPS err when it failed to pay Invoice # X in

² Conference 1: At this conference, Dicon was represented by Kyung Dickerson, Esq., Interdynamics by Patricia Hammar, Esq., the District by Quinne Harris-Lindsey and Virginia Crisman. Counsel for the Petties class, Patrick Wojahn also participated.

³ Included herewith as Attachment C.

⁴ Conference 2: At this conference, Interdynamics was represented by Patricia Hammar, Esq., Dicon was represented by Dr. Syretta James and the District of Columbia was represented by Quinne Harris-Lindsey, Esq. Counsel for the Petties class, Patrick Wojahn, Esq., also participated.

full? If yes, what is the appropriate remedy?” It was agreed that a determination that the amount of payment was in error could entail one of the following:

- A. that DCPS failed to pay the reasonable, prevailing or market rate;
- B. that DCPS failed to take note of a Hearing Officer’s direction to disregard the Chancellor’s Rate Directive;
- C. that DCPS’ failed to respond timely to the providers invoice or objections; and/or
- D. that the Chancellor’s Rate Directive did not cover the evaluation in question.

Parties also agreed to meet and prepare written stipulations pertaining to each invoice in dispute, and to submit witness lists and prehearing briefs according to directions laid out by the Special Master in a Scheduling Order (“December 2 Scheduling Order”)⁵ resulting from the meeting.

The sole discovery issue in dispute at the time of the conference was a disagreement regarding the defendant’s obligation to furnish information on the development of the rates in the Chancellor’s Directive. The Special Master found that this information would only be relevant if the plaintiffs failed to show that their own rates were the reasonable, prevailing or market rates. If that outcome was reached, evidence on the appropriateness of the defendant’s methodology would be required. The December 2 Scheduling Order further laid out proceedings as follows:

Date	Event
2009/12/14	Interdynamics meet with DCPS ⁶
2010/01/13	Prehearing disclosure of documents and lists of witnesses and briefs due
2010/01/14	Prehearing conference
2010/01/26	Presentation of Interdynamics case

⁵ Included herewith as Attachment D.

⁶ On December 14, 2009, the Office of the Special Master received a communication from representatives for Interdynamics, Inc. stating that they had been unable to meet with DCPS as directed by the December 2, 2009 Scheduling Order. Such meeting was rescheduled for December 29, 2009 and continued on January 12, 2010.

As directed by the December 2 Scheduling Order, pre-hearing briefs were received by the Special Master from DCPS and Interdynamics on January 13, 2010. Counsel for the Petties class also submitted a brief outlining their position.⁷ Attached to the defendant's submission was an exhibit resulting from the above-referenced meetings held between representatives of Interdynamics and DCPS. The exhibit listed the 190 invoices which parties considered to be in contention. The invoices were listed by date and invoice number and; for all but one invoice; student name, amount invoiced, amount invoiced less cost of living allowance, amount paid, amount in dispute, language authorizing payment (i.e. Hearing Officer Decision, Funding Letter etc.), amount prescribed in the Chancellor's Rate Directive for the specific service invoiced, and basis for the amount paid if the assessment did not appear on the 2002 Rate Directive or the Chancellor's Directive. While the defendant had included an invoice 1635 in the list, they had failed to include this invoice's corresponding amount invoiced, amount disputed and amount paid out. By electronic mail dated January 15, 2010, Interdynamics amended the list to include the missing information for invoice 1635.⁸ In the same communication Interdynamics stipulated to the list's contents.

A pre-hearing conference⁹ with the defendant and both plaintiffs was convened before the Special Master on January 14, 2010.¹⁰ The purpose of this conference was to acknowledge pre-hearing statements and enter them onto the record; organize and schedule hearing proceedings and resolve outstanding matters.

⁷ Prehearing briefs included herewith as Attachments E1 through E3.

⁸ Included herewith as Attachments F1 and F2.

⁹Conference 3: At this conference, Interdynamics was represented by Patricia Hammar, Esq., Dicon was represented by Mr. Gerald Tillman, Esq., and the District of Columbia was represented by Quinne Harris-Lindsey, Esq. Counsel for the Petties class, Patrick Wojahn, Esq., also participated.

¹⁰ Meeting Agenda included herewith as Attachment G.

At the conclusion of the conference, parties had agreed upon the following:

- A. Parties' pre-hearing submissions made on January 13, 2010 would be considered opening statements.

- B. To facilitate an organized review of the case, the invoices in dispute would be divided into four categories and examined, as agreed at the November 29, 2009 meeting, with the following question in mind: "Did DCPS err when it failed to pay Invoice # X in full? If yes, what is the appropriate remedy?" The plaintiff would present its case for review as laid out below:
 - i. Category A Invoices : Invoices paid in err because Hearing Officer (or settlement agreement or letter) specifically directed DCPS to disregard Chancellor's Directive or expressly referred to "reasonable" rate, "market" rate or "prevailing" rate:
 - Introduction of underlying document;
 - Testimony regarding rate billed; and
 - Cross examination of witness(es).

 - ii. Category B Invoices: Invoices paid in err because [the] evaluation [invoiced] is not identified on Chancellor's Directive:
 - Testimony regarding evaluation and how it differed from evaluation identified in Chancellor's Directive; and
 - Cross examination of witness(es).

 - iii. Category C Invoices: Invoices paid in err because the document authorizing the evaluation is silent as to whether the cost of evaluation should be bound to the Chancellor's Directive although evaluation is specifically listed on the Directive.

 - iv. Category D Invoices: Invoices paid in err because the document authorizing the evaluation specifies that the cost of evaluation should be bound to the Chancellor's Directive, and the evaluation is specifically listed on the Directive.

Following the plaintiff's presentation of its case, the defendant would present its case for each invoice category as follows:

- Testimony rebutting the claim that the provider's rates are reasonable, prevailing or market rates;
- Testimony supporting the claim that the evaluation or assessment not listed on the Chancellor's Directive is subject to the rate paid;
- Testimony that DCPS has been uniform in the application of the Chancellor's Directive; and

- Optional cross by plaintiff after each issue or at the conclusion of each witness’s testimony.
- C. Regarding a separate contested issue of law raised by DCPS in its pre-hearing submission: “[w]hether the hearing office has authority to waive or suspend D.C. Law, specifically 5 D.C.M.R. Section 3027.5,” parties were directed to submit briefs in time to allow the question to be resolved prior to the beginning of the evidentiary proceedings.
- D. Regarding timeliness, DCPS had stipulated in their pre-hearing submission to the following:
- i. All of the invoices that are the subject of this payment dispute were timely disputed by DCPS and objected to by vendors;
 - ii. DCPS issued timely final administrative decisions for each disputed invoice; and
 - iii. [the] vendor filed timely requested proceedings for each disputed invoice.

The Special Master requested stipulations for the record to this effect from the plaintiffs, or in lieu of such stipulations, a list of invoices considered by Interdynamics to be at issue in terms of timeliness, before close of business on January 15, 2010.¹¹

By Scheduling Order dated January 20, 2010 (“January 20 Scheduling Order”)¹², and resulting from the preceding meeting, proceedings involving Interdynamics were laid out as follows:

Date	Event
2010/01/12 (COB)	Defendant’s Brief on Contested Issue of Law due.
2010/02/02	Presentation of Interdynamics Case.
2010/02/04	Presentation of Interdynamics Case – Second Day, if necessary.

The issue of contested law having been briefed in full by January 25, 2010 and resolved¹³ in time for the scheduled start of evidentiary hearings, the hearing commenced on

¹¹ These stipulations were received *via* electronic mail on January 15, 2010. The submission listed 112 invoices for which dispute notices and final administration letters ranged from 1 to 16 days overdue. The list is included herewith as Attachment F2.

¹² Included herewith as Attachment H.

¹³ There were two motions filed: One from Petties class counsel to reopen discovery and to compel information relating to the development of Chancellor’s Directive regarding independent educational evaluation rates, or in the

February 2, 2010.¹⁴ It convened at the Offices of the Special Master in suite 500 of 1201 F Street, N.W. Washington D.C. 20004 at 10:00am, adjourning at 4:58pm that day until 10:00am on February 4, 2010, concluding at 2:02 pm on February 4.

February 2, 2010

Interdynamics was represented by Patricia Hammar, Esq., and Anthony Shore, Esq.; the District of Columbia was represented by Quinne Harris-Lindsey, Esq., and Daniel Kim, Esq. Counsel for the Petties class, Patrick Wojahn, Esq., and Christian Gailinan, Esq., also participated. Also present were Joan Branch, founder and Chief Executive Officer (“CEO”) of Interdynamics; Denise Daniels, PhD., psychologist and consultant to DCPS; Gregory Hall, billing examiner at DCPS, and Neela Rathinasamy also of DCPS. Ms. Branch and Mr. Hall represented their respective agencies as witnesses.¹⁵ Through the course of proceedings, the following documents were entered into the record by the Special Master as exhibits:

- A. Special Master Exhibits A1 and A2 - Payment Orders in Petties:
 - i. Special Master Exhibit A1: August 5, 2009 Payment Order;and
 - ii. Special Master Exhibit A2: November 8, 2004 Payment Order.
- B. Special Master Exhibit B: Chancellor’s Rate Directive of July 9, 2008.
- C. Special Master Exhibits C1 through C6 - Hearing Requests containing invoices with aspects of timeliness in dispute:
 - i. Special Master Exhibit C1: April 15, 2009 Hearing Request;
 - ii. Special Master Exhibit C2: March 6, 2009 Hearing Request;
 - iii. Special Master Exhibit C3: February 27, 2009 Hearing Request;
 - iv. Special Master Exhibit C4: January 6, 2009 Hearing Request;
 - v. Special Master Exhibit C5: December 23, 2008 Hearing Request; and
 - vi. Special Master Exhibit C6: August 7, 2008 Hearing Request.

alternative, a motion to strike specific entries from the record in 35.2 et seq; and a joint motion *in limine* from Petties class counsel and Interdynamics seeking to preclude the testimony of any expert witness listed by DCPS. By Order from the Special Master dated January 27, 2010, both motions were denied. Parties’ submissions and the subsequent Order from the Special Master are included herewith as Attachments I1 through I7.

¹⁴ Full transcripts of the proceedings, and parties comments thereupon are included herewith as Attachments J1 through J3. Also included, as Attachment K, is a full list by category, of the invoices under review at the time of the hearing.

¹⁵ Per the request of plaintiff, the witnesses were sequestered during testimony.

As an initial matter, the plaintiff withdrew allegations regarding the alleged untimeliness of certain invoices, opting to dispute invoices solely on the matter of reasonableness of rates. The defendant did not object.

Testimony was heard from Ms. Branch on her academic and professional background.¹⁶ She also testified on Interdynamics as an organization, specifically the nature of populations it serves, the types of evaluations it conducts and the experience and expertise of its staff.¹⁷ She was questioned regarding her qualifications, as well as the manner in which cases are referred to Interdynamics. She was also examined on invoices falling within each of the 4 invoice categories laid out in the December 2, 2009 Scheduling Order.¹⁸

Within each category, invoices were sub grouped by the evaluation billed as depicted below for Category A, such that Ms. Branch's testimony for each evaluation applied to multiple invoices.¹⁹

CATEGORY A : Invoices paid in err because Hearing Officer (or settlement agreement or letter) specifically directed DCPS to disregard Chancellor's Directive or expressly referred to "reasonable" rate, "market" rate or "prevailing" rate	
Psychological	536
Clinical Psychological	1357
Comprehensive Psychological	796,1282,1296,1320,1494,1358,1361,1381,1401,1411,1412,1416,1418,1422,1451,1470,1472,1477,1479,1487,1489,1490,1496,1550,1560,1564,1633,1646,1649,1653,1655,1661,1667,1671,1699 and 1686
Educational	1441
Psychoeducational	1501, 1543, 1547, 1634,1819
Neuropsychological	1335, 1357,1416
Neurological	1399, 1419, 1631, 1638, 1653
Psychiatric	1388, 1503, 1504, 1665

¹⁶ Ms. Joan Branch's Curriculum Vitae, submitted at the hearing as Provider's Exhibit 1, is included herewith as Attachment L.

¹⁷ Early in her testimony, Ms. Branch's eligibility as an expert witness was contested by the defendant. A provisional ruling by the Special Master found that, in the event testimony of an expert witness was necessary, Ms. Branch qualified as an expert in the evaluation of children with disabilities but did not qualify as an expert witness with regard to establishment of rates. In this regard, however, she could testify with respect to the manner in which rates were set at her company.

¹⁸ Included herewith as Attachment D.

¹⁹ Ms. Branch's testimony on a particular evaluation billed on an invoice falling within Category A was considered applicable to invoices billed for the same evaluation which happened to fall within Category B.

Speech and Language	1288, 1330, 1349, 1399, 1433, 1459, 1545, 1560, 1633, 1635, 1646, 1653, 1658, 1661, 1662
Audiological	1653, 1695
Social History	1383, 1437
Occupational Therapy	1469, 1646, 1659, 1707
Physical Therapy	1561, 1639

For each of the 13 evaluations listed, Ms Branch testified and was subsequently cross-examined on the different instruments used in its conduct. She testified as well on the billing structure used in developing the cost of each evaluation, particularly what peripheral charges generated outside the specific act of conducting the evaluation were typically folded into the amount eventually billed to DCPS for an evaluation. In addition, she testified on employee compensation and billable hour structures at Interdynamics, as well as Interdynamics' overhead costs. Ms. Branch was also asked to discuss Interdynamics' rate structure in comparison to that of the Maryland Association for Nonprofit Special Education Facilities ("MANSEF"). Her testimony concluded at the close of proceedings on February 2, 2010.

February 4, 2010

At this session, Interdynamics was represented by Patricia Hammar, Esq., and Erik Rosenfeld, Esq.; the District of Columbia was represented by Quinne Harris-Lindsey, Esq., and Daniel Kim, Esq. Counsel for the Petties class, Patrick Wojahn, Esq., and Christian Gailinan, Esq., also participated. Also present were Scaria Steephan, accountant for Interdynamics; Denise Daniels, PhD., psychologist and consultant to DCPS; and Gregory Hall, billing examiner at DCPS. Mr. Hall was presented by DCPS as a witness. Through the course of the hearing, the following documents were added on to the record by the Special Master as exhibits:

- D. Special Master Exhibit D: Prehearing Statement of Interdynamics;
- E. Special Master Exhibit E: Prehearing Statement of DCPS;

- F. Special Master Exhibit F: Joint Exhibit of Interdynamics and DCPS;²⁰
- G. Special Master Exhibit G : List by Interdynamics of Category B Invoices;²¹
- H. Special Master Exhibit H: Prehearing Statement of Petties Class Counsel;
- I. Special Master Exhibit I: Snapshot of 15 Invoices; and
- J. Special Master Exhibit J: Superintendent Directive 530.6 of March 20, 2002.

Mr. Gregory Hall was sworn in, and testimony taken on his professional background and the length and breadth of his experience at DCPS. He testified on the processing of invoices and the underlying official policies guiding the process. He was questioned specifically on the resources used for reference by him and other billing examiners in determining the appropriateness of a specific rate, including invoices for evaluations that are not listed on the Chancellor's Directive. As well, he was asked to discuss Interdynamics' rates within the larger context of those charged by other providers serving DCPS students and make specific comparisons. Noting the defendant's objection to class counsel's participation in questioning, the Special Master during the course of the hearing permitted a contribution from Mr. Wojahn. He spoke on the validity of the Chancellor's Directive as a governing document for the invoicing of evaluations, and the validity, also, of methods used by billing examiners' references for assessing the appropriateness of rates.

At the conclusion of Mr. Hall's testimony, counsel provided oral closing arguments. Prior to the adjournment of the evidentiary hearing proceedings, parties were informed by the Special Master to expect requests for additional documentation with regard to a number of the

²⁰ Pltfs amendment to Special Master Exhibit F included herewith as Attachment F1.

²¹ This handwritten list was received at the February 2, 2010 Hearing and is included herewith as Attachment M.

disputed invoices. As well, she included, copies of transcripts for both sessions of the hearings would be circulated for comment once there were ready.

By electronic mail dated February 25, 2010,²² the Special Master requested copies of all evaluations pertaining to all invoices in Group B - Invoices for services not listed on the Chancellor's Directive – as well as the underlying legal authority for all invoices in this group. Hard copies of such evaluations were received by the Office of the Special Master on April 20, 2010. By this date, transcripts from both sessions of the hearing proceedings had been circulated to parties, and parties' comments pertaining thereto had been received by the Office of the Special Master.²³

Following a review of all documents and testimony before her in this matter, the Special Master determined that the plaintiff, Interdynamics, Inc. had failed to support its contention that it had billed the defendant according to a "reasonable" rate for all 4 categories of the disputed invoices. The July 13, 2010 Order of the Special Master detailing such determination also directed parties to prepare for a new set of hearings. At such hearings, the defendant will be required to show that the rates at which it paid the plaintiff for the services billed on the invoices in question were reasonable.²⁴

²² Included herewith as Attachment N.

²³ Parties' comments and corrections to transcripts included herewith as Attachment J3.

²⁴ Included herewith as Attachment O.

Recommendations

A thorough review of the record discloses that the plaintiff has failed to prove that the rates it charges DCPS are the prevailing, market rates or reasonable rates. This conclusion is based on the following findings.

1. Plaintiff did not introduce evidence that other companies providing substantially the same services invoice at rates comparable to those billed by the plaintiff. In this regard, the president of Interdynamics did testify that many of the clients it serves are children and young adults with complicated histories and medical conditions; that the evaluations performed by Interdynamics were not routine initial evaluations of a student who had just begun to struggle with school. I credit that testimony but would maintain that Interdynamics is not the only evaluation firm in the metropolitan area with experience evaluating the most vulnerable and complicated children in the District. The only inference that can be drawn from the failure to introduce evidence of other rates is that that evidence would not support the claim that Interdynamics' rates are prevailing market rates or reasonable in comparison to other service companies.
2. Plaintiff did not introduce evidence that other agencies or clients pay the rates that plaintiff bills to DCPS. At one point in the proceeding the president of Interdynamics testified that she consulted with other school systems. She also testified that her company was under contract with Baltimore City Schools and had been retained by at least one family as a "private pay." Yet, the plaintiff did not introduce the contract with Baltimore or the invoice(s) given to private pay client(s). The only inference that can be drawn from the failure to introduce evidence that others have paid the rate currently billed to DCPS is that no other client has paid those rates.

3. The methodology used by plaintiff to establish its rates is neither internally coherent nor consistent with general principles of accounting. The plaintiff provided a formula which it uses to establish rates billed to DCPS in an exhibit²⁵ attached to its prehearing brief. This formula had four components. The first number in the formula is referred to as the “base amount.” According to testimony, the base amount is, for the most part, the average rate that will be paid for an evaluation. The base amount for a speech and language evaluation, for example, is listed as \$500.00. According to Dr. Branch, the base amount may vary depending upon the experience of the clinician, but Interdynamics uses an average. Next on the formula is a figure representing 19.303% of the “base amount.” This second term is described as “fringe rate,” and covers benefits paid to employees.²⁶ Next, Interdynamics adds another percentage of the “base amount,” this time 166.741%, to cover overhead rent, telephone, internet, malpractice insurance, and employee screening costs. To that subtotal, a “5-10% profit” is added. The following hypothetical example was provided:

Hourly Rate	Fringe	Overhead	Fee	Rate
\$100.00	+ 19.1303	+ 166.74	= \$286.00	+ \$21.44 = \$307.31

Interdynamics notes that the base rate has remained consistent and has not been raised to meet changes in the cost of living over the past several years.

Despite its contention that this rate stabilization proves the rates are inherently reasonable, the underlying construction of the invoice is flawed. First, no evidence was

²⁵ Included herewith as Attachment E-1c.

²⁶ No fringe rate is applied to neurological, psychiatric or vision evaluations since only contract employees conduct those evaluations.

introduced regarding the methodology used to develop the “base rates.” Unlike the example used in the prehearing brief, the base rates are clearly not hourly rates for any of the professions involved. It is impossible to tell what metric was used to establish base rates. Moreover, the formula provided above does not track with other information provided by the plaintiff. At another point in the same submission, Interdynamics notes that full time speech and language pathologists on staff earn \$80,000. Based on that annual salary, the three staff members earn \$40.00 an hour. According to Interdynamics – and DCPS - the minimum time for a speech and language assessment is ten hours. Using this information - all taken from Interdynamics own exhibit – the formula for billing should be as follows:

Base Rate		Fringe		Overhead		Fee		Profit		Total		
10 hrs @ \$40.00/hr	=	\$400.00	+	(19.303% x \$400.00)	+	(166.74% x \$400.00)	=	\$744.00	+	(10% x \$400.00)	=	\$784.00

Yet, Interdynamics charges considerably more than \$800.00 for a speech evaluation -- the invoices in dispute here involve charges of \$1500.00 for a speech and language evaluation.

4. The application of overhead was not clear. It is, of course, understood that a business is permitted to add overhead and profit to an employee’s salary to achieve a “billable” rate. This is a common practice in accounting firms, law practices and consulting companies. However, in addition to full and part-time employees, Interdynamics also uses contract employees. For example, neurological, psychiatric and vision evaluations are all done by outside clinicians. Since consultants or contract employees do use the Interdynamics facilities to conduct evaluations, it may be

appropriate to include some overhead for rent. However, some of the costs included in overhead are not relevant to contract employees, such as employee screening costs. Moreover, the Interdynamics facility is used both for evaluations and for direct services, such as speech therapy. No apportionment of rent was made and it appears that the cost of the whole building is being charged to evaluations.

Presentation of Defendant's Case

Inasmuch as the plaintiff has failed to show that its rates are reasonable or prevailing market rates, it is necessary to determine whether the Chancellor's Rates – and those paid by DCPS – meet those criteria. Accordingly, the defendant is requested to prepare to present its case in line with the format and schedule proposed below:

A. Formulation of the issue for adjudication:

How did the defendant determine its rate for payment each of the invoices in dispute?

B. Stipulations regarding each individual invoice:

The parties have previously met and prepared written stipulations to the 190 invoices remaining in dispute. Such documentation was received by the Office of the Special Master on January 15, 2010 and is included herewith as Attachment G. Absent any changes to the document, the Office of the Special Master will continue to use it as a guide. Parties are invited to jointly stipulate to, and submit any modifications to Attachment G to the Office of the Special Master within 45 (forty-five) calendar days of the Order.

C. Prehearing disclosures:

Although hearings arising under the November 8, 2004 Payment Order are not bound by the Federal Rules of Civil Procedure ("FRCP"), the proceedings will be guided by the

structure set forth in FRCP Rules 16 and 26. Accordingly, the parties shall schedule a joint conference to take place within forty-five (45) calendar days of this order, to develop a proposed discovery plan. All attorneys, as well as their clients, are responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting a report to the Special Master within fourteen (14) calendar days of the conference. The discovery plan contained in the report should cover, if at all applicable, the issues presented in FRCP 26(a) (1) and (b) (2).

Following the conclusion of discovery, arrangements will be made for prehearing briefs and a date for a hearing will be set.

Respectfully submitted,

Elise T. Baach
Special Master

October 12, 2010