

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-417V

Filed: January 22, 2007

PUBLISHED

LISA ROSS, parent of, *
SHANNON ROSS, a minor *
Petitioner, *

v. *

Attorneys' Fees; Payment of Fees and Costs
for Omnibus Work

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *
Respondent. *

ATTORNEYS' FEES AND COSTS DECISION¹

GOLKIEWICZ, Chief Special Master.

On November 7, 2006, petitioner filed an application for fees and costs, requesting \$12,873 for fees, \$1,105.90 for attorneys' costs, and \$210.46 for petitioner's costs, for a total of \$14,189.36. Additionally, the application for fees and costs included a request for \$18,891.50 in fees and \$3,789.68 in costs for the "Hepatitis B Panel," a proposed Omnibus proceeding designed to resolve several hundred Hepatitis B claims.

Respondent filed a response in which he did not object to the request for \$14,189.36 in fees and costs related specifically to the handling of the instant matter, but objected to the \$22,681.18 for fees and costs charged to the "Hepatitis B Panel."

¹The undersigned intends to post this decision 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). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

The assigned Special Master in the Ross case, Special Master Denise K. Vowell, issued an Order on January 3, 2007 finding that the requested \$14,189.36 related to the Ross case are appropriate and allowable. Special Master Vowell further stated that :

I am referring petitioner's counsel's request for fees and costs associated with the "Hepatitis B Panel" to Chief Special Master Golkiewicz with a request that he transfer this case to himself for a decision on attorney's fees and costs. I recommend that he award fees and costs for matters pertaining to the *Ross* petition in accordance with my findings above and that he take whatever action he deems appropriate with regard to reimbursement of fees and costs pertaining to the "Hepatitis B Panel."

Order filed January 3, 2007.

In accordance with Vaccine Rule 3(c), this case is hereby **transferred** to the undersigned.

In the January 3 Order, Special Master Vowell sets forth respondent's brief explanation of the Hepatitis B Panel and his argument against awarding petitioner's counsel's fees and costs. Special Master Vowell wrote:

According to the Respondent, the "Hepatitis B Panel" charges stem from counsels' "involvement in a Hepatitis B working group that convened periodically to discuss proposals for processing the Hepatitis B vaccine cases pending before the special masters." Respondent suggested that the appropriate case for deciding whether the request for fees and costs relating to the Hepatitis B working group should be granted would be the "lead" case in this matter *Loizzi v. HHS*, No. 99-559V. This case is assigned to Chief Special Master Golkiewicz. Respondent argued that, as Chief Special Master Golkiewicz oversaw the working group's activities, he is "uniquely positioned to judge the reasonableness of the fees and costs requested" in connection with the "Hepatitis B Panel."

Order filed January 3, 2007 (citations omitted).

The so-called Hepatitis B Panel was a collective effort of the court, petitioners' Bar and respondent to utilize an independent panel of experts to assist in the resolution of several hundred Hepatitis B cases. Although the effort ultimately failed, due to the inability to fund the effort, the undersigned firmly believes that the independent panel concept was a very good idea and would have resolved the Hepatitis B cases efficiently and fairly. The undersigned also firmly believes that, but for the funding issue, the parties' excellent work would have secured that success.

To resolve the fees issue related to the Panel work, the undersigned conducted status conferences with the representative parties on January 12 and 19. After much discussion, the parties and the undersigned agreed to the following:

1. that petitioner's counsel is entitled to the charges, with minor deductions which the parties agreed to, for the efforts on the Hepatitis B Panel;
2. that it makes eminent sense to bill the charges to one case, as opposed to allocating the charges to all of counsel's cases involved in the Panel effort; and
3. that both for the benefit of counsel getting paid in a timely fashion and to assist respondent in its review of counsel's charges relative to the Panel effort, the charges should be awarded in the first decided case (a case which was previously included in the panel effort), and thus eligible for an award of fees and costs.

The parties resolution of this matter reflects a common sense approach that meets the statutory framework and fulfills the parties' respective interests. Accordingly, the parties agreed to an award of \$15,598.72 for attorneys' fees and \$3,789.68 for costs for a total of \$19,388.40. These fees and costs represent full payment for counsel's efforts on the Hepatitis B Panel.

Accordingly, petitioner is entitled to the following award for fees and costs for efforts in the Ross case and for efforts on the Hepatitis B Panel: **\$33,367.30** for attorney's fees and costs to be paid by check payable to petitioner and petitioner's counsel, and **\$210.46** for petitioner's own litigation costs to be paid by check payable to petitioner.

The undersigned appreciates greatly the cooperative and good efforts of counsel for both petitioner and respondent in resolving this matter. The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

²Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.