

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**  
**E-Filed: August 14, 2012**

* * * * *	*	
MICHAEL STEPHEN SHAW,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 1-707V
	*	
v.	*	Chief Special Master
	*	Campbell-Smith
SECRETARY OF THE	*	
DEPARTMENT OF	*	Interim Attorneys' Fees
HEALTH AND HUMAN SERVICES,	*	and Costs; Reasonable
	*	Amount to Which
Respondent.	*	Respondent Does Not
	*	Object.
	*	
* * * * *		

Ronald Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for petitioner.

Voris Johnson, U.S. Dep't of Justice, Washington, DC, for respondent.

**DECISION ON INTERIM ATTORNEYS' FEES AND COSTS**<sup>1</sup>

On December 20, 2001, Michael Stephen Shaw (“petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program

---

<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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.

(“Vaccine Program”).<sup>2</sup> Petitioner alleges that as a result of his receipt of a Hepatitis B vaccine, he thereafter suffered an inflammatory polyneuropathy.

**A. Petitioner’s Second Application for Interim Attorneys’ Fees and Costs**

On June 22, 2012, petitioner filed a second application for interim attorneys’ fees and costs in this matter. See Pet’r’s App. for Interim Attorneys’ Fees and Costs, June 22, 2012. See also Pet’r’s App. for Interim Attorneys’ Fees and Costs, Aug. 19, 2008.

On July 5, 2012, respondent filed her response in opposition to petitioner’s second application for interim attorneys’ fees and costs, setting forth certain objections. See Resp’t’s Resp. in Opposition to Pet’r’s Second App. for Interim Attorneys’ Fees and Costs.

Petitioner requested, and was subsequently granted, an enlargement of time, or until August 15, 2012, to file a reply to respondent’s response. See NON-PDF Order, July 16, 2012.

**B. The Parties’ Joint Stipulation of Fact Concerning Interim Attorneys’ Fees and Costs**

On August 10, 2012, the parties filed a stipulation of fact concerning interim attorneys’ fees and costs, to which the parties had agreed during informal discussions.<sup>3</sup> See Stip. ¶ 3.

The parties request a decision to be entered awarding interim attorneys’ fees and costs in the amount of **\$290,000.00**.<sup>4</sup> Id. ¶¶ 3, 5.

---

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

<sup>3</sup> During informal discussions, petitioner agreed to amend the requested amount of interim attorneys’ fees and costs, to reflect an amount which respondent would not object. Stip. ¶¶ 3-4.

<sup>4</sup> In their stipulation, the parties note that petitioner’s **out-of-pocket expenses**, in the amount of **\$150.00**, were previously awarded by the undersigned in her first decision awarding interim attorneys’ fees and costs in this case, issued on March

### C. An Award of Interim Attorneys' Fees and Costs

The undersigned determines that there is no just reason to delay the entry of judgment on interim attorneys' fees and costs. Based on the reasonableness of petitioner's interim attorneys' fees and costs request and respondent's lack of objection to petitioner's request, the undersigned **GRANTS** the parties' stipulation of fact concerning interim attorneys' fees and costs.

Therefore, in the absence of a motion for review filed under RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** in petitioner's favor in the amount of **\$290,000.00** for **interim attorneys' fees and costs**,<sup>5</sup> **payable jointly to petitioner and his attorney of record.**<sup>6</sup>

---

27, 2009, and subsequently affirmed by Judge Bruggink on February 14, 2012. See Decision, Mar. 27, 2009; Opinion, Feb. 14, 2012.

Although the Clerk of Court has not yet issued a judgment on that first decision, the parties observe that petitioner's out-of-pocket expenses will be awarded when judgment on that decision enters. Stip. at 1 n.1.

<sup>5</sup> On August 13, 2012, the undersigned's chambers attempted to contact the parties to confirm that the latest amount of requested interim attorneys' fees and costs, **\$290,000.00**, is wholly separate from that amount of interim attorneys' fees and costs previously awarded by the undersigned in her first decision dated March 27, 2009. See Decision, Mar. 27, 2009.

In response to an email sent to the parties by the undersigned's chambers on August 13, 2012, petitioner's counsel explained that the stipulation specifies that "petitioner's cost[s] will be paid from the first judgment" and "confirm[ed] that the two amounts are separate." Email from Ronald Homer dated Aug. 13, 2012. Respondent's counsel was unavailable when the undersigned's chambers attempted to reach him for comment telephonically.

Although petitioner's counsel's representation, explaining that "petitioner's cost[s] will be paid from the first judgment," is not entirely responsive to the undersigned's inquiry, the undersigned nonetheless issues this decision based on the understanding that the latest amount of requested interim attorneys' fees and costs, **\$290,000.00**, is wholly separate from that amount of interim attorneys' fees and costs previously awarded by the undersigned in her first decision dated March 27, 2009. See Decision, Mar. 27, 2009.

<sup>6</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

The judgment shall reflect that **Conway, Homer & Chin-Caplan, P.C.** may collect **\$290,000.00** from petitioner.

Furthermore, the deadline established for the filing of **petitioner's reply**, on or before **August 15, 2012**, is **RENDERED MOOT**.

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith  
Patricia Campbell-Smith  
Chief Special Master

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

MICHAEL STEPHEN SHAW,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 01-707V (ECF)
	)	Chief Special Master
SECRETARY OF HEALTH	)	Patricia E. Campbell-Smith
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

**STIPULATION OF FACT CONCERNING  
ATTORNEYS' FEES AND COSTS**

It is hereby stipulated, by and between the parties, the following factual matters:

1. Ronald C. Homer, with the law firm Conway, Homer & Chin-Caplan, P.C., is the attorney of record for petitioner in this matter.
2. On June 22, 2012, petitioner filed an Interim Application for Attorneys' Fees and Costs ("Application") related to this matter.
3. On July 5, 2012, respondent filed her response in opposition to the Application, setting forth certain objections. The parties subsequently engaged in informal discussions and, as a result, petitioner has agreed to amend her Application to seek reimbursement for attorneys' fees and costs for the law firm Conway, Homer & Chin-Caplan, P.C., in the amount of \$290,000.00.<sup>1</sup>
4. Respondent does not object to the amended request.
5. The parties now request that the Court issue a decision awarding the attorneys' fees and costs described in paragraph 3 of this Stipulation, directing payment in the form of a check payable jointly to petitioner and petitioner's counsel.

---

<sup>1</sup> Petitioner filed a General Order #9 Statement on June 22, 2012, indicating that he has out-of-pocket expenses in the amount of \$150.00. However, petitioner's out-of-pocket expenses were previously awarded by the Chief Special Master in a Decision dated March 27, 2009, and that Decision was affirmed by Judge Bruggink in an Opinion issued on February 14, 2012. While the Clerk has not yet issued a Judgment on that Decision, petitioner's out-of-pocket expenses will be paid out of that Judgment when it issues.

6. Nothing in this Stipulation, including the amount set forth in paragraph 3, should be construed as an admission, concession, or waiver by either party as to any of the matters raised by petitioner's request for attorneys' fees and costs, including but not limited to the hourly rates requested, the number of hours requested, and other litigation-related costs.

Respectfully submitted,

Dated: August 10, 2012

By: s/Ronald C. Homer by /s Voris E. Johnson, Jr.  
RONALD C. HOMER  
Attorney for Petitioners  
Conway, Homer & Chin-Caplan, P.C.  
16 Shawmut Street  
Boston, MA 02116  
(617) 695-1990

Dated: August 10, 2012

By: s/Voris E. Johnson, Jr.  
VORIS E. JOHNSON, JR.  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Ben Franklin Station  
Washington, D.C. 20044-0146  
(202) 616-4136