

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

**Case No. 06-0777V**

**(E-Filed: May 9, 2011)**

_____	)	
EARL STEWART,	)	UNPUBLISHED
	)	
Petitioner,	)	
	)	Interim Award of Attorneys’ Fees
v.	)	and Costs; Reasonable Amount
	)	Requested to which
SECRETARY OF THE DEPARTMENT OF	)	Respondent Does Not Object
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

Ronald Homer, Boston, MA, for petitioner.

Julia McNerny, Washington, DC, for respondent.

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

On November 16, 2006, Earl Stewart (“petitioner”), filed a petition for compensation alleging that he suffered certain injuries as a result of receiving a vaccination. Among the injuries petitioner alleges that he has suffered as a result of receiving a trivalent influenza vaccination is Guillain-Barré syndrome. He sought an award under the National Vaccine Injury Compensation Program, National Vaccine Injury Compensation Program<sup>2</sup> (the Act or the Program). 42 U.S.C. §§ 300aa-1 to -34

<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.

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the

(2006).

On April 13, 2011, Chief Special Master Campbell-Smith conducted a status conference and advised the parties that an entitlement decision awarding compensation would be issuing forthwith, and encouraged the parties to address damages.

On February 8, 2011, petitioner's counsel filed a motion for interim fees (Interim Fees Motion). On February 25, 2011, respondent's counsel filed a response with a number of objections that were shared in part by the undersigned. On March 14, 2011, petitioner's counsel filed a reply to respondent's objections. A status conference was conducted by the undersigned on April 13, 2011, wherein the undersigned encouraged the parties to settle the interim fees and costs issue.

On May 3, 2011, counsel for petitioner filed an unopposed motion for interim attorneys' fees and costs, stating that a decision should be entered awarding interim attorneys' fees, attorneys' costs, and petitioner's costs in the total amount of \$175,000.00. The parties stipulated that petitioner's counsel shall receive the following compensation and respondent will not object:

**A lump sum of \$144,000.00 in the form of a check payable to petitioner and petitioner's attorney's firm, Conway, Homer, & Chin-Caplan, for interim attorneys' fees and costs and petitioner's costs.**

In accordance with General Order No. 9, petitioner represents that he incurred \$6,138.17 in out-of-pocket expenses in proceeding on the petition, which is included in this sum.

See Interim Fees Motion ¶¶ A-B. Of the \$144,000.00, petitioner is entitled to retain \$6,138.17 for out-of-pocket expenses.<sup>3</sup>

**In addition to the \$144,000.00, a sum of \$31,000.00, in the form of a check payable to petitioner and petitioner's former attorney's firm, Andrew Dodd, Esquire, for interim attorneys' fees and costs and petitioner's costs.**<sup>4</sup>

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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 the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

<sup>3</sup> The Conway, Homer & Chin-Caplan firm shall retain \$137,861.83 for interim attorneys' fees and interim attorneys' costs.

<sup>4</sup> Mr. Dodd, initially represented petitioner in this matter, and is deceased. His death precipitated the involvement of the Homer, Conway, Chin-Caplan firm in this case.

Petitioner is entitled to an award of interim attorneys' fees and attorneys' costs. The special master determines that there is no just reason to delay the entry of judgment on interim attorneys' fees and attorneys' costs. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court **SHALL ENTER JUDGMENT in petitioner's favor for \$175,000.00 in interim attorneys' fees and attorneys' costs.** Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

**IT IS SO ORDERED.**

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