

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: August 20, 2010)

No. 03-215V

TO BE PUBLISHED

GEORGE and VICTORIA)	
MEAD, Parents of)	
WILLIAM P. MEAD,)	
)	
Petitioners,)	Omnibus Autism Proceeding;
)	Test Case; Petitioners' Second
)	Theory of General Causation;
)	Failure to Prove that
v.)	Thimerosal-Containing
)	Vaccines Cause Autism;
)	Attorneys' Fees and Costs
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

Thomas Powers, Portland, OR, for petitioners.

Lynn Ricciardella, United States Department of Justice, Washington, DC, for respondent.

ATTORNEYS' FEES AND COSTS DECISION¹

CAMPBELL-SMITH, Special Master

¹ Vaccine Rule 18(b) provides that all of the decisions of the special masters will be made available to the public unless an issued decision contains trade secrets or commercial or financial information that is privileged or confidential, or the decision contains medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. When a special master issues a decision or substantive order, the parties have 14 days within which to move for the redaction of privileged or confidential information before the document's public disclosure.

On January 29, 2003, George and Victoria Mead (petitioners or the Meads), as parents of William P. Mead (William), filed a short-form petition² pursuant to the National Vaccine Injury Compensation Program³ (the Act or the Program), 42 U.S.C. § 300aa-10, et seq. With the consent of the Meads, the Petitioners' Steering Committee (PSC) designated this case on November 19, 2007, as one of the three test cases to be heard in the Omnibus Autism Proceeding (OAP) on petitioners' second theory of general causation. See Docket of Omnibus Autism Proceeding (OAP Docket), Order Modifying Schedule for PSC's "Second Theory" of Causation, dated November 20, 2007, at 2. The three test cases designated by the PSC for petitioners' second theory of causation proceeded "on the theory that thimerosal as contained in certain pediatric vaccines was a substantial contributing cause of neurodevelopmental injuries, including autism spectrum disorder, in certain claimants in this proceeding." See Docket of Autism Omnibus Proceeding (OAP Docket), PSC Proposal for Scheduling Additional Test Cases, dated June 25, 2007, at 1.

² As permitted by the Order dated July 8, 2002, petitioners electing to participate in the Omnibus Autism Proceeding (OAP) were permitted to file a short-form "opt-in" petition. See OAP Order of 7/8/02 at 1, 4. Each short form petition would consist of the name of the injured child, the names of the injured child's parents or legal representatives, and an election to opt into the OAP proceeding. Id. at 1. The petition "would not contain a detailed account of the relevant vaccinations and the vaccinee's disorder." Id. Nor would the vaccinee's medical records be required to accompany the petition. Id.

Prior to filing their vaccine claim here, the Meads had filed a civil lawsuit in Oregon state court against a number of pharmaceutical companies alleging that the thimerosal additive in many pediatric vaccines significantly contributed to the development of William's autism. See Petitioners' Post-Hearing Brief (Mead Ps' Brief) at 6. The state court determined that the Meads' thimerosal injury claim was "vaccine-related" as defined under the Vaccine Act, see 42 U.S.C. § 300aa-33(5), and thus, the Meads could not maintain their civil action against the vaccine manufacturers without first seeking a remedy under the National Vaccine Injury Compensation Program. See King v. Aventis Pasteur, Nos. 0201-00126 and 0106-05780, 2003 WL 23531954 (Or. Cir. Mar. 20, 2003) (Stipulation and Order of Dismissal). Accordingly, the state court claim was dismissed to permit the Meads to pursue this claim now before the Office of Special Masters. See id.

³ Hereafter, for ease of reference, all "section" references to the Vaccine Injury Compensation Act will be to the pertinent subsection of 42 U.S.C. § 300aa (2006).

A hearing was held in Washington, DC, from May 12-30, 2008. The undersigned heard testimony from fact and expert witnesses. On March 12, 2010, a decision denying entitlement was issued.

On July 1, 2010, petitioners submitted Petitioners' Application for Fees and Costs (Ps' Fee Application) for fees and costs incurred in this case. After discussions with respondent's counsel, petitioners amended their fees and costs request to an amount to which respondent's counsel did not object. Accordingly, petitioners' counsel's final request was for \$65,516.41 in attorneys' fees and costs.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300 aa-15(e). Based on the reasonableness of petitioners' request and on respondent's counsel's agreement not to object to petitioners' counsel's amended fee request, the undersigned **GRANTS** the attorneys' fees and costs as outlined in the Petition for Attorney Fees and Costs.

The undersigned awards petitioners \$65,516.41 in attorneys' fees and costs.

Petitioners are entitled to an award of final attorneys' fees and attorneys' costs and petitioners' costs. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in petitioners' favor in the amount of \$65,516.41 in attorneys' fees and attorneys' costs, and petitioner's costs.⁴ The judgment shall reflect that the Williams Love O'Leary & Powers P.C., may collect \$65,516.41 from petitioners.

IT IS SO ORDERED.

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

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.