

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

(E-filed: September 3, 2009)

No. 99-520V

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KHADIJA AALIYAH FRANCIS,	)	
a minor, by her mother and natural guardian,	)	
DEBORAH VAN BURCH,	)	UNPUBLISHED
	)	
Petitioner,	)	Attorneys' Fees and Costs
	)	
v.	)	
	)	
SECRETARY OF THE DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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Clifford Shoemaker, Vienna, VA, for petitioner.

Alexis Babcock, Washington, DC, for respondent.

### **DECISION ON ATTORNEYS' FEES AND COSTS**<sup>1,2</sup>

On July 28, 1999, Deborah Van Burch (Ms. Burch) filed a petition on behalf of her daughter, Khadija Aaliyah Francis (Khadija) pursuant to the National Vaccine Injury

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<sup>1</sup> Because this document contains a reasoned explanation for the action of the undersigned, the document shall post on the website of the United States Court of Federal Claims 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 fourteen days within which to request the redaction "of any information furnished by that party (1) that is 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." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of timely objection, the entire document will be made publicly available.

<sup>2</sup> The undersigned's August 25, 2009 Decision on Attorneys' Fees and Costs was struck by September 3, 2009 Order.

Compensation Program<sup>3</sup> (the Act or the Program), 42 U.S.C. § 300aa-10 et seq. On December 18, 2008, the undersigned issued a Decision Awarding Damages. See December 18, 2008 Decision.

On August 6, 2009, petitioner's counsel filed an Application for Attorneys' Fees and Costs (Fee App.) requesting a total of \$81,581.54, in attorneys' fees and costs and petitioner's costs. Petitioner's counsel's application included a statement from petitioner regarding her out-of-pocket expenses. See Fee App. at 2-7. By August 12, 2009 Order, the undersigned requested that petitioner's counsel provide additional information to assist her in evaluating his fee application. Petitioner's counsel replied to the undersigned's order by filing a responsive status report on August 24, 2009.

On August 25, 2009, petitioner's counsel and respondent's counsel contacted the undersigned's chambers by telephone and indicated that they had reached an understanding regarding attorneys' fees and were able to identify a quantum to which respondent would not object. As amended, petitioners's counsel requested an award of \$78,581.54 in attorneys' fees and costs and \$277.71 in costs borne by petitioner.

On August 25, 2009, the undersigned issued a Decision on Attorneys' Fees and Costs. On September 3, 2009, petitioner's counsel contacted the undersigned's chambers and indicated that guardianship costs in the amount of \$3,000.00 had been inadvertently omitted from petitioner's fee request and that respondent's counsel did not object to the amended amount. Petitioners's counsel now seeks an award of \$81,581.54 in attorneys' fees and costs and \$277.71 in costs borne by petitioner. Accordingly, by September 3, 2009 Order, the undersigned struck her earlier issued attorneys' fees and costs decision and now revisits petitioner's request for 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 petitioner's request and on respondent's counsel's lack of objection to petitioner's counsel's twice amended fee request, the undersigned **GRANTS** the attorneys' fees and costs as outlined in the joint status call with the undersigned's chambers on August 25, 2009, which was subsequently amended by filed motion on September 3, 2009.

The undersigned awards petitioner \$81,859.25 in attorneys' fees and costs and petitioner's costs.

Therefore, in the absence of a motion for review filed pursuant to RCFC Appendix

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<sup>3</sup> Hereinafter, for ease of reference, all "section" references to the Vaccine Injury Compensation Act will be to the pertinent subdivision of 42 U.S.C. § 300aa (2006 ed.).

B, the clerk of the court **SHALL ENTER JUDGMENT** in petitioner's favor in the amount of \$81,859.25 in attorneys' fees and attorneys' costs and petitioner's costs.<sup>4</sup> The judgment shall reflect that the Shoemaker and Associates law firm may collect \$81,581.54 from petitioner. Petitioner may retain \$277.71 for costs borne by petitioner.

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith

Patricia E. Campbell-Smith

Special Master

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<sup>4</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.