

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
(E-Filed: April 30, 2007)

DAVID DICONZA,)	
Petitioner,)	
)	
v.)	No. 02-1109V
)	UNPUBLISHED
SECRETARY OF THE DEPARTMENT OF)	Attorney's Fees
HEALTH AND HUMAN SERVICES,)	
Respondent.)	
)	
)	

ORDER AND DECISION¹

I. Procedural History

Petitioner, David Diconza, timely filed a claim for compensation pursuant to the National Vaccine Injury Compensation Program² (the Act or the Program) on September 3, 2002. Petitioner's claim was dismissed for failure to prosecute by unpublished Decision dated November 28, 2006.

On March 21, 2007, petitioner filed an Application for Attorney's Fees & Costs ("P. App.") requesting \$14,263.00 for attorneys' fees, \$558.61.83 for costs borne by petitioner's

¹ Vaccine Rule 18(b) states 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. Within 14 days after the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document's public disclosure.

² 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-10 to -34 (2000 & Supp. II 2003) (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.

counsel, and \$0.00 for costs borne by petitioner.³ Petitioner’s application included supporting documentation showing the nature of the costs incurred and the time that petitioner’s counsel expended for particular tasks in this case.

On Wednesday, April 4, 2007, counsel for the parties in this matter jointly contacted the court by telephone, and respondent stated that she had no objection to petitioner’s fee request.

III. Conclusion

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 amended fee request, the undersigned **GRANTS** Petitioner’s Application for Fees and Costs filed on March 21, 2007.

The undersigned awards petitioner’s counsel \$14,263.00 in fees and \$558.61 in costs. The total award is summarized as follows:

I. Attorney Fees

Ron Homer	\$14,263.00
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II. Costs:

Petitioner’s Counsel’s Costs	\$558.61
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³ On April 5, 2007, petitioner’s counsel filed an Affidavit in Accordance with General Order No. 9 (P’s Affidavit). The affiant, Susan Farrell, a paralegal with petitioner’s counsel’s firm, represented that “[o]n March 16, 2007, [she] mailed David Diconza a copy of General Order #9 as well as a letter explaining the need for him to sign and return th[e] document to [her] by April 4, 2007,” confirming “that he did not incur any litigation expenses during the processing of his vaccine claim.” P’s Affidavit at 1. Ms. Farrell requested that Mr. Diconza “contact her as soon as possible if [the firm’s billing] records [indicating that petitioner had not incurred any litigation expenses] were incorrect.” *Id.* at 1-2. After directing this written communication to Mr. Diconza, Ms. Farrell also called Mr. Diconza and asked that he return the signed General Order on April 4, 2007. *See id.* at 1. To date, there has been no contact from Mr. Diconza, and Ms. Farrell states that it is her belief “that Mr. Diconza will not contact our office or return the signed General Order #9 based on his past history of non-compliance.” *Id.* at 1. The undersigned accepts Ms. Farrell’s affidavit in satisfaction of the requirement of General Order #9.

Petitioner's Costs	\$0.00
III. Total Fees and Costs	\$14,821.61

The clerk **SHALL ENTER JUDGMENT** for \$14,821.61. The award shall be made in the form of a single check made payable jointly to petitioner and Conway, Homer & Chin-Caplan, PC, in the amount of \$14,821.61. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.⁴

IT IS SO ORDERED.

s/Patricia 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.