

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
(E-Filed: March 28, 2008)

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ANTHONY LAMBERTI,)	UNPUBLISHED
)	
Petitioner,)	
)	No. 99-507V
v.)	
)	Attorneys' Fees and Costs
SECRETARY OF THE DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES)	
)	
)	
)	
Respondent.)	
)	
)	
_____)	

Clifford Shoemaker, Arlington, VA, for petitioner.

Catharine Reeves, with whom were Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, and Mark W. Rogers, Deputy Director, Department of Justice, Civil Division, Torts Branch, Washington, DC, for respondent.

DECISION REGARDING ATTORNEYS' FEES AND COSTS¹

On July 26, 1999, Anthony Lamberti filed a petition pursuant to the National

¹ Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless the decisions contain trade secrets or commercial or financial information that is privileged or confidential, or the decisions contain medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. Within 14 days of 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.

Vaccine Injury Compensation Program² (the Act or the Program) seeking compensation for injuries allegedly sustained as a result of the hepatitis B vaccination³ he received on March 8, 1998.⁴ Petition (Pet.) ¶ 3. Mr. Lamberti alleges that he experienced an adverse reaction to this inoculation.⁵ Id. Petitioner further alleges that he suffered “residual effects [from his vaccination] for more than six months.” Pet. ¶ 5. On May 31, 2007, the undersigned issued a decision denying petitioner’s claim for compensation.

On March 4, 2008, petitioner filed an Motion for Attorneys’ Fees and Costs (Fee App.). On March 11, 2008, petitioner filed a Motion to Amend/Correct Petitioner’s Motion for Attorney’s Fees. On March 21, 2008, the parties filed a joint status report wherein the parties noted that respondent’s counsel had requested that petitioner’s counsel reduce his request for fees by \$3,495.00. Petitioner’s counsel subsequently reduced his fees and costs request. Respondent’s counsel, in turn, notified the undersigned that she has agreed not to object to the amended request for attorneys’ fees and costs. Accordingly, petitioners’s counsel now seeks an award of attorneys’ fees and

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.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (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.

³ The hepatitis B vaccine is “a noninfectious viral vaccine derived by recombination from hepatitis B surface antigen and cloned in yeast cells; administered intramuscularly for immunization of children and adolescents and of persons at increased risk for infection.” Dorland’s Illustrated Medical Dictionary 1999 (30th ed. 2003).

⁴ A discrepancy exists between the date alleged in the petition for petitioner’s third Hepatitis B vaccination and the date of the alleged vaccination provided in the Final Order issued in his worker’s compensation claim, which was filed in this case as Exhibit 6. See Pet’r Ex. 6. In the petition filed in this case, petitioner alleges March 8, 1998 as the date of vaccination. See Pet. ¶ 3. However, the worker’s compensation order states that he was vaccinated on March 9, 1998. Pet’r Ex. 6. Because the resolution of this factual discrepancy is not material to the outcome of this decision, the undersigned does not determine the actual date of petitioner’s third hepatitis B vaccination.

⁵ Petitioner does not specifically describe his injury as a result of his hepatitis vaccination in the petition. However, in the filed Rule 4 Report, respondent characterizes petitioner’s claimed injuries as a result of his hepatitis vaccinations to be polyarthritis, hepatitis, and weakness. Resp’t Report at 1. The undersigned did not reach the issue of the nature of petitioner’s injury because no opinion was offered causally connecting any injury to petitioner’s received vaccination.

costs totaling \$10,526.81, representing \$10,232.00 in attorneys' fees and \$161.80 in attorneys' costs and \$133.01 in petitioner's costs.⁶

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 petitioner's counsel's amended fee request, the undersigned **GRANTS** the attorney's fees and costs as outlined in Petitioner's Amended Application for Fees and Costs.

The undersigned awards petitioner \$10,526.81 in fees and costs.

Therefore, in the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in petitioner's favor in the amount of \$10,526.81 in attorneys' fees and attorneys' costs and petitioner's costs.⁷ The judgment shall reflect that the Shoemaker and Associates law firm may collect \$10,393.80 from petitioner. Petitioner may retain \$133.01 for costs borne by petitioner.

IT IS SO ORDERED.

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

⁶ In accordance with the Joint Status Report filed by the parties on March 21, 2008, and further to a telephonic conversation with the parties on March 28, 2008, the status report was orally modified to correctly reflect that petitioner did have out-of-pocket expenses in the amount of \$133.01, but that the total amount of attorneys' fees and costs requested remains unchanged.

⁷ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.