

OFFICE OF SPECIAL MASTERS

(Filed: March 21, 2006)

JOSEPH A. THURMOND and)	
CAROLYN K. THURMOND,)	
parents and natural guardian of their daughter,)	
SARAH ROSE THURMOND,)	
)	
Petitioners,)	
)	
v.)	No. 03-0425V
)	DO NOT PUBLISH
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS’ FEES, ATTORNEYS’ COSTS AND PERSONAL EXPENSES¹

Petitioners, Joseph Thurmond and Carolyn Thurmond (the Thurmonds), as natural guardians of their daughter, Sarah Rose Thurmond (Sarah), seek an award of attorneys’ fees, attorneys’ costs and personal expenses as defined by General Order No. 9 for an action that they pursued under the National Vaccine Injury Compensation Program (Program).² Respondent does not contest an award of \$12,734.29. *See* Status Report, filed March 11, 2006. The amount represents the sum of \$11,364.00 in attorneys’ fees, \$370.29 in attorneys’ costs and \$1,000.00 in personal expenses as defined by General Order No. 9. *See id.*

¹ 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

The Thurmonds did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to “award an amount of compensation to cover” the Thurmonds’ “reasonable attorneys’ fees and other costs” as long as “the special master or court determines that” the Thurmonds possessed “a reasonable basis for the claim” and that the Thurmonds filed the petition “in good faith.” § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master’s “discretion is not without limit.” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent “special circumstances,” the special master “should ordinarily” award attorneys’ fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully the record. Based upon his experience, the special master determines that an award of \$12,734.29 is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in the Thurmonds’ favor. The judgment shall reflect that the Thurmonds’ attorney of record, Altom M. Maglio, Esq. (Mr. Maglio), may collect \$11,734.29 from the Thurmonds.³ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send the Thurmonds’ copy of this decision to the Thurmonds by overnight express delivery.

John F. Edwards
Special Master

³ \$12,734.29 - \$1,000.00 for the Thurmonds’ personal expenses.