

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 99-546V

Filed: September 24, 2007

DONALD H. SIMMONS,

*

*

Petitioner,

*

Attorneys' Fees; Payment of Fees and
Costs for Omnibus Work

*

*

v.

*

*

*

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

*

*

*

Respondent.

*

ATTORNEYS' FEES AND COSTS DECISION¹

GOLKIEWICZ, Chief Special Master.

On November 20, 2006, petitioner filed an application for fees and costs, requesting a total of \$127,303.23 for attorney's fees and costs in the instant action, the "Hepatitis B Panel," and the "Hepatitis B Neurodemyelinating Omnibus." On January 29, petitioner filed a statement of compliance with General Order #9 indicating petitioner did not incur any personal costs in this case.

Respondent filed a response largely objecting to the fees and costs charged to the "Hepatitis B Panel" and the "Hepatitis B Neurodemyelinating Omnibus." On January 29, 2007 the parties placed a joint conference call to the Special Master's law clerk, wherein, petitioner's counsel made an oral motion to amend his request for attorney's fees and costs to \$16,000 in fees

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, 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 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.

and costs associated with the instant case, and \$104, 174.50 in fees and costs associated with the “Hepatitis B Panel” and the “Hepatitis B Neurodemyelinating Omnibus.”

The assigned Special Master in the Simmons case, Laura D. Millman, issued an Order on February 1, 2007 finding that the requested \$16,000 related to the Simmons case appropriate and allowable. Special Master Millman further stated that:

I hereby refer petitioner’s counsel’s request for fees and costs associated with the “Hepatitis B Panel” to Chief Special Master Golkiewicz with a request that he transfer this case to himself for a decision on attorney’s fees and costs. I recommend that he award fees and costs for matters pertaining to the Simmons petition in accordance with my findings above and that he take whatever action he deems appropriate with regard to reimbursement of fees and costs pertaining to the “Hepatitis B Panel.”

Order filed February 1, 2007.

In accordance with Vaccine Rule 3(c), this case was transferred to the undersigned on March 12, 2007. By way of background:

The so-called Hepatitis B Panel was a collective effort of the court, petitioners’ Bar and respondent to utilize an independent panel of experts to assist in the resolution of several hundred Hepatitis B cases. Although the effort ultimately failed, due to the inability to fund the effort, the undersigned firmly believes that the independent panel concept was a very good idea and would have resolved the Hepatitis B cases efficiently and fairly. The undersigned also firmly believes that, but for the funding issue, the parties’ excellent work would have secured that success.

Ross v. Sec’y of Health & Human Srvs., No. 05-417V, 2007 WL 415187 (Fed. Cl. Spec. Mstr. Jan. 22, 2007).

To resolve the fees issue related to the Panel and Omnibus work, the undersigned conducted status conferences with the representative parties, and the parties worked cooperatively and extensively on the matter. After much discussion and agreement by the petitioner’s counsel to reduce the amount requested, the parties filed a joint status report on September 13, 2007 indicating respondent had no objection to the following fees and costs requested by petitioner.

1. Hepatitis B Neurodemyelinating Omnibus: \$21,766.50 in attorney’s fees and \$1,287.20 in costs;
2. Hepatitis B Panel: \$77,062.00 in attorney’s fees and \$4,925.20 in costs.

Accordingly, petitioner is entitled to the following award for fees and costs for efforts in the Simmons case and for efforts on the Hepatitis B Panel and the Hepatitis B Neurodemyelinating Omnibus: **\$121,040.90** for attorney's fees and costs to be paid by check payable to petitioner and petitioner's counsel.

The undersigned appreciates greatly the cooperative and good efforts of counsel for both petitioner and respondent in resolving this matter. The parties are commended for their efforts. The Clerk shall enter judgment accordingly.²

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

²Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.