

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-693V

Filed: March 19, 2012

NAHALEY FORTENBERRY by,)	
ERICH A. FORTENBERRY,)	
Administrator of the Estate of)	
NAHALEY FORTENBERRY,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	
v.)	Attorneys' fees and costs;
)	personal litigation costs;
SECRETARY OF)	award in the amount to which
HEALTH AND HUMAN SERVICES,)	respondent does not object
)	
Respondent.)	
)	

Elaine W. Sharp, Whitfield, Sharp & Sharp, Marblehead, MA, for Petitioner;
Chrysovalantis P. Kefalas, U.S. Dep't of Justice, Washington, D.C., for Respondent.

DECISION ON FEES AND COSTS¹

LORD, Special Master.

On December 28, 2011, Petitioner filed a "Petition For Attorneys Fees And Costs" ("Fees Petition"), requesting \$31,017.04 in attorneys' fees and \$250.00 in costs. This amount, however, did not include the costs incurred for two of Petitioner's three experts, whose invoices were outstanding at the time of filing.² On February 10, 2012, after informal discussions with Respondent, Petitioner filed an "Amended, And Unobjected-To Petition For Attorneys Fees And Costs" ("Amended Fees Petition"), requesting \$26,364.43 in fees and \$8,425.63 in costs.³ On March 8, 2012, in

¹ In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the document as posted on the United States Court of Federal Claims' website.

² In the Fees Petition, Petitioner stated that the invoices for two of the experts, Jan E. Leestma, M.D., M.M., and Vera Byers, Ph.D., M.D., were outstanding and would be filed upon receipt. Respondent did not object to the delay. Petitioner promptly filed the invoice for Dr. Leetsma on January 6, 2012, and the invoice for Dr. Byers on January 25, 2012, as Exhibits 7 and 8, respectively.

³ The amount requested in the Amended Fees Petition represents a fifteen percent reduction of the fees and costs originally requested and includes all attorneys' fees and costs, including those incurred for the

accordance with General Order #9, Petitioner's counsel filed a "Statement of Petitioner and Counsel" ("Statement") delineating the costs borne by Petitioner and the costs borne by counsel. According to the Statement, Petitioner incurred no reimbursable personal litigation costs. Respondent raised no objection to Petitioner's request as outlined in the Amended Fees Petition.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300aa-15(e). After reviewing the request, the undersigned finds the requested amount of \$26,364.43 in attorneys' fees and \$8,425.63 in costs to be reasonable. Based on its reasonableness, the undersigned **GRANTS** Petitioner's request.

Accordingly, pursuant to Vaccine Rule 13, Petitioner is awarded a total of **\$34,790.06** in attorneys' fees and costs.

The judgment shall reflect that Petitioner is awarded fees and costs as follows:

A lump sum of \$34,790.06 in the form of a check payable jointly to Petitioner and Petitioner's counsel, Elaine Whitfield Sharp, Whitfield, Sharp & Sharp, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e).

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.⁴

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Special Master

services of Petitioner's experts, Leonard Worden, Ph.D., M.D., Jan Leestma, M.D., M.M., and Vera Byers, Ph.D., M.D.

⁴ Pursuant 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.