

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-287 V

Filed: May 17, 2010

To Be Published

WILLIAM R. STEWART and LEANOR	*	
SOTELO, on behalf of WILLIAM	*	
STEWART-SOTELO, a minor,	*	
	*	
Petitioners	*	
	*	Interim Attorneys' Fees and Costs.
	*	
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

Richard Gage, Cheyenne, WY, for petitioners.

Katherine C. Esposito, Washington, D.C., for respondent.

MILLMAN, Special Master

DECISION AWARDING INTERIM ATTORNEYS' FEES AND COSTS¹

Petitioners William Stewart and Leanor Sotelo, on behalf of their son, William Stewart-Sotelo (hereinafter “Will”) established that Will’s hepatitis A vaccination caused his subsequent injuries. Ruling on Entitlement, 2007 WL 1032377 (Fed. Cl. Spec. Mstr. 2007). Petitioners were awarded damages based on respondent’s proffer. Decision, 2008 WL 5024924 (Fed. Cl. Spec. Mstr. 2008). Petitioners now seek attorneys’ fees and costs.

Petitioners are now awarded interim attorneys’ fees and costs totaling **\$77,036.21**. This

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).

amount constitutes an amount that no reasonable litigant could dispute is owed to petitioners. Another forthcoming decision will resolve the parties' disputed fee and cost issues.

I. Procedural History

On April 10, 2006, Will's parents, on his behalf, filed a petition for compensation under the National Childhood Vaccination Act. 42 U.S.C. § 300aa-10 et seq. Mr. T. Christopher Pinedo was the attorney of record at the time of filing.² The case was transferred from Mr. Pinedo to Mr. Richard Gage of Cheyenne, WY, on June 27, 2006.

An evidentiary hearing took place in Washington, D.C. on December 1, 2006. The undersigned ruled in favor of petitioners on March 19, 2007. On July 23, 2008, the undersigned issued a damages decision based on respondent's proffer. Judgment was entered in this case on August 7, 2008.

Petitioners filed an Application for Award of Attorney's [sic] Fees and Reimbursement of Costs on August 5, 2008 which sought the following amounts:

Richard Gage, P.C., fees -	\$47,361.00
Richard Gage, P.C., costs -	\$20,406.47
T. Christopher Pinedo, fees -	\$169,400.00
T. Christopher Pinedo, costs -	\$29,747.93
R. Louis Bratton ³ , costs -	\$522.92
Petitioners, costs -	\$20,509.74

In response to the motion, respondent filed a response on August 22, 2008, and objected to Mr. Pinedo's fees, specifically because they were incurred in a prior civil suit and because his requested hourly rate (\$500 an hour) was unreasonably high. Respondent also objected to Mr. Gage's calculation of his fees, and a few other details that were later resolved.

Petitioners filed a reply to Respondent's Response on September 15, 2008. In addition to justifying the August 5, 2008, motion, petitioners requested fees for the additional time post-

² Mr. Pinedo represented petitioners in a prior civil suit against Merck Pharmaceutical Company ("Merck") which was filed in the District Court of Travis County in Austin, Texas on August 29, 2003. Pet'r. Fee App., Tab F. With the addition of Hepatitis A to the Vaccine Injury Table on December 1, 2004, petitioners elected to terminate their civil suit against Merck on March 20, 2006, and filed their petition under the Vaccine Injury Compensation Program on April 10, 2006.

³ Petitioners originally brought their case to the Bratton Firm, P.C. which then referred the case to the firm where Mr. Pinedo was employed. Mr. Bratton's costs stemmed from a half-hour of investigative work (\$47.50) and filing fees for the civil lawsuit, William R. Stewart et al. vs. Merck & Co., Inc. et al. which totaled \$447.00.

August 5, 2008, to prepare the reply and for fees associated with establishing a guardianship for Will. Petitioners revised downward the request of Mr. Pinedo's fees to \$157,250.00. In turn, respondent filed a Sur-Reply to petitioners' Reply on September 29, 2008, which took exception to the compensation of guardianship fees and to the fees charged by Mr. Gage to respond to Respondent's Response.

The undersigned issued an Order dated October 23, 2008, whereby the parties were encouraged to settle the attorneys' fees and costs. Order, 2008 WL 5024924 (Fed. Cl. Spec. Mstr. 2008). In the same Order, both parties were ordered to respond to a number of issues arising from the petitioners' submitted application. Specifically, the Order stated how the undersigned intended to base her award, but clearly allowed both parties to reply to each of the following issues: (1) whether to compensate Mr. Pinedo for his work on the vaccine petition starting on March 20, 2006 (the date petitioners' civil suit against Merck was dismissed), (2) whether to deny the costs associated with Mr. Pinedo's admittance to practice in the U.S. Court of Federal Claims, (3) whether to deny Mr. Pinedo's request for travel expenses incurred during petitioners' civil suit against Merck, (4) whether to award fees claimed by petitioners for guardianship proceedings, (5) whether to reimburse Mr. Pinedo at an hourly rate of \$250, and (6) whether to consider the bulk of Mr. Gage's work under Avera v. Sec'y of HHS, 515 F.3d 1343 (Fed. Cir. 2008), was performed in Washington, D.C. and, therefore, to award him D.C. forum rates. In response to the Order, petitioners filed a response on November 10, 2008, and respondent filed a reply on November 25, 2008. The undersigned issued an Order on December 10, 2008, setting a December 17, 2008, deadline for petitioners to file additional documentation and a January 7, 2009, deadline for petitioners to file a sur-response to respondents' reply. Subsequent to a motion for an extension of time to file, petitioners filed the additional documentation and reply on March 2, 2009. On March 25, 2009, respondent filed a response to petitioners' memorandum, characterizing the March 2, 2009, filing as untimely and renewing objections previously raised. From the filings of petitioners and respondent in response to the Order, subsequent case law and status conferences, and additional analysis, the undersigned reached conclusions on all of the issues listed above in both this interim decision and the forthcoming final decision in this case.

On March 30, 2009, petitioners filed a Motion for Interim Attorney's [sic] Fees requesting that the "irreducible minimum" of interim fees and costs not in dispute be awarded. In a March 31, 2009, Order, the undersigned ordered petitioners to identify the amounts which the parties agreed were not in dispute. Included in that Order was the deadline of April 30, 2009, for petitioners to file the undisputed amounts and, alternatively, the deadline of May 14, 2009, for respondent to file a reply if disagreement remained over petitioners' stated undisputed amounts.

On April 3, 2009, petitioners filed a memorandum entitled "Proposed Irreducible Minimum." The requested amounts were as follows:

Petitioners, costs -	\$20,509.74
Richard Gage, P.C., costs -	\$20,406.47

T. Christopher Pinedo, costs - 429,747.93

T. Christopher Pinedo, fees - \$169,400.00

R. Louis Branton, (sic) costs - 522.92

Richard Gage, P.C. attorneys hours:

2006 - 69.2 hours

2007 - 69.4 hours

2008 - 55.4 hours

2009 - 21.2 hours

First, it appears that the amount for Mr. Pinedo's costs in the memorandum was a typographical error, as the dollar sign (\$) was omitted and instead, a "4" was inserted. Second, petitioners did not submit a dollar amount for Mr. Gage's interim fees, instead looking at the undersigned's decisions in Heflin v. Sec'y of HHS, No. 04-1541V, 2008 WL 5024923 (Fed. Cl. Spec. Mstr. 2008) and Kuttner v. Sec'y of HHS, No. 06-195V, 2009 WL 256447 (Fed. Cl. Spec. Mstr. 2009), where Mr. Gage received rates over the years 2006 - 2009. Mr. Gage proposed that the undersigned look to Heflin or Kuttner to arrive at an irreducible amount for his interim fees payment, but did not agree to the reasonableness of those hourly rates, maintaining his previously articulated assertion that the "forum rates rule" should apply in this case.

On April 7, 2009, petitioners filed an "Irreducible Minimum Calculation" to accompany the "Proposed Irreducible Minimum" memorandum filed on April 3, 2009. In this calculation, petitioners requested the following amounts:

Petitioners, costs - \$20,509.74

Richard Gage, P.C., costs - \$20,406.47

T. Christopher Pinedo, fees - \$8,525.00

Richard Gage, P.C.

If paid at Heflin rates: \$43,305

If paid at Kuttner rates: \$42,404

Omitted from the calculation were the requests for Mr. Bratton's costs and Mr. Pinedo's costs. The proposed irreducible minimum amount for Mr. Pinedo's fees was taken from the October 23, 2008, Order where the undersigned proposed to compensate Mr. Pinedo for 34.1 hours of work at \$250 an hour. At the time the undersigned issued this Order, the undersigned was considering higher rates than at present.

On April 16, 2009, respondent filed a Sur-Response to Petitioners' April 2, 2009 Filing, objecting to the hourly rates proposed by petitioners and the proposed use of "forum rates." On April 17, 2009, petitioners filed a Response to Respondent's April 16, 2009 filing, characterizing respondent's filing as "declin[ing] to respond to petitioners' interim fees and costs motion" and seeking an immediate Court award of interim fees and costs in the amount deemed appropriate by the undersigned. On April 23, 2009, the undersigned issued an Order which pointed out the inaccuracy of petitioners' statement regarding the perceived inactivity on the part of respondent, and further clarified that respondent had until the previously stated deadline of May 14, 2009, to

respond to petitioners' "proposed irreducible minimum" amounts.

On May 14, 2009, respondent filed her Reply to Petitioners' Interim Fees Motion and raised objection to payment of interim fees at that stage of the case, since the only matter left for resolution was the payment of fees and costs. While maintaining the objection to an interim award, respondent noted the following amounts to which she did not object:

Petitioners, costs -	\$20,509.74
Richard Gage, P.C., costs -	\$20,406.47
T. Christopher Pinedo, fees -	\$8,525.00
Richard Gage, P.C. fees -	\$29,300.00

Respondent did not object to Mr. Gage receiving compensation for his work "at an hourly rate not to exceed \$200.00 for all work done on this case," but respondent did take issue with the total number of hours submitted in the request. Respondent agreed to the following hours for the years:

2006 - 45.667 hours
2007 - 66.083 hours
2008 - 34.75 hours (through July 21, 2008)
2009 - respondent did not agree to any hours

In total, respondent did not object to an award of interim fees and costs totaling \$78,741.21.

Mr. Gage contacted the undersigned's chambers on March 17, 2010, to request an immediate telephonic status conference which was had with the respondent. Mr. Gage reiterated his request that interim fees to be paid in this case as soon as possible. The undersigned proposed an amount to both parties to settle this matter in its entirety. After conferring with both parties, it was determined that an agreement was not reached. On April 2, 2010, petitioners filed a Status Report and Renewed Motion for Interim Attorney's [sic] Fees. In that filing, petitioners sought the award of a payment of interim fees and costs, and also a final decision which addressed the issues raised in the renewed motion. Notably, the filing did not list dollar amounts sought for fees and costs in the renewed request. Also on April 2, 2010, petitioners filed an additional Status Report with updated entries for attorneys' fees sought from March 2009 through April 2010.

The undersigned issued an Order on April 7, 2010, which gave respondent until April 16, 2010, to respond to petitioners' renewed motion. Respondent filed its response on April 14, 2010, noting that subsequent to the March 17, 2010 status conference, respondent's attempts to contact petitioners' counsel resulted in "no response." Respondent also objected to the \$11,880.00 in additional fees submitted by petitioners' counsel and renewed her objection to the award of interim fees and costs since both entitlement and damages had been previously awarded in this case.

On April 26, 2010, petitioners' counsel filed a memorandum which renewed their motion for interim fees, but moreover, requested the undersigned issue a final decision on fees and costs that applied select aspects of Judge Bush's ruling in Hall v. Sec'y of HHS, 2010 WL 1840837 (Fed. Cl. 2010). On May 10, 2010, respondent filed a Response to Petitioners' April 26, 2010, Filing. Respondent noted that "petitioners place erroneous emphasis on the October 23, 2008 preliminary order issued by the special master in this case." Respondent correctly continued,

"In her [October 23, 2008,] Order offering the parties additional opportunity for briefing, the special master sketched a possible compensation scenario for petitioners' counsel. However, the special master made it very clear that the parties had an additional opportunity to brief the issues, and she invited further comments no less than seven separate times throughout the Order. Therefore, it is apparent that her views as to the compensation to be awarded in this case were preliminary. Since then, no less than an additional fourteen filings from the parties have ensued. Also, additional case law has developed on the issue of the hourly rates for petitioners' attorneys. See Masias v. HHS, No. 99-697, 2009 WL 1838979 (Fed. Cl. Spec. Mstr. 2009), aff'd, [slip. op.] (Fed. Cl. Dec. 10, 2009) (the difference between the local rate of \$220 and the forum rate of \$350 was very significant[;] therefore the local rate was awarded); Rodriguez v. HHS, No. 06-559V, 2009 WL 2569468 (Fed. Cl Spec. Mstr. 2009), aff'd, 2010 WL 675162 (Fed. Cl. Feb. 22, 2010) (the Davis County exception did not apply because the local market rate was higher than the forum rate). In light of the foregoing, the special master could further consider what an appropriate hourly rate might be, and come to a different conclusion than she initially did."

II. Analysis

Petitioners who receive compensation through the Vaccine Program are also entitled to receive reasonable attorneys' fees and other costs. 42 U.S.C. § 300aa-15(e)(1). Interim fees and costs are also awardable in the Vaccine Program. Avera. However, the discretion to award interim fees does not impose a requirement to award them. In Avera, the Federal Circuit denied an interim award to the attorney in that case because "there was only a short delay in the award pending the appeal." 515 F.3d at 1352. Typically, interim fees should not be allowed if attorneys' fees and costs are the only matters left for resolution in a case. However, the undersigned recognizes that under certain circumstances, it is appropriate to award partial fees and costs when the parties seem likely to seek appellate review, prolonging resolution of fees and costs.

In the Interim Attorneys' Fees and Costs decision in Hall v. Sec'y of HHS, No. 02-1052V, 2009 WL 3094881 (Fed. Cl. Spec. Mstr. 2009), aff'd, 2010 WL 1840837 (Fed. Cl. 2010), the special master noted various factors to consider when awarding interim attorneys' fees and costs. First, the petitioners must be entitled to an award of attorneys' fees and costs. Here, petitioners are entitled to such an award as the undersigned ruled in their favor on entitlement

and issued a damages decision.

The second factor for an interim award in Hall is that the interim fee and cost amounts can be calculated with relative ease. As in the case of final awards, the burden of demonstrating the reasonableness of the requested amounts rests squarely on petitioners. See Saunders v. Sec'y of HHS, 26 Cl. Ct. 1221, 1226 (1992), aff'd, 25 F.3d 1031 (Fed. Cir. 1994). Specifically, petitioners in this case must produce evidence to justify and substantiate the fees requested, the hours submitted, and the costs incurred.

Petitioners' counsel in this case filed an Application for Award of Attorney's [sic] Fees and Reimbursement of Costs on August 5, 2008. Respondent had issues of significant concern with the submission. Petitioners requested \$169,400.00 for Mr. Pinedo's fees in both the first Application for Award of Attorney's [sic] Fees and Reimbursement of Costs and in the first Petitioners' Motion for Interim Attorney's [sic] Fees. Respondent objected to any payment of Mr. Pinedo, or alternatively, to the payment of his requested rate and the number of hours he submitted for compensation. It was then the burden of petitioners to justify and substantiate the requested amount for Mr. Pinedo's fees and costs. In subsequent "irreducible minimum" submissions, petitioners declined to request interim reimbursement for Mr. Pinedo's costs, and acquiesced to an amount only suggested in an exploratory Order in 2008 for Mr. Pinedo's fees.

Petitioners' counsel's motion for interim attorneys' fees and costs filed on March 30, 2009, lacked any numbers, but asked for the undersigned "at the soonest possible date, [to] award[] a payment of interim fees and costs of the amounts that are not in dispute, the 'irreducible minimum.'" At the time of petitioners' request, it was not clear to the undersigned what amounts were not in dispute. It was not until April 3, 2009, that petitioners' counsel provided any numerical amount for the proposed irreducible minimum, which, of note, contained numerical errors. Four days later, petitioners' counsel altered the requested amount and revised downward the "irreducible minimum". Despite the revision, it did not appear that the parties had negotiated or reached an agreement on the amount submitted in petitioners' April 7, 2009, request.

While Mr. Gage has been awarded an hourly rate in this court in previous cases, and thus, those rates can be used to calculate a minimum hourly rate, the calculation of his hours in the interim award request was contested by respondent. Additionally, respondent did not agree to the minimum rates from the Heflin and Kuttner cases, but instead, agreed only to a minimum rate of \$200. It was only on May 14, 2009, that there was the first signal that petitioners' counsel and respondent had amounts to which neither party would object for an interim award.

While petitioners proposed an "irreducible minimum" amount for an interim award, that amount was disputed by respondent. That being the case, "the Special Master has an independent responsibility to satisfy [her]self that the fee award is appropriate and not limited to endorsing or rejecting respondent's critique." Duncan v. Sec'y of HHS, No. 99-455, 2008 WL 4743493 (Fed. Cl. 2008), Order on Petition for Review, August 4, 2008, at 2. The undersigned set out to perform a more thorough review of that which was submitted and to produce a final

decision, but realized that the matters in dispute were likely to be maintained by either party despite an award. Therefore, the undersigned has put forth in this interim award those amounts which have been easy to calculate and has deferred the issues requiring more discussion to the final decision.

The third factor in Hall considered whether the petitioner and attorneys would be denied compensation for a lengthy time absent an interim award. The undersigned had hoped the parties would resolve any discrepancies in the attorneys' fees and costs informally. It is now clear that the parties' efforts will not produce an agreement. In addition, because of the issues present in the award of attorneys' fees and costs in this case, it is virtually guaranteed that both sides will appeal. That being said and in the interest of the parties, the counsel, and the experts employed, an interim award is now appropriate.

III. Award of Attorneys' Fees and Costs

A. Petitioners' Costs

Consistent with General Order #9, petitioners William Stewart and Leanor Sotelo submitted proof that they personally paid costs in the amount of \$20,509.74 to pursue this matter. Respondent did not object to the award of these costs to petitioners. Therefore, in this interim decision, William Stewart and Leanor Sotelo are awarded \$20,509.74. The undersigned deems this amount to be reasonable.

B. Richard Gage's Costs

As stated in his first motion for attorneys' fees and in his subsequent motions for interim awards, Mr. Gage incurred costs of \$20,406.47. Respondent did not object to the award of these costs to Mr. Gage. Therefore, in this interim decision, Mr. Gage is awarded \$20,406.47 for his costs, an amount the undersigned deems to be reasonable and appropriate at this time.

C. Richard Gage's Fees

Mr. Gage first requested \$47,361.00 in fees, followed by a request of \$42,404 (calculated by following the amounts awarded to him in Kuttner) or \$43,305 (calculated by following the amounts awarded to him in Heflin). Because of an objection to the number of hours calculated by Mr. Gage, as well as the minimum rate to be used in the calculation, respondent agrees not to object to the interim award of \$29,300.00 for Mr. Gage's fees. The undersigned deems this amount to be reasonable and appropriate at this time.

D. Christopher Pinedo's Fees

The Vaccine Act provides that the special master shall award attorneys' fees and costs incurred during the proceedings so long as they are reasonable. Barnes v. Sec'y of HHS, No. 90-

1101V, 1999 WL 797468, at *2 (Fed. Cl. Spec. Mstr. 1999).

The Act permits the recovery of attorneys' fees and costs according to Section 15(e)(1):

- (1) In awarding compensation on a petition filed under section 300aa-11 of this title the special master or court shall also award as part of such compensation an amount to cover—
 - (A) reasonable attorneys' fees, and
 - (B) other costs,
- incurred in any proceeding on such petition.

Reasonable attorneys' fees are determined using a two-part process. The initial determination uses the lodestar method – “multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.” Avera, 515 F.3d at 1347-48 (quoting Blum v. Stenson, 465 U.S. 886, 888 (1984)). The second step is adjusting the lodestar calculation up or down. Id. at 1348.

Ultimately, the special master will determine the reasonableness of the request based on the case law and a review of the submission. See Perreira v. Sec'y of HHS, 27 Fed. Cl. 29, 34 (1992), aff'd, 33 F.3d 1375 (Fed. Cir. 1994) (“The special master is afforded wide discretion in determining the reasonableness of costs, as well as attorneys' fees.”). A special master may use her experience to review a petition for fees. Saxton v. Sec'y of HHS, 3 F.3d 1517, 1519 (Fed. Cir. 1993).

In the undersigned's Order dated October 23, 2008, the undersigned proposed to compensate Mr. Pinedo for 34.1 hours of work at \$250 an hour resulting in a total of \$8,525 for all of his fees pertaining to his work done in this case. Petitioners included this amount in their proposed irreducible minimum submission and respondent did not object to the award of that amount. The undersigned's preliminary thoughts on Mr. Pinedo's hourly rate, and about all other matters in the October 23, 2008, Order, were a starting point for discussion among the parties. The undersigned gave ample opportunity for both petitioners and respondent to present case law and arguments on why the matters discussed in the Order should be decided differently than initially presented. Since that Order, the parties have had extensive opportunity to present their arguments, additional cases on attorneys' fees and costs have been decided, and additional analysis has been conducted. Upon further consideration of the amount requested and the hourly rate, the undersigned now awards \$200 an hour for Mr. Pinedo's services.

This program does not have hourly rates for attorneys practicing in Corpus Christi, Texas, the forum where Mr. Pinedo practiced while representing petitioners in this case. Therefore, the undersigned considered the rate requested by examining both the reasonableness of the request and by using her discretion. Looking to provide the hourly rate that is “prevailing in the community for similar services by a lawyer”, Mr. Pinedo included affidavits of two attorneys who practice in complex litigation and who substantiated his billing rate of \$500 per hour. The affidavit of one attorney states, “In my opinion, it is reasonable and appropriate for Chris Pinedo to receive \$500.00 an hour for his work litigating *pharmaceutical cases*.” Pet'r.

Resp. to Resp't Resp., Tab C (emphasis added). Such may be the case for Mr. Pinedo's pharmaceutical cases, but this opinion of the reasonable and appropriate rate for pharmaceutical cases does not transfer to Vaccine Program cases.

Mr. Pinedo had not been a member of the bar of the U.S. Court of Federal Claims before he applied for admission solely to pursue this petition, and, therefore, there are no prior decisions in this forum to consider how much he should be reimbursed. His limited experience and reputation in vaccine cases do not warrant the fees he requests. Mr. Pinedo did not elect to try this case once he was admitted to practice before this Court, but instead transferred the case over to Mr. Gage, someone with both experience and skill in handling these cases. The fees requested by Mr. Pinedo exceed the amount that Mr. Gage has been awarded for trying cases in this forum by two and one-half times. It would be unreasonable to award Mr. Pinedo his requested fee per hour when he was new to the Program and, in fact, did not significantly advance his clients' case here. Additionally, none of Mr. Pinedo's work under the Program occurred in Washington D.C. or was complex litigation which would warrant a discussion of Laffey matrix rates.⁴

Relying on the undersigned's prior experience, the documentation submitted, and the rate awarded to similar attorneys new to the Program in 2006, the undersigned has now determined Mr. Pinedo's rate is \$200 an hour. Therefore, in this interim decision, Mr. Pinedo is awarded \$6,820.00 for his fees, an irreducible minimum amount the undersigned deems to be reasonable and appropriate, subject to further analysis in the final decision. Mr. Pinedo's costs will also be reviewed and awarded in the final decision.

IV. Summary

The clerk shall enter judgment for **an interim award totaling \$77,036.21 in this case.** The Clerk shall direct that the award be in the form of:

- a.) A check made payable solely to petitioners in the amount of **\$20,509.74**;
- b.) A check made payable jointly to petitioners and Mr. Richard Gage in the amount of **\$49,706.47** for his fees and costs;
- c.) A check made payable jointly to petitioners and Mr. T. Christopher Pinedo in the amount of **\$6,820.00** for his fees.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of

⁴ Laffey matrix, discussed in Avera, allows for the award of higher attorneys' fees based on the scale used in the District of Columbia Circuit for counsel practicing in the District of Columbia in the area of complex litigation. 515 F.3d at 1346.

the court is directed to enter judgment herewith.⁵

IT IS SO ORDERED.

Dated: May 17, 2010

s/ Laura D. Millman
Laura D. Millman
Special Master

⁵ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.