

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
**OFFICE OF SPECIAL MASTERS**

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TSUYOSHI and MARIE MIYAKE, as legal	*	
representatives of their minor daughter,	*	No. 06-459V
AGATA MIYAKE,	*	Special Master Christian J. Moran
	*	
Petitioners,	*	
	*	Filed: January 12, 2011
v.	*	
	*	
SECRETARY OF HEALTH	*	Attorneys' fees and costs; award in
AND HUMAN SERVICES,	*	the amount to which respondent does
	*	not object
Respondent.	*	
	*	
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**UNPUBLISHED DECISION AWARDING FEES AND COSTS**<sup>1</sup>

David L. Terzian, Esq., Rawls & McNelis P.C., Richmond, VA, for Petitioner;  
Glenn A. MacLeod, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

Petitioners Tsuyoshi and Marie Miyake, as legal representatives of their minor daughter, Agata Miyake (“Agata”), filed an application for attorneys’ fees and costs on January 11, 2011. The Court awards the amount to which respondent has not objected.

Petitioners claimed that the diphtheria-tetanus-pertussis vaccine caused Agata to suffer “an encephalopathy.” On September 8, 2006, the respondent conceded that compensation was appropriate. Respondent filed a Proffer on Award of Compensation on July 28, 2010. The parties received compensation based upon this proffer. Decision, filed August 4, 2010. Because

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

petitioners received compensation, they are entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

Petitioners seek a total of **\$123,973.11** in attorneys' fees and costs for petitioners' counsel. Additionally, petitioners filed a statement of costs in compliance with General Order No. 9, stating that they incurred **\$526.89** in out-of-pocket reimbursable expenses in pursuit of their claim. Respondent stated that she had no objection to this application for attorneys' fees and costs.

After reviewing the request, the court awards the following:

1. **A lump sum of \$123,973.11 in the form of a check payable to petitioners' attorney, David L. Terzian, of the law firm Rawls & McNelis, P.C., for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e).**
2. **A lump sum of \$526.89 in the form of a check payable to petitioners, Tsuyoshi and Marie Miyake, legal representatives of Agata.**

The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk shall enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

S/ Christian J. Moran

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Christian J. Moran  
Special Master

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<sup>2</sup> 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.