

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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DENVIL COSBY, as administrator of	*
the estate of LAURA L. COSBY,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF HEALTH AND	*
HUMAN SERVICES,	*
	*
Respondent.	*
*****	

Case No. 99-501V  
Special Master Christian Moran

Filed: August 14, 2009

attorney’s fees and costs, award  
in the amount to which  
respondent has not objected.

Clifford J. Shoemaker, Esq., Shoemaker and Associates, Vienna, Virginia, for petitioner;  
Ann Martin, Esq., United States Dep’t of Justice, Washington, D.C., for respondent.

**UNPUBLISHED DECISION AWARDING ATTORNEYS’ FEES AND COSTS<sup>1</sup>**

Petitioner filed an application for attorneys’ fees and costs on August 11, 2009. Petitioner is awarded the amount to which respondent has not objected.<sup>2</sup>

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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

<sup>2</sup> Respondent’s decision not to object to the amount requested essentially moots two issues. First, in an earlier pleading, respondent appeared to question whether the petition was supported by a reasonable basis. See Resp’t Resp. to Pet’r Mot. for Judgment on the Record, filed Dec. 15, 2008, at 2. Second, respondent appeared to question the identity of the petitioner. Id. However, respondent has not pursued these objections, and the record provides a sufficient

Petitioner has requested a total of **\$21,051.33** in attorneys' fees and costs. Additionally, petitioner filed a statement of costs in compliance with General Order No. 9, stating that he incurred no litigation costs. Respondent has no objection to the requested amount for attorneys' fees and costs.

After reviewing the request, the court awards **\$21,051.33** in attorneys' fees and other litigation costs. Those fees and costs are awarded as follows:

**A lump sum of \$21,051.33 in the form of a check payable to petitioner and petitioner's attorneys, Shoemaker and Associates.**

The court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment accordingly.<sup>3</sup>

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basis for the undersigned to find the petition was brought in good faith and upon a reasonable basis.

In addition, the documents supporting petitioner's motion for attorneys' fees indicate that petitioner seeks compensation for a person working at Shoemaker & Associates, identified as "MG." See Pet'r Appl'n at pdf page 9-10. It is assumed that "MG" refers to Mark Greenspan, who has been included with applications for attorneys' fees and costs previously.

In previous applications before the undersigned, petitioners have treated Dr. Greenspan as a "cost." This application appears to be the first to the undersigned's knowledge in which Dr. Greenspan was presented as working under the "Shoemaker & Associates" letterhead.

Whether Dr. Greenspan should have been listed under the "Shoemaker & Associates" letterhead is not clear. For example, if Dr. Greenspan was not an owner or employee of Shoemaker & Associates, his activities may have been properly classified as a "cost," incurred by attorneys as opposed to a "fee" earned by attorneys. Moreover, simply presenting Dr. Greenspan's activities as work performed by someone within the law firm and not as a separately retained consulting (non-testifying) expert does not change the analysis. If Dr. Greenspan's work is unreasonable, it will not be compensated. See Riggins v. Sec'y of Health & Human Servs., No. 99-382V, 2009 WL 1949120, at \*15 (Fed. Cl. Spec. Mstr. June 15, 2009), motion for review filed (July 15, 2009); Valdes v. Sec'y of Health & Human Servs., No. 99-310V, 2009 WL 1456437, at \*8 (Fed. Cl. Spec. Mstr. Apr. 30, 2009) (citing cases), motion for review filed (June 1, 2009).

Due to respondent's failure to object and due to the relatively modest amount requested for work performed by Dr. Greenspan, the undersigned finds the requested amount reasonable in this particular case.

<sup>3</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.

**IT IS SO ORDERED.**

S/ Christian J. Moran

Christian J. Moran

Special Master