

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-328V

Filed: July 16, 2013

***** NOT TO BE PUBLISHED
LUIS F. LAMBOY, *
*
* **Special Master Zane**
*
* Stipulation; attorneys' fees and costs
Petitioner, *
*
*
v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *
*

F. John Caldwell, Jr., Maglio Christopher & Toale, P.A., Sarasota, FL, for Petitioner; Melonie J. McCall, United States Dep't of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS¹

On July 11, 2013, the parties in the above-captioned case filed a Stipulation of Facts Concerning Attorneys' Fees and Costs ("Stipulation") memorializing their agreement as to the appropriate amount of attorneys' fees and costs in this case. Petitioner requests a total award of \$125,232.00, to which Respondent does not object. Petitioner's counsel represents that

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, § 205, 44 U.S.C. § 3501 (2006). The decisions of the special master will be made available to the public with the exception of those portions that contain trade secret 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. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available. If the special master, upon review of a timely filed motion to redact, agrees that the identified material fits within the categories listed above, the special master shall redact such material from the decision made available to the public. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

Petitioner incurred no personal litigation costs. In accordance with 42 U.S.C. § 300aa-15(e), the undersigned awards the amount to which Respondent does not object.

Petitioner, Luis F. Lamboy, alleges that he suffered from a chronic inflammatory demyelinating polyneuropathy (“CIDP”) as a consequence of his receipt of the influenza (“flu”) vaccine, which is a vaccine contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a), and which he received on or about November 9, 2007. Petitioner alleges that he experienced the residual effects of this injury for more than six months. Petitioner also represents that there have been no prior awards or settlement of a civil action for these damages. A decision awarding compensation based upon the parties’ stipulation was entered on July 15, 2013.

Although Respondent did not concede the claim, the parties, nonetheless, settled the matter, and an award of compensation was made. Because Petitioner had been awarded compensation, Petitioner is entitled to an award of reasonable attorneys’ fees and costs. 42 U.S.C. § 300aa-15(e). The undersigned also finds that the stipulated amount of \$125,232.00, in attorneys’ fees and costs, is reasonable based on the stage at which this matter was settled. Based on the request’s reasonableness and pursuant to Vaccine Rule 13, the undersigned **GRANTS** the parties’ request as outlined in the Stipulation. The judgment shall reflect that Petitioner is awarded attorneys’ fees and costs as follows:

in a check made payable jointly to Petitioner (Luis F. Lamboy) and Petitioner’s counsel (F. John Caldwell, Jr., of the law firm Maglio Christopher & Toale, P.A.), the amount of \$125,232.00, pursuant to 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.²

IT IS SO ORDERED.

s/ Daria Zane
Daria J. Zane
Special Master

² 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.