

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-826V

Filed: April 13, 2012

RODGER PLEMMONS,

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Petitioner,

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Special Master Zane

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v.

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Uncontested attorneys' fees and costs

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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F. John Caldwell, Jr., Maglio, Christopher & Toale, P.A., Sarasota, FL, for Petitioner;
Lisa A. Watts, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

On April 12, 2012, the parties in the above-captioned case filed a Stipulation of Fact Concerning Attorneys' Fees and Costs (Stipulation) memorializing their agreement as to the appropriate amount of attorneys' fees and costs in this case. Pursuant to the stipulation of the parties, Petitioner requests a total award of \$22,255.07. In accordance with General Order #9, Petitioner incurred no personal litigation costs. In accordance with 42 U.S.C. §§ 300aa-15(b) and (e)(1), the undersigned hereby awards this amount to which Respondent does not object.

Petitioner, Rodger Plemmons, alleged that he suffered from Guillain-Barre Syndrome (GBS) that was caused-in-fact by his receipt of the influenza (flu) vaccine administered to him on October 8, 2008, and which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Petitioner was unable to secure an expert witness to establish causation and thus, requested a ruling on the record. In the ruling on this motion, compensation was denied. *Unpublished Ruling on Entitlement*, dated Nov. 16, 2011.

¹ The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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). Otherwise, the entire ruling will be available to the public. Id.

Despite the denial of compensation, Petitioner may still be awarded attorneys' fees and costs, when his petition is brought in good faith and has a reasonable basis. *See* 42 U.S.C. § 300aa-15(e)(1); *see generally Cloer v. Sec'y of Health & Human Servs.*, No. 09-5052V, 2012 WL 1202044(Fed. Cir. Apr. 11, 2012). Here, at the outset of this case, Petitioner appeared to have a reasonable basis, and counsel for Petitioner spent time preparing the case and gathering medical records for Petitioner. But, when counsel was unable to secure an expert that could support Petitioner's claim for causation, it became evident to counsel that the case could not proceed. At that point, counsel for Petitioner took reasonable action by filing the motion for ruling on the record to get a quick resolution to the matter, thereby minimizing additional expenditure of resources and avoiding additional costs and expenses. In so doing, Petitioner's counsel acted in good faith and had a reasonable basis for proceeding in that manner. Respondent does not contend that Petitioner failed to satisfy these criteria. Thus, Petitioner is eligible for an award of attorneys' fees and costs.

The undersigned finds that the stipulated amount of \$22,255.07, 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** Petitioner's counsel's petition for fees, to which Respondent has acquiesced. The judgment shall reflect that Petitioner is awarded attorneys' fees and costs as follows:

in a check made payable jointly to Petitioner (Rodger Plemmons) and Petitioner's counsel (F. John Caldwell, of Maglio, Christopher & Toale, PA), in the amount of \$22,255.07.

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.