

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 06-775V  
Filed: May 14, 2009

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BRIGITTE MUELLER,

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Petitioner,

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v.

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SECRETARY OF HEALTH AND  
HUMAN SERVICES,

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Respondent.

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Interim Petition for Attorney's  
Fees and Costs; Partial Grant of  
Requested Amount; Deferred  
Consideration of Contested  
Portion of Request

### INTERIM FEES AND COSTS DECISION<sup>1</sup>

Petitioner filed petitioner's Motion for Interim Fees and Costs on January 28, 2009. Petitioner's Motion for Interim Fee's and Costs (hereinafter P Interim Fees), filed Jan. 28, 2009. Respondent filed respondent's Respondent to petitioner's Motion for Interim Fees requesting denial of petitioner's request for an interim award of attorney's fees and costs, and to the extent the undersigned deems it appropriate to award any fees and costs at this juncture, requests that the undersigned use his discretion to evaluate the evidence and "award only a *reasonable* amount" in attorney's fees and costs. Respondent's Opposition to Petitioner's Application for Interim Attorneys' Fees and Costs (hereinafter R Response to Interim Fees) at 14, filed Feb. 17, 2009 (Nunc Pro Tunc ). Petitioner filed a Reply on March 12, 2009. Supplemental Declaration of Lisa A. Roquemore in Reply to Respondent's Opposition to Interim Fees and Costs (hereinafter P Reply), filed March 12, 2009. At the status conference was held on April 13, 2009 the parties discussed, amongst other issues, petitioner's request for interim fees. Minute Entry for Status Conference held on April 13, 2009, entered on April 17, 2009. A follow-up status conference was held on May 11, 2009, where the parties represented that they were unable to

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<sup>1</sup>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, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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 decision will be available to the public. Id.

informally resolve interim fees. Minute Entry for Status Conference held on May, 11, 2009, entered on May 13, 2009. However, the parties represented that respondent does not object to awarding the following fees and costs based on the currently-pending application, \$40,000.00 in attorney's fees, \$830.88 in attorney's costs and \$2,925.98 in petitioner's costs, with the understanding that all of petitioner's remaining demands and respondent's objections thereto are preserved for later determination by the court.

As indicated in the status conferences held on April 13, 2009 and May 11, 2009, the undersigned urged the award of interim fees and costs that are not in dispute, with the disputed portions of the interim fees and costs request to be resolved at a later date. See Masias v. Sec'y of HHS, No. 99-697V, 2009 WL 899703 (Fed. Cl. Spec. Mstr. Mar. 12, 2009); Shaw v. Sec'y of HHS, No. 01-707V, 2009 WL 1010058 (Fed. Cl. Spec. Mstr. Mar. 27, 2009). After reviewing the parties proposal, the court finds an award in the amount of \$43,756.86 in interim attorney's fees and costs to be reasonable. This amount represents the portion of the request to which respondent does not object. Petitioner's remaining demands and respondent's objections thereto are preserved for later consideration by the court. The court thanks the parties for their cooperative efforts in this matter.

Accordingly, pursuant to Vaccine Rule 13, petitioner is hereby awarded a **total of \$43,756.86 in interim attorney's fees and costs**. The judgment shall reflect that petitioner is awarded \$2,925.98 for her costs in a check made payable to petitioner; petitioner is awarded \$830.88 for her counsel's costs in a check made payable jointly to petitioner and her counsel; and, petitioner is awarded \$40,000.00 for her counsel's fees in a check made payable jointly to petitioner and her counsel. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment according to this decision.<sup>2</sup>

**IT IS SO ORDERED.**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Chief 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.