

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: March 26, 2008)

DO NOT PUBLISH

_____)	
AUSTIN GUNTER,)	
)	
Petitioner,)	
)	
v.)	No. 02-0519V
)	Attorneys' Fees; Attorneys' Costs
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS¹

Petitioner, Austin Gunter (Mr. Gunter), seeks an award of \$29,387.44 in attorneys' fees and attorneys' costs for an action that he pursued under the National Vaccine Injury Compensation Program (Program).² See Petitioner's Application for Fees and Costs (Fee Petition), filed February 27, 2008. Mr. Gunter represents that he did not incur any personal expenses as defined by General Order No. 9. See Petitioner and Counsel Statement (Statement), filed March 24, 2008. Respondent does not object. See Respondent's Status Report, filed March 26, 2008.

Mr. Gunter did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" Mr. Gunter's "reasonable attorneys' fees and other costs" as long as "the special master or court

¹ 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.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

determines that” Mr. Gunter possessed “a reasonable basis for the claim” and that Mr. Gunter filed the petition “in good faith.” § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master’s “discretion is not without limit.” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent “special circumstances,” the special master “should ordinarily” award attorneys’ fees and costs to an unsuccessful petitioner. *Id.*, *citing Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully the record as a whole. Based upon his experience, the special master determines that an award of \$29,387.44 in attorneys’ fees and attorneys’ costs is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Mr. Gunter’s favor for \$29,387.44 in attorneys’ fees and attorneys’ costs. The judgment shall reflect that Mr. Gunter’s attorney of record, Ronald C. Homer, Esq. (Mr. Homer), may collect \$29,387.44 from Mr. Gunter. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

s/John F. Edwards
John F. Edwards
Special Master