

# OFFICE OF SPECIAL MASTERS

(Filed: February 2, 2007)

DO NOT PUBLISH

_____ GOPINATHA McALPINE,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 02-0720V
	)	Attorneys' Fees; Attorneys' Costs
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

## DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS<sup>1</sup>

Petitioner, Gopinatha McAlpine (Mr. McAlpine), seeks an award of attorneys' fees and attorneys' costs for an action that he pursued under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> Mr. McAlpine filed an initial application for attorneys' fees and attorneys' costs on December 11, 2006. *See generally* Application for Attorneys' Fees & Costs (Fee Petition), filed December 11, 2006. Mr. McAlpine amended his Fee Petition on January 31, 2007. *See generally* Joint Status Report (JSR), filed January 31, 2007. Mr. McAlpine requests now \$25,587.90 in attorneys' fees and attorneys' costs for his current attorney of record, Clifford J. Shoemaker, Esq. (Mr. Shoemaker), and \$3,237.66 in attorney's fees and attorney's costs for his former attorney of record, Russell E. Nordstrom, Esq. (Mr. Nordstrom). *See* JSR at 1. Mr. McAlpine notified informally the special master that Mr. McAlpine waives a request for personal expenses as defined

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<sup>1</sup> 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.*

<sup>2</sup> 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.

by General Order No. 9. Respondent does not object to Mr. McAlpine's Fee Petition, as amended. See JSR at 1.

Mr. McAlpine 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. McAlpine's "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" Mr. McAlpine possessed "a reasonable basis for the claim" and that Mr. McAlpine 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. The special master determines that the Fee Petition, as amended, is reasonable. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Mr. McAlpine's favor for \$28,825.56 in attorneys' fees and attorneys' costs.<sup>3</sup> The judgment shall provide that Mr. Shoemaker may collect \$25,587.90 from Mr. McAlpine. In addition, the judgment shall provide that Mr. Nordstrom may collect \$3,237.66 from Mr. McAlpine. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send Mr. McAlpine's copy of this decision to Mr. McAlpine by overnight express delivery.

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John F. Edwards  
Special Master

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<sup>3</sup> \$25,587.90 + \$3,237.66.