

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-276V

Filed: April 29, 2011

For Publication

APRIL RILEY,

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Petitioner,

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v.

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Attorneys' Fees and Costs;
Reasonable basis, good faith;
Two injections, Kenalog, Tetanus

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Ronald C. Homer, Boston, MA, for petitioner.

Darryl R. Wishard, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

Petitioner filed a petition on April 30, 2009 under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that she had pain, scarring on her upper left arm, and emotional distress after receiving tetanus toxoid on May 2, 2006. Facts showed that petitioner received a steroid Kenalog in September 2006 followed by an abscess in her left deltoid, about which she complained to a doctor on November 2, 2006.

On April 1, 2010, petitioner filed a Motion for Decision Dismissing her Petition. In a decision dated April 6, 2010, the undersigned dismissed the petition for failure to prove petitioner's allegations, granting petitioner's motion.

On June 15, 2010, petitioner filed an Application for Attorneys' Fees and Costs, seeking \$18,324.50 in attorneys' fees and \$705.07 in costs (composed of attorneys' costs of \$593.12 and

¹ Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

petitioner's costs of \$111.95). Costs expended by petitioner were also included in the statement of petitioner and her counsel filed on June 15, 2010.

On June 22, 2010, respondent filed Objections to Petitioner's Fee Application, requesting that the special master deny *in toto* petitioner's application because petitioner should have known that Kenalog, not tetanus diphtheria ("Td"), was the cause of her arm abscess. R Objections, p. 7. If, however, the special master were to award fees, respondent objected that petitioner's billed hours were excessive. *Id.* These hours constituted 37,8 attorney hours, 24.9 law clerk hours, and 53 paralegal hours. *Id.* at 8.

On August 2, 2010, petitioner filed her Reply to the Respondent's Objections to Petitioner's Fees Application, stating she is entitled to an award of reasonable attorneys' fees and costs because she filed her petition in good faith and with a reasonable basis for her claim at every stage of the process. P Reply, p. 1. Specifically, petitioner claims that a reasonable basis is supported by the procedural history of her case and her medical records, which implicated her Td vaccination as the cause of her injury. P Reply, pp. 8-19.

On August 19, 2010, petitioner filed her First Supplemental Application for Attorneys' Fees, seeking \$4,380.30 incurred primarily in litigating the reasonable basis of her claim. On August 20, 2010, respondent filed her Objections to Petitioner's First Supplemental Application for Attorneys' Fees, requesting the special master deny them in their entirety, based on a lack of reasonable basis, or, in the alternative, exercise her broad discretion to find a reasonable number of hours for the work of petitioner's attorneys and staff. R Objections, p. 2. On August 25, 2010, petitioner filed a Reply to the Respondent's Objections to Petitioner's First Supplemental Application for Attorneys' Fees and Costs, reiterating her prior assertion of good faith and reasonable basis. R Reply, p. 3.

The total amount sought by petitioner is \$22,704.80 in attorneys' fees and \$705.07 in costs.

DISCUSSION

Respondent's opposition to petitioner's receiving any attorneys' fees and costs at all is based on the question whether or not petitioner had good faith in filing her petition and had a reasonable basis to go forward because the information in the medical records shows that the injection most closely related in time to petitioner's developing a deformity in her deltoid was her Kenalog injection, not her Td vaccination months before. Respondent defends her objections based on three arguments: (1) petitioner's counsel represented petitioner for 27 months before her petition was filed; (2) petitioner's counsel failed to obtain expert review of her claim before filing her petition; and (3) petitioner's medical records revealed that her injury was not due to Td vaccine, but a Kenalog injection. *See* Resp. 4-6. Respondent advances the secondary argument that "reject" letters sent to petitioner in July and September of 2008 appear to represent counsel's acknowledgment of a lack of a reasonable basis. Resp. at 6. Each of these arguments, respondent claims, should be grounds for denial of petitioner's fee application in its entirety.

Respondent makes the same arguments, incorporated by reference, in her opposition to petitioner's supplemental application for fees.

a. Good Faith and Reasonable Basis

The Vaccine Act mandates the award of reasonable attorneys' fees and costs to successful petitioners. § 300aa-15(e). If a petitioner does not establish entitlement to compensation, the special master may award reasonable attorneys' fees and costs if the petition was brought in good faith and there was a reasonable basis for the claim. § 300aa-15(e)(1); *Saxton v. Sec'y of HHS*, 3 F.3d 1517, 1520-21 (Fed. Cir. 1993). Even if good faith and a reasonable basis are found, a fee award is not mandatory. § 300aa-15(e)(1); *Di Roma v. Sec'y of HHS*, No. 90-3277V, 1993 WL 496981, at *1 (Fed. Cl. Spec. Mstr. 1993).

Whether a petition was filed in good faith is a subjective inquiry. Id. It is satisfied if the petitioner honestly believes she has suffered a compensable vaccine injury. Id. The good faith requirement is an easy test to satisfy. In this case, petitioner believed that she suffered a vaccine injury, thereby satisfying the good faith requirement for filing the petition. The more difficult question is whether there was a reasonable basis to go forward after she filed her petition.

The term "reasonable basis" is not defined in the statute or directly by the case law. "[T]he 'reasonable basis' requirement 'is objective, looking not at the likelihood of success of a claim but more to the feasibility of the claim.'" *Turner v. Sec'y of HHS*, No. 99-544V, 2007 WL 4410030, at *6 (Fed. Cl. Spec. Mstr. 2007) (quoting *Di Roma*, 1993 WL 496981, at *1). Counsel has an ongoing obligation to ensure that the claim is founded upon a reasonable basis. "However, when the reasonable basis that may have been sufficient to bring the claim ceases to exist, it cannot be said that the claim is maintained in good faith." *Perreira v. Sec'y of HHS*, 33 F.3d 1375, 1377 (Fed. Cir. 1994).

Typically, petitioners are permitted to supplement their petitions after they are filed. Although it is reasonable to permit petitioners to supplement their petitions in order to meet the statutory requirements, "it is also reasonable to put on them the risk of not being compensated for attorneys' fees and costs if they file a petition without the necessary supporting documentation and are later unable to produce such documentation." *Spagiere v Sec'y of HHS*, No. 90-468V, 1991 WL 146284, at *2 (Fed. Cl. Spec. Mstr. 1991). Experienced counsel should be able to discern when a case lacks the necessary underpinnings, and "rather than waste the court's time and efforts, an attorney should use reasoned judgment in determining whether to . . . pursue a claim." *Murphy v. Sec'y of HHS*, 30 Fed. Cl. 60, 62 (1993), *aff'd*, 48 F.3d 1236 (Fed. Cir. 1995). Counsel has a "duty to the court to avoid frivolous litigation." *Perreira*, 33 F.3d at 1377.

To determine whether a claim has a reasonable basis, courts look to a number of factors, "including the factual basis, the medical support and jurisdictional issues." *Di Roma*, 1993 WL 496981, at *1. Claims lack a reasonable basis when petitioners, after having an opportunity to submit evidence, produce neither medical records nor an expert report that is legally sufficient to support causation. *Perreira*, 33 F.3d at 1377 (affirming special master's finding that once

petitioner's only expert submitted opinion that was legally insufficient to establish causation, the case no longer had reasonable basis); *Everett v. Sec'y of HHS*, No. 91-1115, 1992 WL 35863 (Fed. Cl. Spec. Mstr. 1992) (denying fees when the medical records did not support petitioner's claim of an adverse reaction to vaccination and no expert report was filed). This is not to say that a petitioner must establish causation to show a claim has a reasonable basis. A reasonable basis can exist, for example, where an expert interprets ambiguous evidence to reach a result that differs from the court's interpretation or where the trier of fact decides that the strength of testimony is insufficient. See *Stevens v. Sec'y of HHS*, No. 90-221V, 1992 WL 159520, at *3 (Fed. Cl. Spec. Mstr. 1992).

Historically, special masters have been "quite generous in finding a reasonable basis for petitioners." *Turner*, 2007 WL 4410030, at *8 (quoting *Turpin v. Sec'y of HHS*, No. 99-564V, 2005 WL 1026714, at *2 (Fed. Cl. Spec. Mstr. 2005)). However, this generosity does not extend to situations in which counsel fails to investigate the facts or continues to prosecute a case after counsel should have recognized that the evidence was manifestly insufficient. See, e.g., *Perreira*, 33 F.3d at 1377 (denying fees incurred at hearing when petitioner's counsel knew his expert's opinion was legally insufficient).²

The submission of an expert report by itself does not establish a reasonable basis for the claim; the facts of the case must corroborate the report. *Perreira*, 33 F.3d at 1377; *Stevens*, 1992 WL 159520 (denying fees based on lack of reasonable basis when expert report was based solely on mother's affidavit, with no reference to the medical records). However, "the [Vaccine] Program's interest in promoting attorney representation in vaccine cases, as contemplated by the attorneys' fees provision of the statute, must be balanced carefully against the court's examination of the reasonableness of the basis for bringing the vaccine petition." *Turner*, 2007 WL 4410030, at *11.

b. When Petitioner's Claim had a Reasonable Basis

To determine if a reasonable basis to go forward existed and, if so, when it was no longer reasonable to go forward, the undersigned finds that the procedural history is highly relevant. Ms. Riley first contacted counsel on January 3, 2007. Tab A, p. 4, attached to P Application for Attorneys' Fees and Costs. Counsel accepted her case on January 31, 2007. *Id.* Following the acceptance of petitioner's case, counsel forwarded her a "stage one packet." *Id.* This package required her to complete a comprehensive list of medical facilities visited from three years prior to her vaccination until the present. Although counsel contacted her multiple times, petitioner did not return this packet until October 12, 2007. *Id.* at p. 5. During the next several months,

² See also *Murphy*, 30 Fed. Cl. at 61 (affirming special master's finding of no reasonable basis when the medical and other written records contradicted the claims in the petition). See generally *Stevens*, 1992 WL 159520, at **3-4 (denying fees when counsel relied on a medical expert's opinion that had "no plausible factual support" and counsel failed to investigate adequately the facts); *Collins v. Sec'y of HHS*, No. 91-821V, 1992 WL 164512 (Fed. Cl. Spec. Mstr. 1992) (denying fees when the injuries alleged in the petition were not supported by medical records or expert opinion); cf. *Turner*, 2007 WL 4410030, at *10 (finding a reasonable basis when, after filing a skeletal petition, counsel promptly investigated the case, and "counsel [did] not unduly prolong[] the proceeding but [] moved promptly for judgment on the record" after being unable to find an expert).

counsel collected the medical records identified in the stage one packet.

Petitioner's case was not ready for "stage two" until June 2008, when counsel discovered there were medical records missing. Counsel made numerous attempts to contact petitioner unsuccessfully. *Id.* at p. 6. On July 18, 2008, counsel sent petitioner a "reject letter" due to her unresponsiveness. On July 24, 2008, petitioner contacted her counsel with updated information. On September 3, 2008, counsel held a case meeting where missing medical records and client compliance was discussed. *Id.* at p. 8. On September 11, 2008, counsel sent petitioner another reject letter. Five days later, on September 16, 2008, petitioner contacted her counsel and provided additional information and updated contact information. From November 5, 2008 through the next several months, counsel continued to collect the remaining medical records from petitioner. *Id.* at pp. 8-9. By April 17, 2009, counsel determined that the only remaining medical records outstanding were not vital to the case. Thereafter, on April 30, 2009, petitioner filed her petition under the Vaccine Act. *Id.* at pp. 8-10.

During the next several months, counsel on both sides engaged in litigative risk settlement conferences, and status conferences on June 17, 2009 and July 9, 2009. *Id.* at p. 12. During those status conferences, respondent's counsel indicated that his client had not yet evaluated the case, but would do so by the Rule 4(c) deadline on August 3, 2009. On August 4, 2009, respondent filed a Rule 4(c) Report, which *inter alia* requested that petitioner file additional records. Petitioner aptly points out that respondent's report did not mention the lack of a reasonable basis.

Petitioner's counsel e-mailed respondent regarding a possible litigative risk settlement on August 11, 2009. A few days prior to the September 2, 2009 status conference, respondent's counsel indicated his client would defer any decision pending petitioner's response to the Rule 4(c) Report requests for additional records. *Id.* at p. 13. During the September 2, 2009, status conference, however, the parties agreed to defer the filing of any medical expert reports pending the results of any litigative risk settlement discussions. *See* Order of September 2, 2009. On October 2, 2009, petitioner filed her Response to the Respondent's Request for Additional Information. P Application, Tab A, p. 13. During the next status conference on October 26, 2009, respondent's counsel indicated his client was engaged in reviewing petitioner's response to the Rule 4(c) requests, and would contact petitioner shortly regarding any litigative risk settlement. *See* Order of October 26, 2009. During the November 24, 2009 status conference, the parties informed the special master they were unable to reach a litigative risk settlement. The court ordered petitioner to file a medical expert report by January 8, 2010. *See* Order of November 30, 2009. Subsequently, on January 8, 2010 and February 9, 2010, petitioner filed unopposed motions for extension of time to file her medical expert report. The undersigned granted these motions. *See* Orders of January 12, 2010 and February 17, 2010.

Prior to the next status conference, both counsel communicated. Respondent's counsel informed petitioner's counsel that he planned to question the reasonable basis of petitioner's case. On March 1, 2010, at petitioner's request, the court conducted a digitally recorded status conference. During this conference, the parties discussed the issue of reasonable basis.

Petitioner's counsel emphasized the importance of her medical records, which associated her tetanus vaccination with her injury. Petitioner's counsel also noted an April 16, 2008 dermatology record, which recorded that she had a tetanus shot in 2006, and was likely suffering some "nerve trapping related to scarring." *See* P Ex. 4, p. 2. Respondent disagreed about a reasonable basis, arguing that petitioner's September 5, 2006 Kenalog injection, not her Td vaccination, was the cause of her injury. The court ordered, *inter alia*, petitioner to "file an expert report and CV from a dermatologist by Monday, April 12, 2010." Order of March 1, 2010.

On April 1, 2010, petitioner filed a motion for a decision dismissing her petition as she was unable to secure a medical expert report in her case. On April 6, 2010, the court issued a decision dismissing petitioner's case. Judgment entered on May 26, 2010.

Based on the foregoing procedural history, respondent's first argument, relating to the delay in filing as well as counsel's "reject letters" are unavailing. Petitioner's counsel are experienced in the Vaccine Program and followed a well-regimented set of procedures in order to advance their client's case. They have used these procedures in many other vaccine cases and there is no reason to doubt they followed the same procedures here. Unfortunately, petitioner was difficult to reach and prolonged providing assistance to her own counsel in pursuing her case for a considerable period of time in obtaining required medical records. This lack of communication, through no fault of counsel, was the cause of both the delay in filing the petition as well as the "reject letters." Challenging the speed with which counsel and petitioner communicate with one another, unless the statute of limitations is violated, has no bearing on the substantive merits of the case, and is irrelevant on whether there was a reasonable basis to go forward.

Respondent's second argument against payment of fees and costs is that petitioner did not obtain expert review of her petition before filing. However, expert review is not required prior to the filing of a petition and petitioner does not have to submit an expert affidavit with the petition. Section 300aa-11(c)(1) requires an affidavit be filed with documentation, but does not specify it be an expert affidavit. This provision has always been interpreted as being petitioner's affidavit. Petitioners for the most part do not file expert reports with their petitions in the Vaccine Program.

Respondent argues that petitioner's medical records never supported the assertion that tetanus toxoid, rather than a Kenalog-10 injection, injured her. The undersigned finds this argument generally unavailing, at least at the outset of the case. It is noteworthy that petitioner accumulated 12 sets of medical records prior to filing her case, some of which arguably supported her position that tetanus toxoid injured her. Moreover, these records conflated the Kenalog shot with a Depo Provera shot, and are anything but clear overall.

The medical records petitioner initially filed contain references to her injuries and her tetanus vaccination. On December 8, 2006, Dr. Dean Quimby stated petitioner "complains of a deepening 'divot' of the left arm . . . She did have a tetanus shot in that same area in May of this y[ea]r." Pet. Ex. 1, p. 4. An x-ray report from December 18, 2006 of petitioner's left arm from Lancaster General Hospital stated: "Clinical history: Left humeral pain and skin breakdown after Tetanus shot." *Id.* at 33. On January 2, 2007, during a punch biopsy, Dr. Quimby noted:

“ASSESSMENT: 1) Skin atrophy probably secondary to fat necrosis, possibly secondary to Tetanus show received within the past year.” *Id.* at 3. During petitioner’s February 16, 2008 visit with Dr. Quimby, he wrote: “Complains of left arm pain worse with lifting. . . .She had a reaction to a tetanus shot a y[ea]r ago with atrophy of the fatty layer, now improved. . . . The Chief Complaint is: Left upper arm reaction to tetanus shot last year, would like dermatology referral. . . .” P Ex. 1, p. 45. Finally, on April 16, 2008, a dermatology consultation stated: D[iagnosis] #1: Left upper arm atrophy, now with [questionable] scarring and pain. This patient had a tetanus shot in late [sic-mid] 2006 that resulted in what appears from the photograph that accompanied her to be an area of traumatic fat necrosis and deep cutaneous atrophy. This has slowly resolved to a normal contour in the ensuing 18 months. The patient however still has a painful area in the left upper arm with deep pressure. . . . We discussed that what likely she’s sensing is some nerve trapping related to scarring.” P Ex. 4, p. 2.

On the other hand, by November 21, 2007, petitioner’s counsel had also obtained records from Diamontoni and Associates (P Ex. 1) which revealed that petitioner had not only received a Td vaccination on May 2, 2006, but also a Kenalog-10 vaccination on September 5, 2006, and first complained of symptoms on November 2, 2006. Respondent argues that “[a] simple internet search for Kenalog-10 using Google” would have shown that “cutaneous and subcutaneous atrophy” is a known adverse reaction to Kenalog. Respondent also argues that the timing of petitioner’s injuries was medically appropriate for the Kenalog injection.

The substantive law of vaccine injury entitlement is highly relevant here. In order for a petitioner to establish by preponderant evidence that a vaccine caused an “off-table” injury, the vaccine must be the “but-for” cause of the petitioner’s injury and a substantial factor in bringing about that injury. *Shyface v. Sec’y of HHS*, 165 F.3d 1344, 1352 (Fed. Cir. 1999) (emphasis added). The Federal Circuit, the United States Court of Federal Claims, and the special masters have repeatedly held that the “substantial factor” requirement of *Shyface* means that a vaccine need not be the “sole” cause or even the “predominant” cause of the injury. It need only be a substantial factor. Petitioner’s counsel collected numerous pieces of evidence from treating physicians that linked petitioner’s tetanus toxoid with her injuries. This was important evidence, particularly in light of the Federal Circuit’s descriptions of treating physician opinions as “quite probative.” *Capizzano v. Sec’y of HHS*, 440 F.3d 1317, 1326 (Fed. Cir. 2006); *see also Andreu v. Sec’y of HHS*, 569 F. 3d 1367 (Fed. Cir. 2009). Although a detailed search into the effects of Kenalog may have shown that Kenalog was the more likely culprit, and even if this realization is the reason petitioner could not find a medical expert willing to write a supportive report, petitioner’s counsel had an ethical duty to pursue diligently petitioner’s case in obtaining a favorable outcome for his client under a *Shyface* analysis.

Since petitioner had a reasonable basis to go forward at the filing of the petition in pursuing the petition even with two potential causes of injury (tetanus toxoid and Kenalog), the final question presented is *how long* did the reasonable basis to go forward persist and when did it end? Petitioner’s theory of a vaccine-caused injury was not rebutted in respondent’s Rule 4(c) Report filed on August 4, 2009. The report does not mention the Kenalog injection. This fact underscores the difficulty of interpreting petitioner’s medical records, as evidenced by their

erroneous reference to Depo Provera rather than Kenalog. Respondent also did not mention the lack of reasonable basis in her report, and the undersigned cannot find anything more in the report than a disagreement as to the existence of a prima facie case based on the medical records. Rather than pointing out the Kenalog injection, which respondent apparently believed caused the abscess all along, respondent proceeded to engage in negotiations with petitioner for a settlement. For most of the litigation, petitioner had no reason to suspect that her counsel's reading of the medical records and the evidence filed was unreasonable.

From August 4, 2009 until November 24, 2009, the parties engaged in litigative risk settlement negotiations, during which time the parties agreed to delay further record collection until the negotiations had concluded. Therefore, there is no reason to suspect that petitioner discovered unequivocal evidence during this time tending to negate the theory that petitioner's tetanus toxoid was a substantial factor in causing her injury.

On November 30, 2009, the court issued an order directing petitioner to file an expert report and CV by January 8, 2010 stating that her tetanus toxoid was the cause of her abscess rather than her Kenalog inoculation. After petitioner moved twice for an extension of time to file the report, the court held a telephonic status conference on March 1, 2010, at petitioner's request. At that status conference, the undersigned informed petitioner's counsel that petitioner must obtain a dermatologist's report stating that tetanus toxoid, or a combination of tetanus toxoid and Kenalog, caused petitioner's injuries. At that point, the undersigned informed petitioner's counsel that petitioner had a reasonable basis to go forward in obtaining an expert report from a dermatologist, but not a second report from a neurologist, because such a report would relate only to sequelae, and not to petitioner's prima facie case. It was also at this point, importantly, that petitioner was on notice that without a dermatologist's expert report linking tetanus toxoid to petitioner's injury, petitioner could not establish a prima facie case, and would therefore have no reasonable basis to go forward.

(1). The point at which reasonable basis disappears

After the March 1, 2010 status conference, petitioner's counsel's billing records indicate an almost immediate recognition that the case was no longer reasonable to pursue. However, a total of \$1,146.50 in hourly work was used to wind down the case. This included, at the outset, attorney Ronald Homer spending 18 minutes on March 4 and 5, 2010, discussing the search for an expert, and a paralegal in the office spending 42 minutes researching experts (presumably dermatological) and writing a memorandum to the attorneys in the office regarding his or her findings. After this hour was expended, petitioner's counsel apparently concluded that a reasonable basis no longer existed, consistent with the undersigned's previous indication that with a dermatological expert report, no reasonable basis could exist.

The costs incurred in winding down the case, after petitioner's counsel had determined that the case was no longer reasonable to pursue, are generally compensable. Counsel had determined that a dermatological expert could not be found, and therefore the case could not be pursued on a reasonable basis. Counsel then took appropriate action to wind down the case. I therefore award **\$18,324.50** in attorneys' fees for the case in chief.

The undersigned admonishes counsel to ensure that a reasonable basis is present at *every* stage of the case. Although it was present here, this was a close case. Had the records more evidently indicated Kenalog was the more likely culprit, or that the treating physicians had definitely not known of Ms. Riley's Kenalog injection when they made links to her vaccine, the analysis could have easily swung the other way. Counsel should be advised in cases like this to limit the number of hours expended, or risk expending those hours for free.

(2). Supplemental Application

In her supplemental application for attorneys' fees, petitioner requests an additional \$4,380.00 in fees and costs. For the reasons noted above, petitioner's case was pursued on a reasonable basis. Therefore, it stands to reason that petitioner's counsel should be reimbursed for defending the reasonable basis for going forward with petitioner's case. The undersigned finds **\$4,380.30** to be reasonable.

(3). Costs

Petitioner's fee application requested **\$705.07** in litigation costs. The undersigned finds this amount to be reasonable. In accordance with General Order #9, petitioner stated that she incurred **\$111.95** in costs herself, and that the law firm Conway, Homer & Chin-Caplan, P.C. bore the remainder, or **\$593.12**.

CONCLUSION

Petitioner had a reasonable factual and medical basis for maintaining this case until the point it became apparent that petitioner could not produce a report from a dermatological expert who would state that tetanus toxoid was a substantial factor in causing petitioner's injury. At that point, there was no reasonable basis to go forward with the case. The undersigned awards **\$18,324.50** from the initial fee application; **\$4,380.30** from the supplemental fee application, and **\$705.07** in costs (**\$593.12** of which is due to petitioner's counsel, and **\$111.95** to petitioner).

The award shall be in the form of two checks, the first representing attorneys' fees and counsel's share of the costs, in the amount of **\$23,297.92, which shall be made payable jointly to petitioner and the law firm of Conway, Homer & Chin-Caplan, P.C.** The second check, representing costs of petitioner herself, shall be in the amount of **\$111.95 and shall be made payable solely to petitioner.**

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

Dated: April 29, 2011

/s/ Laura D. Millman
Laura D. Millman
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.