

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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CHRISTOPHER SABELLA, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*

AND HUMAN SERVICES, \*

Respondent. \*

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No. 02-1627V  
Special Master Christian J. Moran

Filed: September 23, 2008

Motion to redact denied

*Clifford Shoemaker, Esq.*, Shoemaker & Associates, Vienna, VA, for Petitioner;  
*Michael Milmo, Esq.*, U.S. Department of Justice, Washington, D.C., for Respondent.

**ORDER**\*

On August 29, 2008, the undersigned issued a 55-page decision regarding Mr. Sabella’s motion for an award of attorneys’ fees and costs. Mr. Sabella filed, on September 2, 2008, a motion to redact the decision on attorneys’ fees and costs, which was one sentence in length. This motion is denied.

Before Mr. Sabella filed his motion for an award of attorneys’ fees and costs, he had received compensation through the National Vaccine Injury Compensation Program. The undersigned issued a decision adopting a settlement agreement between the parties on May 21,

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\* Because this published order contains a reasoned explanation for the special master's action in this case, the special master intends to post it 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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before 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. 42 U.S.C. § 300aa–12(d)(4); Vaccine Rule 18(b).

2007. In accord with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), this decision is available through the web site for the United States Court of Federal Claims. The May 21, 2007 decision states, in part, that Mr. Sabella alleged in his petition that he suffered an encephalopathy and experienced learning disabilities as a result of receiving hepatitis B vaccines.

In due course, Mr. Sabella filed a motion for an award of attorneys' fees and costs. This motion, which was vigorously challenged by respondent, was adjudicated in the decision issued on August 29, 2008. The August 29, 2008 decision stated that a party may move for deletion of certain information pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b).

On September 2, 2008, which happens to be the next business day after August 29, 2008, Mr. Sabella filed a motion for redaction. In its entirety, this motion states: "Comes now the Petitioner and pursuant to Vaccine Rule 18(b) files this Motion to Redact the Attorney Fees and Costs Decision of the Special Master filed on August 29, 2008."

Because Mr. Sabella did not identify the information he wanted redacted or why he wanted the information redacted, the undersigned scheduled a status conference. During this status conference, Mr. Sabella's counsel stated that he essentially wanted all proper names (the name of his client, the name of the experts retained by Mr. Sabella, and the name of Mr. Sabella's attorneys) redacted. Mr. Sabella's counsel gave two reasons for this request. First, Mr. Sabella's counsel stated that he did not want these names posted to the internet. Mr. Sabella's counsel, apparently, is concerned about being criticized. Second, Mr. Sabella's counsel also maintained that respondent has argued in another case that the names of attorneys representing respondent should not be disclosed to the public, and he believes that he is entitled to the same treatment.

Finally, Mr. Sabella requested expedited consideration of his motion to redact. He requested that a decision be issued before the deadline for filing a motion to review the August 29, 2008 decision on attorneys' fees and costs. To achieve that end, respondent was ordered to file his response to the motion to redact by September 16, 2008, which respondent did. In accord with Mr. Sabella's request, he waived his opportunity to file a brief in reply. Order, filed September 11, 2008. Thus, the motion for redaction is ready for adjudication.

Mr. Sabella certainly enjoys the right to request that certain information be redacted from decisions of a special master before they are made available to the public. The statute creating the National Vaccine Injury Compensation Program grants Mr. Sabella this right. 42 U.S.C. § 300aa-12(d)(4). In turn, Vaccine Rule 18(b) generally tracks the statute and provides some procedure, such as a deadline, for filing a motion to redact.

The statute does not authorize the redaction of all information. Only some categories of information are mentioned. The statute states that the special master's decision

shall be disclosed, except that if the decision is to include information —  
(i) which is trade secret or commercial or financial in substance and is privileged or confidential; or  
(ii) which are medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy, and if the person who submitted such information objects to the inclusion of such information in the decision, the decision shall be disclosed without such information.

42 U.S.C. § 300aa–12(d)(4)(B).

As the party seeking to prevent the disclosure of information, Mr. Sabella bears the burden of demonstrating that the information should not be made available to the public. DiRussa v. Dean Witter Reynolds Inc., 121 F.3d 818, 826 (2d Cir. 1997); see also BBA Nonwovens Simpsonville, Inc. v. Superior Nonwovens, LLC, 303 F.3d 1332, 1335 n.1 (Fed. Cir. 2002) (noting presumption in favor of public access to judicial decisions).

Mr. Sabella has not made the required showing. His one-sentence motion sets forth no reasons for redaction. The argument made by his counsel during the status conference adds little.

For purposes of analysis, Mr. Sabella's request to redact people's names can be divided into two parts. First, Mr. Sabella requests the redaction of the names of professionals, such as his attorneys and experts whom he retained. This request appears to be unprecedented. Second, Mr. Sabella also requests the redaction of his own name. Although this form of request is not controversial, it is not appropriate under the circumstances of this case.

Mr. Sabella's request to redact the names of his attorney and the names of his experts is construed as based upon the fact that the August 29, 2008 decision contains "financial" information, such as the person's reasonable hourly rate. It is not sufficient that the information is "financial"; the statute also requires that the information be "privileged or confidential." 42 U.S.C. § 300aa–12(d)(4)(B). Mr. Sabella has not made this showing. In light of the long history of special master's decisions publicizing hourly rates for attorneys and experts, it is difficult to see how Mr. Sabella's counsel could argue that his hourly rate is "privileged or confidential."

The publication of names and associated hourly rates of attorneys and experts retained by petitioners has a long history in the Vaccine Program. This general history probably stems from the understanding that the provisions permitting the non-disclosure of information protect, primarily, the parties, especially the petitioner. Whether this understanding is correct has not been thoroughly explored before (and has not yet been developed by Mr. Sabella in his one-sentence motion for redaction here).

Redacting the names of attorneys and the names of experts to prevent the dissemination of information about their hourly rates would not promote the efficient administration of cases. The group of decisions containing meaningful analysis of hourly rates could easily become one-sided. Decisions of special masters can be roughly divided into two groups. In the first, the special master generally awards the petitioner the requested hourly rate. One assumes that the petitioner's attorney would not object to this decision because it is a trend the attorney wishes to encourage. Respondent, however, appears not to be authorized to object to the inclusion of the name of the petitioner's attorney or the petitioner's expert because respondent was not the party "who submitted such information." 42 U.S.C. § 300aa-12(d)(4)(B). The second broad category of decisions includes decisions in which the special master generally disagreed with the proposed hourly rate and set a lower rate. Petitioner's attorneys would have an incentive to seek the redaction of this decision to minimize its persuasive value. Such a system would wrongfully give too much control over the public dissemination of judicial decisions to one party. See Reidell v. United States, 47 Fed. Cl. 209 (2000) (denying parties' request to vacate a decision after a settlement).

The present case illustrates how past decisions about attorneys' fees and costs can advance the litigative process. The underlying August 29, 2008 decision on attorneys' fees and costs cited to some decisions discussing the reasonable hourly rate for specific individuals. Decision at 37 (Dr. Geier's hourly rate), at 38 (Dr. Poser's hourly rate), at 40 (Dr. Shoenfeld's hourly rate), 48-49 (Dr. Greenspan's hourly rate). Relying upon past decisions was necessary because Mr. Sabella did not provide evidence to support a proposed hourly rate. Without some basis for determining the reasonableness of the expert's proposed hourly rate, another alternative would be to deny the request for lack of evidence. By avoiding this alternative, the past decisions that identify experts by name actually benefit Mr. Sabella.

Finally, to the extent that Mr. Sabella's attorney argues that the release of the unredacted decision would cause harm to someone's reputation is a legally adequate basis for redacting information, this argument is legally erroneous. Harm to an attorney's professional reputation is not a basis for preventing the public to access a judicial decision. Miller-Holzwarth, Inc. v. United States, 44 Fed. Cl. 153, 154 (1999).

For these reasons, Mr. Sabella has not established that the name of his attorneys and the name of his experts should be redacted from the August 29, 2008 decision on attorneys' fees and costs. The remaining question is whether Mr. Sabella's own name should be redacted.

In terms of his request to redact his own name from the decision on attorneys' fees and costs, Mr. Sabella comes closest to presenting a well-founded motion to redact. The decision on attorneys' fees and costs mentions, in its opening paragraph, that Mr. Sabella sought compensation for an encephalopathy. Arguably, Mr. Sabella's medical history (or more precisely, his characterization of his medical history) falls within paragraph (ii) of section 12(d)(4)(B). But, the statute permits the redaction of medical information when "the disclosure of which would constitute a clearly unwarranted invasion of privacy." Here, disclosing Mr.

Sabella's medical history in the August 29, 2008 decision would not be an invasion of Mr. Sabella's privacy because the same information has already been disclosed in the May 21, 2007 decision, which adopted the parties' stipulation.

Because Mr. Sabella has not established any basis for redacting his name, the names of his attorneys, or the names of experts retained in this case, his motion to redact is denied. The August 29, 2008 decision on attorneys fees' and costs will be published without redaction.

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master