

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 03-1202V
Filed: October 1, 2010
To be Published**

TIMOTHY and MARIA DWYER, parents *	*	
of Colin Dwyer, a minor,	*	
	*	Vaccine Act Fees and Costs; Fees
Petitioners,	*	for Omnibus Proceeding "Test Case"
v.	*	
	*	
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

DECISION AWARDING ATTORNEYS FEES AND COSTS¹

VOWELL, Special Master:

In this case under the National Vaccine Injury Compensation Program (hereinafter "the Program"), the petitioners seek, pursuant to 42 U.S.C. § 300aa-15(e),² an award for attorney fees and costs incurred in the course of the petitioners' attempt to obtain Program compensation. After careful consideration, I have decided to award attorney fees and costs to the law firms R.G. Taylor, II, P.C. & Associates ("RGT") and Williams Love O'Leary & Powers ("WLOP"), for the reasons set forth below.

I. BACKGROUND.

Colin Dwyer's case is one of more than 5,000 cases filed under the Program in which it has been alleged that a child's disorder known as "autism," or a similar disorder, was caused by one or more vaccinations. A detailed history of the controversy

¹ Because I have designated this document to be published, each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b); 42 U.S.C. § 300aa-12(d)(4)(B) (2006). Otherwise, this entire document will be available to the public.

² The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2006).

regarding vaccines and autism, along with a history of the development of the 5,000 cases in this court, was set forth in my decision on entitlement to compensation filed in this case, see *Dwyer v. Sec’y, HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010), and will not be repeated here. However, a very brief summary of that history follows.

A. The Omnibus Autism Proceeding.

Beginning in 1998, certain theories became popular among the public, suggesting that the measles-mumps-rubella (“MMR”) vaccine, and/or a mercury-based preservative known as “thimerosal” contained in several childhood vaccinations, might be causing the neurodevelopmental disorder known as autism. The emergence of those theories led to a large number of claims filed under the Program, each alleging that an individual’s autism, or a similar disorder, was caused by the MMR vaccine, by thimerosal-containing vaccines, or by both. To date, more than 5,000 such cases have been filed with this court, and most of them remain pending.

To deal with this group of cases involving a common factual issue – *i.e.*, whether these types of vaccinations can cause autism – the Office of Special Masters (OSM) devised special procedures. On July 3, 2002, the Chief Special Master, acting on behalf of the OSM, issued a document entitled *Autism General Order #1*,³ which set up a proceeding known as the Omnibus Autism Proceeding (hereinafter sometimes the “OAP”). In the OAP, a group of counsel selected from attorneys representing petitioners in the autism cases, known as the Petitioners’ Steering Committee (“PSC”), was charged with obtaining and presenting evidence concerning the general issue of whether those vaccines can cause autism, and, if so, in what circumstances. The evidence obtained in that general inquiry was to be applied to the individual cases. *Autism General Order #1*, 2002 WL 31696785, at *3, 2002 U.S. Claims LEXIS 365, at *8.

Ultimately, the PSC elected to present two different theories concerning the causation of autism. The first theory alleged that the measles portion of the MMR vaccine can cause autism. That theory was presented in three separate Program “test cases” during several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines can directly affect an infant’s brain, thereby substantially contributing to the causation of autism. That theory was presented

³ The *Autism General Order #1* is published at 2002 WL 31696785, 2002 U.S. Claims LEXIS 365 (Fed. Cl. Spec. Mstr. July 3, 2002). I also note that the documents filed in the Omnibus Autism Proceeding are contained in a special file kept by the Clerk of this court, known as the “Autism Master File.” An electronic version of that File is maintained on this court’s website. This electronic version contains a “docket sheet” listing all of the items in the File, and also contains the complete text of most of the items in the File, with the exception of a few documents that are withheld from the website due to copyright considerations or due to § 300aa-12(d)(4)(A). To access this electronic version of the Autism Master File, visit this court’s website at www.uscfc.uscourts.gov. Select the “Vaccine Info” page, then the “Autism Proceeding” page.

in three additional “test cases” during several weeks of trial in 2008. Colin Dwyer’s case served as the third of those three test cases.

Decisions in each of the three “test cases” pertaining to the PSC’s second theory rejected the petitioners’ causation theories. *Dwyer*, 2010 WL 892250 at *2; *King v. Sec’y, HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec’y, HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010). The Dwyers did not appeal my decision, but rather filed an election to pursue a civil action.⁴ Thus, the proceedings on the underlying petition for compensation in this case are now concluded.

B. The Request for Fees in this Case.

On July 23, 2010, and September 23, 2010, the petitioners in this case filed their applications for attorney fees and costs [together the “Combined Application”]. As noted in my August 10, 2010, order, the parties endeavored to address respondent’s objections to the Combined Application informally. The parties have advised me that they have resolved the respondent’s objections and reached an understanding as to an amount of attorney fees and costs to which respondent will not object. Finding the amounts reasonable, I adopt the parties’ understanding, as explained below.

In their Combined Application, the petitioners sought a total of \$1,524,905.05 for attorney fees and costs. This total reflected \$1,464,033.90 for the fees and costs of the RGT firm and \$60,871.15 for the fees and costs of the WLOP firm incurred in this case.⁵ The RGT firm’s compensation also reflects their work preparing general causation issues arising from both theories presented by the PSC in the omnibus test cases.

Based on the respondent’s objections, the petitioners have agreed to reduce their request to \$1,115,976.15, broken down as follows:

RGT attorney fees and costs:	\$1,062,000.00
WLOP attorney fees and costs:	\$53,976.15

II. AWARD OF FEES AND COSTS.

As I stated in my decision on entitlement, I conclude that the petitioners filed this petition in good faith, and with a reasonable basis for the claim, so that an award is appropriate pursuant to § 300aa-15(e)(1).

⁴ The petitioners in *King* and in *Mead* also did not appeal.

⁵ Petitioners filed a statement on September 28, 2010, pursuant to General Order #9, explaining they had incurred no costs in this case.

Petitioners' counsel represents that the law firms listed above agreed to reduce their attorney fees and costs request from \$1,524,905.05 to \$1,115,976.15. Respondent's counsel has indicated that respondent will not object to that amount. After reviewing the entire record of this case, as well as the record of the Omnibus Autism Proceeding in general, I conclude that such amount, which I award in this Decision, is reasonable and appropriate compensation for the services in question provided by the RGT and WLOP firms. This Decision resolves all fees and costs requested by the RGT and WLOP firms in this *Dwyer* case.⁶

III. CONCLUSION.

For the reasons set forth above, **I hereby make an award of fees and costs in this case, pursuant to § 300aa-15(e), of \$1,062,000.00 for the RGT firm and \$53,976.15 for the WLOP firm. The total amount of \$1,115,976.15 shall be awarded in the form of a check payable jointly to petitioners and their counsel of record. This amount is to be promptly distributed as set forth herein.**

In the absence of a timely motion for review of this Decision, the clerk of this court shall enter judgment accordingly.⁷

IT IS SO ORDERED.

/s/Denise K. Vowell
Denise K. Vowell
Special Master

⁶ This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir. 1991).

⁷ Entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review. Vaccine Rule 11(a).