

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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CHARLENE MACOMBER,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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No. 13-980V

Special Master Christian J. Moran

Filed: May 4, 2016

Attorneys' fees and costs

David C. Richards, Christensen & Jensen, P.C., Salt Lake City, UT, counsel for petitioner;

Darryl R. Wishard, United States Dep't of Justice, Washington, DC, for respondent.

### **UNPUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS**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

Petitioner Charlene Macomber filed her application for attorneys' fees and costs on April 15, 2016. The Secretary objected to the amount Ms. Macomber requested. Ms. Macomber is awarded **\$63,871.62**.

Ms. Macomber alleged that on September 12, 2011, she received the influenza vaccine which caused her to suffer from a hypotensive episode and encephalomyelitis. The undersigned issued a decision awarding compensation to petitioner based on the parties' stipulation. Decision, issued Nov. 19, 2015, 2015

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<sup>1</sup> The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

WL 9665706. Because petitioner received compensation, she is entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

The Secretary objected to the amount Ms. Macomber requested. She stated that a suitable amount is between \$50,000.00 to \$54,000.00. The Secretary further suggested that the undersigned make a determination as to the amount of an award within that range. See Resp't's Resp. at 3.

Because the Secretary provided no explanation for how she determined the range, the Secretary's representation carries relatively little weight. Although the Secretary cited two cases as examples, the proposed comparisons are not on point. In this case, Ms. Macomber retained two experts. Exhibits 7 and 21. The cases that Secretary cites had either one expert or no expert.

The attorney's timesheets are sufficiently detailed that his activities are understandable. The attorney appropriately delegated tasks to paralegals. While there might be disagreement over some entries, the Secretary did not make any specific objections.<sup>2</sup> Overall, the amount of time is reasonable.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. §15(e). The undersigned finds \$63,871.62 to be a reasonable amount for all attorneys' fees and costs incurred. In compliance with General Order No. 9, petitioner states that she did not incur any in out-of-pocket litigation expenses while pursuing this claim. The undersigned **GRANTS** Ms. Macomber's motion and awards **\$63,871.62** in attorneys' fees and costs. This shall be paid as follows:

**A lump sum payment of \$63,871.62, in the form of a check made payable jointly to petitioner and petitioner's attorney, David C. Richards, of Christensen & Jensen, P.C., for attorneys' fees and other litigation costs available under 42 U.S.C. § 300aa-15(e).**

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.

Any questions may be directed to my law clerk, Shannon Proctor, at (202) 357-6360.

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<sup>2</sup> In the future, petitioner's attorney may wish to redact amounts discussed in settlement negotiations before submitting timesheets. See entries for Aug. 5, 2014, and Aug. 25, 2014.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master