

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1414V

Filed: April 19, 2016

\* \* \* \* \*  
KIMBERLY TAIT *and* DAVID TAIT,  
*on behalf of their minor child, J.T.,*

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\* \* \* \* \*

UNPUBLISHED

Chief Special Master Dorsey

Attorneys' Fees and Costs

Andrew D. Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioners.  
Robert P. Coleman, III, U.S. Department of Justice, Washington, D.C., for respondent.

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

On November 23, 2015, Kimberly and David Tait ("petitioners") filed a petition on behalf of their minor child, J.T., pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to 34 (2012). Petitioners alleged that as a result of receiving DTaP, Hib, IPV, and MMR vaccinations on January 30, 2015, J.T. developed Type 1 Diabetes. Petition at Preamble, ¶¶ 9, 11.

On February 12, 2016, petitioners filed a motion for a decision dismissing their petition. A decision dismissing the petition was issued. The undersigned issued a Decision dismissing the petition on February 16, 2016.

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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 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).

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On April 12, 2016, petitioners filed an application for attorneys' fees and costs, requesting \$5,457.00 in attorneys' fees, and \$812.05 in attorneys' costs, for a total fees and costs award of \$6,269.05. See Pet'rs' App. at 1-2. Petitioners' counsel filed an itemized invoice for attorneys' fees and costs with the motion. See id., Exhibit A. In accordance with General Order #9, petitioners' counsel states that petitioner did not incur any costs in pursuit of the claim. Id. at 1.

On April 18, 2016, respondent filed a response to petitioners' application, stating:

Based on a survey of fee awards in similar cases and her experience litigating Vaccine Act claims, respondent has no objection to the overall amount requested in petitioners' motion. However, the lack of objection should not be construed as an admission, concession, or waiver as to any of the matters raised by petitioners' request for attorney's fees and costs. . .

Resp's Response at 2.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). The undersigned has reviewed counsel's time records, tasks performed, and costs requested, and finds them reasonable. Based on the reasonableness of petitioner's request and the lack of opposition from respondent, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

**Accordingly, the undersigned awards the total of \$6,269.05 as follows:**

- (1) A lump sum of \$6,269.05 in the form of a check payable jointly to petitioners and petitioners' counsel of record, Andrew D. Downing, for attorneys' fees and costs.**

The clerk of the court shall enter judgment in accordance herewith.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.