

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-0025V

(not to be published)

LEXI KESTNER,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 22, 2023

Special Processing Unit (SPU);  
Attorney's Fees and Costs

*Anne Carrion Toale, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioner.*

*Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.*

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

On January 8, 2020, Lexi Kestner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the "Vaccine Act"). Petitioner alleged that she suffered from a shoulder injury related to vaccine administration as a result of an influenza vaccine she received on October 4, 2017. Petition, ECF No. 1. On February 3, 2023, I issued a decision awarding damages to Petitioner, following briefing by the parties and a Motions day hearing. ECF No. 64.

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<sup>1</sup> Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). This means the Decision will be available to anyone with access to the internet. In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$68,152.67 (representing \$66,642.10 for fees and \$1,510.57 for costs). Petitioner's Application for Attorneys' Fees and Costs ("Motion") filed May 9, 2023, ECF No. 70. In accordance with General Order No. 9, Petitioner filed a signed statement indicating that she incurred no out-of-pocket expenses. ECF No. 70-3.

Respondent reacted to the motion on May 23, 2023, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, ECF No. 71. Petitioner did not file a reply thereafter.

I note this case required additional briefing regarding the issue of damages. See Joint Status Report, filed Mar. 21, 2022, ECF No. 57 (reporting that Petitioner intends to file a motion for a damages ruling); Petitioner's Motion for findings of Fact and Conclusions of Law Regarding Damages, filed June 24, 2022, ECF No. 59; Petitioner's Reply filed Sept. 12, 2022, ECF No. 61; Hearing Minute Entry, Jan. 27, 2023. Petitioner's counsel expended approximately 6.00 hours drafting her damages brief and 4.10 hours drafting her reply. ECF No. 70-1. I find this amount of time to be reasonable.

Furthermore, Petitioner has provided supporting documentation for all claimed costs and Respondent offered no specific objection to the rates or amounts sought. I have reviewed the requested costs and find them to be reasonable.

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). I award a total of **\$68,152.67 (representing \$66,642.10 for fees and \$1,510.57 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel. Per Petitioner's request, the check is to be forwarded to Maglio Christopher and Toale Law, 1605 Main Street, Suite 710, Sarasota, FL 34236.** In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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