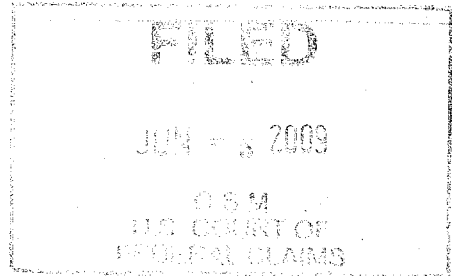


ORIGINAL

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: June 5, 2009)



IN RE: CLAIMS FOR VACCINE INJURIES *
RESULTING IN AUTISM SPECTRUM *
DISORDER OR A SIMILAR *
NEURODEVELOPMENTAL DISORDER *

 VARIOUS PETITIONERS, *

 v. *

 SECRETARY OF HEALTH AND *
 HUMAN SERVICES, *

 Respondent. *

ORDER CORRECTING NOTICE FILED ON OCTOBER 29, 2003

On October 29, 2003, Special Master Hastings filed a Notice concerning attorneys' fees and costs incurred in the Omnibus Autism Proceeding into the Autism Master File. The notice referenced a memo created by the Petitioners' Steering Committee (the "PSC") that provided guidelines for the submission of fees and costs related to the general causation issues litigated in the Autism Omnibus Proceeding (the "OAP"). The memo had been previously circulated among the PSC attorneys, and the Notice urged attorneys incurring fees and expenses in the OAP to conform their fee submissions to the PSC's guidelines.

The memo should have been filed as an attachment to the Notice filed on October 29, 2003, but was inadvertently omitted. The memo is attached hereto, and is hereby filed into the Autism Master File.

Patricia Campbell-Smith
 Patricia Campbell-Smith
 Special Master

Denise Vowell
 Denise Vowell
 Special Master

George L. Hastings, Jr.
 George L. Hastings, Jr.
 Special Master

TO: NVICP Omnibus Autism Proceedings Petitioners' Steering Committee Members
FROM: Michael Williams and John Kim, Co Chairs of the PSC Executive Committee, and Tobi
Millrood and Rich Lewis, co-chairs of the PSC Fees and Costs Committee
DATE: September 25, 2003
RE: **TIME AND EXPENSE REPORTING PROCEDURES FOR COMMON BENEFIT
WORK**

For all counsel for petitioners in the omnibus autism proceedings, time and expense reporting will go into effect immediately. Time and expense records must be submitted timely by the 20th of each month to Schiffman & Barroway, LLP, Attention: Kathy VanderVeur, Three Bala Plaza East, Suite 400 Bala Cynwyd, PA 19004, facsimile: (610) 667-7056, or by email: kvanderveur@sbclasslaw.com so they can be compiled and submitted to Co-Lead Counsel and eventually, to the DOJ and the Court. It is essential that each firm on a monthly basis timely submit its records for the proceeding month.

As you all know, the goal of this process is to ensure that Special Master Hastings, the DOJ, and the Court are provided with sufficient detail regarding attorney time to justify and support our anticipated fee and cost petition. Please review this memorandum in its entirety and forward to the person who will be responsible for submitting your firm's reports.

Any member of the PSC may inspect the time and expense records submitted by other members on reasonable notice. The Costs and Fees Committee will issue confidential quarterly reports to all PSC members summarizing each lawyer's time to date and all the approved common benefit expenses.

Any lawyer, law firm or petitioner who intends to seek fees and costs for work on the omnibus autism proceeding must comply with this Memorandum's guidelines and deadlines. There will be one joint petition for common benefit fees and costs at the conclusion of the omnibus proceedings, submitted by the PSC through its Co-Chairs. Of course, legal work and expenses that are peculiar to any individual case and are not of common benefit will be submitted in separate fee and cost petitions in those individual cases as each member sees fit. These guidelines apply to any time and expenses that will be submitted for work on general causation and the other issues involved in the omnibus autism proceeding.

I. ALLOWABLE EXPENSES

A. All common benefit expense items reported by the Petitioners' Steering Committee (PSC) must be reasonable and necessary for the collective prosecution of the Omnibus Autism Proceedings and must be for the benefit of the PSC and petitioners as a whole and not solely for individual clients.

B. Reporting Guidelines:

1. Receipts:

Each expense claimed must be properly documented by a receipt or some other form of proof of payment acceptable for presentation and approval by the Court. Copies of receipts need to be submitted on a monthly basis, but originals must be available for production upon request. Cash advances will not be considered for reimbursement without evidence of payments made with the case.

2. Miscellaneous Cash Expenses:

Miscellaneous cash expenses for which receipts generally are not available (Tips, luggage handling, pay telephone, etc.), will be allowed up to a maximum of \$50.00 per trip, providing those expenses are properly itemized.

3. Airfare:

First class airfare will not be reimbursed and only coach airfare shall be claimed.

4. Hotels:

Hotel accommodations will be reimbursed at rates up to \$200 per night or the average of the Hyatt, Hilton, and Marriott hotels in that city. Charge for movies, laundry, toiletries, etc. will not be reimbursed.

5. Meals:

A copy of the restaurant receipt must be submitted.

6. Rental Automobiles:

Luxury automobile rentals will not be fully reimbursed, unless satisfactory evidence is submitted that only luxury automobiles were available. If luxury automobiles are selected where ordinary vehicles are available, the difference between the luxury and ordinary vehicle rates must be indicated on the expense claim and only the ordinary vehicle rate will be claimed.

7. Mileage:

Mileage claims must be documented by stating origination point; destination, total actual miles for each trip; and the rate-per mile paid by the individual PSC member's firm. The maximum allowable rate will be the current allowable rate set by I.R.S. (presently 36.5¢ per mile)

8. Long Distance and Cellular Telephone:

Long distance and cellular telephone expenses must be documented. Copies of telephone bills must be submitted with notation as to which charges are related to the Omnibus Autism Proceedings. Only actual charges are reimbursable.

9. Federal Express Local Courier Service or Other Courier:

All claimed expenses must be documented with bills showing the sender, origin of the package, recipient and destination of the package.

10. Postage Charges:

A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.

11. Telefax Charges:

Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$ 0.10 (ten cents) per page.

12. In-House Photocopy:

A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is \$ 0.10 (ten cents) per page.

13. Lexis/Westlaw:

Claims for expenses relating to computerized legal research, i.e.

LEXIS or WESTLAW, should be in the exact amount charged to the PSC member's firm for these research services.

14. Deposition Costs, Expert Witness Fees, and Exhibit Costs:

Fees and costs associated with pretrial discovery that are authorized by the Cost/Expense Committee and/or the Co-Chairs of the Executive Committee will generally be paid directly by the PSC out of its **Common Costs Fund**. **In other words, court reporters, experts and any special cost of exhibits for depositions will be immediately reimbursable or directly paid by the PSC.** Travel costs for attorneys and assistants must be carried ('held') by that law firm until the conclusion of the litigation.

15. Equipment Purchases:

Purchases of equipment are not to be claimed, absent special circumstances approved by the Cost/Expense Committee and/or the Co-Chairs of the Executive Committee. Computer hardware or software purchased for and utilized by the individual attorneys and their staff, even if used primarily for this case, are not reimbursable, unless prior approval is received.

16. Monetary Sanctions:

No monetary sanction levied by the Court on any PSC member shall be reported as an expense.

C. Exceptions:

The only exceptions to these guidelines shall be as specifically approved by the Cost/Expense Committee and/or the Co-Chairs of the Executive Committee.

D. The procedures set forth herein will apply to PSC members and those to whom the PSC has assigned a specific case related task.

E. Each attorney submitting a time and expense statement shall be considered as representing to the Federal Court of Claims, under oath, that the time and expense submitted meets the criteria set forth herein.

II. EXPLANATION OF SHARED COSTS VS. HELD COSTS

A. Common Shared Costs:

Costs of substantial nature under the below categories shall be considered Common Shared Costs and reimbursable.

1. Deposition and court reporter costs (including the cost of renting a room in which to hold the deposition, if necessary).
2. Document Depository: Creation and Administration - Equipment for Liaison Counsel and PSC Administrative Matters (including but not limited to electronic filing service, list-serve, web site, etc.)
3. Equipment and leases for group common expenses (e.g.: computer equipment)
4. Expert witness and consultant fees
5. Extraordinary postage (mass mailing)
6. Printing, copying, coding, scanning (out of house or extraordinary and related solely to common issues)
7. PSC group meetings and expenses as approved by PSC
8. Research by outside third party
9. Telephone conference calls (third party)
10. Common Witness expenses including travel
11. Translation Cost

B. Held Costs:

Costs not considered common Shared Costs shall be "Held Costs."

1. Fax charges
2. Meals
- Photocopying (in-house)
4. Postage, Shipping, Courier, Certified Mail
5. Printing (in-house)
6. Computerized research - Lexis/Westlaw
7. Supplies
8. Telephone - local and long distance
9. Travel - non-common witness, attorney or paralegals for deposition, court, committee meetings, or legislative issues that could affect petitioners including:
 - a. Airfare
 - b. Reasonable ground transportation
 - c. Hotel up to \$200/night or the average of Hyatt, Hilton, and Marriott hotel rates in that city.
 - d. Reasonable meals
 - e. Reasonable other (i.e., parking, hotel tips)
10. Assessments
11. Car rental, cabs, etc.
12. Investigative Services

III. SUBMISSION OF SHARED EXPENSES

An expense report shall be completed and submitted with copies of receipts and logs. See example forms at the end of these guidelines.

IV. SUBMISSION OF HELD EXPENSES

An expense report shall be completed and submitted with copies of receipts and logs. Forms are shown below.

V. ALLOWABLE TIME

Only time spent and incurred on matters common to all petitioners will be considered in submission for the fee petition in the Omnibus Autism Proceedings. No time spent on developing or processing your case for an individual client will be considered and should not be submitted as part of the joint fee petition. Any time submitted in violation will be disallowed. You will of course be allowed to submit individual fee petitions for work done on individual cases, as you see fit.

All time submitted must be incurred at the discretion of and pursuant to PSC directives. Form time sheets are attached. It is essential that all time for all timekeepers in each firm be maintained in tenths of an hour increments in the form and substance as set forth in the time sheet and time report summary.

All time records shall be submitted together with summaries. The summaries shall contain a compilation of the total hours incurred by timekeepers in your firm on omnibus autism matters only. Each timekeeper's time shall be compiled by total hours and tasks for the period. Each summary shall be set forth in the form submitted on a monthly basis.

EVERY FIRM MUST SUBMIT ITS SUBMISSION OF TIME/EXPENSE RECORDS COVERING JULY 1, 2003 to SEPTEMBER 30, 2003 TO KATHY VANDERVEUR ON OR BEFORE NOVEMBER 15, 2003. This will enable Kathy to compile all of the information so the Cost Committee can review them by December 15, 2003. Reports that need editing or clarifications will be sent back to the submitting firm for revision until the Costs and Fees Committee is satisfied that the report is accurate and complete and conforms to the guidelines.

EVERY FIRM MUST SUBMIT ITS SUBMISSION OF TIME/EXPENSE RECORDS COVERING THE PERIOD PRIOR TO JULY 1, 2003 ON OR BEFORE DECEMBER 15, 2003. This will enable Kathy to compile all of the information so the Cost Committee can review them no later than January 15, 2004. Some firms have legal work and expert expenses incurred since 2001 or even before that are eligible for inclusion in the Joint Fee Petition. Firms are encouraged to submit all such time and expenses in this November submission. Expert fees already paid, for example, may be immediately reimbursable from the Common Costs Fund if the expert is approved by the Co Chairs of the Executive Committee as useful to the common benefit.

Each month a listing of all time with proper classification shall be submitted denoting:

- a. Date
- b. Detailed Description of the tasks completed or materials reviewed
- c. Timekeeper name
- d. Amount of time
- e. Summary by timekeeper of name and total hours

Do not submit any hourly rate information at this time. When the joint petition is finally filed, we will seek the appropriate hourly rate for that person's skill level and professional standing. We hope to negotiate with DOJ and get agreement to the appropriate rates for each region of the country or each federal district for significant pharmaceutical mass tort litigation. If we cannot reach agreement with DOJ, the court will ultimately set the rates on which we will get paid in any event, not us.

All time reported must have accompanying documentation (e.g., time reports generated from your firm's time keeping program).

As a reminder, please continue to bill your time in one tenth hour increments. A Time Report form is located at page 8 and a Time Report Summary on page 10 of this memo for your use. We have provided an example on page 9, and the Expense Report Forms are on pages 11-12. We also encourage your firm to submit these forms electronically.

Please remember that only time and expenses spent and incurred on matters common to all petitioners and authorized by the Executive Committee will be considered for submission in the fee petition for the Omnibus Proceeding. No time or expense spent on developing or processing your case for an individual client will be

considered or should be submitted as part of the joint petition. All time submitted must be incurred at the discretion of and pursuant to PSC directives. Any time submitted in violation will be disallowed.

In the end, the court will decide which time to pay, at what rate, and which expenses will be reimbursed, and each lawyer or law firm deemed eligible to be paid for common benefit work will get a separate award based on the joint petition.

Attorneys, we ask you to please communicate this memorandum to the person who will be responsible for your firm's time and expense submissions. Tobi Millrood at Schiffrin & Barroway, LLP (610) 822-2230, e-mail tmillrood@sbcslaw.com, or Rich Lewis of Cohen Milstein (202) 408-4600. e-mail rlewis@CMHT.com will be more than happy to answer any questions you may have.

Please do not hesitate to contact Tobi Millrood or Rich Lewis with questions. Thank you for your cooperation in this matter.