

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-620 V

Filed: May 15, 2012

Not for Publication



Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Damages Decision Based on
Stipulation; Flu Vaccine; GBS;
Death

Isaiah R. Kalinowski, Sarasota, FL, for petitioner.
Michael P. Milmo, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On May 15, 2012, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleged that the vaccinee suffered from Guillain-Barré Syndrome (“GBS”) following an influenza vaccination resulting in his death. Respondent denies that the vaccinee’s GBS or that his death was caused in fact by his influenza vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

The court finds the terms to be reasonable, hereby adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$125,000.00**, representing compensation for damages. The award shall be in the form of a check made payable to petitioner as Personal Representative of the Estate of [REDACTED]

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.²

IT IS SO ORDERED.

Dated: May 15, 2012

s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

)	
)	
Petitioner,)	ECF
v.)	No. 10-620V
)	Special Master
SECRETARY OF HEALTH AND HUMAN SERVICES,)	Laura D. Millman
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her deceased husband, [REDACTED] petitioner [REDACTED] as Personal Representative of [REDACTED]'s estate, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for [REDACTED] injury and death allegedly related to petitioner's receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. [REDACTED] received a flu vaccine on September 23, 2009.
3. The vaccine was administered within the United States.
4. Petitioner alleges that [REDACTED] sustained the first symptom of Guillian-Barré Syndrome ("GBS") on or about November 9, 2009, and that his GBS was caused by his flu vaccination. Petitioner further alleges that [REDACTED] died on March 27, 2010, as the result of his GBS.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of [REDACTED] as a result of his alleged vaccine injury or his death.

6. Respondent denies that [REDACTED] suffered any injury as a result of his flu vaccination administered on September 23, 2009, and denies that [REDACTED]'s death was a sequela of his allegedly vaccine-related GBS.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$125,000.00 in the form of a check payable to petitioner as Personal Representative of the [REDACTED]. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Payments made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. Petitioner represents that she presently is duly authorized to serve as the Personal Representative of the Estate of [REDACTED] under the laws of the State of Ohio.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the Estate of [REDACTED] and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to, and death of Drago Potocic resulting from, or alleged to have resulted from, the flu vaccination administered on September 23, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about September 15, 2010, in the United States Court of Federal Claims as petition No. 10-620V.

13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be null and void at the sole discretion of either party.

14. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or

amount of damages.

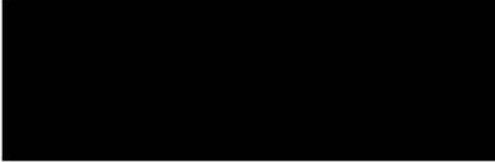
15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused [REDACTED] GBS or any other injury or his death.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors, and assigns.

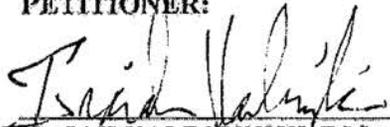
END OF STIPULATION

Respectfully submitted,

PETITIONER:



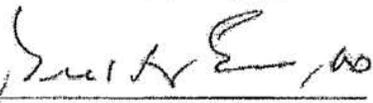
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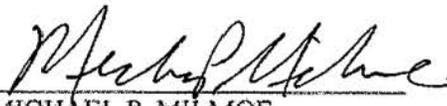
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Dated: May 15, 2012