

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 11-307V

Filed: April 16, 2012

\*\*\*\*\*

[REDACTED]

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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NOT TO BE PUBLISHED

Stipulation; influenza (flu) vaccine;  
Guillain-Barre Syndrome (GBS)

Isaiah Kalinowski, Maglio, Christopher, & Toale, Sarasota, FL, for Petitioner.  
Heather L. Pearlman, United States Dep't of Justice, Washington, D.C., for Respondent.

### DECISION<sup>1</sup>

ZANE, Special Master.

On April 13, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, [REDACTED] alleged that she contracted Guillain-Barre syndrome (GBS) as a result of her receipt of the influenza vaccine that she received on September 10, 2010, and which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Ms. [REDACTED] also alleges that she experienced the residual effects of the complications of this injury for more than six months and that she has not otherwise received compensation for such injuries. Petitioner seeks compensation related to these injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

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<sup>1</sup> The special master intends to post this decision on the website for the United States Court of Federal Claims in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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 clearly be an unwarranted invasion of privacy. As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available.

Respondent denies that the September 10, 2010, influenza vaccine caused Petitioner to suffer GBS or any other injury and denies that Petitioner's current condition is a sequela of any alleged vaccine-related injury. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

**a lump sum of \$85,000.00, in the form of a check payable to Petitioner.**

This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/Daria J. Zane  
Daria J. Zane  
Special Master

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<sup>2</sup> This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

ELIZABETH JASNOSZ,	)	
	)	
Petitioner,	)	
v,	)	No. 11-307V
	)	Special Master Daria J. Zane
SECRETARY OF HEALTH AND	)	ECF
HUMAN SERVICES	)	
	)	
Respondent.	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, [REDACTED] 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 injuries allegedly related to petitioner's receipt of the influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received an influenza immunization on September 10, 2010.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she contracted Guillain-Barré syndrome ("GBS") as a result of her September 10, 2010, influenza vaccination. Petitioner further alleges that she experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.
6. Respondent denies that the September 10, 2010, influenza vaccination caused

petitioner to suffer GBS or any other injury, and denies that her current condition is a sequela of any alleged vaccine-related injury.

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 a lump sum payment of \$85,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available to petitioner 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. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. sec. 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

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

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the influenza vaccination administered on September 10, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about May 13, 2011, in the United States Court of Federal Claims as petition No. 11-307V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. 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 voidable at the sole discretion of either party.

16. 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccination caused petitioner to suffer GBS or any other injury or her current condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,

**PETITIONER:**



**ATTORNEY OF RECORD FOR  
PETITIONER:**

ISAIAH KALINOWSKI  
MAGLIO CHRISTOPHER & TOALE  
1751 Mound St., Second Floor  
Sarasota, FL 34236  
tel: (941) 952-5242

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE  
OF THE SECRETARY OF HEALTH  
AND HUMAN SERVICES:**

GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail Stop 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

HEATHER L. PEARLMAN  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
tel: (202) 353-2699

Dated: 04/13/12