

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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██████████,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\*\*\*\*\*

\* No. 11-858V  
\* Special Master Christian J. Moran  
\*  
\* Filed: August 1, 2013  
\*  
\* Stipulation; tetanus-diphtheria-  
\* acellular pertussis (Tdap) vaccine;  
\* bilateral symmetric diaphragmatic palsy;  
\* demyelination of the phrenic nerve

Anne C. Toale, Maglio Christopher and Toale, Sarasota, FL, for Petitioner;  
Melonie J. McCall, United States Department of Justice, Washington, D.C., for Respondent.

### **UNPUBLISHED DECISION**<sup>1</sup>

On July 26, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by ██████████ on December 7, 2011. In his petition, petitioner alleged that the tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which he received on or around March 19, 2009, caused him to suffer bilateral symmetric diaphragmatic palsy and demyelination of the phrenic nerve. Petitioner further alleges that he suffered the residual effects of this injury for more than six months. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.

Respondent denies that petitioner suffered bilateral symmetric diaphragmatic palsy, demyelination of the phrenic nerve, or any other injury as a result of his Tdap vaccination. Respondent further denies that the Tdap vaccine caused petitioner’s current disabilities.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Damages awarded in that stipulation include:

**A lump sum payment of \$25,000.00 in the form of a check payable to petitioner, [REDACTED].** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-858V according to this decision and the attached stipulation.<sup>2</sup>

Any questions may be directed to my law clerk, Tucker McCarthy, at (202) 357-6392.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>2</sup> 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.