

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

No. 13-180V

Filed: May 9, 2014

(Not to be published)

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[REDACTED]

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Stipulation; GBS; Flu Vaccine;  
Attorney's Fees and Costs

*Anne Toale, Esq.*, Maglio, Christopher and Toale, Sarasota, FL, for petitioner.  
*Traci R. Patton, Esq.*, U.S. Dept. of Justice, Washington, D.C., for respondent.

**DECISION ON JOINT STIPULATION<sup>1</sup>**

**Gowen**, Special Master:

[REDACTED] ["petitioner"] filed a petition for compensation under the National Vaccine Injury Compensation Program<sup>2</sup> on March 8, 2013. Petitioner alleges that he suffered from Guillain-Barre Syndrome ["GBS"] that was caused in fact by a flu vaccination he received on October 3, 2011. See Stipulation, filed May 9, 2014, at ¶¶ 2, 4. Further, petitioner alleges that he experienced residual effects of his injuries for more than six months. Petition at 2. Respondent denies that the flu vaccine caused petitioner to suffer GBS, or any other injury or condition. Stipulation at ¶ 6.

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete 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 "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

Nevertheless, the parties have agreed to settle the case. On May 9, 2014, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

Respondent agrees to pay petitioner:

- a. **A lump sum of \$85,000.00 in the form of a check payable to petitioner,** [REDACTED] This amount represents compensation for all damages that would be available under § 300aa-15(a); and
- b. **A lump sum of \$13,154.99 in the form of a check payable jointly to petitioner and petitioner's attorney, Anne C. Toale, of Maglio, Christopher & Toale, P.A., for attorneys' fees and costs** available under § 300aa-15(e); and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/ Thomas L. Gowen**  
**Thomas L. Gowen**  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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| ████████████████████          | ) |                      |
|                               | ) |                      |
| Petitioner,                   | ) |                      |
| v.                            | ) | No. 13-180V          |
|                               | ) | Special Master Gowen |
| SECRETARY OF HEALTH AND HUMAN | ) | ECF                  |
| SERVICES,                     | ) |                      |
|                               | ) |                      |
| Respondent.                   | ) |                      |

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STIPULATION

The parties hereby stipulate to the following matters:

1. Tyrone Prince, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 *et seq.* (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to ██████████ receipt of the influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received his flu immunization on October 3, 2011.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused him to suffer Guillain-Barré Syndrome (“GBS”).
5. 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.
6. Respondent denies that the flu vaccine caused petitioner to suffer GBS or any other injury or condition.

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 payments:

- a. 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); and
- b. A lump sum of \$13,154.99, in the form of a check payable jointly to petitioner and petitioner's attorney, Anne C. Toale, of Maglio, Christopher & Toale, P.A., pursuant to 42 U.S.C. § 300aa-15(e), for attorneys' fees and costs. In compliance with General Order #9, petitioner represents that he incurred no out-of-pocket expenses in proceeding on the petition.

9. Petitioner and his 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. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

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

11. 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).

12. In return for the payments described in paragraph 8, petitioner, in his individual capacity, and on behalf of his 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 flu vaccination administered on October 3, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about March 8, 2013, in the United States Court of Federal Claims as petition No. 13-180V.

13. 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.

14. 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.

15. 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. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act



Respectfully submitted,

**PETITIONER:**



**ATTORNEY OF RECORD FOR  
PETITIONER:**

ANNE C. TOALE  
Maglio, Christopher & Toale, P.A.  
1605 Main Street, Suite 710  
Sarasota, FL 34236  
(888) 952-5242

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

VINCENT J. MATANOSKI  
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:**

A. MELISSA HOUSTON, M.D., M.P.H., F.A.A.P.  
Acting Director, Division of Vaccine  
Injury Compensation (DVIC)  
Acting Director, Countermeasures Injury  
Compensation Program (CICP)  
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:**

TRACI R. PATTON  
Senior Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 353-1589

Dated: 5-9-2014