

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-438V

Filed: December 12, 2011

Not for Publication



Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

Damages Decision Based on Stipulation;
GBS; Flu Vaccine

Diana L. Stadelnikas, Sarasota, FL, for petitioner.
Glenn A. MacLeod, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On December 12, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleges that the vaccinee suffered from Guillain-Barré Syndrome (“GBS”) following his trivalent influenza (“flu”) vaccine. Respondent denies that the vaccinee’s GBS was caused in fact by his flu vaccine. 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¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 and 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. A lump sum of **\$15,037.54**, representing compensation for satisfaction of the State of West Virginia Medicaid lien. The award shall be in the form of a check payable jointly to petitioner, as Fiduciary of the [REDACTED] and

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Charleston, WV 25339

- b. A lump sum of **\$109,962.46**, representing compensation for damages. The award shall be in the form of a check payable to petitioner, [REDACTED] as Fiduciary 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: December 12, 2011

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.

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

[REDACTED]	*	
	*	
Petitioner,	*	
	*	
v.	*	No. 10-438V (ECF)
	*	SPECIAL MASTER
	*	LAURA D. MILLMAN
	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, as Fiduciary and Administratrix of the Estate of [REDACTED] deceased, maintains the petition filed by Billie J. Scott for vaccine injury compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition sought compensation for injuries allegedly related to Billie J. Scott's receipt of the trivalent 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 immunization on or about October 21, 2009.
3. The vaccine was administered within the United States.
4. Petitioner claims that [REDACTED] suffered Guillain-Barre Syndrome ("GBS") as a result of the October 21, 2009 flu immunization, and died as a consequence of his vaccine-related injuries on August 16, 2010.

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5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Billie J. Scott's behalf as a result of his alleged vaccine-related injury and death.

6. Respondent denies that the flu vaccine caused Billie J. Scott to suffer GBS or any other injury, and further denies that his death on August 16, 2010, was vaccine-related.

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 \$15,037.54 in the form of a check payable jointly to petitioner, as Fiduciary of the Estate of [REDACTED] and

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West Virginia, 25339

representing compensation for satisfaction of the State of West Virginia's Medicaid lien resulting from payments made to or on behalf of [REDACTED] and

b. A lump sum of \$109,962.46 in the form of a check payable to petitioner, [REDACTED] as Fiduciary of the [REDACTED] representing compensation for all other 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. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

11. Payments 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. Petitioner has provided respondent with proof that she is presently authorized to serve as Fiduciary and Administratrix of Billie J. Scott's Estate under the laws of the State of West Virginia.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and as Fiduciary and Administratrix of [REDACTED] Estate, and on behalf of Billie J. Scott's 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

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unknown, suspected or unsuspected personal injuries to or death of Billie J. Scott resulting from, or alleged to have resulted from, the flu vaccination administered on or about October 21, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about July 8, 2010, in the United States Court of Federal Claims as petition No. 10-438V.

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, 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.

16. 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] to suffer GBS or any other injury, and/or that the flu vaccination caused [REDACTED]'s death.

17. 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:



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Dated: 12/12/11