

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: October 21, 2013)

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The Estate of [REDACTED]
Decedent, by and through,
[REDACTED] as Personal
Representative

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

* * * * *

* No. 11-144V

*

* Special Master

* Hamilton-Fieldman

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* Stipulation; Influenza Vaccine;

* Guillain-Barré Syndrome; Death

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Isaiah Richard Kalinowski, Washington, DC, for Petitioner

Linda Sara Renzi, Washington, DC, for Respondent

DECISION¹

On March 8, 2011, [REDACTED] filed a petition for compensation alleging that he suffered certain injuries as a result of receiving a vaccination. Upon [REDACTED] death, [REDACTED], was substituted as Petitioner. Among the injuries Petitioner alleged that [REDACTED] suffered as a result of receiving a trivalent influenza vaccination was Guillain-Barré syndrome. He sought an award under the National Vaccine Injury Compensation Program, National Vaccine Injury Compensation Program² (the Act or the Program). 42 U.S.C. §§ 300aa-1 to -34 (2006).

¹ 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)), requires that the court post this decision on its website. In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, the undersigned will delete such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

Respondent denies that the flu vaccine cause [REDACTED] GBS, or any other injury, including his death.

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.

On October 18, 2013, counsel for both parties filed a stipulation, stating that a decision should be entered awarding compensation. The parties stipulated that the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- (a) A lump sum of \$ 126,000.00 in the form of a check payable jointly to Petitioner and to:**

**Minnesota Department of Human Services
P.O. Box 64994
St. Paul, Minnesota 55164-0994**
[REDACTED]

Petitioner agrees to endorse this check to the Minnesota Department of Human Services; and,

- (b) A lump sum of \$169,000.00 in the form of a check payable to Petitioner, [REDACTED] as the Administrator of the [REDACTED], Estate. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. §300aa-15(a).**

Stipulation ¶ 8(a) and (b).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Lisa Hamilton-Fieldman
Lisa Hamilton-Fieldman
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

The Estate of [REDACTED]
Decedent, by and through
[REDACTED] as
Personal Representative,

Petitioner,

v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,

Respondent.

The parties hereby stipulate to the following matters:

2. [REDACTED] received a flu immunization on November 12, 2008.

4. Petitioner alleges that this immunization caused [REDACTED] to develop Guillain-Barre

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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 alleged vaccine-related condition or his death.

6. Respondent denies that the flu vaccine caused [REDACTED] GBS, or any other injury, or his death.

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 payment of \$126,000.00 in the form of a check payable jointly to petitioner and to:

Minnesota Department of Human Services
P.O. Box 64994
St. Paul, Minnesota 55164-0994
[REDACTED] [REDACTED]

Petitioner agrees to endorse this check to the Minnesota Department of Human Services; and,

(b) A lump sum of \$169,000.00 in the form of a check payable to petitioner, [REDACTED] as the Administrator of the [REDACTED] Estate. This amount represents compensation for all remaining 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. The 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.

11. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as conservator/legal representative of [REDACTED] estate under the laws of the [REDACTED]. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as conservator/legal representative of [REDACTED] estate. If petitioner is not authorized by a court of competent jurisdiction to serve as conservator/legal representative of the estate [REDACTED] at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as conservator/legal representative of the estate of [REDACTED] upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and as legal representative of the estate [REDACTED], on behalf of himself, the estate and [REDACTED] 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 [REDACTED] resulting from, or alleged to have resulted from, the Influenza vaccine administered on November 12, 2008, as alleged in a petition for vaccine compensation filed on or about March 8, 2011, in the United States Court of Federal Claims as petition No. 11-144V.

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 voidable 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.

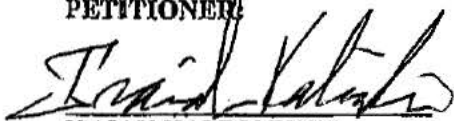
16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal administrator of the estate of [REDACTED]

END OF STIPULATION

Respectfully submitted,

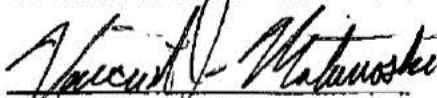
PETITIONER:

ATTORNEY OF RECORD FOR
PETITIONER:



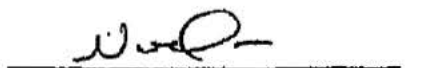
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Dated: October 18, 2013