

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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The Estate of [REDACTED],
[REDACTED], Decedent, by and
through [REDACTED]
[REDACTED], as co-Personal
Representatives,
Petitioner,

No. 17-636V
Special Master Christian J. Moran

v.

Filed: September 27, 2018

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Stipulation; flu vaccine;
Guillain-Barré syndrome (“GBS”).

* * * * *

Diana Stadelnikas, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioner;
Alexis B. Babcock, United States Dep’t of Justice, Washington, DC, for
Respondent.

UNPUBLISHED DECISION¹

On September 26, 2018, the parties filed a joint stipulation concerning the petition for compensation filed on May 15, 2017 by [REDACTED] and Sally Van Keuren, as co-Personal Representatives of the estate of [REDACTED]. [REDACTED] Petitioners alleged that the influenza (“flu”) vaccine Mr.

¹ Because this decision contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). This means the decision will be available to anyone with access to the internet. In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material before posting the decision.

Van Keuren received on February 29, 2016, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), caused him to suffer Guillain-Barré syndrome (GBS) and ultimately resulted in his death. Petitioners represent that there has been no prior award or settlement of a civil action for damages on [REDACTED] behalf as a result of his injury and / or death.

Respondent denies that the vaccine either caused or significantly aggravated petitioner’s alleged GBS or any other injury or his death.

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

Damages awarded in that stipulation include:

A lump sum payment of \$160,000.00 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).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 17-636V according to this decision and the attached stipulation.²

IT IS SO ORDERED.

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

² 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**

The Estate of [REDACTED]
[REDACTED] Decedent, by and through
[REDACTED] and
[REDACTED], as co-Personal
Representatives,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 17-636V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. [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").¹ The petition seeks compensation for injuries allegedly related to Mr. Van Keuren's receipt of an 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 vaccination on February 29, 2016.
3. The vaccine was administered within the United States.

¹ [REDACTED] passed away on November 6, 2017, while the case was pending before this Court. His parents, [REDACTED] and [REDACTED] were subsequently substituted as petitioners in the case representing the Estate of [REDACTED]

4. Petitioners allege that [REDACTED] suffered from Guillain Barre Syndrome (“GBS”) that was caused-in-fact by his flu vaccine. Petitioners further allege that [REDACTED] experienced the residual effects of his injury for more than six months, and that his death was a sequelae of his injuries.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of [REDACTED], as a result of [REDACTED] alleged injury and/or death.

6. Respondent denies that [REDACTED] alleged GBS was caused-in-fact by his flu vaccine. Respondent further denies that the flu vaccine caused him 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 petitioners have 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 payment:

A lump sum of **\$160,000.00** in the form of a check payable to petitioners as legal representatives of [REDACTED] estate. This amount represents compensation for all 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 petitioners have 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. 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. Petitioners represent that they presently are or within 90 days of the date of judgment will become, duly authorized to serve as legal representatives of [REDACTED] estate under the laws of the State of Tennessee. No payments pursuant to this Stipulation shall be made until petitioners provides the Secretary with documentation establishing their appointment as legal representatives of [REDACTED] estate. If petitioners are not authorized by a court of competent jurisdiction to serve as legal representatives of the Estate of [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 legal representatives 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, petitioners, in their individual capacity and as legal representatives of [REDACTED] estate, on their own, and on behalf of [REDACTED] estate, and his heirs, executors, administrators, successors or assigns, do 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 flu vaccination administered on February 29, 2016, as alleged in a petition for vaccine compensation filed on May 15, 2017, in the United States Court of Federal Claims as petition No. 17-636V.

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, and any change in items of compensation sought is not grounds to modify or revise this agreement.

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] to suffer GBS or any other injury or caused his death.

16. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives the Estate of Mr. Van Keuren.

END OF STIPULATION

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PETITIONERS:




SALLY VAN KEUREN

**ATTORNEY OF RECORD FOR
PETITIONER:**



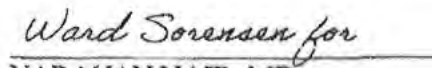
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Dated: 9/26/18