

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
 No. 07-450V
 (E-Filed: September 28, 2012)

SANDRA DWARES,)	UNPUBLISHED
)	
)	
Petitioner,)	Joint Stipulation on
)	Damages; Trivalent
)	Influenza Vaccine;
)	Transverse Myelitis
v.)	
)	
SECRETARY OF THE DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

Ron Homer, Boston, MA, for petitioner.

Julia McInerny, Washington, DC, for respondent.

DECISION¹

On June 28, 2007, Sandra Dwares (“petitioner”), filed a petition for compensation alleging that she suffered certain injuries as a result of receiving a vaccination. Among the injuries petitioner alleged that she has suffered as a result of receiving the trivalent influenza vaccine on October 26, 2006, was transverse myelitis. She sought an award under the National Vaccine Injury Compensation

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends 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, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

Program, National Vaccine Injury Compensation Program² (the Act or the Program). 42 U.S.C. §§ 300aa-1 to -34 (2006).

On September 28, 2012, counsel for both parties filed a stipulation, stating that a decision should be entered awarding compensation. The parties stipulated that petitioner shall receive the following compensation:

- a. A lump sum of \$ 740,000.00 in the form of a check payable to petitioner, which represents compensation for damages that would be available under 42 U.S.C. §300aa-15(a), including lost earnings, actual and projected pain and suffering, and part unreimbursable expenses, in the form of a check payable to petitioner; and
- b. A sum of \$460,000.00 to purchase the annuity contract described in paragraph 10 in the attached stipulation, paid to the life insurance company from which the annuity will be purchased (the “Life Insurance Company”).

Stipulation ¶ 8.

The undersigned approves the requested amount for petitioner’s compensation. 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/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

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.

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.

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

_____)	
SANDRA DWARES,)	No. 07-450V
)	Chief Special Master Campbell-Smith
Petitioner,)	ECF
)	
v.)	
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Sandra Dwares, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the trivalent influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received the trivalent influenza ("flu") vaccine on October 26, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of transverse myelitis ("TM") on or about December 1, 2006, and further alleges that she experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.
6. Respondent denies that the flu vaccine caused petitioner's TM or any other injury and

denies that petitioner's current disabilities are sequella of her alleged vaccine-related injury.

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 \$740,000.00 in the form of a check payable to petitioner, which represents compensation for damages that would be available under 42 U.S.C. §300aa-15(a), including lost earnings, actual and projected pain and suffering, and past unreimbursable expenses, in the form of a check payable to petitioner; and
- b. A sum of \$460,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract¹ from the Life Insurance Company at a cost of \$460,000.00 for the benefit of Sandra Dwares, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for unreimbursable vaccine-related life-care expenses as follows:

- a. Beginning 90 days from the date of purchase of the annuity, \$1,400.00 payable monthly, if living, for 13 years, increasing at the rate of 2.5% compounded annually from the date of first payment.
- b. Beginning 13 years and 3 months from the date of purchase of the annuity, \$2,250.00 payable monthly, if living, for 10 years, increasing at the rate of 2.5% compounded annually from the date of first payment.
- c. Beginning 23 years and 3 months from the date of purchase of the annuity, \$4,420.51 payable monthly for life only, increasing at the rate of 2.5% compounded annually from the date of first payment.

The purchase price of the annuity, which was locked in by the John Hancock Life Insurance Company on September 18, 2012, shall be \$460,000.00, excluding any increased cost associated with the purchase of a guarantee if the Secretary elects to purchase such a guarantee with respect to this annuity. The annuity payments shall be paid as set forth above. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she is alive at the time a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of petitioner's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary

¹ To satisfy the conditions set forth herein, in respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. 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 program, 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation, either immediately or as part of the annuity contract, 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).

16. In return for the payments described in paragraph 8 and 12, petitioner, in her individual capacity and on behalf of her 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. § 300 aa-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 petitioner resulting from, or alleged to have resulted from, the trivalent influenza vaccination administered on October 26, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about June 28, 2007, in the United States Court of Federal Claims as petition No. 07-450V.

17. 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.

18. 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.

19. 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 12 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 further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

20. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

21. 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 petitioner's TM or any other injury, or that petitioner's current disabilities are sequella of her alleged vaccine-related injury.

22. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors, and assigns.

END OF STIPULATION

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PETITIONER:

Sandra Dwares
SANDRA DWARES

ATTORNEY OF RECORD FOR
PETITIONER:

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Dated: 9/28/12