

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

ROBERT BARKER,	*	
	*	No. 11-638V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: December 7, 2012
	*	
SECRETARY OF HEALTH	*	Stipulation; influenza vaccine; right leg
AND HUMAN SERVICES,	*	weakness; pain; polyneuropathy of the legs;
	*	Guillain-Barré syndrome; attorneys' fees
Respondent.	*	and costs

UNPUBLISHED DECISION¹

Ben T. Castle, Hudson & Castle Law, LLC, Wilmington, DE, for Petitioner;
Lynn E. Ricciardella, U.S. Department of Justice, Washington, D.C., for Respondent.

On December 6, 2012, the respondent filed a joint stipulation concerning the petition for compensation filed by Robert Barker. In his petition, Mr. Barker alleged that the influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which he received on or about October 14, 2010, caused him to sustain the injuries of right leg weakness, pain, polyneuropathy of the legs, and Guillain-Barré syndrome (“GBS”). 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.

Respondent denies that petitioner suffered right leg weakness, pain, polyneuropathy of the legs, GBS, or any other injury caused by his receipt of the flu vaccine, and denies that his disabilities are sequelae of his alleged injuries.

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 and attorneys’ fees and costs, on the terms set forth therein.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Compensation awarded in that stipulation includes:

- A. A lump sum payment of \$185,000.00 in the form of a check payable to Robert Barker, 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 \$10,511.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Ben T. Castle, for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-638V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jay All, at (202) 357-6353.

IT IS SO ORDERED.

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

6. Respondent denies that petitioner suffered right leg weakness, pain, polyneuropathy, GBS, or any other injury caused by his receipt of the flu vaccine, and denies that his disabilities are sequelae of his alleged injuries.

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 \$185,000.00 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 \$10,511.00 in the form of a check jointly payable to petitioner and petitioner's attorney, Ben T. Castle, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner 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. The 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 or about October 14, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about October 3, 2011, in the United States Court of Federal Claims as petition No. 11-638V.

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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner suffered right leg weakness, pain, polyneuropathy, GBS, or any other injury that was caused by the flu vaccine; or that his current disabilities are sequelae of his alleged injuries.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

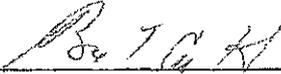
END OF STIPULATION

Respectfully submitted,

PETITIONER:

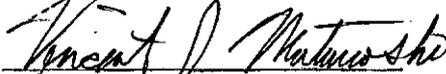

ROBERT BARKER

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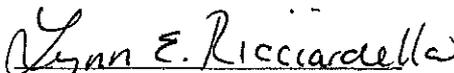
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Dated: December 6, 2012