

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

ROBERT FINLEY,	*	
	*	No. 11-220V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: November 16, 2012
	*	
SECRETARY OF HEALTH	*	Stipulation; hepatitis B vaccine;
AND HUMAN SERVICES,	*	thrombotic thrombocytopenic
	*	purpura
Respondent.	*	

UNPUBLISHED DECISION¹

Isaiah R. Kalinowski, Maglio Christopher and Toale, Sarasota, FL, for Petitioner;
Lisa A. Watts, U.S. Department of Justice, Washington, D.C., for Respondent.

On November 15, 2012, the respondent filed a joint stipulation concerning the petition for compensation filed by Robert Finley (“petitioner”) on April 8, 2011. In his petition, the Mr. Finley alleged that the hepatitis B vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Mr. Finley received on March 5, 2010, caused him to suffer thrombotic thrombocytopenia purpura (“TTP”). Mr. Finley further alleges that he suffered the residual effects of this injury for more than six months. Mr. Finley 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 the hepatitis B vaccine caused Mr. Finley’s alleged TTP, or any other injury, and further denies that petitioner’s current disabilities are sequelae of a vaccine-related injury.

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.

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.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$6,580.06 representing compensation for the reimbursement of a State of Indiana Medicaid lien, payable jointly to petitioner and Indiana Medicaid, c/o Diane Carey, HP Enterprise Services, TPL Casualty Dept., P.O. Box 7262, Indianapolis, IN 46207. Petitioner agrees to endorse this check to Indiana Medicaid; and**
- B. A lump sum of \$78,419.94 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 11-220V 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 the Hep B vaccine caused petitioner's alleged TTP, or any other injury, and further denies that petitioner's current disabilities are sequelae of a 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 payment of \$6,580.06, representing compensation for the reimbursement of a State of Indiana Medicaid lien, payable jointly to petitioner and Indiana Medicaid, c/o Diane Carey, HP Enterprise Services, TPL Casualty Dept., P.O. Box 7262, Indianapolis, IN 46207. Petitioner agrees to endorse this check to Indiana Medicaid; and

b. A lump sum of \$78,419.94 in the form of a check payable to petitioner. 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. Petitioner and his 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 prepaid 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.

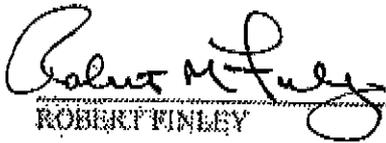
12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors, and 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 United States 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 Hep B vaccine administered on March 5, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about April 8, 2011, in the United States Court of Federal Claims as petition No. 11-220V.

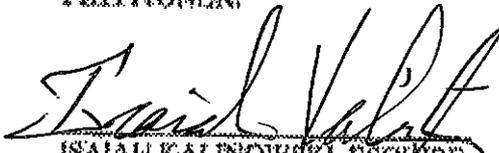
14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

Respectfully submitted,

PETITIONER:


ROBERT FINLEY

ATTORNEY OF RECORD FOR
PETITIONER:

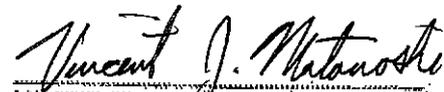

ISAIAH KALINOWSKI, ESQUIRE
Maglio Christopher & Foale, P.A.
1605 Mulla Street, Ste. 710
Sarasota, FL 34236
1435 Pennsylvania Avenue, Ste. 400
Washington, DC 20004
Tel: (941) 952-5242

AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:


VITO CASERTA, M.D., M.P.H.
Acting Director, Division of Vaccine
Injury Compensation (DVIC)
Director, Countermeasures Injury
Compensation Program (CICP)
Healthcare Systems Bureau
U.S. Department of Health and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

DATE: 11/15/2012

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


VINCENT J. MUTANGSKI
Acting Deputy Director,
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

ATTORNEY OF RECORD FOR
RESPONDENT:


LISA A. WATTS
Trial Attorney
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4099