

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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U.S. COURT OF FEDERAL CLAIMS

BRENDA FISCHER,
Petitioner,
v.
SECRETARY OF HEALTH AND HUMAN
SERVICES,
Respondent.

No. 04-1096V

Special Master Vowell

STIPULATION

The parties hereby stipulate to the following matters:

1. For herself, on July 1, 2004, petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 300aa-34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the tetanus vaccine, which is listed in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3(a).
2. Petitioner received her tetanus immunization on July 17, 2001.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained the Table injury of brachial neuritis, and, alternatively, that the brachial neuritis was caused in fact by the tetanus vaccine. She further

alleges that as a result of the brachial neuritis, she developed the sequela of fatigue, headaches, and body pain.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of herself as a result of her condition.

6. Respondent denies that petitioner sustained a Table injury and denies that the tetanus vaccine caused in fact any or all of petitioner's injuries or pain. Respondent denies that petitioner's brachial neuritis, fatigue, headaches, and body pain are sequela 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 payment:

A lump sum of \$75,000.00 in the form of a check payable to petitioner. This amount represents compensation for past and future unreimbursed medical expenses, lost wages, pain and suffering.

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 attorney's 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. In return for the payments described in paragraph 8, petitioner in her individual capacity, on behalf of herself, and her heirs, executors, administrators, successors, or assigns, does forever and fully expressly release, acquit, and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses, and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the tetanus vaccination administered on July 13, 2001, as alleged by petitioner in a petition for vaccine compensation filed on or about July 1, 2004, in the United States Court of Federal Claims as petition No. 04-1096V.

12. If petitioner should die prior to the Secretary making the payment described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

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 null and void at the sole discretion of either party.

14. This Stipulation expresses a full, complete, and total 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.

15. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:


Brenda Fischer

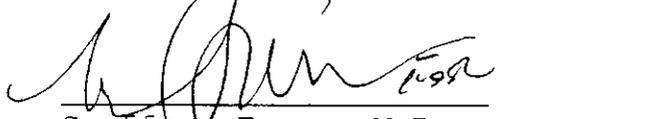
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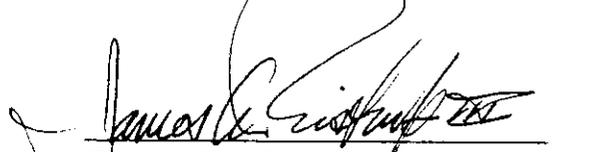
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Dated: _____