

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 05-1046V

Filed: May 6, 2008

\*\*\*\*\*  
RAYMOND OSTRANDER, \*  
\*  
Petitioner, \*  
\* Influenza Vaccine; GBS; Stipulation  
v. \*  
\*  
SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*  
\*  
Respondent. \*  
\*\*\*\*\*

### DECISION<sup>1</sup>

On April 30, 2008, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleged that Mr. Raymond Ostrander developed Guillain-Barre Syndrome (GBS) as a result of a influenza vaccine administered on October 1, 2002. Respondent denies that petitioner's GBS is vaccine-related. Nonetheless, the parties agreed informally to resolve this matter.

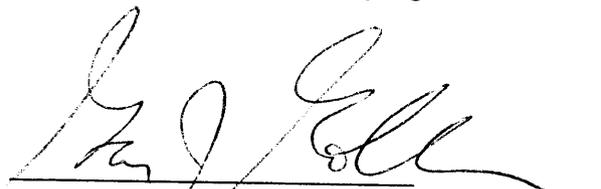
The court hereby **adopts** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded a lump sum of \$316,746.07, which amount represents compensation for first year post judgment life care expenses (\$57,536.50), lost earnings (\$79,340.15), pain and suffering (\$163,202.70), and past unreimbursable expenses (\$16,666.72) in the form of a check payable to

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<sup>1</sup>The undersigned intends to post this decision on the United States Court of Federal Claims's 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.

petitioner. Petitioner is also awarded an amount sufficient to purchase the annuity contract described in paragraph 10 of the attached Stipulation, paid to the life insurance company from which the annuity will be purchased. The Clerk of the Court is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

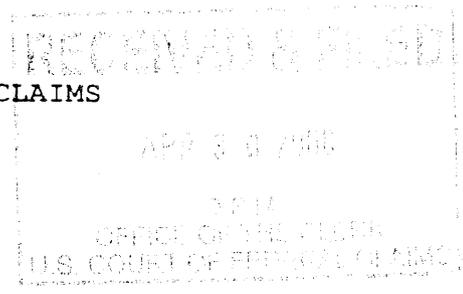


Gary J. Golkiewicz  
Chief Special Master

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<sup>2</sup>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.

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

_____	)	
RAYMOND E. OSTRANDER,	)	
	)	
Petitioner,	)	No. 05-1046V
	)	Chief Special Master
v.	)	Golkiewicz
	)	
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Respondent.	)	
_____	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. 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 influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a) (I); 42 C.F.R. § 100.3 (a).
2. Petitioner received his influenza immunization on October 1, 2002.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he developed Guillian-Barro Syndrome ("GBS") as a result of receipt of the vaccine.
5. 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.

6. Respondent denies that petitioner suffered the onset of GBS as a result of the influenza vaccine, and denies that his current disabilities are sequelae of his alleged Table 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 \$316,746.07, which amount represents compensation for first year post judgment life care expenses (\$57,536.50), lost earnings (\$79,340.15), pain and suffering (\$163,202.70), and past unreimbursable expenses (\$16,666.72) in the form of a check payable to petitioner; and

b. An amount sufficient 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 contract from the Life Insurance Company for the benefit of petitioner, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

a. For future un-reimbursable Medicare premium and deductible expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,291.80 to be paid up to the anniversary of the date of judgment in year 2011, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

b. For future un-reimbursable primary care physician and pain management/neurology expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$41.80 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

c. For future un-reimbursable PT evaluation and OT evaluation expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$100.00 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

d. For future un-reimbursable PT and OT expenses, on the anniversary of the date of judgment in year 2018, a lump sum payment of \$3,872.00, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

e. For future un-reimbursable therapeutic recreation expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$474.00 to be paid up to the anniversary of the date of judgment in year 2011, increasing at the rate of

four percent (4%), compounded annually from the date of judgment.

f. For future un-reimbursable cane, cane with ice adapter, electric wheelchair or scooter, manual wheelchair, rolling walker, and teflon roller walker glide expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$240.30 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

g. For future un-reimbursable wheelchair cushion expenses, on the first anniversary of the date of judgment, a lump sum payment of \$90.00; thereafter, beginning on the anniversary of the date of judgment in year 2010, an annual amount of \$45.00 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

h. For future un-reimbursable hand held shower, toilet arm support, commode, urinal, transfer shower chair, transfer lift, lift sling, electric bed, and portable lift chair expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$251.40 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

i. For future un-reimbursable personal care attendant expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$47,320.00 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of three percent (3%), compounded annually from the date of judgment.

j. For future un-reimbursable nurse case management expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,080.00 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

l. For future un-reimbursable van modification expenses, on the anniversary of the date of judgment in year 2013, a lump sum payment of \$10,000.00; thereafter, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$1,000.00 to be paid for the remainder of Raymond Ostrander's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Raymond Ostrander is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Raymond Ostrander'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 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. 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.

14. 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 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).

15. In return for the payments described in paragraphs 8 and 12, petitioner, on behalf of himself, and his 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 influenza vaccination administered on October 1, 2002, as alleged by petitioner in a petition for vaccine compensation filed on or about September 28, 2005, in the United States Court of Federal Claims as petition No. 05-1046V.

16. If petitioner should die prior to receiving the payments described in paragraph 8(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

17. 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.

18. This Stipulation expresses a full and complete 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.

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

END OF STIPULATION