

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

KIMBERLY GABBARD,	*	
	*	No. 99-451V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: June 26, 2008
	*	
SECRETARY OF HEALTH	*	Stipulation; hepatitis B
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

UNPUBLISHED DECISION*

Clifford J. Shoemaker, Esq., Shoemaker and Associates, Vienna, VA, for Petitioner;
Katherine C. Esposito, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On June 18, 2008, the parties filed a joint stipulation concerning the claim made in the petition filed by Kimberly Gabbard on July 13, 1999. In her petition, Ms. Gabbard alleged that the hepatitis B vaccination, which she received on August 7, 1997, caused her to suffer an adverse reaction. Ms. Gabbard sought compensation for those injuries.

Respondent denies that Ms. Gabbard’s injuries were caused by the hepatitis B vaccination. 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

* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa–12(d)(4) ; Vaccine Rule 18(b).

awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

A lump sum of \$387,000.00 in the form of a check payable to Petitioner.

This amount represents compensation for all damages that would be available pursuant to 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 No. 99-451V according to this decision and the attached stipulation.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

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OFFICE OF SPECIAL MASTERS

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_____)
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))
Petitioner,)
))
v.)
))
SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
))
Respondent.)
_____)

No. 99-451V THE OFFICE OF THE CLERK
Special Master Moran U.S. COURT OF FEDERAL CLAIMS

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Kimberly Gabbard (“Kimberly”), filed a petition for vaccine injury 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 Kimberly’s receipt of the hepatitis B vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Kimberly received the immunization at issue on August 7, 1997.
3. The vaccine was administered within the United States.
4. Kimberly alleges that she suffered an adverse reaction, caused in fact by her receipt of the hepatitis B vaccination.
5. Petitioner represents there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that Kimberly's condition was caused by her hepatitis B vaccination as alleged by petitioner.

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 payments:

A lump sum of \$387,000.00 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).

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 attorneys' 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. 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 Kimberly 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 payment described in paragraph 8, petitioner, in her individual capacity and on behalf of 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 Kimberly resulting from, or alleged to have resulted from, the hepatitis B immunization administered on August 7, 1997, as alleged by petitioner in a petition for vaccine compensation filed on or about July 13, 1999, in the United States Court of Federal Claims as petition No. 99-451V.

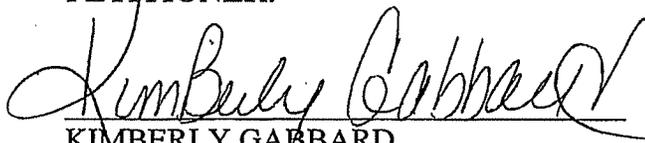
13. If Kimberly should die prior to receiving the payment described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

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 will be null and void at the sole discretion of either party.

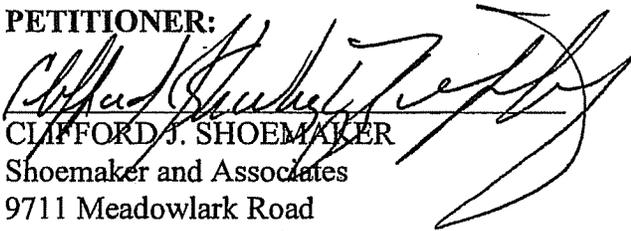
15. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and

Respectfully submitted,

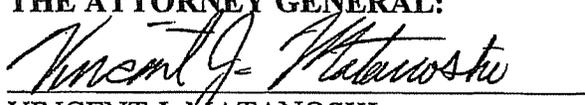
PETITIONER:


KIMBERLY GABBARD

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Dated: 6/10/08