

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-0103V

Filed: 17 July 2008

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

Stephen I. Leshner, Esq., Stephen I. Leshner, P.C., Warren, Michigan, for Petitioner;
Althea Walker Davis, Esq., U.S. Department of Justice, Washington, D.C. for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 10 July 2008, the parties filed a joint stipulation addressing the vaccine-related injuries of Petitioner Brenda K. Nosek, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. Brenda K. Nosek, Petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through 34 (the “Vaccine Program”) on 12 February 2007. The petition seeks compensation for injuries allegedly related to Petitioner’s receipt of the measles-mumps-rubella vaccine, which vaccine is included on the Vaccine Injury Table (the “Table”), 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3(a).

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling 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" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

2. Petitioner received a measles-mumps-rubella vaccine on 16 June 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of chronic arthritis on or about 17 June 2005. Petitioner maintains that she developed neck pain, myalgias, and effusions in both knees within 15 days of vaccination. She further alleges that she continues to suffer from chronic pain syndrome as a sequela of her injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.
6. Respondent denies that Petitioner's alleged injury was vaccine-related, and denies that she suffers any current disabilities that are sequelae of her alleged 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 [by the Undersigned] awarding the compensation described in paragraph 8 of this [Decision].
8. As soon as practicable after an entry of judgment reflecting [this Decision], 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 [shall] issue the following vaccine compensation payments:
 - a. A lump sum of **\$100,000.00** in the form of a check payable to Petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner would be entitled; and
 - b. A lump sum of **\$46,515.00** in the form of a check payable to Petitioner and Petitioner's attorney, Stephen I. Leshner, for attorneys' fees and costs, and, in compliance with General Order No. 9, Petitioner represents that she incurred no out-of-pocket expenses in proceeding on the Petition.
9. Payments made pursuant to paragraph 8 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.
10. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs incurred in this proceeding, the money provided pursuant to this [Decision] [shall] 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)
11. In return for the payments 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 Petitioner,

resulting from, or alleged to have resulted from, the measles-mumps-rubella vaccination administered to her on or about 16 June 2005, as alleged by Petitioner in her petition for vaccine compensation filed on or about 12 February 2007, in the United States Court of Federal Claims as petition No. 07-0103V.

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

13. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

14. This [Decision] expresses a full and complete 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.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

Richard B. Abell
Special Master