

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
E-Filed: August 10, 2012

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JOHN R. CITIZEN,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

* UNPUBLISHED

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* No. 9-744V

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* Chief Special Master
Campbell-Smith

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* Joint Stipulation on Damages;
Hepatitis B Vaccine; Trivalent
Influenza (“Flu”) Vaccine;
Neuralgias

*

Anne C. Toale, Maglio, Christopher & Toale, P.A., Sarasota, FL, for petitioner.
Voris E. Johnson, U.S. Dep’t of Justice, Washington, DC, for respondent.

DECISION¹

On October 30, 2009, John R. Citizen (“petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).²

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

Petitioner alleges that as a result of the administration of hepatitis B vaccines on February 12, 2008, September 3, 2008, and October 3, 2008, as well as a trivalent influenza (“flu”) vaccine on October 23, 2008, he thereafter suffered an adverse reaction resulting in neuralgias, and the residual effects of his injury for more than six months.

Respondent denies that either the hepatitis B vaccine or the flu vaccine caused petitioner’s alleged adverse reaction and residual effects. Stip. at ¶ 6.

Nevertheless, on August 10, 2012, counsel for the parties filed a joint stipulation, which is attached to this decision, stating that a decision should be entered awarding compensation. The parties stipulated that petitioner should receive the following compensation payment:

A lump sum payment of \$100,000.00, 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).³ Stip. at ¶ 8.

The undersigned finds the stipulation reasonable, adopts it as the decision of the court on damages, and approves the requested amount for petitioner’s compensation.

Accordingly, an award should be made in the form of a check payable to petitioner in the amount of **\$100,000.00**. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties’ stipulation.⁴

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia Campbell-Smith
Chief Special Master

³ The parties further stipulated that they had not yet reached an agreement with respect to attorneys’ fees and costs. Stip. at ¶ 9.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

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

action for damages as a result of his condition.

6. Respondent denies that either the hepatitis B or influenza vaccine caused petitioner's alleged adverse reaction and residual effects.

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 \$100,000.00 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 reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by entities that provide health services on a pre-paid basis.

11. Payment 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 or assigns, does forever irrevocably and unconditionally release, acquit and discharge the Secretary of Health and Human Services and the United States of America 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 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 hepatitis B vaccines administered on February 12, 2008, September 3, 2008, and October 3, 2008, and/or the influenza vaccine administered on October 23, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about October 30, 2009, in the United States Court of Federal Claims as petition No. 09-744V.

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.

15. 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 voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National 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. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States of America or the Secretary of Health and Human Services that petitioner's alleged injury and residual effects, or any other injury, were caused-in-fact by the hepatitis B or influenza vaccines.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, successors and/or assigns.

END OF STIPULATION

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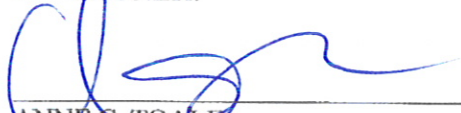
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Respectfully submitted,


PETITIONER:


JOHN R. CITIZEN

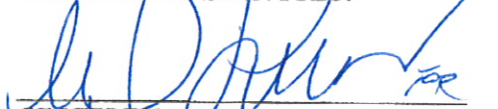
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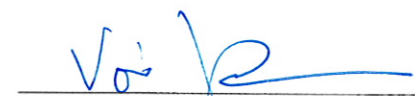
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