

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

(Filed: May 19, 2008)

DO NOT PUBLISH

TALTA KERN,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 07-0092V
	)	Influenza Vaccine; Guillain-Barré
SECRETARY OF	)	Syndrome; Stipulation
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

### DECISION DIRECTING ENTRY OF JUDGMENT<sup>1</sup>

Petitioner, Talta Kern (Ms. Kern), seeks compensation under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> In November 2005, Ms. Kern suffered Guillain-Barré Syndrome (GBS). *See generally* Petitioner's exhibit (Pet. ex.) 12. In a Program petition that she filed on February 7, 2007, Ms. Kern relates her GBS to a trivalent influenza vaccination that she received on October 31, 2005. *See* Petition (Pet.) at 1.

Respondent denies that Ms. Kern sustained a vaccine-related injury. *See generally* Respondent's Report, filed May 11, 2007. Nevertheless, on May 14, 2008, the parties filed a Stipulation. *See* Stipulation (Stipulation), filed May 14, 2008. The special master has reviewed thoroughly the Stipulation. He adopts completely the Stipulation. Therefore, in the absence of a

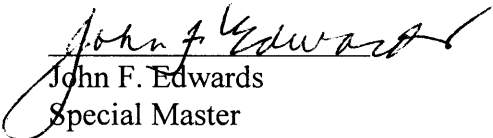
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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, 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.*

<sup>2</sup> The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the Stipulation in Ms. Kern's favor. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), Ms. Kern may expedite payment by filing an election to accept the judgment.

The clerk of court shall send Ms. Kern's copy of this decision to Ms. Kern by overnight express delivery.

  
John F. Edwards  
Special Master

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

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OSM  
OFFICE OF THE CLERK  
U.S. COURT OF FEDERAL CLAIMS

TALTA KERN,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

No. 07-92V

Special Master Edwards

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Talta Kern ("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 a trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table") at 42 U.S.C. § 300aa-14(a)(XIV) and 42 C.F.R. §100.3(a)(XIV).
2. Petitioner received a flu vaccination on October 31, 2005.
3. The vaccine was administered within the United States.
4. On or around November 29, 2005, petitioner experienced the onset of Guillain Barré Syndrome ("GBS"), which petitioner alleges was caused-in-fact by the flu vaccine. Petitioner further alleges that she experienced the residual effects of her GBS for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that petitioner's GBS and alleged residual effects were caused-in-fact by the flu vaccine.

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) A lump sum of \$150,000.00 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); and,

(b) A lump sum of \$89,500.00 in the form of a check payable jointly to petitioner and her counsel, James J. Biscoglia of LaMarca and Landry, P.C., for all attorneys' fees and costs that would be available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Any payment made pursuant to paragraph 8 of this Stipulation will 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, 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).

11. In return for the payments described in paragraphs 8(a) and (b), petitioner 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 flu vaccination administered on October 31, 2005, as alleged by petitioner in a petition for vaccine compensation filed on or about February 7, 2007, in the United States Court of Federal Claims as petition No. 07-92V.

12. If petitioner should die prior to receiving the payment described in paragraph 9(a), 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 in the event 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 and complete settlement of liability and damages, including attorneys' fees and costs, claimed in this matter by petitioner 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.

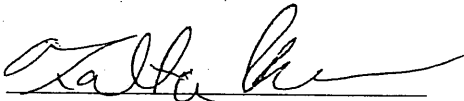
15. All rights and obligations of petitioner hereunder shall apply equally to

petitioner's heirs, successors and/or assigns.

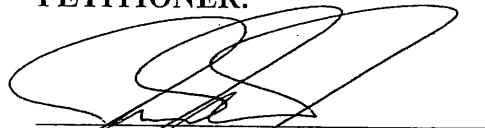
END OF STIPULATION

Respectfully submitted,

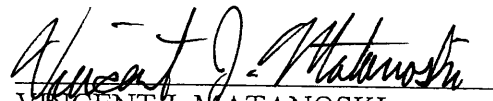
**PETITIONER:**

  
TALTA KERN

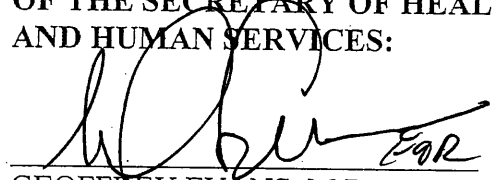
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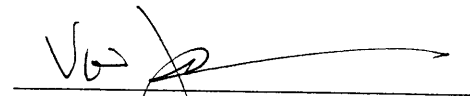
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Dated: 5/14/08