

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 09-110V
Filed: November 1, 2011
Unpublished

HARRY A. SELPH,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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* Stipulation; Influenza vaccine, flu;
* Guillain-Barré Syndrome, GBS;
* Attorneys' fees and costs
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S. Allan Hill, Greenville, NC, for Petitioner.

Voris E. Johnson, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION ON ENTITLEMENT AND
DECISION ON ATTORNEYS' FEES AND COSTS¹

GOLKIEWICZ, Special Master.

On October 28, 2011, the parties to the above-captioned case filed a Stipulation, attached hereto, memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that he suffered Guillain-Barré Syndrome (“GBS”) as a consequence of the influenza vaccination he received on November 4, 2007. Petitioner further alleges that he experienced the residual effects of the injury for more than six months. Respondent denies that petitioner developed that the flu vaccine caused petitioner’s alleged injuries and residual effects. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed October 28, 2011.

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, 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. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.**

Further, on October 28, 2011, the parties also filed a Stipulation of Fact Concerning Attorneys' Fees and Costs ("Fee Stipulation"). The Fee Stipulation states that petitioner informally provided respondent with his request for attorneys' fees and costs. Through informal discussions, respondent raised certain objections and petitioner has agreed to amend his request for fees and costs. Petitioner now requests, and respondent does not object to, an award of \$57,000.00 for petitioner's attorneys' fees and costs. In compliance with General Order #9, petitioner filed documents evidencing out-of-pocket expenses paid by petitioner himself. Fee Stipulation, Tab A.

The court hereby **ADOPTS** the parties' Stipulation on entitlement and the parties' Stipulation of Fact Concerning Attorneys' Fees and Costs, awarding compensation in the amount and on the terms set forth therein. **Specifically, a) petitioner is awarded a lump sum of \$365,000.00 in the form of a check payable to petitioner, see Stipulation, ¶ 8; b) petitioner is also awarded a lump sum of \$34,266.09 in the form of a check payable jointly to petitioner and petitioner's attorney, S. Allan Hill, for attorney fees and costs; c) lastly, petitioner is awarded a lump sum of \$22,733.91 in the form of a check payable to petitioner for petitioner's own litigation expenses. See Stipulation of Fact Concerning Attorneys' Fees and Costs, ¶ 3.**

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.²

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. 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.

6. Respondent denies that the flu vaccine caused petitioner's alleged injury 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 \$365,000.00 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. Payments made pursuant to paragraph 8 and any amount 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, on behalf of himself and 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 flu vaccine administered on November 4, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about February 20, 2009, in the United States Court of Federal Claims as petition No. 09-110V.

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, 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 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 were caused-in-fact by the flu vaccine.

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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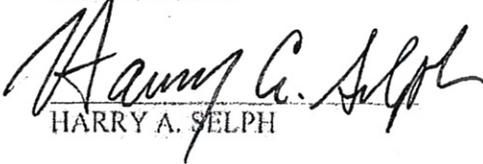
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Respectfully submitted.

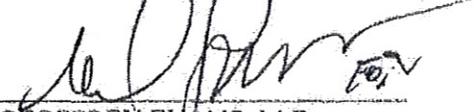
PETITIONER:


HARRY A. SELPH

**ATTORNEY OF RECORD FOR
PETITIONER:**


S. ALLAN HILL
Temple, Mann, Briggs & Hill
819 East North Street
Greenville, SC 29601
(864) 242-2995

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building,
Mail Stop 11C-26
Rockville, MD 20857

Dated: 10/28/11

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


by 
MARK W. ROGERS
Deputy Director
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**ATTORNEY OF RECORD FOR
RESPONDENT:**


VORIS E. JOHNSON, JR.
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4136