

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 99-0321V

Filed: July 9, 2009

BETTY FLUCK,	)	
	)	
Petitioner,	)	DO NOT PUBLISH
	)	Stipulation; Hepatitis B vaccination;
v.	)	Fibromyalgia
	)	
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

### DECISION<sup>1</sup>

**GOLKIEWICZ, Chief Special Master.**

Petitioner, Betty Fluck, filed a Petition on May 18, 1999, pursuant to the National Vaccine Injury Compensation Program (the "Act" or "the Program").<sup>2</sup> Petition ("Pet.") at 1. Petitioner received Hepatitis B (Hep B) vaccinations on October 14, 2007, and December 2, 2007. Petitioner alleges that "she sustained the first onset or manifestation of a serum-like illness within twenty-four hours of vaccination." Stipulation at 1. Petitioner further alleges that as a result of her Hepatitis B vaccinations "she developed and continues to suffer from an ill-defined neurological disorder characterized by myalgias, and arthritis and consistent with fibromyalgia." Id.

Respondent denies that the above-mentioned vaccinations caused petitioner's alleged vaccine-related illness; and also denies that "petitioner's alleged injury fulfils the criteria of the injury table in the statute." Id. at 2. Nonetheless, the parties have agreed informally to resolve this

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<sup>1</sup> The undersigned intends to post this decision 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). 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 National Vaccine Injury Compensation Program comprises 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-10 et seq. (2006) ("Vaccine Act" or the "Act"). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Vaccine Act.

matter. On July 8, 2009, the parties to the above captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case.

The court hereby **adopts** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded a lump sum of \$226,000.00 in the form of a check payable to petitioner. The Clerk of the Court is directed to enter judgment accordingly.<sup>3</sup>

**IT IS SO ORDERED.**

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

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<sup>3</sup> 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.

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

_____	)	
BETTY FLUCK,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 99-321V
	)	Special Master Golkiewicz
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Betty Fluck, 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 the hepatitis B (“hep B”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received a hep B vaccination on October 14, 2007, and December 2, 2007.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of a serum-sickness like illness within twenty-four hours of vaccination. She further alleges that she developed and continues to suffer from an ill-defined neurologic disorder characterized by myalgias, and arthritis and consistent with fibromyalgia, as a result of the vaccination.

5. Petitioner represents that she has not received compensation in the form of an award or settlement for her vaccine related injuries.

6. Respondent denies that petitioner's alleged injury fulfills the criteria of the injury table in the statute, and denies that the injury identified in the petition is causally related to the administration of the 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 vaccine compensation payment:

A lump sum of \$226,000.00 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.

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. 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 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).

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever expressly and fully 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 hep B vaccination administered to her on or about October 14, 1997, and December 2, 1997, as alleged by petitioner in a petition for vaccine compensation filed on May 18, 1999, in the United States Court of Federal Claims as petition No. 99-321V.

13. If petitioner 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 shall 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

