



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 compensation as follows:**

- a. The Secretary of Health and Human Services will purchase an annuity contract described in ¶¶ 8 - 10 of the Stipulation at a sum cost of \$400,000.00, paid to the life insurance company from which the annuity will be purchased, for the benefit of petitioner, Gail Katz. This amount represents compensation for all damages that would be available under pursuant to 42 U.S.C. § 300aa-15(a).**
- b. A lump sum of \$15,253.00 in the form of a check payable to petitioner and petitioner's attorney, Jack Hull, Esq., representing petitioner's attorneys' fees and costs.<sup>2</sup>**

Stipulation, ¶¶ 8 - 10. On May 27, 2010, in compliance with General Order #9, petitioner averred that all litigation costs were advanced by petitioner's counsel of record.

The Clerk of the Court is directed to enter judgment accordingly.<sup>3</sup>

**IT IS SO ORDERED.**

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Gary J. Golkiewicz  
Special Master

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<sup>2</sup> This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991).

<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

GAIL KATZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 07-159V
	)	Chief Special Master
SECRETARY OF HEALTH AND HUMAN	)	Gary J. Golkiewicz
SERVICES,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Gail Katz, 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 influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received her influenza immunization on October 5, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained vaccine-related injuries of dysimmune inflammatory polyradiculoneuropathy, incontinence of urine, sensory disturbances, numbness, pain, and fatigue, that were caused in fact by the vaccination. She further alleges that she suffered sequelae of those injuries that persisted for over six months.

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 injuries and sequelae were vaccine-related.

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 payments:

- a) A sum of \$400,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).
- b) A lump sum of \$15,253.00 in the form of a check payable to petitioner and petitioner's attorney, Jack Hull, Esq., representing petitioner's attorneys' fees and costs, which were incurred in bringing this vaccine injury claim.

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company at a cost of \$400,000.00 for the benefit of Gail Katz, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner as follows:

Beginning 10/03/2017, \$4,012.36 payable monthly, guaranteed for 13 years (156 payments guaranteed). The monthly benefit shall compound at 2.5% annually from the date of first payment, with the last payment on 09/03/2030.

The purchase price of the annuity shall not exceed \$400,000.00. The above monthly amount represents an estimate of the annuity stream that could be purchased for \$400,000.00. In the event that the cost of the annuity payments set forth above varies from \$400,000.00 due to market rate fluctuations on the date the annuity is purchased, the payment described above shall be adjusted downward or upward accordingly to ensure that the total cost of the annuity will not be greater than or less than \$400,000.00. The monthly payments are guaranteed for 13 years. Petitioner will receive the annuity payments from the Life Insurance Company for the guaranteed period. Should petitioner predecease the exhaustion of payments during the guarantee period described above, any remaining payments shall be made payable to

the Estate of Gail Katz. The personal representative of the Estate of Gail Katz shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of petitioner's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amount set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. Payments 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.

13. In return for the payments described in paragraphs 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 influenza vaccination administered on October 5, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about March 12, 2007, in the United States Court of Federal Claims as petition No. 07-159V.

14. 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).

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 null and void at the sole discretion of either party.

16. This Stipulation 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.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

END OF STIPULATION

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