

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-108V

Filed: December 13, 2010

Not to be Published

WHITNEY MIXTER,

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Petitioner,

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v.

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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DECISION¹

On December 10, 2010, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that she suffered Guillain-Barré Syndrome (“GBS”) as a consequence of the Twinrix (hepatitis A and hepatitis B) vaccinations she received on May 2, 2008, and on June 18, 2008. Petitioner further alleges that she experienced the residual effects of her injury for more than six months. Respondent denies that the Twinrix vaccine caused petitioner’s alleged injury and current condition, and denies that petitioner experienced residual effects for more than six months. Nonetheless, the parties agreed informally to resolve this matter.

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 \$35,000.00 in the form of a check payable to petitioner; petitioner is also awarded \$9,000.00 in the form of a check payable jointly to petitioner and petitioner’s attorney of record.** See Stipulation, ¶ 8, filed December 10, 2010 (complying with General Order #9, petitioner did not personally incur out-of-pocket expenses in proceeding on this Petition).

The Clerk of the Court is directed to enter judgment accordingly.²

¹The 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.

IT IS SO ORDERED.

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

² 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**

WHITNEY MIXTER,)	
)	
)	
Petitioner,)	
)	No. 10-108V (ECF)
v.)	Special Master Golkiewicz
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Whitney Mixter (“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 sustained following petitioner’s receipt of a Twinrix (hepatitis A and hepatitis B) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a).
2. Petitioner received the Twinrix vaccine on May 2, 2008, and June 18, 2008.
3. The vaccines were administered within the United States.
4. Petitioner alleges that she subsequently suffered the injury Guillain-Barré Syndrome (“GBS”), which petitioner alleges was caused-in-fact by her receipt of the Twinrix vaccine. Petitioner further alleges that she experienced the residual effects of her injury 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 the Twinrix vaccine caused petitioner's alleged injury and current condition, and denies that petitioner experienced the residual effects for more than six months.

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. A lump sum of \$35,000.00 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 \$9,000.00 in the form of a check payable to petitioner and petitioner's attorney, Mark T. Sadaka of Sadaka Associates, LLC, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. Petitioner and her 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.

10. Payments made pursuant to paragraph 8(a) and (b) 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 paragraph 8(a) and (b), petitioner, on behalf of herself and her 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 Twinrix vaccines administered on May 2, 2008, and June 18, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about February 18, 2010, in the United States Court of Federal Claims as petition No. 10-108V.

13. If petitioner should die prior to entry of the judgment, this agreement shall be 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 voidable at the sole discretion of either party.

15. 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.

16. 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 Twinrix vaccine.

17. 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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Respectfully submitted.

PETITIONER:



Whitney Mixter

ATTORNEY OF RECORD FOR
PETITIONER:



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Dated: 12/10/10