

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-710V

Filed: October 31, 2008

FRANK SALANITRI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Stipulation; Influenza Vaccination
	)	Guillain Barré Syndrome;
SECRETARY OF	)	Attorney's fees and costs
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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

On October 22, 2008, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation and attorney's fees and costs in this case.

Petitioner alleged that he developed Guillain Barré Syndrome ("GBS") and related sequella, as a result of an Influenza ("flu") vaccination received on or about October 8, 2004. Respondent denies that petitioner's GBS and any alleged residual effects were caused-in-fact by his flu vaccination. Nonetheless, the parties have 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 \$125,000.00 in the form of a check payable to petitioner. Additionally, the petitioner is awarded a lump sum of \$17,628.38 in the form of a check payable jointly to

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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.

petitioner and his counsel, Stephen Seidner, of Seidner, Rosenfeld & Guttentag, in attorney's fees and costs.<sup>2</sup> 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  
Chief Special Master

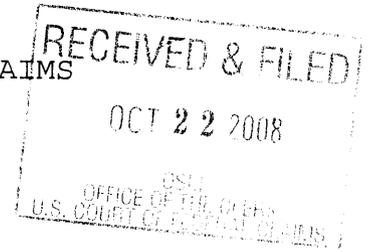
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<sup>2</sup>This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an 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.

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v. ) No. 07-710V  
 ) Chief Special Master Golkiewicz  
SECRETARY OF HEALTH AND HUMAN )  
SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_)

STIPULATION

The parties hereby stipulate to the following matters:

1. Frank Salanitri, 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 trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a) (XIV).<sup>1</sup>

2. Petitioner received his flu immunization on or about October 8, 2004.

3. The vaccine was administered within the United States.

4. Petitioner alleges that he developed Guillain Barre

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<sup>1</sup> As of July 1, 2005, trivalent influenza vaccines have been added to the Table under this category. 70 Fed. Reg. 19,092 (April 12, 2005) (to be codified at 42 C.F.R. pt. 100.3).

Syndrome ("GBS"), and related sequela, as result of his receipt of the flu vaccine.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.

6. Respondent denies that petitioner suffered from GBS as a result of his receipt of the flu vaccine, and denies that petitioner's current condition is a sequela to his alleged vaccine reaction.

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 lump sum of \$125,000.00 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 \$17,628.38 in the form of a check payable to petitioner and petitioner's attorney, Stephen Seidner, for attorneys' fees and costs. Pursuant to General Order #9, petitioner has not incurred any expenses personally in proceeding on his petition.

9. 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.

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 paragraph 8, petitioner, in his individual capacity, and on behalf of his 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 or about October 8, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about October 2, 2007, in the United States Court of Federal Claims as petition No. 07-710V.

12. If petitioner should die prior to receiving any or all of

the payments described in paragraph 8(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 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.

14. 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.

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

END OF STIPULATION

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