

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-618V

Filed: October 24, 2011

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DOROTHY KAY WINDHAM,	)	
	)	NOT TO BE PUBLISHED
Petitioner,	)	
	)	
v.	)	Stipulation; Tetanus-diphtheria
	)	(TD); vaccine injury; sensory
SECRETARY OF	)	small fiber neuropathy (SFN)
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, M.A., for Petitioner;  
Debra A. Begley, United States Dep't of Justice, Washington, D.C., for Respondent.

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

**LORD**, Special Master.

On October 21, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Dorothy Kay Windham, alleges that she developed a sensory small fiber neuropathy ("SFN") as a result of her September 8, 2005, tetanus-diphtheria ("TD") vaccination. Petitioner alleges that her injury was caused-in-fact by her receipt of the TD vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R § 100.3(a). Petitioner further alleges that she experienced the residual effects of this injury for more than six months. She sought damages related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34.

Respondent denies that Petitioner developed SFN or any other injuries from receipt of the TD vaccine, and Respondent further denies that Petitioner experienced residual effects of SFN or any other injuries for more than six months. Nonetheless, the parties have agreed informally to resolve this matter.

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<sup>1</sup> In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the decision as posted on the United States Court of Federal Claims' website.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

A lump sum of **\$65,000.00 in the form of a check payable to petitioner, Dorothy Kay Windham.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/ Dee Lord  
Dee Lord  
Special Master

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<sup>2</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

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DOROTHY KAY WINDHAM,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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No. 08-618V (ECF)  
SPECIAL MASTER  
SANDRA D. LORD

STIPULATION

The parties hereby stipulate to the following matters:

1. 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 a tetanus-diphtheria ("Td") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received her Td immunization on September 8, 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she developed a sensory small fiber neuropathy ("SFN") that was caused-in-fact by her Td vaccination and that she experienced residual effects of this injury for more than 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 developed SFN or any other injuries that was caused-in-fact by her Td vaccination and denies that she experienced residual effects of this injury 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 lump sum of \$65,000.00 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 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.

11. 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.

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 herself, and her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services 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 Td vaccination administered on September 8, 2005, as alleged by petitioner in a petition for vaccine compensation filed on or about September 3, 2008, in the United States Court of Federal Claims as petition No. 08-618V.

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 Childhood 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 or the Secretary of Health and Human Services that petitioner developed SFN or any other injury that was caused-in-fact by her Td vaccination or that she experienced residual effects of this injury for more than six months.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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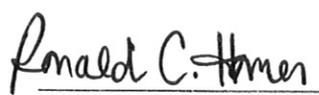
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Respectfully submitted,

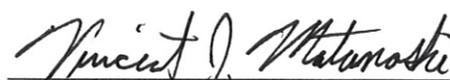
PETITIONER:

  
DOROTHY KAY WINDHAM

ATTORNEY OF RECORD FOR  
PETITIONER:

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*Dated: 10/21/11*