

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 12-680V

Filed: August 7, 2013

Not for Publication

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DEBRA BERLAND,

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Petitioner,

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Damages decision based on stipulation;

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Tetanus-Diphtheria vaccine; shoulder

v.

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injury related to vaccine administration;

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SIRVA

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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Jerome A. Konkel, Milwaukee, WI, for petitioner.

Debra A. Filteau Begley, Washington, DC, for respondent.

**MILLMAN, Special Master**

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

On August 7, 2013, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner developed pain in her left shoulder known as shoulder injury related to vaccine administration (SIRVA) at the location where she received her Tetanus-Diphtheria (DT) immunization on October 19, 2009. This condition includes, but is not limited to, petitioner's synovitis, tendinosis, rotator cuff impingement, acromioclavicular joint arthritis, and glenohumeral chondral sloughing of the humeral head. Petitioner underwent three surgeries to alleviate her symptoms and suffered the residual effects of her injury for more than six

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

months. There is not a preponderance of evidence demonstrating that petitioner's SIRVA was due to a factor unrelated to her DT immunization. Respondent agrees that petitioner is entitled to compensation under the terms of the Vaccine Program for her SIRVA.

Accordingly, the court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$188,412.74**, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The award shall be in the form of a check for **\$188,412.74** made payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: August 7, 2013

s/ Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

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

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DEBRA BERLAND,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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No. 12-680V  
SPECIAL MASTER  
LAURA MILLMAN

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 the Tetanus-Diphtheria ("DT") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received her DT immunization on October 19, 2009.
3. The vaccine was administered within the United States.
4. Petitioner developed pain in her left shoulder, at the location where she received her DT immunization, known as a shoulder injury related to vaccine administration ("SIRVA"). This condition includes, but is not limited to, petitioner's synovitis, tendinosis, rotator cuff impingement, acromioclavicular joint arthritis, and glenohumeral chondral sloughing of the humeral head.

5. Petitioner underwent three surgeries to alleviate her symptoms, including a humeral head replacement, and she has suffered the residual effects or complications of her injury for more than six months.

6. There is not a preponderance of evidence demonstrating that petitioner's SIRVA was due to a factor unrelated to her October 19, 2009 immunization.

7. 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.

8. Accordingly, petitioner is entitled to compensation under the terms of the Vaccine Program for her SIRVA. Therefore a decision should be entered awarding the compensation described in Paragraph 9 of this stipulation.

9. 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 \$188,412.74 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).

10. 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.

11. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

12. Payment made pursuant to paragraph 9 and any amounts awarded pursuant to paragraph 10 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. 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).

14. In return for the payments described in paragraphs 9 and 10, petitioner, in her individual capacity and on behalf of 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 DT vaccination administered on October 19, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about October 9, 2012, in the United States Court of Federal Claims as petition No. 12-680V.

15. 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.

16. 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.

17. 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 10 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.

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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Respectfully submitted,

**PETITIONER:**

*Debra Berland*  
DEBRA BERLAND

**ATTORNEY OF RECORD FOR  
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*[Signature]*  
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Dated: 8/6/13