

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-425V

Filed: April 3, 2013

Not for Publication

VICKI COMBS,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Damages decision based on
stipulation; influenza vaccine;
Guillain-Barré syndrome; fees and
costs based on stipulation

Jack G. Leader, Rock Hill, SC, for petitioner.

Julia Wernett McInerney, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS¹

On April 3, 2013, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleges that she suffered from Guillain-Barré syndrome following her receipt of influenza vaccine on October 8, 2010. Petitioner further alleges that she suffered the residual effects of this injury for more than six months. Respondent denies that petitioner's Guillain-Barré syndrome, or any other injury, was caused in fact by the influenza vaccine. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 redact 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 redact such material from public access.

The court finds the terms to be reasonable, hereby adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$140,000.00**, representing compensation for damages that would be available under 42 U.S.C. § 300aa-15(a). The award shall be in the form of a check for **\$140,000.00** made payable to petitioner; and
- b. A lump sum of **\$181,053.22**, representing compensation for past unreimbursed expenses pursuant to 42 U.S.C. § 300aa-15(a). Petitioner agrees to endorse this payment to the Valley Nursing Center. The award shall be in the form of a check for **\$181,053.22** made payable jointly to petitioner and

Valley Nursing Center
581 N. Carolina 16
Taylorsville, NC 28681-9986
Attn: Sheila Carlson

The parties have also agreed on an appropriate amount for attorneys' fees and costs in this case. In accordance with the General Order #9 requirement, petitioner's counsel asserts that petitioner did not incur any costs to pursue her petition.

Petitioner requests \$23,702.62 in attorneys' fees and costs to which respondent does not object. The undersigned finds this amount to be reasonable. Accordingly, the court awards **\$23,702.62**, representing reimbursement for attorneys' fees and costs. The award shall be in the form of a check made payable jointly to petitioner and Elrod Pope Law Firm, in the amount of **\$23,702.62**.

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.²

IT IS SO ORDERED.

Dated: April 3, 2013

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

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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

VICKI COMBS,

Petitioner,

v.

**SECRETARY OF HEALTH AND
HUMAN SERVICE,**

Respondent.

ECF

No. 11-425V

Special Master Millman

STIPULATION

The parties hereby stipulate to the following matters:

1. Vicki Combs ("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"). Petitioner seeks compensation for injuries allegedly related to her receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received her flu vaccine on October 8, 2010.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained a vaccine-related injury diagnosed as Guillain Barre Syndrome ("GBS") that was caused-in-fact by the flu vaccine, and that she experienced the residual effects of that injury for over 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 flu vaccine caused petitioner's GBS or any other injury, and denies that petitioner experienced residual effects of that 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 payments:

- a. A lump sum of \$140,000.00 in the form of a check payable to petitioner. This amount represents compensation for damages that would be available under 42 U.S.C. § 300aa-15(a); and
- b. A lump sum of \$181,053.22 in the form of a check payable jointly to petitioner and

Valley Nursing Center
581 N. Carolina 16
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Attn.: Sheila Carlson

This represents compensation for past unreimbursed expenses pursuant to 42 U.S.C. § 300aa-15(a). Petitioner agrees to endorse this payment to the Valley Nursing Center.

- c. A lump sum of \$23,702.62 in the form of a check payable jointly to petitioner and petitioner's attorney, Jack Leader, 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 petitioner in proceeding on the petition.

9. 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.

10. 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, 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, 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 flu vaccination administered on October 8, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about June 28, 2011, in the United States Court of Federal Claims as petition No. 11-425V.

13. 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.

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 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. 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 or the Secretary of Health and Human Services that the petitioner's GBS or any other injuries were caused-in-fact by the flu vaccine and that petitioner experienced residual effects of these injuries for more than six months.

17. 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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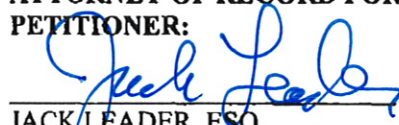
Respectfully submitted,

PETITIONER:



VICKI COMBS

**ATTORNEY OF RECORD FOR
PETITIONER:**



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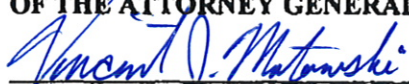
**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**



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Dated: 4/3/13

**AUTHORIZED REPRESENTATIVE
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