

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-416V

Filed: January 10, 2011

Not for publication

ESTATE OF RICHARD CUPPLER, by *
EILEEN CUPPLER, Administratrix *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Vincent P. Manning, Freehold, NJ, for petitioner.

Lisa A. Watts, Washington, DC, for respondent.

Damages and Attorneys' Fees and Costs
decision based on stipulation

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹ **AND ATTORNEYS' FEES AND COSTS**

On January 5, 2011, the parties filed the attached stipulation, in which they agreed to settle the damages portion of the case and the attorneys' fees and costs, and described the settlement terms. Petitioners alleged that Richard Cuppler suffered from transverse myelitis, paraplegia and death following a flu vaccination. Respondent denies that Mr. Cuppler's injuries and death were caused in fact by the flu vaccination. Nonetheless, the parties agreed to resolve

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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

this matter informally.

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. a lump sum of **\$175,000.00** in the form of a check made payable to petitioner as Administratrix of the Estate of Richard Cuppler; and
- b. a lump sum of **\$35,461.44** in the form of a check payable to petitioner and petitioner's attorney, Vincent P. Manning, Esq., for attorneys' fees and costs.

In accordance with the General Order #9 requirements, petitioner states she incurred no costs to pursue her petition. The court finds the amount requested by petitioner to be reasonable.

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: _____

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

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U.S. COURT OF FEDERAL CLAIMS

No. 07-416V
Special Master
Laura D. Millman

ESTATE OF RICHARD CUPPLER, by
EILEEN CUPPLER, Administratrix,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

STIPULATION

The parties hereby stipulate to the following matters:

1. Richard Cuppler ("Mr. Cuppler") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program") on June 26, 2007. Mr. Cuppler died on June 3, 2010. Mr. Cuppler's spouse and Administratrix of his estate, Eileen Cuppler, was substituted as petitioner, and an Amended Petition was filed on September 9, 2010. The Amended Petition seeks compensation for injuries and death allegedly related to Mr. Cuppler's 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. Mr. Cuppler received the flu vaccine on October 22, 2002.

3. The vaccine was administered within the United States.

4. Petitioner alleges that the flu vaccine caused Mr. Cuppler to sustain vaccine-related injuries including, transverse myelitis ("TM") and paraplegia, that were caused-in-fact by the vaccination. Petitioner further alleges that Mr. Cuppler's TM, or complications thereof, resulted in his death.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of Richard Cuppler as a result of Mr. Cuppler's injury and/or death.

6. Respondent denies that the flu vaccine caused Mr. Cuppler's TM and/or his death.

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 \$175,000.00 in the form of a check payable to petitioner as Administratrix of the Estate of Richard Cuppler. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).
- b. A lump sum of \$35,461.44 in the form of a check payable to petitioner and petitioner's attorney, Vincent P. Manning, Esq., for attorney's fees and costs, and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Payments made pursuant to paragraph 8 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

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. Petitioner represents that she has been appointed as the Administratrix of the Estate of Richard Cuppler under the laws of the State of New Jersey, and has filed proof of appointment in this case. If petitioner is not authorized by a court of competent jurisdiction to serve as Administratrix of Mr. Cuppler's estate at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent

jurisdiction to serve as guardian/conservator of the Estate of Richard Cuppler upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and as the personal representative of Mr. Cuppler's estate, on behalf of Mr. Cuppler's 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. § 300 aa-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 Richard Cuppler resulting from, or alleged to have resulted from, the flu vaccine administered to Mr. Cuppler on October 22, 2002, as alleged in a Petition filed on June 26, 2007, and in an Amended Petition filed on September 9, 2010, in the United States Court of Federal Claims as petition No. 07-416V.

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 voidable at the sole discretion of either party.

14. 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

Respectfully submitted,


PETITIONER:


EILEEN CUPPLER


**ATTORNEY OF RECORD FOR
PETITIONER:**


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**AUTHORIZED REPRESENTATIVE
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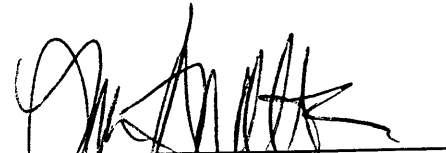

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