

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 11-611 V

Filed: February 29, 2012

Not for Publication

\*\*\*\*\*

KELLY WEISSE, \*  
as Administratrix of the Estate of, \*  
SEAN WEISSE, \*

Petitioner, \*

v. \*

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

Respondent. \*

\*\*\*\*\*

Kevin B. Lynch, New York, NY, for petitioner.  
Ryan D. Pyles, Washington, DC, for respondent.

Damages Decision Based on Stipulation;  
Flu Vaccine; ADEM; Death; Attorneys'  
Fees & Costs Decision Based on Stipulation

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS<sup>1</sup>**

On February 29, 2012, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleges that the vaccinee suffered from acute disseminated encephalomyelitis ("ADEM"), which resulted in his death, following a trivalent influenza ("flu") vaccination. Respondent denies that the vaccinee's ADEM and

---

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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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

resulting death were caused in fact by his flu vaccination. Nonetheless, the parties agreed to resolve this matter informally.

In the attached stipulation, the parties also settled attorneys' fees and costs. Pursuant to General Order #9, petitioner states that she did not incur any out-of-pocket litigation expenses to pursue the petition.

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 **\$200,000.00**, representing compensation for damages. The award shall be in the form of a check payable to petitioner as administratrix of the Estate of Sean Weisse; and
- b. A lump sum of **\$9,403.50**, representing reimbursement for attorneys' fees and costs. The award shall be in the form a check made payable jointly to petitioner and petitioner's counsel's firm, Scaffidi & Associates.

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: February 29, 2012

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

---

<sup>2</sup> 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.



for damages on behalf of the Estate of Sean Weisse as a result of Sean's alleged condition, resulting in death.

6. Respondent denies that the vaccine received by Sean on September 29, 2009, caused his ADEM and/or any other injury; and denies that Sean's death occurred as the result of a vaccine-related injury.

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 **\$200,000.00** in the form of a check payable to petitioner as administratrix of the Estate of Sean Weisse. 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 **\$9,403.50** in the form of a check payable jointly to petitioner and petitioner's counsel's firm, Scaffidi & Associates, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner incurred no out-of-pocket litigation expenses in proceeding on the 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of the Estate of Sean Weisse under the laws of the State of New York. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal

representative of the Estate of Sean Weisse. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the Estate of Sean Weisse 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 legal representative of the Estate of Sean Weisse upon submission of written documentation of such appointment to the Secretary.

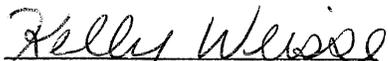
11. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of the Estate of Sean Weisse, on behalf of herself and her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit 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 Sean Weisse resulting from, or alleged to have resulted from, the vaccination administered on or about September 29, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about September 22, 2011, in the United States Court of Federal Claims as petition No. 11-611V.

12. 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'

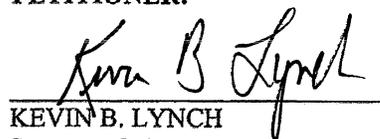


Respectfully submitted,

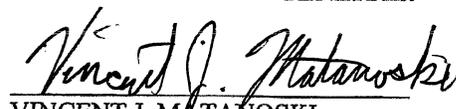
**PETITIONER:**

  
KELLY WEISSE

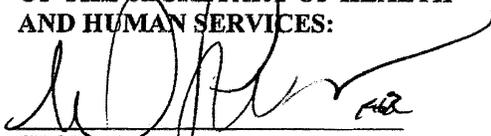
**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
KEVIN B. LYNCH  
SCAFFIDI & ASSOCIATES  
747 Third Ave., Ste. 10-B  
New York, New York 10017  
(212) 593-2155

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

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

  
GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail Stop 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
RYAN D. PYLES  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 616-9847

Dated: February 29, 2012