

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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DEBORAH M. EBENSTEIN,	*	
	*	No. 06-573V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: April 3, 2012
	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	Damages; decision based on proffer;
	*	MMR vaccination; idiopathic
	*	thrombocytopenic purpura.
Respondent.	*	

\* \* \* \* \*

John F. McHugh, Law Office of John McHugh, New York, NY, for Petitioner;  
Michael P. Milmoe, U.S. Department of Justice, Washington, DC, for Respondent.

### **UNPUBLISHED DECISION AWARDING DAMAGES\***

On August 7, 2006, Deborah Ebenstein filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-1 et seq., alleging that the MMR vaccination caused her to suffer idiopathic thrombocytopenic purpura. On September 1, 2010, the assigned special master determined that Ms. Ebenstein was entitled to compensation under the Vaccine Act.

Since that ruling, the parties have been attempting to determine the amount of compensation to which Ms. Ebenstein is entitled. This process was prolonged because, in part, Ms. Ebestein suffered an unusually severe form of thrombocytopenic purpura. The parties'

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\* Because this published decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it 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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before 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.

efforts to reach an agreement regarding damages were successful. On April 2, 2012, respondent filed a Proffer on Award of Compensation, to which petitioner agrees. Based upon the record as a whole, the special master finds the proffer reasonable and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the attached Proffer, with Tab A, the court awards petitioner:

**A lump sum payment of \$565,000.00 representing compensation for lost earnings, pain and suffering, and past and projected unreimbursable vaccine-related medical expenses, in the form of a check payable to petitioner, Deborah M. Ebenstein. This amount reflects that the portion of the award for lost future earnings, projected pain and suffering, and projected unreimbursable vaccine-related expenses has been reduced to net present value. See 42 U.S.C. § 300aa-15(f)(4)(A).**

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.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
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Petitioner,	)	
	)	
v.	)	No. 06-573V
	)	Special Master Moran
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

**I. Items of Compensation**

The parties agree that based upon the evidence in the record, Deborah M. Ebenstein should be awarded \$565,000.00 in compensation for all damages available under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

The parties recommend that the compensation provided to Deborah M. Ebenstein should be made through a lump sum payment as described below, and request that the special master's decision and the Court's judgment award the following:

- A. A lump sum payment of \$565,000.00, representing compensation for lost earnings, pain and suffering, and past and projected unreimbursable vaccine-related medical expenses, in the form of a check payable to petitioner, Deborah M. Ebenstein. This amount reflects that the portion of the award for lost future earnings, projected pain and suffering, and projected unreimbursable vaccine-related expenses has been reduced to net present value. See 42 U.S.C. § 300aa-15(f)(4)(A).

**III. Summary of Recommended Payment Following Judgment**

A. Lump sum paid to petitioner, Deborah M. Ebenstein, for all damages available under 42 U.S.C. § 300aa-15(a): **\$ 565,000.00**

Respectfully submitted,

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Dated: April 2, 2012