

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

HEATHER STEEL,	*	
	*	No. 9-787V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: March 13, 2012
	*	
SECRETARY OF HEALTH	*	Stipulation; influenza vaccine;
AND HUMAN SERVICES,	*	neurologic injuries; attorneys’
	*	fees and costs.
Respondent.	*	
	*	

UNPUBLISHED DECISION¹

Daniel J. Leeper, Leeper & Leeper, St. Petersburg, FL, for Petitioner;
Lisa A. Watts, U.S. Department of Justice, Washington, D.C., for Respondent.

On March 12, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Heather Steel on November 16, 2009. In his petition, the petitioner alleged that the influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which petitioner received on November 17, 2006, caused petitioner to suffer neurologic injuries, to include brachial plexopathy, the effects of which lasted for more than six months.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent denies that petitioner's claimed injuries, or any other injuries, were caused by the flu vaccine, and denies that petitioner's current disabilities are sequelae of her alleged injuries.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$50,000.00 in the form of a check payable to petitioner, Heather Steel. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and**
- B. An amount neither less nor greater than \$250,000.00 to purchase the annuity contract described in the attached stipulation (see paragraph 10), paid to the life insurance company from which the annuity will be purchased; and**
- C. A lump sum payment of \$67,607.39, for attorney's fees and costs in the form of a check payable to petitioner and petitioner's attorney, Daniel J. Leeper, 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.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 9-787V according to this decision and the attached stipulation.

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

S/ Christian J. Moran

Christian J. Moran
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

HEATHER STEEL, *
*
Petitioner, * ECF
*
v. *
* No. 09-787V
* Secretary OF HEALTH * Special Master
* AND HUMAN SERVICES, * Christian J. Moran
*
Respondent. *

STIPULATION

The parties hereby stipulate to the following matters:

1. On November 16, 2009, a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"), was filed on behalf of Heather Steel ("petitioner") by her mother, Jennifer Steel.¹ The petition seeks compensation for injuries allegedly related to Heather'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. Petitioner received the flu vaccine on November 17, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered neurologic injuries, to include brachial plexopathy, which were caused-in-fact by the flu vaccine. Petitioner further alleges that she suffered residual effects of this injury for more than six months.

¹ In an Order filed September 26, 2011, the Special Master granted a motion to substitute Heather as the proper petitioner in this case because she had reached the age of majority.

5. 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.

6. Respondent denies that petitioner's claimed injuries, or any other injuries, were caused by the flu vaccine, and denies that petitioner's current disabilities are sequelae of her alleged injuries.

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 \$50,000.00 in the form of a check payable to petitioner, Heather Steel. This amount represents partial compensation for damages that would be available under 42 U.S.C. §300aa-15(a); and**
- b. An amount neither less nor greater than \$250,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"); and**
- c. A lump sum of \$67,607.39, for attorney's fees and costs in a form of a check payable to petitioner and petitioner's attorney, Daniel J. Leeper, 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. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. **A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;**
- b. **Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;**
- c. **Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;**
- d. **Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.**

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for petitioner's benefit, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. **Beginning as soon as practicable after the date of judgment, \$1,000.00 per month for 11 years certain.**
- b. **\$171,768.79 payable in a certain lump sum on May 8, 2023.**

The purchase price of the annuity shall be neither less nor greater than \$250,000.00. In the event that the cost of the annuity payments set forth above varies from \$250,000.00, the lump sum payment to be made on May 8, 2023, shall be adjusted upward or downward to ensure that the total cost of the annuity is neither less nor greater than \$250,000.00. Should Heather Steel predecease the exhaustion of any certain payments set forth above, any remaining certain payments shall be made to her estate. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Heather Steel's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary

of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. 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.

14. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of Heather Steel 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).

15. In return for the payments described in paragraph 8, petitioner, in her individual capacity, 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. § 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 petitioner resulting from, or alleged to have resulted from, the influenza vaccination administered on November 17, 2006, as alleged in a petition for vaccine compensation filed on or about November 16, 2009, in the United States Court of Federal Claims as petition No. 09-787V.

16. 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.

17. 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.

18. 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.

19. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in

this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

20. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner's injuries were caused by the flu vaccine administered to her on November 17, 2006, or that her current disabilities are sequelae of her alleged injuries.

21. 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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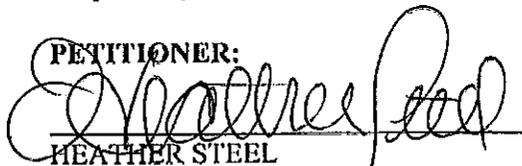
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Respectfully submitted,

PETITIONER:


HEATHER STEEL

**ATTORNEY OF RECORD FOR
PETITIONER:**


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Dated: 3/12/2012