

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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GABRIELLA ZODDA, a Minor, \*  
By Her Parent, ALICE RIVERA \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 11-574V

Special Master Christian J. Moran

Filed: April 15, 2013

Stipulation; influenza (flu) vaccine;  
Guillain-Barré syndrome.

Lawrence R. Cohan, Anapol, Schwartz, et al., Philadelphia, PA, for petitioner.

Glenn A. MacLeod, United States Department of Justice, Washington, D.C., for respondent.

### **UNPUBLISHED DECISION**<sup>1</sup>

On April 15, 2013, the parties filed a joint stipulation concerning the petition for compensation filed by Alice Rivera on September 8, 2011. In her petition, petitioner alleged that the influenza vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which her daughter received on October 10, 2009, caused Gabriella to suffer Guillain-Barré syndrome (“GBS”). Respondent denies that the influenza vaccine caused petitioner to suffer GBS or any other injury.

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 of \$11,500.00 in the form of a check payable to petitioner, Alice Rivera, representing compensation for Gabriella’s past unreimbursed vaccine-related medical expenses; and**

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

**B. A lump sum of \$115,000.00 in the form of a check payable to petitioner, Alice Rivera, as guardian/conservator of Gabriella Zodda's estate, representing compensation for all other damages that would be available under 42 U.S.C. § 300aa-15(a).**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-574V according to this decision and the attached stipulation.<sup>2</sup>

Any questions may be directed to my law clerk, Tucker McCarthy, at (202) 357-6392.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

GABRIELLA ZODDA, a Minor, )  
By Her Parent, ALICE RIVERA )  
Petitioner, )  
v. )  
SECRETARY OF HEALTH )  
AND HUMAN SERVICES, )  
Respondent. )

No. 11-574V (ECF)  
Special Master  
CHRISTIAN J. MORAN

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Alice Rivera, as the parent of Gabriella Zodda ("Gabriella"), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Gabriella's receipt of influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Gabriella received flu vaccine on or about October 10, 2009.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Gabriella suffered Guillain-Barre Syndrome ("GBS") as a consequence of the flu immunization she received on or about October 10, 2009, and further alleges that Gabriella suffered the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Gabriella as a result of her condition.
6. Respondent denies that the flu vaccine caused Gabriella's GBS or any other injury and further denies that her current disabilities are a sequela 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 \$11,500.00 in the form of a check payable to petitioner, representing compensation for Gabriella's past unreimbursed vaccine-related medical expenses; and

b. A lump sum of \$115,000.00 in the form of a check payable to petitioner, as guardian/conservator of Gabriella Zodda's estate, representing compensation for all other damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. 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 prepaid basis.

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

12. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Gabriella 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).

13. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Gabriella Zodda's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Gabriella Zodda's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Gabriella Zodda 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 Gabriella Zodda upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of Gabriella and Gabriella's heirs, executors, administrators, successors, and 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 United States 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 Gabriella resulting from, or alleged to have resulted from, the flu vaccination administered on or about October 10, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about September 8, 2011, in the United States Court of Federal Claims as petition No. 11-574V.

15. If Gabriella 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.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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.

17. 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, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or 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.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Gabriella's GBS or any other injury or any of her current disabilities.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representative of Gabriella Zodda.

END OF STIPULATION

Respectfully submitted,

**PETITIONER:**

Alice Rivera  
ALICE RIVERA

**ATTORNEY OF RECORD FOR  
PETITIONER:**

[Signature]  
LAWRENCE R. COHAN, ESQUIRE  
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**AUTHORIZED REPRESENTATIVE  
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**AUTHORIZED REPRESENTATIVE OF  
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HUMAN SERVICES:**

[Signature]  
VITO CASERTA, M.D., M.P.H.  
Acting Director, Division of  
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Director, Countermeasures Injury  
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Dated: 4/15/13