

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-302V

Filed: May 1, 2009

Not for publication

DUANE BUNDY,

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Petitioner,

*

v.

*

Damages decision based on stipulation;
GBS following influenza vaccination

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

*

*

*

Respondent.

*

*

Altom M. Maglio, Sarasota, FL, for petitioner.

Rebecca J. Trinrud, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On April 20, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that he developed Guillain-Barré Syndrome (“GBS”) as a result of an influenza vaccination administered on January 9, 2007. Respondent denies that petitioner’s GBS was caused in fact by his influenza vaccination.

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this 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.

Nonetheless, the parties agreed to resolve 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 payment of **\$225,000.00** in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and
- b. a lump sum payment of **\$1,081.20** in the form of a check payable jointly to petitioner and New York Medicaid Agency, Attention: Ms. Janet Mischel, for reimbursement of New York Medicaid expenses.

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: May 1, 2009

/s/ Laura D. Millman
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

DUANE BUNDY,)	
)	
Petitioner,)	
)	
v.)	No. 08-302V
)	Special Master Millman
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner 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 petitioner's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3 (a).

2. Petitioner received his flu immunization on January 9, 2007.

3. The vaccine was administered within the United States.

4. Petitioner alleges that he developed Guillain-Barre Syndrome ("GBS") as a result of his January 9, 2007, vaccination.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his

condition.

6. Respondent denies that petitioner's GBS was caused-in-fact by his January 9, 2007, vaccination.

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 payment of \$225,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and

b. a lump sum payment of \$1,081.20 in the form of a check payable jointly to petitioner and New York Medicaid Agency, Attention: Ms. Janet Mischel, for reimbursement of New York's Medicaid expenses.

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

11. The parties and their attorneys further agree and stipulate that, except for past unreimbursed expenses described in paragraph 8(b) and any award for attorneys' fees and costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner 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).

12. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on January 9, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about April 21, 2008, in the United States Court of Federal Claims as petition No. 08-0302V.

13. If petitioner should die prior to receiving any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. 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 null and void at the sole discretion of either party.

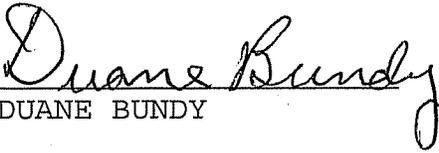
15. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns.

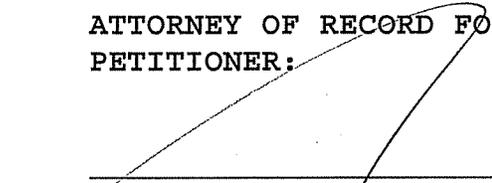
END OF STIPULATION

Respectfully submitted,

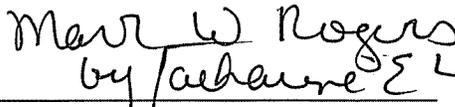
PETITIONER:


DUANE BUNDY

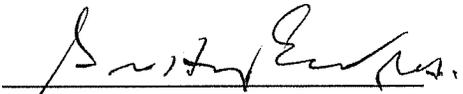
**ATTORNEY OF RECORD FOR
PETITIONER:**


ALTOM MAGLIO
MAGLIO CHRISTOPHER & TOALE
1751 Mound Street
Second Floor
Sarasota, Florida 34236
(941) 952-5042

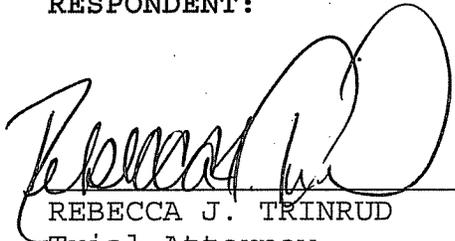
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


by 
MARK W. ROGERS
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

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


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

**ATTORNEY OF RECORD FOR
RESPONDENT:**


REBECCA J. TRINRUD
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 353-7832

Dated: April 20, 2009