

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-868V

Filed: April 27, 2009

Not for publication

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JEANNETTE DAY,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Damages decision based on stipulation;  
GBS/CIDP following influenza vaccination

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Curtis R. Webb, Twin Falls, ID, for petitioner.

Michael P. Milmo, Washington, DC, for respondent.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES<sup>1</sup>**

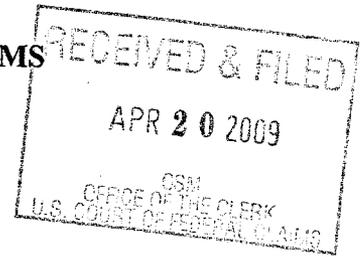
On April 20, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that she suffered from Guillain-Barré Syndrome (“GBS”) or Chronic Inflammatory Demyelinating Polyneuropathy (“CIDP”)

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<sup>1</sup> 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.

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



JEANETTE DAY,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

No. 07-868V

Special Master Millman

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. Petitioner, Jeanette Day, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to her receipt of an influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3.
2. Petitioner received her immunization on October 14, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered Guillain Barre Syndrome ("GBS") or Chronic Inflammatory Demyelinating Polyneuropathy ("CIDP"), which was caused-in-fact by the influenza vaccine she received on October 14, 2004.
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 suffered the onset of GBS or CIDP as a result of the influenza vaccine, and denies that her current disabilities were caused by any vaccination she received.

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 payment:

A lump sum of \$92,500.00 in the form of a check payable to petitioner. This amount represents compensation for all damages 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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Payments made pursuant to paragraph 8 and any amount awarded pursuant to paragraph 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 the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner, Jeanette Day, 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 her individual capacity, and on behalf of her 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 herself resulting from, or alleged to have resulted from, the influenza vaccine administered to her on October 14, 2004, as alleged by petitioner in a petition for vaccine compensation filed on December 10, 2007, in the United States Court of Federal Claims as petition No. 07-868V.

13. If petitioner should die prior to receiving the payment 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 petitioner's successors and assigns.

END OF STIPULATION

Respectfully submitted,

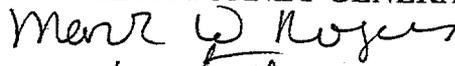
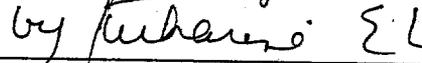
**PETITIONER:**

  
\_\_\_\_\_  
JEANETTE DAY

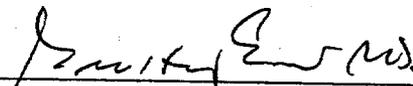
**ATTORNEY OF RECORD FOR  
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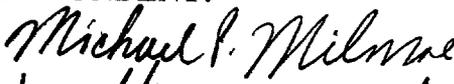
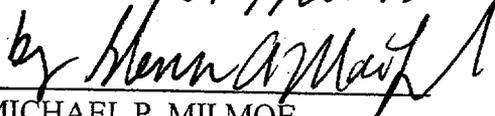
**AUTHORIZED REPRESENTATIVE  
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Dated: 4/20/09