

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

JAMES DILLIG (deceased), *
KAY DILILG (wife of deceased), *
*
Petitioner, *
*
v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *

No. 09-813V
Special Master Christian J. Moran
Filed: September 8, 2010

Stipulation; influenza vaccine;
Guillain-Barre Syndrome

UNPUBLISHED DECISION¹

Eric E. Hobbs, Esq., Michael Best & Friedrich, LLP, Milwaukee, WI, for Petitioner;
Ann D. Martin, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On September 2, 2010, the parties filed a joint stipulation concerning the petition for compensation filed by Kay Dillig, on behalf of her husband, James Dillig on November 23, 2009. In her petition, Ms. Dillig alleged that the influenza vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which Mr. Dillig received on October 9, 2007, caused Mr. Dillig to suffer from Guillain-Barre Syndrome (“GBS”), the effects of which caused his death.

Respondent denies that Mr. Dillig suffered from a GBS as a result of the vaccination; and denies that the vaccination caused his death.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

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:

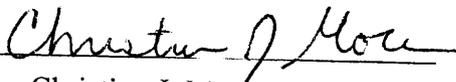
- A. **A lump sum payment of \$240,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and**

- B. **A lump sum payment of \$51,000.00 in the form of a check payable to petitioner and petitioner's attorney, Eric E. Hobbs, Esq., for attorney's fees and costs. In accordance with General Order # 9, petitioner represents that all litigation costs were paid by petitioner's attorney and that petitioner did not personally incur any costs in proceeding on the petitioner.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 09-813V according to this decision and the attached stipulation.

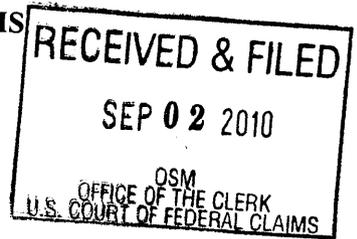
Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.



Christian J. Moran
Special Master

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



JAMES DILLIG (deceased) and
KAY DILLIG (wife of deceased),

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 09-813V
Special Master Moran

STIPULATION

The parties hereby stipulate to the following matters:

1. Kay Dillig ("petitioner"), on behalf of her deceased husband, James Dillig, 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 Mr. Dillig's death, which petitioner alleges was the result of Mr. Dillig's receipt of an influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Mr. Dillig received an influenza immunization on October 9, 2007.
3. The vaccine was administered within the United States.
4. Petitioner alleges that on or around October 20, 2007, Mr. Dillig experienced the first symptom or onset of Guillain-Barre Syndrome ("GBS"), which petitioner alleges was caused in fact by the influenza vaccine. Petitioner further alleges that Mr. Dillig died as a result of his GBS on November 25, 2007, and that his death was caused by the influenza vaccine.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Mr. Dillig, as a result of his GBS or his death.
6. Respondent denies that the influenza immunization caused Mr. Dillig's GBS, and respondent denies that the influenza immunization caused Mr. Dillig's death.
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 \$240,000.00 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 of \$51,000.00 in the form of a check payable to petitioner and petitioner's attorney, Eric E. Hobbs, Esq., for attorneys' fees and costs. In accordance with General Order # 9, petitioner represents that all litigation costs were paid by petitioner's attorney and that petitioner did not personally incur any costs in proceeding on the petition.
9. 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.
10. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of Mr. Dillig's estate under the laws of the State of Wisconsin.
11. In return for the payments described in paragraph 8, petitioner, in her individual

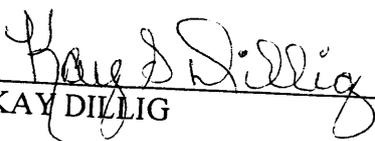
capacity and as legal representative of Mr. Dillig's estate, on behalf of herself and Mr. Dillig's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from 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 Mr. Dillig resulting from, or alleged to have resulted from, the influenza vaccination administered on October 9, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about November 23, 2009, in the United States Court of Federal Claims as petition No. 09-813V.

12. 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.

13. 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.

Respectfully submitted,

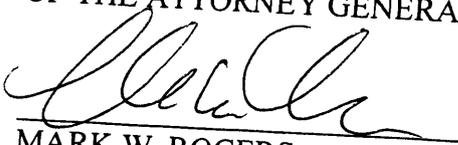
PETITIONER:


KAY DILLIG

ATTORNEY OF RECORD FOR
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Dated: September 2, 2010