

**OFFICE OF SPECIAL MASTERS**

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KELLY GELZHEISER, \*

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Petitioner, \*

No. 07-511V  
Special Master Christian J. Moran

v. \*

\*

SECRETARY OF HEALTH AND HUMAN SERVICES, \*

Filed: November 13, 2008

Respondent. \*

Stipulation; Meningococcal Polysaccharide Diphtheria Toxoid Conjugate Vaccine (Menactra); transverse myelitis.

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**UNPUBLISHED DECISION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

Quinn A. Johnson, Esq., Meyer, Unkovic & Scott, Pittsburg, P.A., for Petitioner;  
Michael P. Milmo, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On November 10, 2008, the parties filed a joint stipulation concerning the petition for compensation filed by Kelly Gelzheiser on July 9, 2007. In her petition, Ms. Gelzheiser alleged that the Meningococcal Polysaccharide Diphtheria Toxoid Conjugate Vaccine (Menactra) which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3, and which Ms. Gelzheiser received on July 11, 2005, caused her to develop transverse myelitis and that she suffered the residual effects or complications of the condition for more than six months.

Respondent denies that Ms. Gelzheiser’s transverse myelitis was caused-in-fact by her July 11, 2005, Menactra vaccination. Respondent further denies that Ms. Gelzheiser suffered any

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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

residual effects or complications of the condition for more than six months following the vaccination. 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 lump sum payment of \$50,000.00 in the form of a check payable to the petitioner.**  
The amount represents compensation for all damages that would be available pursuant to 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 07-511V according to the decision and the attached stipulation.

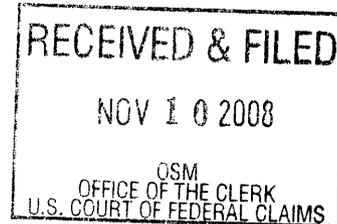
Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.

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Christian J. Moran  
Special Master

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



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\*  
KELLY GELZHEISER, \*  
\*  
Petitioner, \*  
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v. \*  
\*  
SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*  
\*  
Respondent. \*  
\*\*\*\*\*

No. 07-511V  
Special Master  
Christian J. Moran

STIPULATION

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

1. Petitioner Kelly Gelzheiser filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 300aa-34 (Vaccine Program). The petition seeks compensation for injuries allegedly related to her receipt of a Meningococcal Polysaccharide Diphtheria Toxoid Conjugate Vaccine (brand name "Menactra"), which vaccine is contained in the Vaccine Injury Table (Table), 42 C.F.R. § 100.3.
2. Petitioner received her Menactra vaccination on July 11, 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she developed transverse myelitis as a result of receiving the Menactra vaccination and suffered the residual effects or complications of the condition for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent's Rule 4 Report denies that petitioner's transverse myelitis was caused by her July 11, 2005 Menactra vaccination, and further denies that petitioner suffered any residual effects or complications of the condition for more than six months following 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 payment:

A lump sum payment of \$50,000.00 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. Payment 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and costs and out-of-pocket expenses incurred by petitioner in proceeding on

the petition, 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, on behalf of herself, and 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 petitioner resulting from, or alleged to have resulted from, the Menactra vaccination administered on July 11, 2005, as alleged by petitioner in a petition for vaccine compensation filed on July 9, 2007, in the United States Court of Federal Claims as petition No. 07-511V.

13. In the event 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. In the event that the Special Master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event 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

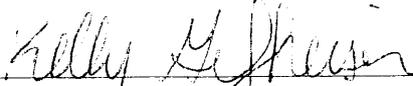
otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

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

END OF STIPULATION

Respectfully submitted,

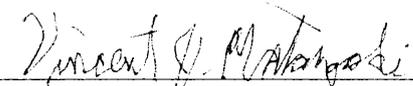
**PETITIONER:**

  
KELLY GELZHEISER

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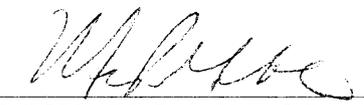
**AUTHORIZED REPRESENTATIVE  
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Dated: Nov 10, 2007