

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

LISA MARKS-SMITH

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 08-723V
Special Master Moran

Filed: April 13, 2010

Stipulation awarding damages;
influenza (flu) vaccine; myositis and
bilateral peroneal neuropathy

UNPUBLISHED DECISION AWARDING DAMAGES¹

Michael A. London, Esq., Douglas & London, P.C., New York, N.Y., for Petitioner;
Lisa A. Watts, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

Ms. Marks-Smith alleged that the influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which she received on October 15, 2005, caused her to develop myositis and bilateral peroneal neuropathy. Ms. Marks-Smith filed a petition for compensation on October 14, 2008. Ms. Marks-Smith also presented an expert opinion in support of her claim. Respondent elected not to file a responsive expert opinion.

On July 24, 2009, the undersigned issued a decision establishing Ms. Marks-Smith’s entitlement to compensation under the Vaccine Program. The parties proceeded to determine the amount of compensation to which Ms. Marks-Smith is entitled.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

On April 9, 2010, the parties filed a Stipulation for Award, attached hereto as Appendix A. Based upon the record as a whole, 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 \$200,000.00, in the form of a check payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 08-723V according to this decision and the attached stipulation.

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

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

LISA MARKS-SMITH,)	
)	<u>ECF</u>
Petitioner,)	
v.)	No. 08-723V
)	Special Master
SECRETARY OF HEALTH)	Christian J. Moran
AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

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

1. On October 14, 2008, Lisa Marks-Smith (“petitioner”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of an influenza vaccine, which is covered under the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a), as amended.
2. Petitioner received the influenza vaccine on October 15, 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she developed myositis and bilateral peroneal neuropathy that was caused-in-fact by receipt of the influenza vaccine. She submitted an expert opinion in support of her claim.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her alleged vaccine-related injury.
6. Respondent elected not to file a responsive expert opinion.

7. On July 24, 2009, the Special Master issued a decision establishing petitioner's entitlement to compensation under the Vaccine Program. Therefore, 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 \$200,000.00 in the form of a check payable to petitioner, Lisa Marks-Smith. This amount represents all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

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 and any amounts 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, except for any award for reasonable attorney's fees and costs incurred in this proceeding, 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 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 petitioner resulting from, or alleged to have resulted from, the influenza vaccination administered to her on October 15, 2005, as alleged by petitioner in a petition for vaccine compensation filed on October 14, 2008, in the United States Court of Federal Claims as petition No. 08-723V.

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 her successors and assigns.

END OF STIPULATION

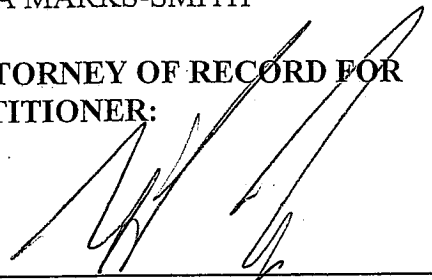
Respectfully submitted,

PETITIONER:




LISA MARKS-SMITH

**ATTORNEY OF RECORD FOR
PETITIONER:**



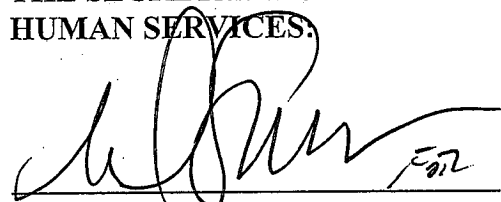
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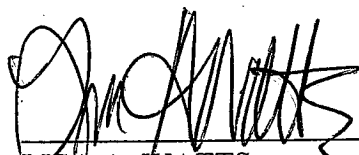
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Dated: 4-9-2010