

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

No. 12-749V

Filed: February 25, 2013

RACHAEL DONNELLY,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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* Damages Decision Based on Proffer;
* Influenza; Shoulder Injury Related to
* Vaccine Administration ["SIRVA"]
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Scott Rooney, Esq., Nemes, Rooney, P.C., Farmington Hills, MI, for petitioner.
Gordon Shemin, Esq., U.S. Dept. of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Vowell, Special Master:

On November 2, 2012, Rachael Donnelly filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*² [the "Vaccine Act" or "Program"] alleging that she suffered a shoulder injury as a result of the administration of her September 22, 2011 flu vaccination. Petition at 2-3.

On January 14, 2013, noting respondent's concession in her Rule 4(c) Report that petitioner is entitled to compensation in this case, I issued a Ruling on Entitlement. On February 22, 2013, respondent filed a Proffer on award of compensation. The proffer indicates that petitioner agrees with each aspect of the compensation award.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

Pursuant to the terms stated in the attached proffer, **I award petitioner a lump sum payment of \$80,850.75 in the form of a check payable to petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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RACHAEL DONNELLY,)	
)	
Petitioner,)	No. 12-749V
)	Special Master Vowell
v.)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

PROFFER ON AWARD OF COMPENSATION¹

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$80,850.75, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$80,850.75 in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

STUART F. DELERY
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

¹ This Proffer does not include attorney's fees and costs, which the parties intend to discuss after the Damages Decision is issued.

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch, Civil Division

/s/ Gordon Shemin
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Dated: February 22, 2013