

Respondent agrees to pay petitioner:

- A lump sum payment of **\$23,221.03**, an amount which represents reimbursement of a State of Maine Medicaid lien, in the form of a check payable jointly to petitioner and Treasurer, State of Maine
DHHS, MaineCare Services
11 State House Station
Augusta, ME 04333
Attn: No. 85048801A (Libby); and
- A lump sum payment of **\$60,000.00** in the form of a check payable to petitioner, which represents compensation for all remaining damages that would be available under § 15(a).

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein.

Additionally, the parties' joint stipulation addressed attorney fees and costs. Pursuant to General Order #9, the stipulation indicates petitioner incurred no personal litigation costs.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate, pursuant to §§ 15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total \$9,903.50³ in the form of a check payable jointly to petitioner and petitioner's counsel of record, Verne E. Paradie, Jr., for petitioner's attorney fees and costs.**

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

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

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally *Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).

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

ALLISON LIBBY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 12-735V

Special Master Denise K. Vowell

ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Allison Libby ("petitioner") 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 injuries allegedly related to petitioner's receipt of the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a flu vaccine on or about November 15, 2011.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused her to suffer a corneal transplant failure and that she experienced residual effects of this injury 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 denies that flu immunization is the cause of petitioner's alleged corneal transplant failure and/or any other injury.

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 **\$23,221.03**, which amount represents reimbursement of a State of Maine Medicaid lien, in the form of a check payable jointly to petitioner and

Treasurer, State of Maine
DHHS, MaineCare Services
11 State House Station
Augusta, ME 04333
ATTN: No. 85048801A (Libby)

Petitioner agrees to endorse this payment to the State; and

b. A lump sum of **\$60,000.00** in the form of a check payable to petitioner. This amount represents all remaining compensation for damages that would be available under 42 U.S.C. §300aa-15(a); and

c. A lump sum of **\$9,903.50** in the form of a check payable jointly to petitioner and petitioner's attorney, Verne E. Paradie, Jr., Esq., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner confirms that she incurred no out-of-pocket litigation expenses in proceeding on the petition.

9. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

10. 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, 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 paragraph 8, petitioner, in her individual capacity and on behalf of her heirs, executors, administrators, successors and/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. § 300aa-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 petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on or about November 15, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about October 31, 2012, in the United States Court of Federal Claims as petition No. 12-735V.

13. If petitioner should die prior to entry of judgment, this agreement shall be 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 voidable at the sole discretion of either party.

15. 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's corneal transplant failure and/or any other injury.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:

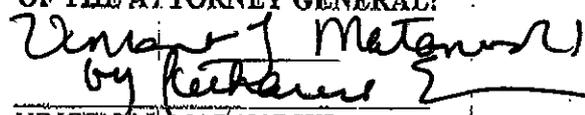
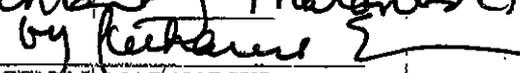

ALLISON LIBBY

**ATTORNEY OF RECORD FOR
PETITIONER:**



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P.O. Box 470
10 Minot Avenue
Auburn, ME 04212-0470
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**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


by 

VINCENT J. MATANOSKI
Deputy Director
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**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


VITO CASERTA, M.D., M.P.H.

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Director, Countermeasures Injury
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**ATTORNEY OF RECORD FOR
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DATED: 8/12/13