

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

**No. 12-593V
Filed: May 9, 2013**

DEWEY ROSE,	*	
	*	
Petitioner,	*	
v.	*	Stipulation; Influenza; Myelopathy;
	*	Radiculopathy
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

Dewey Rose [“petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on September 12, 2012. Petitioner alleges that he developed a myelopathy and radiculopathy as a result of an influenza vaccination he received on or about September 22, 2009, and he further alleges that he experienced residual effects of this injury for more than six months. See Stipulation, filed May 8, 2013, at ¶¶ 2, 4. In the alternative, petitioner alleges that the influenza vaccine significantly aggravated an underlying immunologic, neurologic, or genetic condition. *Id.* at ¶ 4.

Respondent denies that petitioner’s influenza vaccine is the cause of his alleged myelopathy and radiculopathy, and denies that his condition or any other injuries were significantly aggravated by the vaccine. Stipulation at ¶ 6. Nevertheless, the parties have agreed to settle the case.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, 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).

On May 8, 2013, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms. Respondent agrees to pay petitioner:

A lump sum of \$37,500.00 in the form of a check payable to petitioner, Dewey Rose. This amount represents compensation for all damages that would be available under § 300aa-15(a).

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

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
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DEWEY ROSE,)	
)	
Petitioner,)	
)	
v.)	No. 12-593V
)	Special Master Denise K. Vowell
)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. 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 his flu vaccination on or about September 22, 2009.¹

3. The vaccine was administered within the United States.

4. Petitioner alleges that the flu vaccine caused him to develop a myelopathy and radiculopathy, and that he experienced the residual effects of these injuries for more than six months. In the alternative, petitioner alleges that he suffered from an underlying immunologic,

¹ Petitioner also received a monovalent H1N1 influenza ("H1N1") vaccine on November 13, 2009. This vaccine, however, is not covered under the Vaccine Program. See 42 U.S.C. § 300aa-14 and 42 C.F.R. § 100.3(a). The 2009 monovalent H1N1 vaccine is covered under the Countermeasures Injury Compensation Program ("CICP"). See 42 U.S.C. 247d-6e; 77 Fed. Reg. 13329 (Mar. 6, 2012).

neurologic, or genetic condition that was significantly aggravated by flu vaccine, and that he experienced residual effects of these injuries 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 his condition.

6. Respondent denies that the flu immunization is the cause of petitioner's alleged myelopathy and radiculopathy, and/or any other injury, and denies that petitioner's condition or any other injuries were significantly aggravated by the flu vaccine.

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 of \$37,500.00 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).

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 parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his 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 by entities that provide health services on a pre-paid basis.

11. 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.

12. 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).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors and/or assigns,

(a) 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 September 22, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or

about September 12, 2012, in the United States Court of Federal Claims as petition No. 12-593V;
and

(b) waives any and all rights to any compensation that may be available under the Countermeasures Injury Compensation Program, 42 U.S.C. § 247d-6e (or an action under 42 U.S.C. § 247d-6d(d)), for a claim alleging that a covered countermeasure, including the H1N1 vaccine administered on November 13, 2009, on its own or in combination with the flu vaccination administered on September 22, 2009, caused or significantly aggravated the same injuries that were the subject of the petition for vaccine compensation filed on or about September 12, 2012, in the United States Court of Federal Claims as petition No. 12-593V, for which petitioner will receive compensation pursuant to this stipulation.

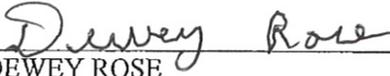
14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. 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.

16. 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, 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. 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

Respectfully submitted,

PETITIONER:


DEWEY ROSE

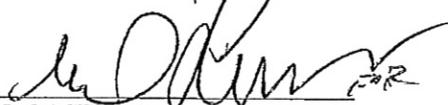
**ATTORNEY OF RECORD FOR
PETITIONER:**


ELIZABETH M. MULDOWNEY, ESQ.
RAWLS MCNELIS & MITCHELL
211 Rocketts Way, Suite 100
Richmond, VA 23231
Tel: (804) 622-0676

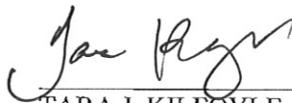
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT V. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


VITO CASERTA, M.D., M.P.H.
Acting Director, Division of Vaccine
Injury Compensation (DVIC)
Director, Countermeasures Injury
Compensation Program (CICP)
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


TARA J. KILFOYLE
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 514-9729

Dated: 5/8/13