

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 10-612V
Filed: July 26, 2011**

ADAM J. SELESH,	*	
	*	
Petitioner,	*	Influenza Vaccine; Rash;
v.	*	Stipulation; Attorney Fees
	*	and Costs
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

Adam J. Selesh filed a petition ["Pet."] for compensation under the National Vaccine Injury Compensation Program² on September 7, 2010. Petitioner alleges that as a result of the influenza vaccine he received on September 29, 2009, he suffered injury. See Pet. Specifically, petitioner alleges that he contracted a skin rash as a result of the influenza vaccination, and that he experienced residual effects of this injury for more than six months. Stipulation, filed July 25, 2011, at ¶4. Respondent denies that petitioner's skin rash or any other injury was caused-in-fact by the influenza vaccine and denies that petitioner's current condition is a sequel of a vaccine-related injury. Stipulation at ¶6.

Nevertheless, the parties have agreed to settle the case. On July 25, 2011, the parties filed a joint stipulation agreeing to settle this case and describing the settlement

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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), 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).

terms for compensation and for attorney fees and costs. Respondent agrees to pay petitioner:

- A lump sum payment of **\$9,000.00** in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under § 300aa-15(a).
- A lump sum of **\$9,084.14**³ in the form of a check payable jointly to petitioner and petitioner's counsel, Milam Howard Nicandri Dees & Gillam, P.A., for attorney fees and costs.⁴

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. 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.⁵

IT IS SO ORDERED.

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, 42 U.S.C. § 300aa-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 A statement pursuant to General Order 9, averring petitioner incurred no personal litigation costs, was also filed July 25, 2011.

⁵ 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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Petitioner,)	
v.)	No. 10-612V
)	Special Master Denise K. Vowell
SECRETARY OF HEALTH AND)	ECF
HUMAN SERVICES)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Adam J. Selesh, 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 influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).¹
2. Petitioner received an influenza immunization on September 29, 2009.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he contracted a skin rash as a result of his September 29, 2009, influenza vaccination. Petitioner further alleges that he 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

¹ Petitioner does not seek compensation for injuries allegedly related to the Pneumovax vaccination that he received. Pneumovax is not covered by the Table. 42 C.F.R. § 100.3 (a).

for damages as a result of his condition.

6. Respondent denies that petitioner's skin rash or any other injury was caused-in-fact by the influenza vaccine, and denies that his current condition is a sequela of a vaccine-related 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 compensation payments:

a. A lump sum of \$9,000.00 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); and

b. A lump sum of \$9,084.14 in the form of a check jointly payable to petitioner and petitioner's law firm, Milam Howard Nicandri Dees & Gillam, P.A., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In accordance with General Order # 9, petitioner represents that all litigation costs were paid by petitioner's attorney and that petitioner did not personally incur any costs in proceeding on the petition.

9. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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.

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, 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, on his own behalf and on behalf of his heirs, executors, administrators, successors 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 influenza vaccination administered on September 29, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about September 7, 2010, in the United States Court of Federal Claims as petition No. 10-612V.

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 influenza vaccine caused petitioner's skin rash or current condition or any other alleged vaccine-related 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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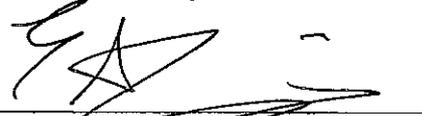
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Respectfully submitted,

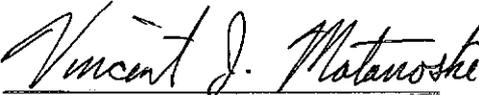
PETITIONER:


ADAM J. SELESH

**ATTORNEY OF RECORD FOR
PETITIONER:**


ERIN A. JUZAPAVICUS
MILAM HOWARD NICANDRI
DEES & GILLAM, P.A.
14 East Bay Street
Jacksonville, FL 32202
(904) 357-3660

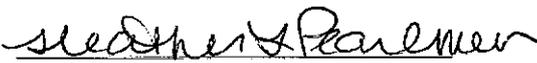
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT J. MATANOSKI
Acting Deputy Director
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Civil Division
U.S. Department of Justice
P.O. Box 146
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Washington, DC 20044-0146

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


GEOFFREY EVANS, M.D.
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Healthcare Systems Bureau
U.S. Department of Health
and Human Services
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Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


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Trial Attorney
Torts Branch
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P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 353-2699

Dated: July 25, 2011

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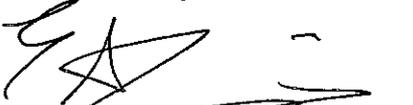
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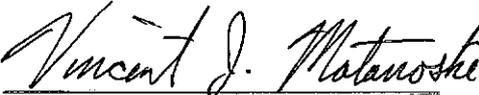
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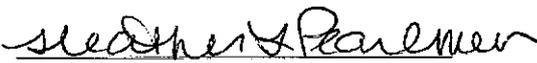
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Dated: July 25, 2011