

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

(Filed: April 12, 2006)

DO NOT PUBLISH

DARLENE A. MITNIK,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 03-1830V
	)	Stipulation
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

### DECISION DIRECTING ENTRY OF JUDGMENT<sup>1</sup>

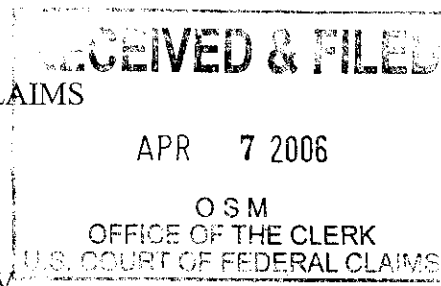
On April 7, 2006, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner's favor.<sup>2</sup>

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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

<sup>2</sup> Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioner may expedite payment by filing an election to accept the judgment.

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



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DARLENE A. MITNIK, )  
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Petitioner, )  
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v. )  
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 )  
SECRETARY OF HEALTH )  
AND HUMAN SERVICES, )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

No. 03-1830V  
Special Master Edwards

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Darlene A. Mitnik 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 Diphtheria-Tetanus ("DT") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a)(I).
2. Petitioner received a DT immunization on October 15, 2002.
3. The vaccine was administered within the United States or its trust territories.
4. Petitioner sustained the first symptom or manifestation of the onset of brachial neuritis within the time period set forth in the Table.
5. Petitioner suffered the residual effects or complications of her brachial neuritis for more than six months after her vaccination.
6. There is not a preponderance of the evidence demonstrating that petitioner's condition is due to a factor unrelated to her October 15, 2002 immunization.

7. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

8. Accordingly, petitioner is entitled to compensation under the terms of the Vaccine Program. Therefore, a decision should be entered awarding the compensation described in paragraph 9 of this Stipulation.

9. 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 \$260,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages available under 42 U.S.C. §300aa-15(a); and

b. A lump sum of \$56,530.15 in the form of a check payable to petitioner and petitioner's attorney, Jay H. Feldstein, Esquire, for attorney's fees and costs, and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

10. Payments made 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. In return for the payments described in paragraph 9, petitioner, in her individual capacity, on behalf of herself, and 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 DT vaccination administered on October 15,

2002, as alleged by petitioner in a petition for vaccine compensation filed on or about August 4, 2003, in the United States Court of Federal Claims as petition No. 03-1830V.

12. If petitioner should die prior to the Secretary making any or all of the payments described in paragraph 9(a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event 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.

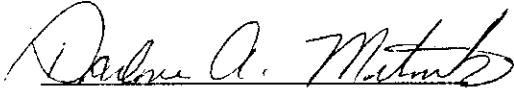
14. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

15. All rights and obligations of petitioner hereunder shall apply equally to her successors and assigns.

END OF STIPULATION

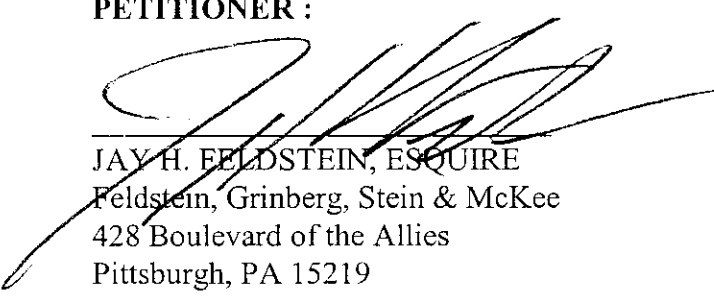
Respectfully submitted,

**PETITIONER:**



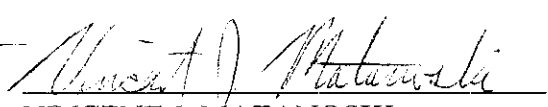
DARLENE A. MITNIK

**ATTORNEY OF RECORD FOR  
PETITIONER :**



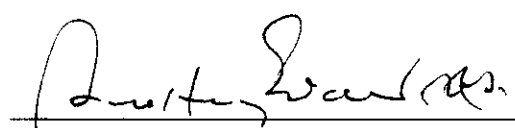
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Dated: 7 April 2006