

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-34V

Filed: May 24, 2010

Not for Publication

ELLIOTT M. LEAKE,

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Petitioner,

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Damages decision based on stipulation;

v.

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Trivalent influenza vaccination; Brachial

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Neuritis; Attorneys' Fees and Costs

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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*

Respondent.

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David L. Terzian, Richmond, VA, for petitioner.

Glenn A. MacLeod, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS¹

On May 24, 2010, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that she suffered from brachial neuritis following a trivalent influenza vaccination. Respondent denies that petitioner's brachial neuritis was caused in fact by her influenza vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

The court hereby adopts the parties' said stipulation, attached hereto, and awards both compensation and attorneys' fees and costs in the amount and on the terms set forth therein.

Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$100,000.00** in the form of a check made payable to petitioner;
- b. a lump sum of **\$11,528.36** in the form of a check made payable to petitioner and petitioner's attorney, David L. Terzian, Esq., of the Law Firm of Rawls & McNelis, P.C. for attorneys' fees and costs; and
- c. a lump sum of **\$271.64** in the form of a check made payable to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on the petition.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: May 24, 2010

s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

or settlement of a civil action for damages on behalf of herself as a result of her condition.

6. Respondent denies that petitioner suffered an injury actually caused by her flu vaccination, and denies that her current disabilities are sequelae of her alleged 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 vaccine compensation payments:

a. A lump sum of \$100,000.00 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).

b. A lump sum of \$11,528.36 in the form of a check payable to petitioner and petitioner's attorney, David L. Terzian, Esq., of the Law Firm of Rawls & Mcnelis, P.C. for attorneys' fees and costs, and,

c. A lump sum of \$271.64 in the form of a check payable to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on the petition, in compliance with General Order #9.

9. 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.

10. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees, litigation costs, 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).

11. In return for the payments described in paragraph 8, petitioner, 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 flu vaccination administered on October 15, 2007, as alleged by petitioner in a petition for vaccine injury compensation filed on January 16, 2009, in the United States Court of Federal Claims as petition No. 09-34V.

12. 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 null and void at the sole discretion of either party.

13. 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.

14. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

END OF STIPULATION

Respectfully submitted,

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ELLIOTT M. LEAKE

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Dated: 5/24/10