

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 09-0545V
(Not to be published¹)

*
CHARLES E. BITTNER, *
*
*
 Petitioner, *
*
*
 v. *
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES *
*
 Respondent. *
*

Filed: September 20, 2012

Decision by Stipulation;
Influenza Vaccination;
Guillain-Barre Syndrome

DECISION

HASTINGS, Special Master.

This is an action seeking an award under the National Vaccine Injury Compensation Program² on account of an illness suffered by Charles E. Bittner. On September 17, 2012, counsel for both parties filed a Stipulation, stipulating that a decision should be entered granting compensation. The parties have stipulated that petitioner shall receive the following compensation:

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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 § 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 The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq.* (2006 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2006 ed.).

- A lump sum of \$85,000.00, 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).
- A lump sum of \$34,275.10, in the form of a check payable jointly to petitioner and petitioner’s counsel, F. John Caldwell, Jr., for attorney’s fees and costs.

Under the statute governing the Program, as well as the “Vaccine Rules” adopted by this court, the special master must now enter a decision endorsing that stipulation, and the clerk must enter judgment, in order to authorize payment of the award. See § 300aa-12(d)(3)(A) and (e)(3); § 300aa-13(a); Vaccine Rules 10(a), 11(a).³

I have reviewed the file, and based on that review, I conclude that the parties’ stipulation appears to be an appropriate one. Accordingly, my decision is that a Program award shall be made to petitioner in the amounts set forth above. In the absence of a timely-filed motion for review of this Decision, the clerk shall enter judgment in accordance herewith.

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ The “Vaccine Rules of the United States Court of Federal Claims” are found in Appendix B of the Rules of the United States Court of Federal Claims.

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

CHARLES E. BITTNER,)	
)	
Petitioner,)	
)	No. 09-545V
v.)	Special Master Hastings
)	
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Charles E. Bittner, 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 influenza ("flu") vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received his flu immunization on October 27, 2006.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused his alleged peripheral neuropathy.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.
6. Respondent denies that the flu vaccine caused petitioner's alleged peripheral neuropathy or any other injury or his current disabilities.

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 \$85,000.00 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 \$34,275.10 in the form of a check jointly payable to petitioner and petitioner's attorney, F. John Caldwell, Jr., MAGLIO CHRISTOPHER & TOALE, PA, 1605 Main Street, Suite 710, Sarasota, Florida, 34236, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner states that he did not incur any out-of-pocket expenses 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 and 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).

12. In return for the payments described in paragraph 8, petitioner, in his individual capacity, 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 flu vaccination administered on October 27, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about August 17, 2009, in the United States Court of Federal Claims as petition No. 09-545V.

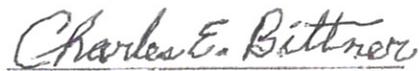
13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

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.

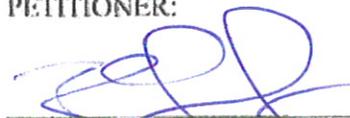
15. This Stipulation expresses a full and complete negotiated settlement of liability and damages, as well as attorneys' fees and costs claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or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

Respectfully submitted,

PETITIONER:


CHARLES E. BITTNER

ATTORNEY OF RECORD FOR
PETITIONER:


F. JOHN CALDWELL, JR.
MAGLIO CHRISTOPHER &
TOALE, PA
1605 Main Street, Suite 710
Sarasota, FL 34236
(888) 952-5242

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


VINCENT J. MATANOSKI
Acting 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:


GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
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:


CLAUDIA B. GANGI
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4138

Dated: 9-17-12