

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-171V

Filed: January 10, 2012

_____)	
RICHARD MOELLER and)	
GRETCHEN MOELLER, as)	
Representatives of the Estate of)	
CHARLES JAMES BUSALACCHI,)	
)	NOT TO BE PUBLISHED
Petitioners,)	
)	
v.)	Stipulation; influenza (flu) vaccine;
)	Guillain-Barre Syndrome (GBS);
SECRETARY OF)	death
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, VA, for Petitioners;
Glenn A. MacLeod, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On January 4, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners, Richard and Gretchen Moeller, as Representatives of the Estate of Charles James Busalacchi ("Charles"), allege that Charles suffered injuries related to his receipt of the trivalent influenza ("flu") vaccine on or about September 23, 2008, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Specifically, Petitioners allege that Charles suffered Guillain-Barre Syndrome ("GBS") as a result of the September 23, 2008, flu immunization, and died as a consequence of his vaccine-related injuries on October 13, 2008. Petitioners seek compensation related to these injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

¹ In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the document as posted on the United States Court of Federal Claims' website.

Respondent denies that the flu vaccine caused Charles to suffer GBS or any other injury, and further denies that his death on October 13, 2008, was vaccine-related. Nonetheless, the parties have agreed informally to resolve this matter.

The Court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioners are awarded:

A lump sum of \$225,000.00, in the form of a check payable jointly to Petitioners, as Representatives of the Estate of Charles James Busalacchi, which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

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RICHARD MOELLER and		*
GRETCHEN MOELLER, as		*
Representatives of the Estate of		*
CHARLES JAMES BUSALACCHI,		*
		*
Petitioners,		*
		*
v.		*
		*
		*
SECRETARY OF HEALTH		*
AND HUMAN SERVICES,		*
		*
Respondent.		*
*****		*

No. 10-171V (ECF)
SPECIAL MASTER
SANDRA D. LORD

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioners, as Representatives of the Estate of Charles James Busalacchi, deceased, filed a petition for vaccine injury compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition sought compensation for injuries allegedly related to Charles James Busalacchi'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. Charles James Busalacchi received a flu immunization on or about September 23, 2008.
3. The vaccine was administered within the United States.
4. Petitioners claim that Charles James Busalacchi suffered Guillain-Barre Syndrome ("GBS") as a result of the September 23, 2008 flu immunization, and died as a consequence of

his vaccine-related injuries on October 13, 2008.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Charles James Busalacchi's behalf as a result of his alleged vaccine-related injury and death.

6. Respondent denies that the flu vaccine caused Charles James Busalacchi to suffer GBS or any other injury, and further denies that his death on October 13, 2008, was vaccine-related.

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 petitioners have 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 \$225,000.00 in the form of a check payable jointly to petitioners, as Representatives of the Estate of Charles James Busalacchi, representing 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 petitioners have 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. Petitioners and their 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 entities that provide health services on a pre-paid basis.

11. Payments 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as Representatives of the Estate of Charles James Busalacchi under the laws of the Commonwealth of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as Representatives of the Estate of Charles James Busalacchi. If petitioners are not authorized by a court of competent jurisdiction to serve as Representatives of the Estate of Charles James Busalacchi at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as Representative(s) of the Estate of Charles James Busalacchi upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities, and as Representatives of the Estate of Charles James Busalacchi, and on behalf of Charles James Busalacchi's heirs, executors, administrators, successors or assigns, do 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 Charles James Busalacchi resulting from, or alleged to have resulted from, the flu vaccination administered on or about September 23, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about March 22, 2010, in the United States Court of Federal Claims as petition No. 10-171V.

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, 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 amount of damages.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Charles James Busalacchi to suffer GBS or any other injury, and/or that the flu vaccination caused Charles James Busalacchi's death.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

PETITIONER:

Richard Moeller
RICHARD MOELLER

PETITIONER:

Getche Moeller
GETCHE MOELLER

ATTORNEY OF RECORD FOR
PETITIONERS

[Signature]

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