

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-753V

Filed: December 21, 2010

BECKY SATHER,	)	
	)	NOT TO BE PUBLISHED
Petitioner,	)	
	)	
v.	)	Stipulation; trivalent influenza (flu)
	)	vaccine; brachial neuritis/
SECRETARY OF	)	neuropathy
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

Joseph J. Zonies, Reilly, Pozner & Connelly, LLP, Denver, Colorado, for Petitioner;  
Katherine C. Esposito, United States Dep't of Justice, Washington, D.C., for Respondent.

### DECISION<sup>1</sup>

**LORD**, Chief Special Master.

On December 16, 2010, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Becky Sather, alleged that she suffered brachial neuritis/neuropathy as a consequence of her receipt of the trivalent influenza ("flu") vaccine on October 31, 2007, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R § 100.3(a). Ms. Sather seeks damages related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the flu vaccine caused Ms. Sather's alleged injuries, and denies that her current condition is a sequelae of the alleged injuries. 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, Petitioner is awarded:

A lump sum of **\$90,000.00, in the form of a check payable to petitioner, Becky Sather**. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction "of any information furnished by that party (1) that is trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of a timely objection, the entire document will be made publicly available.

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.<sup>2</sup>

**IT IS SO ORDERED.**

---

Dee Lord  
Chief Special Master

---

<sup>2</sup> 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.



for damages on her behalf as a result of her condition.

6. Respondent denies that the flu vaccine caused petitioner's alleged injuries, and denies that her current condition is a sequelae of the alleged injuries.

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 payment:

A lump sum of \$90,000.00 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).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has 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. Petitioner and her 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 paragraphs 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. 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).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and on behalf of her 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. § 300 aa-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 31, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about November 3, 2009, in the United States Court of Federal Claims as petition No. 09-753V.

14. 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.

15. 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.

16. 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, 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.

17. 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 petitioner's alleged injuries, or that her current condition is a sequelae of the alleged injuries.

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

END OF STIPULATION

/

/

/

/

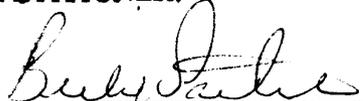
/

/

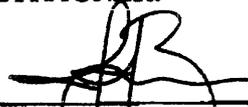
/

Respectfully submitted,

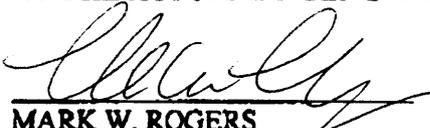
**PETITIONER:**

  
\_\_\_\_\_  
BECKY SATHER

**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
\_\_\_\_\_  
JOSEPH J. ZONIES  
Reilly Pozner, LLP  
511 Sixteenth Street, Suite 700  
Denver, CO 80202  
(303) 893-6100

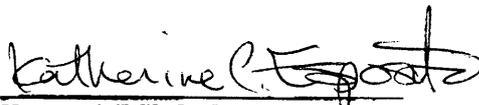
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
\_\_\_\_\_  
MARK W. ROGERS  
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:**

  
\_\_\_\_\_  
KATHERINE C. ESPOSITO  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 514-9729

Dated: 12/16/10