

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-302V

Filed: April 11, 2013

DAVID GILCHRIST, trustee of)	
LYNNE GILCHRIST,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	
v.)	
)	Stipulation; influenza (flu) vaccine
SECRETARY OF HEALTH)	Guillain-Barre Syndrome (“GBS”);
AND HUMAN SERVICES,)	Attorneys’ Fees and Costs.
)	
Respondent.)	
)	

Randall G. Knutson, Farrish Johnson Law Office, Mankato, MN, for Petitioner.
Claudia Gangi, United States Dep’t of Justice, Washington, DC, for Respondent.

DECISION¹

ZANE, Special Master.

On April 4, 2013, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, David Gilchrist, trustee of Lynne Gilchrist (“Mrs. Gilchrist”), alleged that Mrs. Gilchrist sustained Guillain-Barre Syndrome (“GBS”), which resulted in her death, that was caused-in-fact by her receipt on October 22, 2010 of the influenza (“flu”) vaccine, which is a vaccine contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Petitioner also alleges that

¹ Because this decision contains a reasoned explanation for the Special Master’s action in this case, the Special Master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 113 Stat. 2899, 2913 (Dec. 17, 2002). All decisions of the Special Master will be disclosed and made available to the public unless they contain trade secret or commercial or financial information that is privileged and confidential, or medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to redact such information before 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 redact such material from public access. 42 U.S.C. § 300aa-12 (d) (4); Vaccine Rule 18 (b). In the absence of a motion or should the Special Master disagree with the proposed redactions, the decision shall be disclosed in its entirety.

Mrs. Gilchrist's death was caused by the vaccine and that she has not otherwise received compensation for such injuries. Petitioner seeks compensation related to Mrs. Gilchrist's injuries and death pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the vaccine caused Mrs. Gilchrist's GBS or any other injury or her death. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

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:

- 1) **a lump sum of \$235,000.00, in the form of a check payable to Petitioner as Trustee of the Estate of Lynne Gilchrist.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- 2) **a lump sum of \$8,606.68 in the form of a check payable jointly to petitioner and petitioner's attorney, Randall Knutson.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(e).

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/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. 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.

6. Respondent denies that the flu vaccine caused Mrs. Gilchrist's alleged GBS, any other injury, or her death.

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. A lump sum of \$235,000.00 in the form of a check payable to petitioner as Trustee of the Estate of Lynne Gilchrist. 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 \$8,606.68 in the form of a check jointly payable to petitioner and petitioner's attorney, Randall Knutson, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

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. Petitioner represents that he has been appointed as the Trustee of the Estate of Lynne Gilchrist under the laws of the State of Minnesota, and has filed proof of appointment in this case. If petitioner is not authorized by a court of competent jurisdiction to serve as Trustee of Lynne Gilchrist's estate 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 Trustee of the Estate of Lynne Gilchrist upon submission of written documentation of such appointment to the Secretary.

11. In return for the payments described in paragraph 8, petitioner, in his individual capacity, and as the Trustee of Lynne Gilchrist's estate, on behalf of Lynne Gilchrist's 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 Lynne Gilchrist resulting from, or alleged to have resulted from, the flu vaccine administered to Lynne Gilchrist on October 22, 2010, as alleged in a Petition filed on May 10, 2012, in the United States Court of Federal Claims as petition No. 12-302V.

12. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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.

13. 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. There is absolutely no agreement on the part of the parties hereto to make any payment or 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.

14. 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 Lynne Gilchrist's alleged injuries, to include GBS, and/or caused her death.

15. All rights and obligations of petitioner in his capacity as Trustee of the Estate of Lynne Gilchrist shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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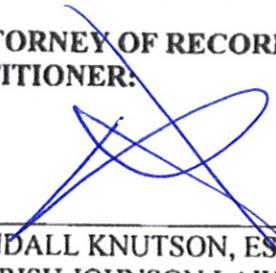
Respectfully submitted,

PETITIONER:



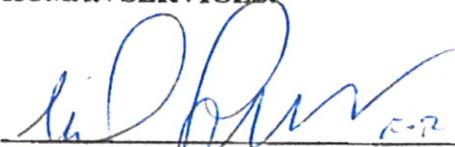
DAVID GILCHRIST

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