

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JAMES BENCIVENGO,

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Petitioner,

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No. 08-328V

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Special Master Christian J. Moran

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Filed: March 6, 2009

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Stipulation; trivalent influenza (flu)
vaccine; Guillain-Barre Syndrome.

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Respondent.

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UNPUBLISHED DECISION¹

Sam Rosmarin, Esq., Law Offices of Sam Rosmarin, LLC, White Plains, N.Y., for Petitioner;
Katherine C. Esposito, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On March 4, 2009, the parties filed a joint stipulation concerning the petition for compensation filed James Bencivengo on May 5, 2008. In his petition, Mr. Bencivengo alleged that the trivalent influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3 (a), and which Mr. Bencivengo received on October 9, 2007, caused him to develop Guillain Barre Syndrome (GBS) and related sequelae.

Respondent denies that Mr. Bencivengo suffered from GBS and related sequelae as a result of his receipt of the flu vaccine.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

A lump sum payment of \$145,000.00 in the form of a check payable to the petitioner.

This amount represents compensation for all damages that would be available pursuant to 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 08-328V according to this decision and the attached stipulation.

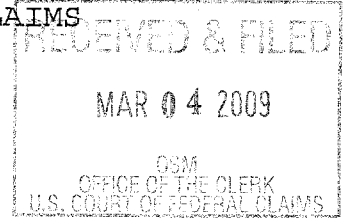
Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.

Christian J. Moran
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



JAMES BENCIVENGO,)	
)	
Petitioner,)	
)	
v.)	No. 08-328V
)	Special Master Moran
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. James Bencivengo, 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 trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Petitioner received his flu immunization on or about October 9, 2007.

3. The vaccine was administered within the United States.

4. Petitioner alleges that he developed Guillain Barre Syndrome ("GBS") and related sequelae, as a result of his receipt of the flu vaccine.

5. Petitioner represents that there has been no prior award

or settlement of a civil action for damages as a result of his condition.

6. Respondent denies that petitioner suffered from GBS and related sequelae as a result of his receipt of the flu vaccine.

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 \$145,000.00 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. Payment 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.

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 payment described in paragraph 8, petitioner, in his individual capacity, and on behalf of his 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 or about October 9, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about May 5, 2008, in the United States Court of Federal Claims as petition No. 08-328V.

13. If petitioner should die prior to receiving the payment

described in paragraph 8, this agreement shall be considered 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 null and void at the sole discretion of either party.

15. 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.

16. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:

James Bencivengo
JAMES BENCIVENGO

ATTORNEY OF RECORD FOR
PETITIONER:

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Dated: 2/10/09 ^{KCE} 3/4/09