

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 08-543V

Filed: July 21, 2009

### NOT TO BE PUBLISHED

\*\*\*\*\*  
KATHERINE DAVIS \*  
\*  
Petitioner, \*  
\*  
v. \* Stipulation; Influenza Vaccine;  
\* Tingling Sensations, Weakness,  
\* Pain and Numbness in Arm; Rash  
SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*  
\*  
Respondent. \*  
\*\*\*\*\*

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

On July 15, 2009, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that petitioner's injuries of tingling sensations, weakness, pain and numbness in her left arm and a scaly rash on her left hand were caused-in-fact by the influenza vaccine which she received on November 17, 2005. Respondent denies that petitioner's injuries and alleged residual effects were caused-in-fact by the influenza vaccine. Nonetheless, the parties agreed informally to resolve this matter.

The court hereby **adopts** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded a lump sum of **\$8,000.00** in the form of a check payable to petitioner. See Stipulation, para. 8, filed July 15, 2009. Additionally, petitioner is awarded a lump sum of **\$8,369.78 for attorney's fees and costs** in the form of a check payable to petitioner and petitioner's attorney

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<sup>1</sup>The undersigned intends to post this decision 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). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a 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." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id.

William Paul Glass, Jr. Esq., of Glass Law Firm. Id. The Clerk of the Court is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Chief Special Master

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<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.

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

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**KATHERINE DAVIS,**

Petitioner,

v.

**SECRETARY OF HEALTH AND  
HUMAN SERVICES,**

Respondent.

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**No. 08-543V (ECF)**  
CHIEF SPECIAL MASTER  
GARY J. GOLKIEWICZ

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Katherine Davis (“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 an influenza vaccination<sup>1</sup>, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).

2. Petitioner received an influenza vaccination on November 17, 2005.

3. This vaccine was administered within the United States.

4. Petitioner alleges that she sustained vaccine-related injuries of tingling sensations, weakness, pain and numbness in her left arm and a scaly rash on her left hand (hereinafter “injuries”) that were caused-in-fact by the influenza vaccine. She further alleges that she experienced the residual effects of her injuries for more than six months.

<sup>1</sup> Petitioner also alleges that her injuries may have been caused by the pneumococcal polysaccharide (“pneumococcal”) vaccination. Injuries resulting from pneumococcal polysaccharide vaccinations are not compensable under the Act as that vaccine is not included in the Vaccine Injury Table (“Table”). See 42 U.S.C. § 300aa-14 (2008) and 42 C.F.R. § 100.3(a)(2008).

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that petitioner's injuries and alleged residual effects were caused-in-fact by the influenza 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 payments:

(a) a lump sum of \$8,000.00 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 \$8,369.78 in the form of a check payable jointly to petitioner and her counsel, William Paul Glass, Jr. Esq., of Glass Law Firm, for all attorneys' fees and costs.

9. Any payment 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. 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).

11. In return for the payments described in paragraph 8, petitioner, in her individual capacity and on behalf of her 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 influenza and/or pneumococcal vaccinations administered on November 17, 2005, as alleged by petitioner in a petition for vaccine compensation filed on or about July 28, 2008, in the United States Court of Federal Claims as petition No. 08-543V.

12. If petitioner should die prior to receiving the payment described in paragraph 8 (a), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event 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.

14. This Stipulation expresses a full and complete settlement of liability and damages, including attorneys' fees and costs and petitioner's out-of pocket expenses, claimed under the National 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.

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

END OF STIPULATION

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