

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-211V

Filed: September 29, 2011

JERRY W. EMMONS, SR.,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	
v.)	Stipulation; Tetanus-diphtheria-
)	acellular Pertussis (TdaP) and
SECRETARY OF)	Pneumococcal vaccines;
HEALTH AND HUMAN SERVICES,)	Guillain-Barre Syndrome (GBS)
)	
Respondent.)	
)	

Michael S. Kolker, Law Offices of Michael S. Kolker, Seattle, W.A., for Petitioner;
Alexis B. Babcock, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On September 28, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Jerry W. Emmons, Sr., alleges that he suffered the onset of Guillain Barre Syndrome ("GBS") that was caused-in-fact by the Tetanus-diphtheria-acellular Pertussis ("TdaP") and Pneumococcal vaccines that he received on April 22, 2009, which vaccines are contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Mr. Emmons further alleges that he experienced the residual effects of his condition for more than six months. Mr. Emmons seeks compensation related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the aforementioned vaccines caused Petitioner's GBS and denies that Petitioner experienced the residual effects of any vaccine-related injury for more than six months. 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:

¹ 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.

- a. **A lump sum of \$155,553.05, in the form of a check payable to Petitioner**, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and
- b. **A lump sum of \$25,949.35 in the form of a check payable to Petitioner and Petitioner's attorney, Michael S. Kolker, Esq.**, for attorney's fees and costs, available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner represents that all litigation costs were paid by his attorney and that he did not personally incur any costs in proceeding on the petition.

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

_____)	
JERRY W. EMMONS, SR.)	
)	
	Petitioner,)	
)	
v.)	No. 11-211V
)	Special Master Lord
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
	Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On April 5, 2011, Jerry Emmons (“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 Tetanus-diphtheria-acellular Pertussis (“TdaP”) and Pneumococcal vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received an TdaP and Pneumoccal vaccinations on April 22, 2009.
3. The vaccines were administered within the United States.
4. Petitioner alleges that he suffered from Guillain- Barre Syndrome (“GBS”), which was caused-in-fact by his TdaP and Pneumococcal vaccinations. Petitioner further alleges that he experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his GBS.

6. Respondent denies that petitioner's GBS was caused-in-fact by his vaccinations, and denies that the vaccines caused his current condition.

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 payments:

- a. A lump sum of \$155,553.05 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 \$25,949.35 in the form of a check payable to petitioner and petitioner's attorney, for attorney's 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. Petitioner and his 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.

10. 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and 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).

12. In return for the payments described in paragraph 8, petitioner, on his own behalf, and on behalf of his 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. § 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 petitioner resulting from, or alleged to have resulted from, the Tdap and Pneumococcal vaccinations administered on April 26, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about April 5, 2011, in the United States Court of Federal Claims as petition No. 11-211V.

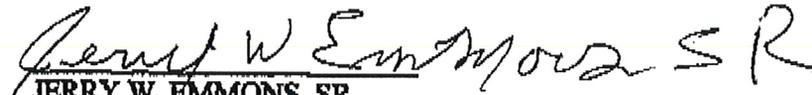
13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

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

Respectfully submitted,

PETITIONER:


JERRY W. EMMONS, SR.

ATTORNEY OF RECORD FOR
PETITIONER:



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Dated: 9-20-11