

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-474V

Filed: October 21, 2011

ROBERT J. WEINWUTH,	)	
as Executor of the Estate of	)	
LOIS E. WEINWUTH,	)	
	)	NOT TO BE PUBLISHED
Petitioner,	)	
	)	
v.	)	Stipulation; influenza (flu) vaccine;
	)	transverse myelitis; death
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

Firooz T. Namei, McKinney & Namei Company, L.P.A., Cincinnati, O.H., for Petitioner;  
Melonie J. McCall, United States Dep't of Justice, Washington, D.C., for Respondent.

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

**LORD**, Special Master.

On October 14, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Robert J. Weinwuth ("Petitioner"), as executor of the estate of Lois E. Weinwuth ("Ms. Weinwuth"), alleges that Ms. Weinwuth suffered injuries that were caused-in-fact by the trivalent influenza ("flu") vaccine that she received on or about October 6, 1999, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Petitioner alleges that as a result of receiving the flu vaccine, Ms. Weinwuth suffered from transverse myelitis. Petitioner further alleges that Ms. Weinwuth's death on June 30, 2009, was the sequela of her alleged vaccine-related injury. Petitioner 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 flu vaccine caused Ms. Weinwuth's transverse myelitis, or any other injury. Respondent further denies that Ms. Weinwuth experienced the residual effects of her alleged vaccine-related injury for more than six months, and denies that Ms. Weinwuth's death was vaccine-related. Nonetheless, the parties have agreed informally to resolve this matter.

<sup>1</sup> In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the decision as posted on the United States Court of Federal Claims' website.

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 \$92,000.00, in the form of a check payable to Petitioner as legal representative of the estate of Lois E. Weinewuth**, which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

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.**

s/Dee Lord  
Dee Lord  
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

ROBERT J. WEINWUTH, as guardian	)	
of his mother, LOIS E. WEINWUTH,	)	
	)	
Petitioner,	)	
v.	)	No. 07-474V
	)	Special Dee Lord
SECRETARY OF HEALTH AND	)	ECF
HUMAN SERVICES	)	
	)	
Respondent.	)	
	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Robert J. Weinwuth (“petitioner”), as guardian of his incompetent mother, Lois E. Weinwuth (“Ms. Weinwuth”), 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 Ms. Weinwuth’s receipt of a trivalent influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Ms. Weinwuth received the flu vaccination on or about October 6, 1999.
3. The vaccine was administered within the United States.
4. Petitioner alleges that as a result of receiving the flu vaccine, Ms. Weinwuth suffered from transverse myelitis. Ms. Weinwuth passed away on June 30, 2009. Petitioner further alleges that Ms. Weinwuth’s death was the sequela of her alleged vaccine-related injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Ms. Weinwuth as a result of her alleged condition or her death.

6. Respondent denies that the flu vaccination caused Ms. Weinewuth's transverse myelitis, or any other injury. Respondent further denies that Ms. Weinewuth experienced the residual effects of her alleged vaccine-related injury for more than six months, and denies that Ms. Weinewuth's death was vaccine-related.

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 \$92,000.00 in the form of a check payable to petitioner as legal representative of the estate of Lois E. Weinewuth. 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. Petitioner represents that he presently is, or within 90 days of the date of judgment

will become, duly authorized to serve as the legal representative of Ms. Weinewuth's estate under the laws of the State of Ohio. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as the legal representative of Ms. Weinewuth's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Lois E. Weinewuth 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 legal representative of the estate of Lois E. Weinewuth upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity and as legal representative of Ms. Weinewuth's estate, on behalf of himself and Ms. Weinewuth'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. §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 Ms. Weinewuth, resulting from, or alleged to have resulted from, the flu vaccination administered on October 6, 1999, as alleged by petitioner in a petition for vaccine compensation filed on or about June 29, 2007, in the United States Court of Federal Claims as petition No. 07-474V.

13. 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.

14. 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.

15. 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 Ms. Weinewuth's transverse myelitis or her disabilities; that Ms. Weinewuth experienced the residual effects of this injury for more than six months, or that her death was vaccine-related.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Lois E. Weinewuth's estate.

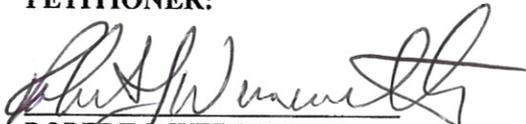
END OF STIPULATION

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Respectfully submitted,

**PETITIONER:**

  
ROBERT J. WEINEWUTH

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Dated: 10/14/11