

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-775V

Filed: August 21, 2013

Not for Publication

ELISA GOULD and CHRISTOPHER
CHUPP, as co-personal representatives of
the Estate of JOSEPH N. CHUPP, JR.,
deceased,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Damages decision based on
stipulation; influenza vaccine;
pneumonia; sepsis; systemic
inflammatory response; death; fees
& costs decision based on stipulation

Danielle A. Strait, Washington, DC, for petitioners.

Lisa A. Watts, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS¹

On August 21, 2013, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioners allege that Joseph N. Chupp, Jr. (J.N. Chupp) suffered pneumonia, sepsis, and/or a systemic inflammatory response as a result of his receipt of influenza vaccine on September 15, 2011. They further allege that J.N. Chupp's

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to 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.

alleged reaction to the flu vaccine was a substantial factor in his death on September 23, 2011. Respondent denies that flu vaccine caused J.N. Chupp's alleged injuries or was a substantial factor in his death. Nonetheless, the parties agreed to resolve this matter informally.

The court finds the terms to be reasonable, hereby adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$225,000.00**. The award shall be in the form of a check for **\$225,000.00** made payable to petitioners as Co-Personal Representatives of the Estate of Joseph N. Chupp, Jr.

The parties have also agreed on an appropriate amount for attorneys' fees and costs in this case. In accordance with the General Order #9 requirement, petitioners' counsel asserts that petitioners incurred no costs to pursue their petition.

Petitioners request \$18,043.43 in attorneys' fees and costs to which respondent does not object. The undersigned finds this amount to be reasonable. Accordingly, the court awards **\$18,043.43**, representing reimbursement for attorneys' fees and costs. The award shall be in the form of a check made payable jointly to petitioners and Maglio Christopher & Toale, PA in the amount of **\$18,043.43**.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: August 21, 2013

/s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

J.N. Chupp's alleged reaction to the flu vaccine was a substantial factor in his death on September 23, 2011.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on J.N. Chupp's behalf as a result of his alleged injuries or death.

6. Respondent denies that the flu vaccine caused J.N. Chupp's alleged injuries or was a substantial factor in his 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 petitioners have 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 \$225,000.00 in the form of a check payable to petitioners as Co-Personal Representatives of the Estate of Joseph N. Chupp, Jr. 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 \$18,043.43 in the form of a check payable jointly to petitioners and petitioners' attorney, Danielle Strait, 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 petitioners 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. Petitioners represent that they have been appointed as the Co-Personal Representatives of the Estate of Joseph N. Chupp, Jr., under the laws of the State of Indiana. If petitioners are not authorized by a court of competent jurisdiction to serve as Co-Personal

Representatives of J.N. Chupp'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 Personal Representative of the Estate of Joseph N. Chupp, Jr. upon submission of written documentation of such appointment to the Secretary.

11. In return for the payments described in paragraph 8, petitioners, in their individual capacities, and as the Co-Personal Representatives of J.N. Chupp's estate, on behalf of J.N. Chupp's heirs, executors, administrators, successors, and assigns, do 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 United States 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 J.N. Chupp resulting from, or alleged to have resulted from, the flu vaccine administered on September 15, 2011, as alleged by petitioners in a petition for vaccine compensation filed on or about November 14, 2012, in the United States Court of Federal Claims as petition No. 12-775V.

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 J.N. Chupp's alleged injuries, or was a substantial factor in the cause of J.N. Chupp's death.

15. All rights and obligations of petitioners in their capacities as Co-Personal Representatives of the Estate of Joseph N. Chupp, Jr. shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

/

/

/

/

/

/

/

/

/

Respectfully submitted,

PETITIONERS:

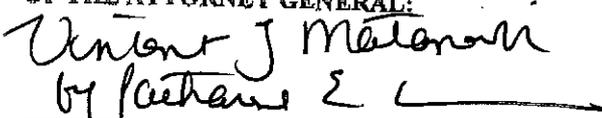

ELISA GOULD


CHRISTOPHER CHUPP

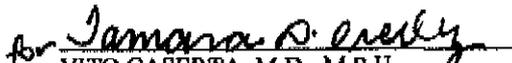
**ATTORNEY OF RECORD FOR
PETITIONERS:**


DANIELLE A. STRAIT, ESQ.
Maglio Christopher & Toale, PA
1455 Pennsylvania, Avenue, NW, Ste. 400
Washington, DC 20004
Tel: (888) 952-5242

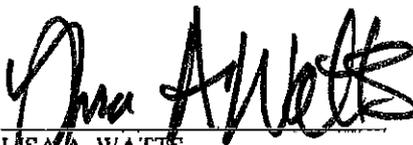
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT MATANOSKI
Deputy Director
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

**AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:**

for 
VITO CASERTA, M.D., M.P.H.
Acting Director, Division of Vaccine
Injury Compensation (DVIC)
Director, Countermeasures Injury
Compensation Program (CICP)
Healthcare Systems Bureau
U.S. Department of Health and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


LISA A. WATTS
Senior Trial Attorney
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4099

DATE: 8-21-2013