

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-730 V

FILED: April 6, 2011

Not for Publication

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JESSICA WENINGER,

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Petitioner,

\*

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v.

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Damages and Attorneys' Fees and Costs  
based on Stipulation;

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HPV Vaccine, myofascial pain, chronic

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

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fatigue syndrome, irritable bowel syndrome,  
fibromyalgia

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Respondent.

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Mark T. Sadaka, Englewood, NJ, for petitioner.

Debra F. Begley, Washington, DC, for respondent.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS<sup>1</sup>**

On April 4, 2011, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner alleged that she suffered from myofascial pain, chronic fatigue syndrome, irritable bowel syndrome and fibromyalgia following HPV vaccinations. Respondent denies that petitioner's injuries were caused in fact by her HPV vaccinations. Nonetheless, the parties agreed to resolve this matter informally.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 delete 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 delete such material from public access.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$20,000.00** in the form of a check made payable to petitioner, which represents compensation for damages;
- b. A lump sum of **\$19,500.00** in the form of a check payable to petitioner and petitioner's attorney, Mark Sadaka, Esq., for attorneys' fees and costs.

In compliance with General Order #9, Petitioner states that she incurred no out-of-pocket expenses in pursuing her petition.

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.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: April 6, 2011

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

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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

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**JESSICA WENINGER,**

Petitioner,

v.

**SECRETARY OF HEALTH AND  
HUMAN SERVICES,**

Respondent.

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**No. 09-730V**  
SPECIAL MASTER  
LAURA D. MILLMAN

STIPULATION

The parties hereby stipulate to the following matters:

1. 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 Human Papillomavirus (“HPV”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received HPV immunizations on October 10, 2006, December 29, 2006, and April 10, 2007.
3. These vaccines were administered within the United States.
4. Petitioner alleges that she developed myofascial pain, chronic fatigue syndrome (“CFS”), irritable bowel syndrome (“IBS”) and fibromyalgia (“FBM”), and that all of these conditions were caused by her vaccinations. She also alleges that she experienced residual effects of these injuries for more than six months.

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

6. Respondent denies that petitioner's myofascial pain, CFS, IBS, and/or FBM or her residual symptoms were caused by her HPV vaccinations.

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 \$20,000.00 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 \$19,500.00 in the form of a check payable to petitioner and petitioner's attorney, Mark Sadaka, Esq., 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 her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by 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 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 payments described in paragraph 8, petitioner, in her individual capacity and on behalf of herself and her 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 HPV vaccinations administered on October 10, 2006, December 29, 2006, and April 10, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about October 27, 2009, in the United States Court of Federal Claims as petition No. 09-730V.

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.

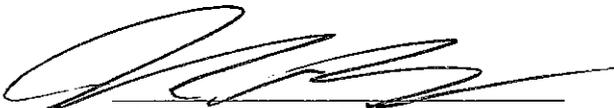


Respectfully submitted,

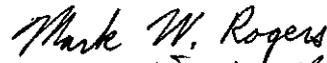
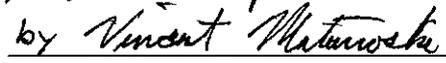
**PETITIONER:**

  
JESSICA WENINGER

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Dated: 3/11/11 4/4/11 DMFB