

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. [redacted]V

Filed: September 4, 2009

Not for publication

Reissued redacted: September 22, 2009

\*\*\*\*\*

JOHN DOE/46,

\*

\*

Petitioner,

\*

\*

v.

\*

\*

\*

Damages decision based on  
stipulation; Postvaccinal neuritis  
after Trivalent influenza vaccination

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

\*

\*

\*

Respondent.

\*

\*

\*\*\*\*\*

Ronald W. Cox, Jr., Rockville, MD, for petitioner.

Althea W. Davis, Washington, DC, for respondent.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On September 2, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that he suffered from

---

<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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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. Here, petitioner moved to redact such information and the undersigned granted his motion.

postvaccinal neuritis following a Trivalent influenza vaccination. Respondent denies that petitioner's postvaccinal neuritis was caused in fact by his influenza vaccination. Nonetheless, the parties agreed to resolve this matter informally.

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 **\$250,000.00** in the form of a check made payable to petitioner; and
- b. a sum of **\$550,000.00** to purchase the annuity contract described in paragraph 10 of the attached stipulation.

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: Sept. 4, 2009

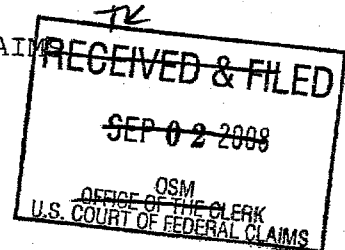
Laura D. Millman

Laura D. Millman  
Special Master

---

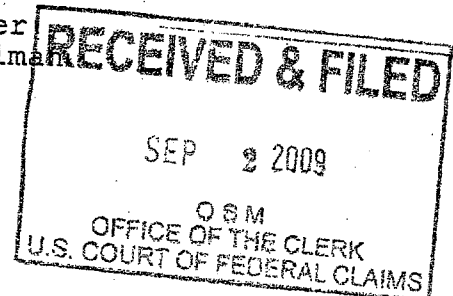
<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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



[REDACTED]  
Petitioner,  
v.  
SECRETARY OF HEALTH AND HUMAN  
SERVICES,  
Respondent.

No. [REDACTED]  
Special Master  
Laura D. Millman



STIPULATION

The parties hereby stipulate to the following matters:

1. [REDACTED], 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 Trivalent influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received his influenza immunization on October 13, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he sustained the first symptom or manifestation of the onset of postvaccinal neuritis on or about October 17, 2004. He further alleges that he developed chronic fatigue, persistent paresthesias in his hands, head and neck, right quadriceps weakness, gait imbalance and a reduced ability to recover from illness as sequelae of his injury.

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

6. Respondent denies that petitioner suffered the onset of postvaccinal neuritis as the result of his 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 vaccine compensation payments:

a. A lump sum of \$250,000.00 in the form of a check payable to petitioner; and

b. A sum of \$550,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

The above amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company at a cost of \$550,000.00 for the benefit of [REDACTED], pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for lost future earnings, pain and suffering and other vaccine-related expenses as follows:

a. Beginning 60 days from the date of the purchase of the annuity, \$1,771.77 payable monthly for life, guaranteed for 29 years (348 payments guaranteed). The monthly benefit shall compound at 2.5% annually from the date of first payment.

b. Guaranteed payments of \$20,000.00 payable every three (3) years for 16 years (6 payments guaranteed), beginning five (5) years from the date of the purchase of the annuity.

The purchase price of the annuity shall not exceed \$550,000.00. The above amounts represent an estimate of the annuity stream that could be purchased for \$550,000.00. In the event that the cost of the annuity payments set forth above varies from \$550,000.00 due to market rate fluctuations on the date the annuity is purchased, the payments described in paragraph 10(a) above shall be adjusted downward or upward accordingly to ensure that the total cost of the annuity will not be greater than or less than \$550,000.00.

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.

13. Payments made pursuant to paragraph 8(a) and 8(b) and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

14. 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).

15. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity, and on behalf of his 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 Trivalent influenza vaccination administered

on October 13, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about June 26, 2007, in the United States Court of Federal Claims as petition No. [REDACTED].

16. 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.

17. 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 null and void at the sole discretion of either party.

18. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 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.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

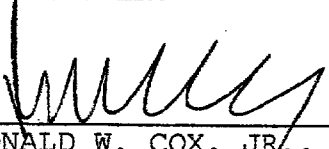
END OF STIPULATION

/


Respectfully submitted,

PETITIONER:

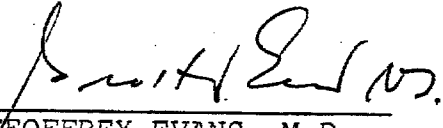
ATTORNEY OF RECORD FOR  
PETITIONER:

  
RONALD W. COX, JR., ESQ.  
McCarthy Wilson, LLP  
2200 Research Boulevard  
Suite 500  
Rockville, MD 20850  
(301) 762-7770  
(301) 926-7444


AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:

  
MARK W. ROGERS  
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:

  
GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
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:

  
ALTHEA WALKER DAVIS  
Senior Trial Counsel  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
(202) 616-0515

Dated: 2 September 2009