

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 10-651V
Filed: February 21, 2012**

DEAN PAUL WALLIN,	*	
	*	
Petitioner,	*	Stipulation; Tdap; Influenza; Guillian
	*	Barre Syndrome; Chronic Inflammatory
v.	*	Demyelinating Polyneuropathy; Attorney
	*	Fees and Costs
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

DECISION ON JOINT STIPULATION¹

VOWELL, Special Master:

Dean Paul Wallin ["Petitioner"] filed a petition for compensation under the National Vaccine Injury Compensation Program² on September 27, 2010. Petitioner alleges that he developed Guillian Barre Syndrom ["GBS"] and/or chronic inflammatory demyelinating polyneuropathy ["CIDP"] as a result of a tetanus, diphtheria, acellular - pertussis ["Tdap"] immunization and an influenza immunization he received on October 15, 2007, and he further alleges that he experienced residual effects of these injuries for more than six months. See Stipulation, filed February 17, 2012, at ¶¶ 2, 4. Respondent denies that petitioner's GBS and CIDP were caused-in-fact by his Tdap and influenza vaccinations, and denies that petitioner's current condition is a sequella of a vaccine-related injury. Stipulation at ¶ 6.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

Nevertheless, the parties have agreed to settle the case. On February 17, 2012, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms. Respondent agrees to pay petitioner a lump sum of \$125,000.00. **Accordingly, I hereby award the total of \$125,000.00³ in the form of a check payable to petitioner, Dean Paul Wallin, and on the terms set forth in the attached stipulation.**

Additionally, the February 17, 2012 joint stipulation addressed attorney fees and costs. In lieu of filing a separate General Order #9 statement, the stipulation indicates petitioner incurred no personal litigation costs.

I find that this petition was brought in good faith and that there existed a reasonable basis for the claim. Therefore, an award for fees and costs is appropriate pursuant to 42 U.S.C. §§ 300aa-15(b) and (e)(1). Further, the proposed amount seems reasonable and appropriate. **Accordingly, I hereby award the total of \$10,100.00⁴ in the form of a check payable jointly to petitioner and petitioner's counsel of record, Lommen, Abdo, Cole, King & Stageberg, P.A., for petitioner's attorney fees and costs.**

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Special Master

³ This amount represents compensation for all damages that would be available under § 300aa-15(a).

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y, HHS*, 924 F.2d 1029 (Fed. Cir.1991).

⁵ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).

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

DEAN PAUL WALLIN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*
*
*

No. 10-651V
SPECIAL MASTER
DENISE VOWELL

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 Influenza ("flu") and Tetanus, diphtheria, acellular-pertussis ("Tdap") vaccinations, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received his flu and Tdap vaccinations on October 15, 2007.
3. These vaccines were administered within the United States.
4. Petitioner alleges that he developed Guillian Barré Syndrome ("GBS") and/or chronic inflammatory demyelinating polyneuropathy ("CIDP") that was caused in fact by his flu and/or Tdap vaccinations and 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 on his behalf as a result of his condition.

6. Respondent denies that petitioner's GBS and/or CIDP, or the sequella of those conditions, or any other injury, was caused-in-fact by the influenza and/or Tdap 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 \$125,000.00 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 \$10,100.00 in the form of a check payable to petitioner and petitioner's attorney, Sheila Bjorklund of Lommen, Abdo, Cole, King & Stageberg, P.A., 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 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 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 his individual capacity 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 flu and/or Tdap vaccinations administered on October 15, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about September 27, 2010, in the United States Court of Federal Claims as petition No. 10-651V.

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.

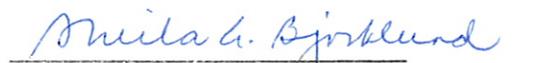
15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do

Respectfully submitted,

PETITIONER:


DEAN PAUL WALLIN

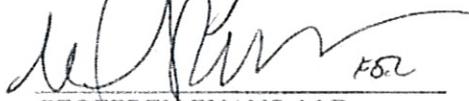
**ATTORNEY OF RECORD FOR
PETITIONER:**


SHEILA A. BJORKLUND
Lommen, Abdo, Cole, King & Stageberg, P.A.
2000 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 339-8131

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 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, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


DEBRA A. FILTEAU BEGLEY
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4181

Dated: 2/17/12