

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 04-1658V

Filed: November 14, 2005

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WILLIAM IRVIN, \*  
\*  
                    Petitioner, \*  
\*  
v. \*  
\*  
SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*  
\*  
                    Respondent. \*  
\*  
\*\*\*\*\*

### **FINAL DECISION AND DECISION ON ATTORNEY'S FEES AND COSTS<sup>1</sup>**

On November 2, 2005, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the amount of compensation in this case. The court has reviewed the Stipulation and hereby grants said Stipulation. The Stipulation is attached to this Decision as an addendum.

In addition, previously, on October 26, 2005, petitioner submitted a "Petitioner's Application for Fees and Costs" [hereinafter "Application"], as well as a "Petitioner and Counsel Statement" in compliance with General Order #9.

In the Application, petitioner's counsel reports that on or about October 4, 2005, he sent a draft fee and cost application for respondent's counsel to review. Respondent's counsel had objections to the initial request, but subsequently, after discussions, the parties agreed to an appropriate amount for fees and costs. As filed with the court, the Application requests

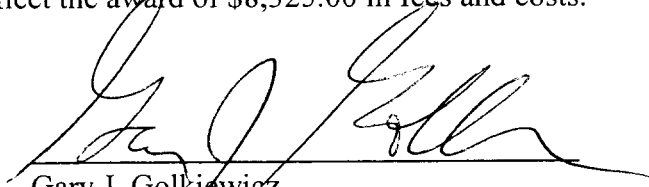
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<sup>1</sup>Because this decision contains a reasoned explanation for the special master's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, as provided by Vaccine Rule 18(b), each party has fourteen (14) days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

\$7,944.75 in attorney's fees and \$380.25 in costs. Petitioner's counsel also represented that the respondent has reviewed the Application and has no objections. The court finds that an award of **\$8,325.00** in fees and costs is appropriate. The award shall be made payable jointly to petitioner and his attorney.<sup>2</sup>

The Clerk shall enter two judgments in this case. The first judgment shall reflect the award of \$25,000.00 in compensation to petitioner, as reflected in paragraph 8 of the Stipulation. The second judgment shall reflect the award of \$8,325.00 in fees and costs.

**IT IS SO ORDERED.**

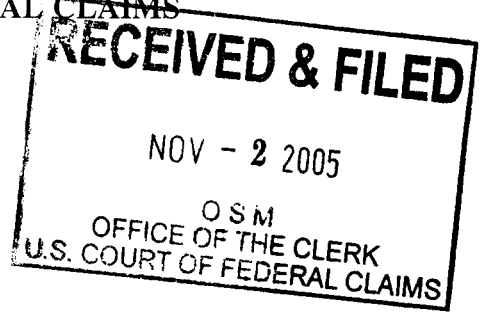


Gary J. Golkiewicz  
Chief Special Master

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<sup>2</sup>This amount is intended to cover all legal expenses. 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) which would be in addition to the amount awarded herein. See Beck v. Secretary of Health and Human Services, 924 F.2d 1029 (Fed. Cir. 1991).

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



\*\*\*\*\*

WILLIAM IRVIN,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\*\*\*\*\*

No. 04-1658V  
CHIEF SPECIAL MASTER  
GARY GOLKIEWICZ

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. Petitioner, William Irvin, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 300aa-34 (Vaccine Program). The petition seeks compensation for injuries allegedly related to petitioner's receipt of Hepatitis B (Hep B) vaccine, which vaccine is contained in the Vaccine Injury Table, 42 U.S.C. §300aa-14(a)(I).
2. Petitioner alleges that he received Hep B vaccine on April 17, 2003 and May 13, 2003.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he sustained the first symptom or manifestation of the onset of rheumatological injuries, including polyarthropathy, within 30 days of his Hep B immunizations.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.

6. Respondent's Rule 4 Report, filed March 30, 2005, denied that the Hep B immunizations caused petitioner to develop rheumatological injuries, including polyarthropathy, or any other injury.

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 payment of \$25,000.00 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).

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. 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 payment described in paragraph 8, petitioner, on behalf of himself, 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 Hep B vaccinations administered on April 17, 2003 and May 13, 2003, as alleged by petitioner in a petition for vaccine compensation filed on November 5, 2004, in the United States Court of Federal Claims as petition No. 04-1658V.

13. In the event petitioner should die prior to the Secretary making the payment described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. In the event that the Special Master fails to issue a decision in complete conformity with the terms of this Stipulation, or in the event 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.

15. 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 9 above. There is absolutely no agreement on the part of the parties

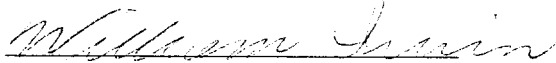
hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns.

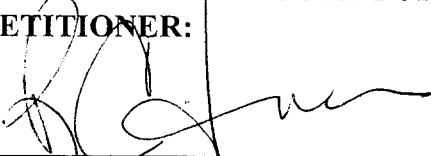
END OF STIPULATION

Respectfully submitted,

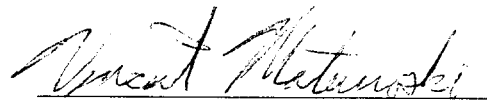
**PETITIONER:**

  
WILLIAM IRVIN

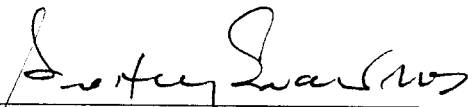
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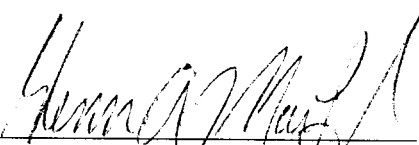
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Dated: November 2, 2005