

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 14-475V

Filed: February 23, 2015

(Not to be published)

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MARLON SPORER

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Petitioner,

\*

Decision on Damages; Tetanus Toxoid;

v.

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Right-arm Injury; Abscess

\*

SECRETARY OF HEALTH

\*

AND HUMAN SERVICES,

\*

\*

Respondent.

\*

\*

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Gerard K. Ryan, Kelner & Kelner, New York, NY for petitioner.

Julia W. McInerney, United States Department of Justice, Washington, DC for respondent.

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

**Gowen**, Special Master:

On June 4, 2014, Marlon Sporer (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> [the “Vaccine Act” or “Program”]. The petition alleges that he suffered from the Table injury of anaphylaxis and related sequelae, or that, in the alternative, he suffered from an

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, I intend to post this ruling on the United States Court of Federal Claims' website, in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.

<sup>2</sup> 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).

injury that was caused-in-fact by a Tetanus Toxoid (“TT”) vaccine. Petition at ¶ 1. On September 3, 2014, respondent filed a Rule 4(c) Report [“Respondent’s Report”], in which she concedes that petitioner is entitled to compensation for a right arm injury and sterile abscess caused-in-fact by a TT vaccination administered on April 6, 2009. Respondent’s Report at 4. The undersigned issued a Ruling on Entitlement on September 4, 2014 in favor of petitioner.

On February 23, 2015, respondent filed a Proffer on award of compensation, indicating that petitioner has agreed to award of compensation in the amount of \$80,000 to be paid to petitioner only, and an amount of \$76,419.83 to be paid on petitioner’s behalf to the New York City Human Resources Administration. Petitioner’s counsel was contacted by the undersigned’s chambers on February 23, 2015, and he confirmed petitioner’s agreement with the proposed compensation amounts stated in the Proffer. Pursuant to the terms in the attached Proffer, **the undersigned awards petitioner the following compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a):**

- 1. A lump sum payment of \$80,000.00 in the form of a check payable to petitioner, Marlon Sporer; and**
- 2. A lump sum payment of \$76,419.83 in the form of a check jointly payable to petitioner and the New York City Human Resources Administration at**

**New York City Human Resources Administration  
Division of Liens & Recovery  
P.O. Box 3786 – Church Street Station  
New York, NY 10008 -3786  
Attn: Amy Wheeler**

**This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that the New York City Department of Social Services and/or the State of New York may have against any individual as a result of any Medicaid payments that the New York City Department of Social Services and/or the State of New York has made to or on behalf of petitioner from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about April 6, 2009 under Title XIX of the Social Security Act.**

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**

Thomas L. Gowen  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

MARLON SPORER,  
 Petitioner,  
 v.  
 SECRETARY OF HEALTH AND  
 HUMAN SERVICES,  
 Respondent.

No. 14-475V  
 Special Master Gowan  
 ECF

The Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report on September 3, 2014, conceding that the injury to petitioner’s right arm and related sequelae, were caused-in-fact by the administration of his April 6, 2009, tetanus toxoid (TT) vaccine, and that these injuries are not due to factors unrelated to the administration of the TT vaccine. Respondent recommended that petitioner be awarded compensation for his injuries. Respondent hereby submits the following proffer regarding the award of compensation. For the purposes of this proffer, the term “vaccine-related” is as described in Respondent’s Rule 4(c) Report.

Based upon the evidence of record, respondent proffers that petitioner should be awarded the following compensation payments in the following forms:

- A. A lump sum payment of \$80,000.00 in the form of a check payable to petitioner;
- B. A lump sum payment of \$76,419.83, which amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that the New York City Department of Social Services and/or the State of New York may have against any individual as a result of any Medicaid payments that the New York City Department of Social Services and/or the State of New York has made to or on behalf of petitioner from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about April 6, 2009 under Title XIX of the Social Security Act, in the form of a check

payable jointly to petitioner and

New York City Human Resources Administration  
Division of Liens & Recovery  
P.O. Box 3786 – Church Street Station  
New York, NY 10008-3786  
Attn: Amy Wheeler

Petitioner agrees to endorse this payment to the New York City Human Resources Administration. Respondent proffers that these four payments represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

**II. Summary of Recommended Payments Following Judgment**

- |    |  |             |
|----|--|-------------|
| 1. | Lump sum paid to petitioner:   | \$80,000.00 |
| 2. | Lump sum paid jointly to petitioner and<br>New York Human Resources Administration<br>(Attn: Amy Wheeler): | \$76,419.83 |

Respectfully submitted,

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Acting Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
Deputy Director  
Torts Branch, Civil Division

MICHAEL P. MILMOE  
Senior Trial Counsel  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

s/ JULIA W. MCINERNY  
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DATED: February 23, 2015