

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-480V

Filed: August 27, 2014

Not for Publication

DEBORA RUSSO,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Damages decision based on proffer;
influenza (flu) vaccine; shoulder
injury related to vaccine
administration (SIRVA); fees and
costs decision based on proffer

Paul R. Brazil, Philadelphia, PA, for petitioner.

Ann D. Martin, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES AND ATTORNEYS' FEES AND COSTS¹

On June 4, 2014, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10–34 (2006), alleging that she suffered a left shoulder injury as a result of the influenza (“flu”) vaccination she received on October 26, 2011. On July 31, 2014, respondent filed her Rule 4(c) Report, conceding that petitioner suffered from a shoulder injury related to vaccine administration (“SIRVA”) and recommending compensation.

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master 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). 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 redact 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 redact such material from public access.

On August 27, 2014, respondent filed Respondent's Proffer on Award of Compensation. Respondent proffers that petitioner should be awarded \$108,000.00 for all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a), and \$13,310.95 for reimbursement of attorneys' fees and costs. In accordance with General Order #9, petitioner's counsel filed a statement asserting that petitioner did not incur any costs in pursuit of her petition.

The undersigned finds the terms of the proffer to be reasonable. Based on the record as a whole, the undersigned finds that petitioner is entitled to the award as stated in the proffer. Pursuant to the terms stated in the attached proffer, the court awards:

- a. a lump sum of **\$108,000.00**, representing all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). The award shall be in the form of a check for **\$108,000.00** made payable to petitioner; and
- b. a lump sum of **\$13,310.95**, representing reimbursement for attorneys' fees and costs. The award shall be in the form of a check for **\$13,310.95** made payable jointly to petitioner and Muller Brazil, L.L.P.

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.²

IT IS SO ORDERED.

Dated: August 27, 2014

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

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

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I. Items of Compensation

Respondent also proffers that petitioner should be awarded an additional \$13,310.95 for attorneys' fees and costs under 42 U.S.C. § 300aa-15(e), to be paid jointly to petitioner and petitioner's counsel. Petitioner agrees.

The parties recommend that the compensation provided to petitioner should be made as follows:

- ¹ 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 and future pain and suffering.

- B. A lump sum of \$13,310.95, in the form of a check payable jointly to petitioner and petitioner's attorney, Paul R. Brazil.²

Respectfully submitted,

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Assistant Attorney General

RUPA BHATTACHARYYA
Director
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VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

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Senior Trial Counsel
Torts Branch, Civil Division

s/ ANN D. MARTIN
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DATED: August 27, 2014

² In compliance with General Order #9, petitioner has filed a statement representing that no personal, out-of-pocket expenses were incurred by petitioner in proceeding on the petition and that all litigation costs were borne by counsel.