

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 14-737V

Filed: May 12, 2015

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Michael O'Leary,

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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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Stipulation; Influenza;  
Guillain-Barre Syndrome (GBS);  
Special Processing Unit (SPU);  
Awarding Damages; Attorney Fees  
and Costs

Lawrence R. Cohen, Anapol Schwartz, Philadelphia, PA, for petitioner.  
Claudia Barnes Gangi, United States Department of Justice, Washington, DC, for  
respondent.

### **DECISION ON JOINT STIPULATION<sup>1</sup>**

**Vowell**, Special Master:

On August 14, 2014, Michael O'Leary ("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"]. Petitioner alleged that, as a result of receiving an influenza vaccine on October 26, 2011, he suffered Guillain-Barre Syndrome ("GBS") the residual effects of which lasted more than six months. (See Stipulation for Award, filed May 11, 2015, ¶¶ 1-4 (ECF No. 21).) Respondent denies that the influenza vaccination caused petitioner's alleged shoulder injury or any other injury. (*Id.*, ¶. 6.)

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, it will be posted on the United States Court of Federal Claims' website, in accordance with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 redact 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 redact such material from public access.

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006).

Nevertheless, the parties have agreed to settle the case. On May 11, 2015, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

Respondent agrees to pay petitioner:

- a. A lump sum of **\$140,000.00** 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 **\$21,500.00** in the form of a check payable to petitioner and petitioner's attorney, Lawrence R. Cohen, ANAPOL AND SCHWARTZ, 1710 Spruce Street, Philadelphia, PA, 19103, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e).

(Id, ¶ 8.)

In accordance with General Order #9, petitioner's counsel has separately indicated that petitioner incurred no out-of-pocket litigation expenses. (See informal communication docketed 5/12/2015.)

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein.<sup>3</sup> In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

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

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<sup>3</sup> The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300aa-15(e). I find the proposed amount to be reasonable.

<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

MICHAEL O'LEARY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES

Respondent.

No. 14-737V  
Chief Special Master Vowell  
ECF

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 seasonal influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received his flu vaccination on or about October 26, 2011.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused him to develop Guillain-Barré Syndrome ("GBS") and that he experienced the 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 as a result of his condition.
6. Respondent denies that the flu immunization is the cause of petitioner's alleged GBS, any other injury, or his current disabilities.

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 \$140,000.00 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 \$21,500.00 in the form of a check payable to petitioner and petitioner's attorney, Lawrence R. Cohan, ANAPOL SCHWARTZ, 1710 Spruce Street, Philadelphia, PA, 19103, for, attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e).

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, and past unreimbursable expenses, 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 vaccination administered on October 26, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about August 19, 2014, in the United States Court of Federal Claims as petition No. 14-737V.

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 any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties'



respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that flu vaccine caused petitioner's alleged GBS, any other injury, or his current disabilities.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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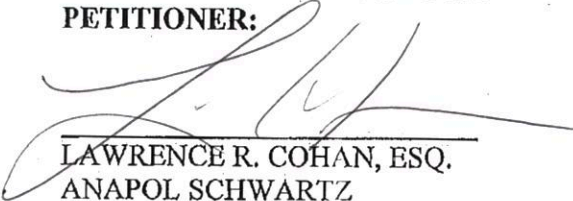
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Respectfully submitted,

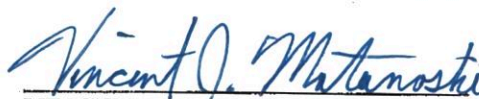
**PETITIONER:**

  
MICHAEL O'LEARY

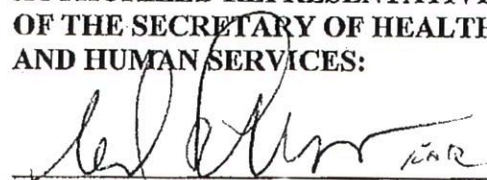
**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
LAWRENCE R. COHAN, ESQ.  
ANAPOL SCHWARTZ  
1710 Spruce Street  
Philadelphia, PA 19103  
Tel: (215) 790-4567


**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
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:**

  
A. MELISSA HOUSTON, M.D., M.P.H., F.A.A.P.  
Director, Division of Injury  
Compensation Programs (DACP),  
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:**

  
CLAUDIA B. GANGI  
Senior Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 616-4138

Dated: 5-11-15