

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 15-083V

GAIL A. CLEMENTS, *Executor Estate of*
RONALD CLEMENTS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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Filed: August 19, 2015

Decision by Stipulation; Damages;
Influenza (“Flu”) Vaccine;
Hemolytic Anemia (“HA”);
Leukostasis; Respiratory
Failure

Edward M. Kraus, Law Offices of Chicago Kent, Chicago, IL, for Petitioner.

Debra A. Begley, U.S. Dep’t of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 27, 2015, Gail A. Clements filed a petition, on behalf of the estate of Ronald Clements, seeking compensation under the National Vaccine Injury Compensation Program (the “Vaccine Program”).² Petitioner alleges that Mr. Clements’s influenza (“flu”) vaccination administered on October 27, 2013, caused him to develop hemolytic anemia (“HA”), leukostasis, and respiratory failure, and that death was a sequelae of these conditions.

¹ Because this decision contains a reasoned explanation for my actions in this case, I will post it 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 (Dec. 17, 2002) (current version at 44 U.S.C. § 3501 (2014)). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the published decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole decision will be available to the public. *Id.*

² The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. § 300aa-10 through 34 (2012)).

Respondent denies that the Mr. Clements's flu vaccine caused his HA, leukostasis, respiratory failure, any other injury, or death. Nonetheless both parties, while maintaining their above-stated positions, agreed in a stipulation (filed August 7, 2015) that the issues before them could be settled, and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties' stipulation (as attached hereto) is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

- A lump sum of \$200,000.00 in the form of a check payable to Petitioner as legal representative of the Estate of Ronald Clements. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

Stipulation ¶ 8. This amount represents compensation for all damages that would be available under Section 15(a) of the Act.

I approve a Vaccine Program award in the requested amounts set forth above to be made to Petitioner. 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.³

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

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

GAIL A. CLEMENTS, executor,
ESTATE OF RONALD CLEMENTS

Petitioner,

v.

**SECRETARY OF HEALTH AND
HUMAN SERVICES**,

Respondent.

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No. 15-083V
SPECIAL MASTER
BRIAN CORCORAN

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of the Estate of Ronald Clements, petitioner, Gail A. Clements, 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 Ronald Clements' ("Mr. Clements") receipt of the flu vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Mr. Clements received flu vaccinations administered on September 27, 2012, and October 9, 2013.
3. These vaccines were administered within the United States.
4. Petitioner alleges that Mr. Clements' flu vaccination administered on October 27, 2013, caused him to develop hemolytic anemia ("HA"), leukostasis, and respiratory failure, and that death was a sequelae of these conditions.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Mr. Clements as a result of his condition.

6. Respondent denies that Mr. Clements' flu vaccine caused his HA, leukostasis, respiratory failure, any other injury, or death.

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 of \$200,000.00 in the form of a check payable to petitioner as legal representative of the Estate of Ronald Clements. 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. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by entities that provide health services on a pre-paid basis.

11. Payments 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.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of the estate of Estate of Ronald Clements under the laws of the State of California. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of the Estate of Ronald Clements. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the Estate of Roland Clements at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Ronald Clements upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as Executor of the Estate of Mr. Clements, on behalf of herself, Mr. Clements and 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 Mr. Clements resulting from, or alleged

to have resulted from, the flu vaccinations administered on September 27, 2012, and October 9, 2013, as alleged by petitioner in a petition for vaccine compensation filed on or about January 27, 2015, in the United States Court of Federal Claims as petition No. 15-83V.

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, 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. 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 Mr. Clements' flu vaccine caused his HA, leukostasis, respiratory failure, any other injury, or death.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as Executor of the Estate of Ronald Clements.

END OF STIPULATION

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Respectfully submitted,


PETITIONER:


GAIL A. CLEMENTS


**ATTORNEY OF RECORD FOR
PETITIONER:**


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Dated: 8/7/15