

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-512V

Filed: November 19, 2015

UNPUBLISHED

\*\*\*\*\*

SUSANA GONZALES-SEXAUER,

\*

\*

Petitioner,

\*

\*

\*

SECRETARY OF HEALTH

\*

AND HUMAN SERVICES,

\*

\*

Respondent.

\*

\*

\*\*\*\*\*

Andrew Donald Downing, Van Cott & Talamante, PLLC, for petitioner.

Gordon Elliot Shemin, U.S. Department of Justice, Washington, DC, for respondent.

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

**Dorsey**, Chief Special Master:

On May 18, 2015, 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”]. Petitioner alleges that she suffered brachial neuritis as a result of a tetanus, diphtheria, acellular pertussis (“Tdap”) vaccine she received on November 14, 2014. Petition at 10; Stipulation at 1, filed 11/19/2015, ¶ 4. “Respondent denies that the Tdap immunization caused any injury to petitioner.” Stipulation, ¶ 6.

Nevertheless, on November 19, 2015, the parties filed the joint stipulation (attached hereto as Appendix A), stating that a decision should be entered awarding compensation. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulate that petitioner shall receive the following compensation:

---

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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 (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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact 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 (2012).

- a. A lump sum of **\$1,112.05**, which represents reimbursement of a State of New Mexico Medicaid lien, in the form of a check payable to petitioner and

**Health Care Service Corporation  
25552 Network Place  
Chicago, IL 60673-1255**

Petitioner agrees to endorse this payment to the State; and

- b. A lump sum of **\$90,000.00** in the form of a check payable to petitioner. Stipulation, ¶ 8(b). This amount represents compensation for all items of damages that would be available under 42 U.S.C. § 300aa-15(a). *Id.*
- c. A lump sum of **\$15,328.95**, in the form of a check payable jointly to petitioner and petitioner's attorney, **Andrew D. Downing**, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner incurred no out-of-pocket litigation expenses in proceeding on the petition.

The undersigned approves the requested amount. 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>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

---

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

	)	
SUSANA GONZALES-SEXAUER,	)	
	)	
Petitioner,	)	No. 15-512V
	)	Chief Special Master Dorsey
v.	)	ECF
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES	)	
	)	
Respondent.	)	
	)	

The parties hereby stipulate to the following matters:

2. Petitioner received her Tdap vaccination on or about November 14, 2014.

3. The vaccine was administered within the United States.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

Page 1 of 5

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 \$1,112.05, which represents reimbursement of a State of New Mexico Medicaid lien, in the form of a check payable to petitioner and

Health Care Service Corporation  
25552 Network Place  
Chicago, IL 60673-1255

Petitioner agrees to endorse this payment to the State; and

- b. A lump sum of \$90,000.00 in the form of a check payable to petitioner. This amount represents compensation for all remaining items of damages that would be available under 42 U.S.C. § 300aa-15(a); and
- c. A lump sum of \$15,328.95 in the form of a check payable jointly to petitioner and petitioner's attorney, Andrew D. Downing, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner incurred no out-of-pocket litigation expenses in proceeding on the petition.

9. Petitioner and her 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 by 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 her individual capacity, and on behalf of her heirs, executors, administrators, successors and/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 Tdap vaccination administered on or about November 14, 2014 as alleged by petitioner in a petition for vaccine compensation filed on or about May 18, 2015 in the United States Court of Federal Claims as petition No. 15-512V.

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. 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 the Tdap vaccine caused any injury to petitioner.

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

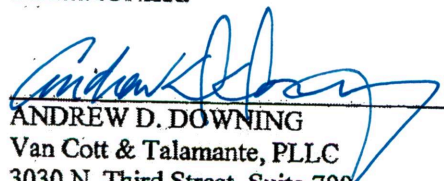
#### **END OF STIPULATION**

Respectfully submitted,


**PETITIONER:**

  
SUSANA GONZALES-SEXAUER


**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
ANDREW D. DOWNING  
Van Cott & Talamante, PLLC  
3030 N. Third Street, Suite 790  
Phoenix, Arizona 85012  
(602) 257-9160

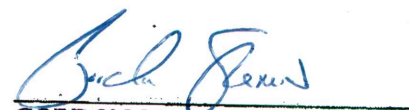
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
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., FAAP  
Director, Division of Injury  
Compensation Programs (DICP)  
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:**

  
GORDON SHEMIN  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 616-4208

Dated: November 19, 2015