

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-0005V

Filed: December 9, 2016

UNPUBLISHED

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JOAN COSTON,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;  
Influenza Vaccine ("Flu Vaccine");  
Shoulder Injury Related to Vaccine  
Administration ("SIRVA");  
Special Processing Unit ("SPU")

\*\*\*\*\*

*Howard Gold, Gold Law Firm, LLC, Wellesley Hills, MA, for petitioner.*

*Althea Davis, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On January 4, 2016, Joan Coston ("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 alleges that she suffered a shoulder injury related to vaccine administration ("SIRVA") which was caused-in-fact by the influenza vaccine she received on October 29, 2014. Petition at 1, ¶ 16. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 20, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation. (ECF No. 19). On December 9, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$120,000.00. Proffer at 1. In the Proffer, respondent represented that

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<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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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).

petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$120,000.00 in the form of a check payable to petitioner, Joan Coston.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

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

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<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.

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

JOAN COSTON,	)	
	)	
Petitioner,	)	No. 16-05V
	)	Chief Special Master
v.	)	Nora Beth Dorsey
	)	ECF
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

**PROFFER ON AWARD OF COMPENSATION**

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$120,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$120,000.00, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO  
Acting Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to the 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.

CATHARINE E. REEVES  
Acting Deputy Director  
Torts Branch, Civil Division

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DATED: 9 December 2016