

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-771V

Filed: November 18, 2016

UNPUBLISHED

\*\*\*\*\*

KIMBERLY HILL,

\*

\*

Petitioner,

\*

v.

\*

Damages Decision Based on Proffer;

Influenza;

\*

Shoulder Injury; SIRVA;

SECRETARY OF HEALTH

\*

Special Processing Unit ("SPU")

AND HUMAN SERVICES,

\*

\*

Respondent.

\*

\*

\*\*\*\*\*

*Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.*

*Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On June 29, 2016, 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 a shoulder injury related to vaccine administration ("SIRVA") following her December 15, 2015, influenza vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 28, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On November 18, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$140,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees

---

<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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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).

with the proffered award. 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 \$140,000.00 in the form of a check payable to petitioner, Kimberly Hill.** 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

---

<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.

	)	
KIMBERLY HILL,	)	
	)	
Petitioner,	)	
	)	No. 16-771V
v.	)	Chief Special Master Dorsey
	)	ECF
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Respondent.	)	
	)	

## **I. Items of Compensation**

## II. Form of the Award

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

1

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

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

ALTHEA W. DAVIS  
Senior Trial Counsel  
Torts Branch, Civil Division

/s/ Mallori B. Openchowski  
MALLORI B. OPENCHOWSKI  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Phone: (202) 305-0660  
Fax: (202) 353-2988

Dated: November 18, 2016