

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-1153V

Filed: August 10, 2017

UNPUBLISHED

VIRGINIA LOVITTO,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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

*Amber Diane Wilson, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.  
Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for respondent.*

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

**Dorsey**, Chief Special Master:

On September 16, 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 left shoulder injury caused by her September 23, 2014 influenza vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 19, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for a shoulder injury related to vaccine administration (“SIRVA”). On August 9, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$147,500.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

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 \$147,500.00 in the form of a check payable to petitioner, Virginia Lovitto.** 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**

VIRGINIA LOVITTO,

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SECRETARY OF HEALTH AND  
HUMAN SERVICES,

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No. 16-1153V

Chief Special Master Nora Beth Dorsey  
ECF

**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On December 16, 2016, respondent filed a Rule 4(c) Report in which she conceded entitlement. Respondent now proffers that petitioner receive an award of a lump sum of **\$147,500.00** in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.<sup>1</sup> This proffer does not address final attorneys' fees and litigation costs. Petitioner is additionally entitled to reasonable attorneys' fees and litigation costs, to be determined at a later date upon petitioner submitting substantiating documentation.

Petitioner agrees with the proffered award of **\$147,500.00** as representing all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

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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.

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

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Assistant Director  
Torts Branch, Civil Division

s/Camille M. Collett  
CAMILLE M. COLLETT  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Telephone: (202) 616-4098

Dated: August 9, 2017