

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: June 23, 2017

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KRISTA M. GUT, as Administrator  
of the Estate of Jeremy D. Gut,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\* \* \* \* \*

\* No. 16-1284V  
\*  
\*  
\* Special Master Sanders  
\*  
\*  
\* Joint Stipulation on Damages; Influenza  
\* (“Flu”) Vaccine; Guillain-Barré Syndrome  
\* (“GBS”); Death.  
\*  
\*

Simina Vourlis, Law Offices of Simina Vourlis, Columbus, OH, for Petitioner.

Douglas Ross, United States Department of Justice, Washington, DC, for Respondent.

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

On October 6, 2016, Krista M. Gut (“Petitioner”), on behalf of the Estate of Jeremy D. Gut, petitioned for compensation pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-10 to -34 (2012). Petitioner alleged that, as a result of an influenza (“flu”) vaccine administered on September 24, 2014, Mr. Gut developed Guillain-Barré Syndrome (“GBS”) and subsequently died due to his alleged vaccine-related injury. Stipulation, ECF No. 20.

On June 19, 2017, the parties filed a stipulation in which they state that a decision should be entered awarding compensation to Petitioner. *Id.* Respondent denies that the flu vaccine

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<sup>1</sup> This decision shall be posted 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), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted from public access.

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter “Vaccine Act,” “the Act,” or “the Program”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

caused Mr. Gut to develop GBS or any other injury, and further denies that the vaccine caused his death. *Id.* at 2. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. 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:

**A lump sum of \$502,691.08 in the form of a check payable to petitioner as legal representative of Jeremy D. Gut's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).**

*Id.* at ¶ 8.

The undersigned approves the requested amount for Petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

Following Petitioner's unopposed Motion to Amend Judgment, the clerk of court is directed to address Petitioner's check to "Krista M. Gut, as Administrator of the Estate of Jeremy D. Gut, deceased."<sup>3</sup>

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation and this decision.<sup>4</sup>

**IT IS SO ORDERED.**

s/Herbrina D. Sanders  
Herbrina D. Sanders  
Special Master

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<sup>3</sup> The clerk of court shall terminate the deadline for Petitioner's Unopposed Motion to Amend Judgment, ECF No. 25.

<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

KRISTA M. GUT, as administrator  
of the Estate of Jeremy D. Gut,  
  
Petitioner,  
  
v.  
  
SECRETARY OF HEALTH AND  
HUMAN SERVICES,  
  
Respondent.

## STIPULATION

1. Krista M. Gut ("petitioner"), filed a petition for vaccine compensation on behalf of the Estate of Jeremy D. Gut ("Jeremy") under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for Jeremy's injury and death, which petitioner alleges were caused by his receipt of an influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

4. Petitioner alleges that Jeremy suffered Guillain-Barré Syndrome ("GBS") as a result of receiving the flu vaccine, and that he subsequently died as a result of his alleged vaccine-related injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Jeremy as a result of his alleged vaccine injury or his death.

6. Respondent denies that the flu vaccine caused Jeremy's alleged GBS, any other injury, or his 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 \$502,691.08 in the form of a check payable to petitioner as legal representative of Jeremy D. Gut's estate. 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. Payment made pursuant to paragraph 8 of this Stipulation 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 Jeremy D. Gut under the laws of the State of Ohio. 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 Jeremy D. Gut. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the Estate of Jeremy D. Gut at the time 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 Jeremy D. Gut 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 legal representative of Jeremy D. Gut's estate, on behalf of herself, the Estate, and on behalf of Jeremy's 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 Jeremy D. Gut resulting



from, or alleged to have resulted from, the flu vaccination administered on September 24, 2014, as alleged by petitioner in a petition for vaccine compensation filed on or about October 6, 2016, in the United States Court of Federal Claims as petition No. 16-1284V.

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 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 flu vaccine caused Jeremy to suffer GBS, any other injury, or his death.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as administrator of the Estate of Jeremy D. Gut.

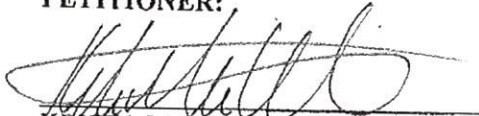
END OF STIPULATION

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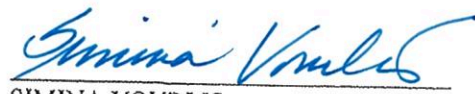
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Respectfully submitted,


**PETITIONER:**

  
KRISTA M. GUT, administrator of the  
Estate of JEREMY D. GUT

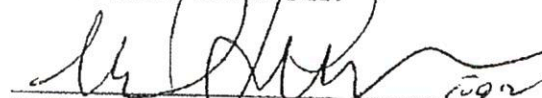
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Dated: June 19, 2017