

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1318V

Filed: November 4, 2020

\* \* \* \* \*

GABRIELA BROUGHAL,

\*

UNPUBLISHED

\*

Petitioner,

\*

Decision on Joint Stipulation;

\*

Optic Neuritis; Influenza

v.

\*

("Flu") Vaccine; FluMist

\*

Vaccine

SECRETARY OF HEALTH

\*

AND HUMAN SERVICES,

\*

\*

Respondent.

\*

\* \* \* \* \*

Alison Haskins, Esq., Maglio Christopher and Toale, PA, Sarasota, FL, for petitioner.

Dhairya Jani, Esq., US Department of Justice, Washington, DC, for respondent.

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

**Roth**, Special Master:

On October 11, 2016, Gabriela Broughal ["Ms. Broughal" or "petitioner"] filed a petition for compensation under the National Vaccine Injury Compensation Program.<sup>2</sup> Petitioner alleges that she developed optic neuritis and a set of non-specific symptoms, including pain, weakness, paresthesias, visual problems, and other physical deficits after receiving an influenza ("flu") vaccine on October 9, 2013. Stipulation, filed Nov. 4, 2020, at ¶¶ 1-4. Respondent denies that the flu vaccine caused petitioner's alleged optic neuritis or any other injury or her current condition. Stipulation at ¶ 6.

Nevertheless, the parties have agreed to settle the case. On November 4, 2020, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

<sup>1</sup> Although this Decision has been formally designated "unpublished," it will nevertheless be posted on the Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). **This means the Decision will be available to anyone with access to the internet.** However, the parties may object to the Decision's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public. *Id.*

<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).

Respondent agrees to issue the following payment:

**A lump sum of \$32,375.00 in the form of a check payable to petitioner, Gabriela Broughal.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/ Mindy Michaels Roth**  
Mindy Michaels Roth  
Special Master

---

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



6. Respondent denies that the flu vaccine caused petitioner's alleged optic neuritis, in addition to a set of non-specific symptoms, to include pain, weakness, paresthesias, visual problems, and other physical deficits, or any other injury or her current condition.

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 \$32,375.00 in the form of a check payable to petitioner. 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. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed 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).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her 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 petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on October 9, 2013, as alleged by petitioner in a petition for vaccine compensation filed on or about October 11, 2016, in the United States Court of Federal Claims as petition No. 16-1318V.

14. 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.

15. 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.

16. 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 nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. 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 petitioner to suffer optic neuritis, or a set of non-specific symptoms, to include pain, weakness, paresthesias, visual problems, and other physical deficits, or any other injury or her current condition.

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

END OF STIPULATION

/

/

/

/

/

/

/

/

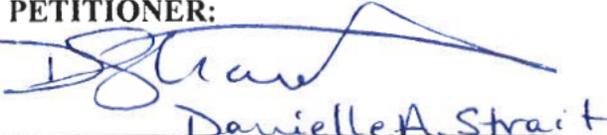
/

Respectfully submitted.

**PETITIONER:**

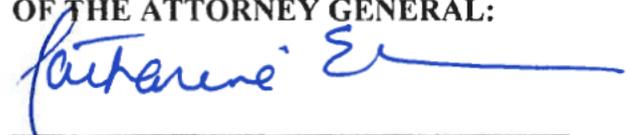
  
GABRIELA BROUGHAL

**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
Danielle A. Strait  
for

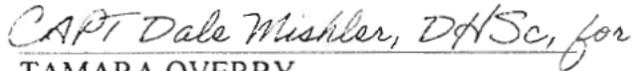
ALISON H. HASKINS  
Counsel for Petitioner  
Maglio Christopher & Toale, PA  
1605 Main Street, Suite 710  
Sarasota, FL 34236

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
CATHARINE E. REEVES

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:**



TAMARA OVERBY  
Acting Director, Division of Injury  
Compensation Programs  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail Stop 08N146B  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

Dhairya D Jani  
by 

DHAIRYA D. JANI  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

Dated: 11/4/20