

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: August 21, 2019

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MICHAEL BACOTTI,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 17-1126V
	*	
v.	*	Special Master Gowen
	*	
SECRETARY OF HEALTH	*	Influenza (“Flu”); Guillain-Barré
AND HUMAN SERVICES,	*	syndrome (“GBS”); Stipulation.
	*	
Respondent.	*	
* * * * *	*	

Leah V. Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.  
Christine M. Becer, United States Department of Justice, Washington, DC, for respondent.

### DECISION ON STIPULATION<sup>1</sup>

On August 21, 2017, Michael Bacotti (“petitioner”) filed a petition for compensation within the National Vaccine Injury Compensation Program.<sup>2</sup> Petition (ECF No. 1). Petitioner received an influenza (“flu”) vaccination on or about September 21, 2016. Stipulation filed August 21, 2019 (ECF No. 40) (“Stipulation”) at ¶ 4. Petitioner alleged that as a result of that flu vaccination, he suffered Guillain-Barré syndrome (“GBS”). *Id.* at ¶ 4.

On August 21, 2019, respondent filed a stipulation providing that a decision should be entered awarding compensation to petitioner. Stipulation. Respondent denies that the flu vaccination caused petitioner to suffer from GBS or any other injury. *Id.* at ¶ 6. Maintaining their respective positions, the parties nevertheless now agree that the issues between them shall

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<sup>1</sup> Pursuant to the E-Government Act of 2002, see 44 U.S.C. § 3501 note (2012), **because this opinion contains a reasoned explanation for the action in this case, I intend to post it on the website of the United States Court of Federal Claims.** The Court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. Before the opinion is posted on the Court’s website, each party has 14 days to file a motion requesting 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). An objecting party must provide the Court with a proposed redacted version of the opinion. *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the Court’s website without any changes.** *Id.*

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

be settled and that a decision should be entered awarding compensation according to the terms of the stipulation attached hereto as Appendix A. *Id.* at ¶ 7.

The stipulation awards:

- 1) **A lump sum of \$800,431.75, in the form of a check payable to petitioner. This amount representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).**

I adopt the stipulation as the decision of the Court in awarding damages. I hereby award compensation in the amount and on the terms set forth therein. Accordingly, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**

Thomas L. Gowen  
Special Master

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<sup>3</sup> Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

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

MICHAEL BACOTTI,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 17-1126V
	)	Special Master Gowen
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Michael Bacotti, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of an influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received his influenza immunization on September 21, 2016.
3. The vaccination was administered within the United States.
4. Petitioner alleges that he suffered from Guillain Barré Syndrome (GBS) as a result of receiving the influenza vaccine.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.
6. Respondent denies that the influenza vaccine caused petitioner to suffer from GBS or any other injury.

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 \$800,431.75 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 his 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 his individual capacity, and on behalf of his 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 influenza vaccination administered on September 21, 2016, as alleged by petitioner in a petition for vaccine compensation filed on or about August 21, 2017, in the United States Court of Federal Claims as petition No. 17-1126V.

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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused petitioner to have GBS or any other injury.

END OF STIPULATION

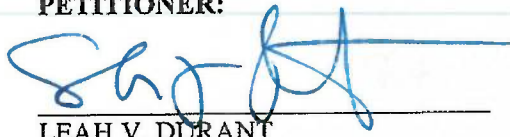
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Respectfully submitted,


**PETITIONER:**

  
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MICHAEL BACOTTI

**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
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LEAH V. DURANT  
Law Offices of Leah V. Durant, PLLC  
1717 K Street, NW Suite 900  
Washington, D.C. 20006

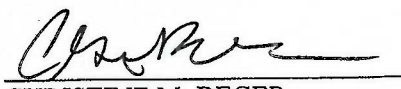
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
\_\_\_\_\_  
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:**

*Ward Sorensen for*  
\_\_\_\_\_  
TAMARA OVERBY, M.D.  
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 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
\_\_\_\_\_  
CHRISTINE M. BECER  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
Tel: (202) 616-3665

Dated: 8/21/19