

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1288V

Filed: June 28, 2019

UNPUBLISHED

JUDITH MORANDA, Executor,
Estate of LARRY MORANDA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU); Joint
Stipulation on Damages;
Pneumococcal Conjugate Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Edward M. Kraus, Law Offices of Chicago Kent, Chicago, IL, for petitioner.

Colleen Clemons Hartley, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

Dorsey, Chief Special Master:

On September 19, 2017, Mr. Larry Moranda filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). On April 27, 2018, Mr. Moranda passed away. On December 18, 2018; Judith Moranda, Executor, Estate of Mr. Moranda was substituted as “petitioner” for Mr. Moranda. See Order Amending Caption, ECF No. 33. Mr. Moranda alleged that he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a consequence of the Prevnar immunization he received on or about July 14, 2015, and that he suffered the residual effects of this injury for more than six months. Petition at 1,6; Stipulation, filed June 28, 2019, at ¶¶ 2, 4. “Respondent denies that Mr.

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** 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. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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).

² 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).

Moranda suffered a Table injury; denies the Plevnar vaccine caused Mr. Moranda's alleged SIRVA or any other injury, or his death.” Stipulation at ¶ 6.

Nevertheless, on June 28, 2019, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **the undersigned awards** the following compensation:

A lump sum of \$40,000.00 in the form of a check payable to petitioner, as Executor, Estate of Larry Moranda. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under § 15(a). *Id.*

The undersigned approves the requested amount for petitioner’s compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ 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.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Mr. Moranda's behalf as a result of Mr. Moranda's condition.

6. Respondent denies that Mr. Moranda suffered a Table injury; denies the Prevnar vaccine caused Mr. Moranda's alleged SIRVA or 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 \$40,000.00 in the form of a check payable to petitioner, as Executor, Estate of Larry Moranda. 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 they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a prepaid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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 Larry Moranda under the laws of the State of California. 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 Larry Moranda. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the Estate of Larry Moranda at the time a 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 Larry Moranda 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 on behalf of her heirs, executors, administrators, successors, and 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 United States 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 Mr. Moranda resulting from, or alleged to have resulted from, the Prevnar vaccination administered on or about July 14, 2015,

as alleged by petitioner in a petition for vaccine compensation filed on or about September 19, 2017, in the United States Court of Federal Claims as petition No. 17-1288V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Prevnar vaccine caused Mr. Moranda's alleged SIRVA, any other injury, or his death.

17. All rights and obligations of petitioner in her capacity as Executor, Estate of Larry Moranda shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:

Judith Moranda
JUDITH MORANDA, Executor,
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Dated: 6/28/19