

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-805V

Filed: April 21, 2020

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MATTHEW HUSSONG,

\*

UNPUBLISHED

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Petitioner,

\*

Decision on Joint Stipulation;

\*

Guillain-Barre Syndrome

v.

\*

("GBS"); Chronic

\*

Inflammatory Demyelinating

SECRETARY OF HEALTH

\*

Polyneuropathy ("CIDP");

AND HUMAN SERVICES,

\*

Influenza ("Flu") Vaccine

\*

Respondent.

\*

\* \* \* \* \*

Jessica Olins, Esq., Maglio Christopher & Toale, Seattle, WA, for petitioner.

Darryl Wishard, Esq., US Department of Justice, Washington, DC, for respondent.

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

**Roth**, Special Master:

On June 6, 2018, Matthew Hussong ["Mr. Hussong" or "petitioner"] filed a petition for compensation under the National Vaccine Injury Compensation Program.<sup>2</sup> Petitioner alleges that he developed Guillain-Barre Syndrome ("GBS") and chronic inflammatory demyelinating polyneuropathy ("CIDP") after receiving an influenza ("flu") vaccination on November 18, 2015. Stipulation, filed Apr. 21, 2020, at ¶¶ 1-4. Respondent denies that petitioner sustained a GBS Table injury; denies that the vaccine caused or significantly aggravated petitioner's alleged injuries or any other injury; and denies that petitioner's current disabilities are the result of a vaccine-related injury. Stipulation at ¶ 6.

<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 Although this Decision has been formally designated "unpublished," it will nevertheless be posted on the Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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).

Nevertheless, the parties have agreed to settle the case. On April 21, 2020, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

Respondent agrees to issue the following payment:

**A lump sum of \$175,500.00 (consisting of \$130,000.00 for past and future pain and suffering; \$35,000.00 for past lost earnings; and \$10,500.00 for unreimbursed expenses) in the form of a check payable to petitioner, Matthew Hussong.** 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

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<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.

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

MATTHEW HUSSONG,	)	
	)	
Petitioner,	)	No. 18-805V    ECF
	)	
v.	)	Special Master Roth
	)	
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Petitioner, Matthew Hussong, 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 the influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. On November 18, 2015, petitioner received the flu vaccine.
3. The vaccine was administered within the United States.
4. Petitioner alleges that, as a result of receiving the vaccine, he suffered from alleged injuries of Guillain-Barre syndrome (“GBS”) and chronic inflammatory demyelinating polyneuropathy (“CIDP”), and that he experienced symptoms of these injuries for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages as a result of his alleged injuries.

6. Respondent denies that petitioner sustained a GBS Table injury; denies that the vaccine caused or significantly aggravated petitioner's alleged injuries or any other injury; and, denies that petitioner's current disabilities are the result of a vaccine-related 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 \$175,500.00 (consisting of \$130,000.00 for past and future pain and suffering; \$35,000.00 for past lost earnings; and, \$10,500.00 for unreimbursed expenses), 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. Section 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, 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 vaccine administered on November 18, 2015, as alleged by

petitioner in a petition for vaccine compensation filed on or about June 6, 2018, in the United States Court of Federal Claims as petition No. 18-805V.

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 petitioner sustained a Table injury, or that the vaccine either caused or significantly aggravated petitioner's alleged injury or any other injury.

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

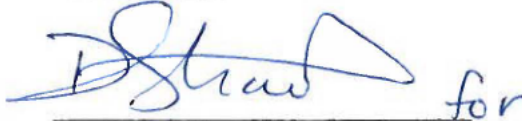
**END OF STIPULATION**

Respectfully submitted,

**PETITIONER:**

  
MATTHEW HUSSONG

**ATTORNEY OF RECORD FOR  
PETITIONER:**

 for

JESSICA OLINS  
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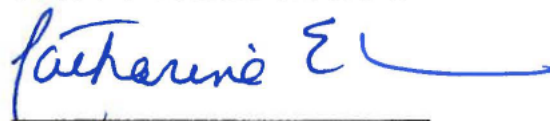
**AUTHORIZED REPRESENTATIVE  
OF THE SECRETARY OF HEALTH  
AND HUMAN SERVICES:**

 for

TAMARA OVERBY  
Acting Director, Division of Injury  
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Healthcare Systems Bureau  
U.S. Department of Health  
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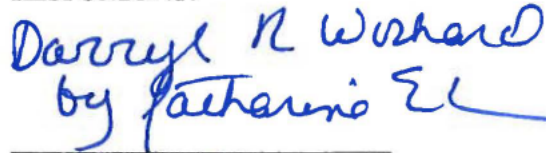
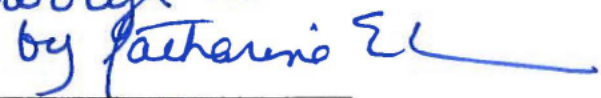
Dated: 4/21/20

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