

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

(Not to be published)

<p style="text-align:center">Petitioner,</p> <p style="text-align:center">v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align:center">Respondent.</p>	* * * * * * * * * * *	<p>Decision by Stipulation; Damages; Influenza (“Flu”) Vaccine; Acute Disseminated Encephalomyelitis (“ADEM”); Tetanus-diphtheria and Pertussis (“Tdap”) Vaccine</p>
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Elizabeth Muldowney, Rawls, McNelis and Mitchell, P.C., Richmond, VA, for Petitioner.

Gordon Shemin, U.S. Dep’t of Justice, Washington, D.C., for Respondent.

DECISION AWARDING DAMAGES¹

On _____, _____, filed a petition seeking compensation under the National Vaccine Injury Compensation Program.² Petitioner alleges that as a result of receiving the influenza (“flu”) vaccine on or about _____, he now suffers from acute disseminated encephalomyelitis (“ADEM”), and that he experienced the effects of this injury for more than six months.

¹ Because this ruling contains a reasoned explanation for my action in this case, it will be posted on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the inclusion of certain kinds of confidential information. To do so, Vaccine Rule 18(b) provides that each party has 14 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 ruling will be available to the public. *Id.*

² The National Vaccine Injury Compensation Program comprises 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.A. § 300aa-10 – 34 (2006)) [hereinafter “Vaccine Act” or “the Act”]. Individual sections references hereafter will be to § 300aa of the Act.

Respondent denies that the tetanus-diphtheria and pertussis (“Tdap”) or flu immunization caused Petitioner’s ADEM, or any other injury, and denies that his current disabilities are sequelae of a vaccine-related injury. Nonetheless both parties, while maintaining their above-stated positions, agreed in a stipulation (filed) that the issues before them can be settled and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties’ stipulation (as attached hereto) is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

- A lump sum of \$909,992.00, which amount represents compensation for first year life care expenses (\$80,157.00); lost earnings (\$618,898.00); pain and suffering (\$190,000.00); and past unreimbursable expenses (\$20,937.00), in the form of a check payable to Petitioner; and
- An amount sufficient to purchase the annuity contract(s) as described in paragraph 10 of the stipulation, paid to the life insurance company(ies) from which the annuity(ies) will be purchased.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). Stipulation ¶ 8.

I approve a Vaccine Program award in the requested amounts set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.³

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.