

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

E-Filed: April 28, 2014

\* \* \* \* \*

JESSICA HUBINA

\*

No.11-708V

\*

\*

Petitioner,

\*

Stipulation;

\*

Meningococcal and

v.

\*

Influenza Vaccines;

\*

Transverse Myelitis

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

\*

\*

\*

Respondent.

\*

\* \* \* \* \*

*Michael London*, New York, NY, for Petitioner  
*Jennifer Reynaud*, Washington, DC, for Respondent

### UNPUBLISHED DECISION<sup>1</sup>

On April 24, 2014, Respondent filed a joint stipulation concerning the petition for compensation filed by Lisa Hubina, on behalf of her minor child, Jessica, on October 26, 2011.<sup>2</sup> In her petition, Petitioner alleged that the

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this order on the United States Court of Federal Claims website, 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 Vaccine Rule 18(b), 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 entire” order will be available to the public. *Id.*

<sup>2</sup> The undersigned issued an order re-captioning the case to reflect Jessica Hubina as the proper Petitioner on December 22, 2013.

meningococcal and influenza vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which she received on November 20, 2008, caused her to develop acute disseminated encephalomyelitis (ADEM). Petitioner filed an amended petition on November 27, 2012, alleging transverse myelitis (TM) as her vaccine-related injury. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf as a result of Ms. Hubina’s alleged vaccine-related injury. Stipulation at ¶¶ 2, 4, 5.

Respondent denies that either the influenza or meningococcal vaccines caused Ms. Hubina to suffer TM or any other injury. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- 8. A lump sum payment of \$50,000.00 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).**

Stipulation at ¶8.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-708V according to this decision and the attached stipulation.<sup>3</sup>

Any questions may be directed to my law clerk, Camille Collett, at (202) 357-6361.

**IT IS SO ORDERED.**

s/Lisa Hamilton-Fieldman  
Lisa Hamilton-Fieldman  
Special Master

---

<sup>3</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

JESSICA HUBINA,  
  
Petitioner,  
  
v.  
  
SECRETARY OF HEALTH AND  
HUMAN SERVICES,  
  
Respondent.

No. 11-708V  
Special Master Hamilton-Fieldman  
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Lisa Hubina filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"), on behalf of her minor daughter, Jessica Hubina.<sup>1</sup> The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza ("flu") vaccination and the meningococcal vaccination, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received flu and meningococcal immunizations on November 20, 2008.
3. The vaccines were administered within the United States.

---

<sup>1</sup> On December 22, 2013, the caption was amended to reflect Jessica Hubina as petitioner, now that she has reached the age of majority.

4. Petitioner alleges that she sustained a vaccine-related injury diagnosed as transverse myelitis ("TM") that was caused-in-fact by flu and/or meningococcal vaccine.<sup>2</sup> She further alleges that she experienced the residual effects of her injury 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 her condition.

6. Respondent denies that petitioner's alleged injury and residual effects were caused-in-fact by either the flu or meningococcal vaccine. Respondent further denies that either the flu and/or meningococcal vaccine caused petitioner 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 \$50,000.00 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

---

<sup>2</sup> In her petition, filed on October 26, 2011, petitioner alleged that she developed acute disseminated encephalomyelitis ("ADEM"), as a result of the flu and/or meningococcal vaccinations that she received on November 20, 2008. She filed an amended petition on November 27, 2012, alleging TM as her vaccine-related injury.

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. Payments made pursuant to paragraphs 8 and 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, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for petitioner's benefit 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 a flu or meningococcal vaccination administered on November 20, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about October 26, 2011, and in an amended petition filed on or about November 27, 2012, in the United States Court of Federal Claims as petition No. 11-708V.

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.

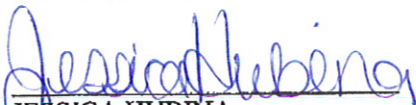
15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this 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.

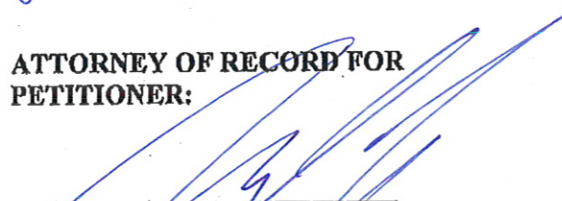


Respectfully submitted,

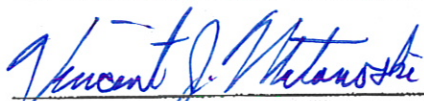
**PETITIONER:**

  
JESSICA HUBINA

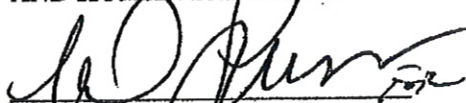
**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
MICHAEL A. LONDON  
DOUGLAS & LONDON, P.C.  
59 Maiden Lane, 6<sup>th</sup> Floor  
New York, NY 10038  
(212) 566-7500


**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
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:**

  
VITO CASERTA, M.D.  
Acting Director, Division of  
Vaccine Injury Compensation (DVIC)  
Director, Countermeasures Injury Compensation  
Program (CICP)  
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:**

  
JENNIFER L. REYNAUD  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 305-1586

Dated: April 24, 2014