

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 13-623V

Filed: January 14, 2015

* * * * *		UNPUBLISHED
JOSEPH WOJTANOWSKI,	*	
	*	Special Master Dorsey
Petitioner,	*	
	*	
v.	*	
	*	Joint Stipulation on Damages;
SECRETARY OF HEALTH	*	Influenza (Flu) vaccine; Guillain-
AND HUMAN SERVICES,	*	Barré Syndrome (GBS); Attorneys’
	*	Fees and Costs; Reasonable Amount
Respondent.	*	to Which Respondent Does Not
	*	Object.
* * * * *		

Joseph P. Casale, Aquidneck Legal Center, LLC, Middletown, RI, for petitioner.  
Traci R. Patton, United States Department of Justice, Washington, DC, for respondent.

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

On August 29, 2013, Joseph Wojtanowski (“petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to -34 (2006). Petitioner alleged that he suffered from Guillain-Barré syndrome as a result of an influenza (“flu”) vaccine that was administered to him on October 12, 2011. See Petition at 1. Petitioner further alleged that he experienced the residual effects of these injuries for more than six months. Id. at 5.

<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling 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 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).

<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 (2006) (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.

On January 14, 2015, the parties filed a stipulation, stating that a decision should be entered awarding compensation. The parties also stipulated to the amount of attorneys' fees and costs that should be awarded to petitioner.<sup>3</sup>

Respondent denies that the flu vaccine caused petitioner's GBS or any other injury. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulated that petitioner shall receive the following compensation:

- a. **A lump sum of \$72,500.00, in the form of a check payable to petitioner.** This amount represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).
- b. **A lump sum of \$20,862.24<sup>4</sup>, in the form of a check payable jointly to petitioner and petitioner's attorney, Joseph P. Casale,** pursuant to 42 U.S.C. § 300aa-15(e), for attorneys' fees and costs. In compliance with General Order #9, petitioner represents that he incurred no out-of-pocket expenses in proceeding on the petition.

Stipulation ¶ 8.

The undersigned approves the requested amount for petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.<sup>5</sup>

**IT IS SO ORDERED.**

s/ Nora Beth Dorsey

Nora Beth Dorsey

Special Master

---

<sup>3</sup> Two separate stipulations were filed in this case. In the original stipulation, the parties omitted an additional \$862.24, in costs incurred by petitioner's counsel. The second stipulation includes the amount for the attorneys' costs for a total of \$20,862.24 in attorneys' fees and costs. This decision will attach both stipulations and enter an award for the total amount to petitioner.

<sup>4</sup> See footnote 3 for an explanation of the total amount of attorneys' fees and costs awarded.

<sup>5</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

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

_____	)	
JOSEPH WOJTANOWSKI,	)	
	)	
Petitioner,	)	
v.	)	No. 13-623V
	)	Special Master Dorsey
SECRETARY OF HEALTH AND HUMAN	)	ECF
SERVICES,	)	
	)	
Respondent.	)	
_____	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Joseph Wojtanowski, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 *et seq.* (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Mr. Wojtanowski's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received his flu immunization on October 12, 2011.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused him to suffer Guillian-Barré Syndrome ("GBS").
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 flu vaccine caused petitioner to suffer GBS or any other injury or 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 payments:

- a. A lump sum of \$72,500.00 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); and
- b. A lump sum of \$20,000.00, in the form of a check payable jointly to petitioner and petitioner's attorney, Joseph P. Casale, pursuant to 42 U.S.C. § 300aa-15(e), for attorneys' fees and costs. In compliance with General Order #9, petitioner represents that he incurred no out-of-pocket expenses in proceeding on the petition.

9. 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.

10. Payments made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, 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).

12. In return for the payments described in paragraph 8, 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 flu vaccination administered on October 12, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about August 29, 2013, in the United States Court of Federal Claims as petition No. 13-623V.

13. 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.

14. 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.

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. 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.

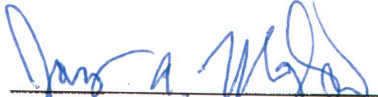
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's GBS or any other injury or condition.

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

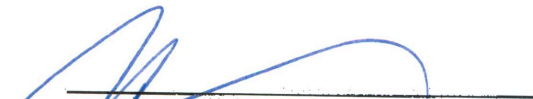
END OF STIPULATION

Respectfully submitted,

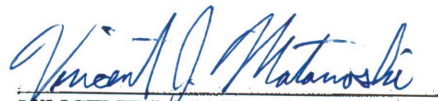
**PETITIONER:**

  
JOSEPH WOJTANWOSKI


**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
JOSEPH P. CASALE  
Aquidneck Legal Center, LLC  
Law Office of Joseph P. Casale  
Irongate I, 438 East Main Road  
Middletown, RI 02842  
Tel: (401) 841-0004


**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:**

  
A. MELISSA HOUSTON, M.D., M.P.H., FAAP  
Director, Division of Injury Compensation  
Programs (DICP)  
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:**

  
TRACI R. PATTON  
Senior Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
Tel: (202) 353-1589

Dated: 1/14/2015

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

JOSEPH WOJTANOWSKI,	)	
	)	
Petitioner,	)	
v.	)	No. 13-623V
	)	Special Master Dorsey
SECRETARY OF HEALTH AND HUMAN	)	ECF
SERVICES,	)	
	)	
Respondent.	)	

**STIPULATION OF FACTS CONCERNING ATTORNEY’S COSTS**

It is hereby stipulated by and between the parties, the following factual matters:

1. Joseph P. Casale is the attorney of record for petitioner.
2. The parties filed a stipulation on January XX, 2015, which included an award of \$72,500.00 to petitioner for all damages that would be available under 42 U.S.C. § 300aa-15(a), and an award of \$20,000.00 for attorney’s fees and costs available under 42 U.S.C. § 300aa-15(e).
3. Mr. Casale incurred an additional \$862.24 in costs. This amount was inadvertently omitted from the Stipulation.
4. The parties jointly request that the Special Master award petitioner an additional \$862.24 in attorney’s costs, in the form of a check payable jointly to petitioner and petitioner’s attorney, Joseph P. Casale.

Respectfully submitted,

s/ Joseph P. Casale  
 \_\_\_\_\_  
 JOSEPH P. CASALE  
 Aquidneck Legal Center, LLC  
 Law Office of Joseph P. Casale  
 Irongate I, 438 East Main Road  
 Middletown, RI 02842  
 Tel: (401) 841-0004

s/ Traci R. Patton  
 \_\_\_\_\_  
 TRACI R. PATTON  
 Senior Trial Attorney  
 Torts Branch, Civil Division  
 U.S. Department of Justice  
 P.O. Box 146, Benjamin Franklin Station  
 Washington, D.C. 20044-0146  
 Tel: (202) 353-1589

DATED: January 14, 2015