

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 14-323V

Filed: March 11, 2016

* * * * *		UNPUBLISHED
LORETTA A. ZIMMERMAN,	*	
	*	Special Master Hamilton-Fieldman
Petitioner,	*	
	*	Joint Stipulation on Damages;
v.	*	Influenza (“Flu”) Vaccine;
	*	Rheumatoid Arthritis (“RA”);
SECRETARY OF HEALTH	*	Attorneys’ Fees and Costs;
AND HUMAN SERVICES,	*	Reasonable Amount Requested
	*	to Which Respondent Does Not
Respondent.	*	Object.
* * * * *		

Jeffrey S. Pop, Jeffrey S. Pop, Attorney at Law, Beverly Hills, CA, for Petitioner.  
Ann D. Martin, United States Department of Justice, Washington, D.C., for Respondent.

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

On April 21, 2014, Loretta A. Zimmerman (“Petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to -34 (2006); Petition (“Pet.”), ECF No. 1, at 1-5. Petitioner alleged that an influenza (“flu”) vaccination administered on December 11, 2012 caused her to develop rheumatoid arthritis (“RA”). Pet. at 1. In an amended Petition filed on February 5, 2015, Petitioner alleged that the vaccination caused-in-fact, or significantly aggravated, her RA. Amended Pet., at 1.

On March 10, 2016, the parties filed a stipulation in which they state that a decision should be entered awarding compensation and attorneys’ fees. Stipulation, ECF No. 37.

<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, codified as amended at 44 U.S.C. § 3501 note (2012). 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.

Respondent denies that the flu vaccine caused Petitioner's RA, significantly aggravated her RA, or any other injury. However, 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 and attorneys' fees, on the terms set forth therein.

The parties stipulate that Petitioner shall receive the following compensation:

- a. **A lump sum of \$60,000.00, 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); and**
- b. **A lump sum of \$50,000.00 in the form of a check payable to Petitioner and Petitioner's attorney, Jeffrey S. Pop, for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e). In compliance with General Order #9, Petitioner represents that no personal, out-of-pocket expenses were incurred by Petitioner in proceeding on the petition.**

Stipulation ¶ 8.

The undersigned approves the requested amount for Petitioner's compensation and for attorneys' fees and costs. 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>3</sup>

**IT IS SO ORDERED.**

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

---

<sup>3</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**

_____	)	
LORETTA A. ZIMMERMAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 14-323V
	)	Special Master Hamilton-Fieldman
SECRETARY OF HEALTH AND	)	ECF
HUMAN SERVICES,	)	
	)	
Respondent.	)	
_____	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Loretta A. Zimmerman, 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 vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received an influenza immunization on December 11, 2012.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered rheumatoid arthritis and/or the significant aggravation of rheumatoid arthritis as a result of the influenza vaccine. Petitioner further alleges that she experienced residual effects of this condition for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her injuries.

6. Respondent denies that petitioner's influenza vaccine caused rheumatoid arthritis, the significant aggravation of rheumatoid arthritis, or any other 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 payments:

a. A lump sum of \$60,000.00 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); and

b. A lump sum of \$50,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Jeffrey S. Pop, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, petitioner represents that no personal, out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. 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.

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, 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).

12. In return for the payments described in paragraph 8, 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, the influenza vaccination administered on December 11, 2012, as alleged by petitioner in a petition for vaccine compensation filed on or about April 21, 2014, in the United States Court of Federal Claims as petition No. 14-323V.

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.



Respectfully submitted,

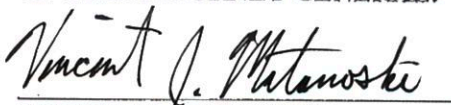
**PETITIONER:**

  
LORETTA A. ZIMMERMAN


**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
JEFFREY S. POP, ESQ.  
Jeffrey S. Pop & Associates  
9107 Wilshire Blvd., Suite 700  
Beverly Hills, CA 90210  
(310) 273-5462


**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:**

  
NARAYAN NAIR, M.D.  
Acting Director, Division of Injury  
Compensation Programs  
Healthcare Systems Bureau  
Health Resources and Services Administration  
U.S. Department of Health and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail Stop 08N146B  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
ANN D. MARTIN  
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) 307-1815

Dated: 3-10-16