

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

No. 15-432V

Filed: February 11, 2016

* * * * *

MARIA ESTHER GARCIA,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

Joint Stipulation on Damages; Attorney
Fees and Costs; Influenza (Flu) Vaccine;
Post-vaccine Neuropathy

Jeffrey S. Pop, Esq., Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.
Lisa A. Watts, Esq., US Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

Roth, Special Master:

Maria Esther Garcia [“petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program² on April 29, 2015. Petitioner alleges that she developed a post-vaccine neuropathy as a result of receiving an influenza immunization on February 3, 2014. *See* Stipulation, filed February 10, 2016, at ¶¶ 1-4. Respondent denies that the influenza immunization caused petitioner’s injury. Stipulation at ¶ 6.

Nevertheless, the parties have agreed to settle the case. On February 10, 2016, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² 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).

Respondent agrees to issue the following payments:

- (1) **A lump sum of \$50,000.00 in the form of a check payable to petitioner, Maria Esther Garcia.** This amount represents compensation for all damages that would be available under § 300aa-15(a);
- (2) **A lump sum of \$10,292.42, representing compensation for the reimbursement of a State of California Medicaid lien,** payable jointly to petitioner and the Department of Health Care Services, Recovery Branch – MS 4720, P.O. Box 997421, Sacramento, CA 95899-7421. Petitioner agrees to endorse this check to the Department of Health Care Services; and
- (3) **A lump sum of \$18,012.14 in the form of a check made payable to petitioner and petitioner’s attorney, Jeffrey S. Pop, Esq.** This amount represents all attorneys’ fees and costs available under § 300aa-15(e). Petitioner’s counsel represents that, in compliance with General Order #9, petitioner incurred no out-of-pocket expenses.

I adopt the parties’ stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. Further, I find that the amount of stipulated fees is reasonable, and thus an award for fees and costs is appropriate pursuant to § 300aa-15(e)(1). The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/ Mindy Michaels Roth
Mindy Michaels Roth
Special Master

³ 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

MARIA ESTHER GARCIA,)	
)	ECF
Petitioner,)	
)	
v.)	No. 15-432V
)	Special Master
SECRETARY OF HEALTH AND HUMAN)	Mindy Michaels Roth
SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Maria Esther Garcia (“petitioner”), 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 influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received a flu vaccine on February 3, 2014.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she developed a post vaccine neuropathy that was caused-in-fact by the flu vaccine. Petitioner further alleges that she suffered 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 on her behalf as a result of her condition.

6. Respondent denies that the flu vaccine caused petitioner's alleged post vaccine neuropathy, or any other injury, and further denies that petitioner's current disabilities are sequelae 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 payments:

- a. 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); and
- b. A lump sum payment of \$10,292.42, representing compensation for the reimbursement of a State of California Medicaid lien, payable jointly to petitioner and the Department of Health Care Services, Recovery Branch – MS 4720, P.O. Box 997421, Sacramento, CA 95899-7421. Petitioner agrees to endorse this check to the Department of Health Care Services.

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 the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a prepaid basis.

11. Payments made pursuant to paragraph 8, 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, 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 her individual capacity, and on behalf of her heirs, executors, administrators, successors, and 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 United States 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 vaccine administered on February 3, 2014, as alleged by petitioner in a petition for vaccine compensation filed on or about April 29, 2015, in the United States Court of Federal Claims as petition No. 15-432V.

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 United States 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 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 flu vaccine caused petitioner's alleged post vaccine neuropathy, or any other injury, or that her current disabilities are sequelae of her alleged vaccine-related injury.

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

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END OF STIPULATION

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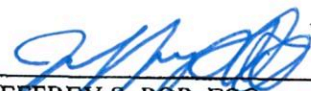
Respectfully submitted,

PETITIONER:




MARIA ESTHER GARCIA

**ATTORNEY OF RECORD FOR
PETITIONER:**



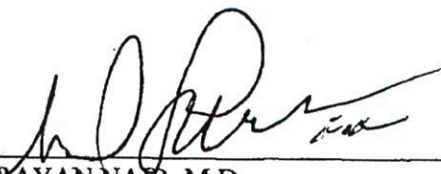
JEFFREY S. POP, ESQ.
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DATE: 2/10/2014

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MARIA ESTHER GARCIA,)	
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Petitioner,)	
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v.)	No. 15-432V
)	Special Master
SECRETARY OF HEALTH AND HUMAN)	Mindy Michaels Roth
SERVICES,)	
)	
Respondent.)	
)	

STIPULATION OF FACT CONCERNING ATTORNEYS' FEES AND COSTS

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

1. Jeffrey S. Pop is the attorney of record for petitioner in this matter. Other members of his firm, Jeffrey S. Pop & Associates, also worked on this case.
2. The parties informally discussed petitioner's preliminary Application for Attorneys' Fees and Costs. Based on these discussions, petitioner seeks reimbursement for attorneys' fees and costs in the total amount of \$18,012.14. Respondent has no objection to this amount.
3. Pursuant to General Order #9, petitioner represents that she did not personally incur any litigation costs in this matter.
4. The parties now request that a decision awarding attorneys' fees and costs, totaling \$18,012.14, payable jointly to petitioner and petitioner's counsel, be issued.
5. This Stipulation does not represent an agreement by either party to the hourly rates of the professionals who worked on this matter, nor a waiver of any objections that respondent may bring in other cases.

Respectfully submitted,

ATTORNEY OF RECORD FOR
PETITIONER:

s/Jeffrey S. Pop

JEFFREY S. POP, ESQ.
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9107 Wilshire Blvd., Ste. 700
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Dated: February 10, 2016

ATTORNEY OF RECORD FOR
RESPONDENT:

s/Lisa A. Watts

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Dated: February 10, 2016