

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-185V

Filed: December 30, 2019

UNPUBLISHED

CHRISTIE KIRBY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;  
Influenza (“flu”) vaccine; Radial  
Nerve Injury

*Richard Gage, Richard Gage P.C., Cheyenne, WY, for petitioner.*

*Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for respondent.*

## **DECISION AWARDING DAMAGES<sup>1</sup>**

On February 8, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered from right arm pain as a result from her receipt of influenza (“flu”) vaccine on October 8, 2013. (Pet.) The case was reassigned to me on June 6, 2019. (ECF No. 46.) On July 22, 2019, an entitlement hearing was held. Thereafter, on November 1, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her radial nerve injury.

On December 30, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$25,000.00. (ECF No. 67, p. 1.) In the Proffer, respondent represented that petitioner agrees with the proffered award.

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<sup>1</sup> I intend to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

<sup>2</sup> 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).

(/d.) Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award petitioner \$25,000.00**. This amount represents compensation for all damages that would be available under §15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/ Daniel T. Horner**  
Daniel T. Horner  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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OFFICE OF SPECIAL MASTERS**

CHRISTIE KIRBY,	)	
	)	
Petitioner,	)	No. 16-185V
v.	)	Special Master Horner
	)	ECF
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Compensation for Vaccine Injury-Related Items**

On November 1, 2019, Special Master Horner issued a Ruling on Entitlement finding that petitioner was entitled to vaccine compensation for a right radial nerve injury. Based on the evidence of record, respondent proffers that petitioner should be awarded \$25,000.00.<sup>1</sup> This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>2</sup> Petitioner agrees.

**II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of **\$25,000.00**, in the form of a check payable to petitioner. Petitioner

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<sup>1</sup> The parties have no objection to the amount of the proffered award of damages. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Special Master’s November 1, 2019 entitlement decision.

<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Torts Branch, Civil Division

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*s/ Mallori B. Openchowski*  
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DATED: December 30, 2019