

REISSUED FOR PUBLICATION

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OSM

U.S. COURT OF FEDERAL CLAIMS

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-407V

Originally Filed: January 5, 2017

Refiled in Redacted Form: January 10, 2017

Not for Publication

FILED

JAN 10 2017

U.S. COURT OF FEDERAL CLAIMS

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S.B.,

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Petitioner,

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Damages and costs decision based on stipulation; Tetanus, diphtheria, and acellular pertussis ("Tdap") vaccine; shoulder injury related to vaccine administration ("SIRVA")

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v.

\*

\*

SECRETARY OF HEALTH AND HUMAN SERVICES,

\*

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\*

Respondent.

\*

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S.B., Chicago, IL, pro se.

Debra A. Filteau Begley, Washington, DC, for respondent.

**MILLMAN, Special Master**

## DECISION AWARDING DAMAGES AND LITIGATION COSTS<sup>1</sup>

On January 4, 2017, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioner received Tetanus, diphtheria, and acellular pertussis ("Tdap") vaccine on July 1, 2014. Petitioner alleges that her receipt of the Tdap vaccine caused her to suffer a shoulder injury related to vaccine administration ("SIRVA"). Petitioner further alleges that she experienced the residual effects of this injury for more than six months. Respondent denies that petitioner's SIRVA, or any other injury, was caused by her Tdap vaccination. Nonetheless, the parties agreed to resolve this matter informally.

<sup>1</sup> When this decision was originally filed the undersigned advised her intent 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). In accordance with Vaccine Rule 18(b), petitioner filed a timely motion to redact certain information. This decision is being reissued without petitioner's full name. The stipulation attached to this decision has also been redacted to remove petitioner's name, signature, and address. Except for those changes and this footnote, no other substantive changes have been made. This decision will be posted on the court's website with no further opportunity to move for redaction.

The court finds the terms of the stipulation to be reasonable, adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth in the stipulation. Pursuant to the attached stipulation, the court awards \$70,000.00 for reimbursement for all damages that would be available under 42 U.S.C. § 300aa-15(a) (2012).

The parties have also agreed on an appropriate amount for litigation costs in this case. Petitioner requests \$704.37 in costs. Respondent does not object to this amount. The undersigned finds this amount to be reasonable.

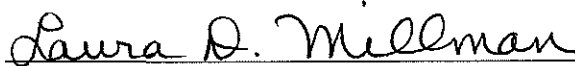
Accordingly, the court awards:

- a. a lump sum of **\$70,000.00**, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The award shall be in the form of a check made payable to petitioner in the amount of **\$70,000.00**; and
- b. a lump sum of **\$704.37**, representing reimbursement for petitioner's litigation costs. The award shall be in the form of a check made payable to petitioner in the amount of **\$704.37**.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: January 10, 2017

  
\_\_\_\_\_  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

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**JAN - 4 2017**

**OSM  
U.S. COURT OF  
FEDERAL CLAIMS**

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

	)
Petitioner,	)
v.	)
<b>SECRETARY OF HEALTH AND HUMAN SERVICES,</b>	)
Respondent.	)

No. 16-407V  
SPECIAL MASTER  
LAURA D. MILLMAN

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STIPULATION

**United States Court of Appeals  
For The Federal Circuit**

The parties hereby stipulate to the following matters:

1. 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 the Tetanus, diphtheria, and acellular pertussis ("Tdap") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a Tdap immunization on July 1, 2014.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered a shoulder injury related to vaccine administration ("SIRVA") that was caused-in-fact by her Tdap vaccination and that she has suffered the residual effects of this 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.

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6. Respondent denies that petitioner's alleged SIRVA, or any other injury, was caused-in-fact by her Tdap vaccination.

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 \$70,000.00 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 \$704.37 in the form of a check payable to petitioner, for litigation costs available under 42 U.S.C. § 300aa-15(e).

9. Petitioner represents that she has 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 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 further agree and stipulate that, except for any award for 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 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, her Tdap vaccination administered on July 1, 2014, as alleged by petitioner in a petition for vaccine compensation filed on or about March 28, 2016, in the United States Court of Federal Claims as petition No. 16-407V.

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:



*Pro se*

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

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**AUTHORIZED REPRESENTATIVE OF  
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(202) 616 - 4138

Dated: 1/3/17

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2017, the foregoing **STIPULATION** was served electronically and by U.S. Mail, postage prepaid, upon:



A handwritten signature in black ink, appearing to read "Debra A. Filteau Begley".

DEBRA A. FILTEAU BEGLEY  
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