

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

KRISTEN DE NUTO *
(aka Kristen De Nuto Sudacki) and, *
WILLIS J. DE NUTO, JR. *
as Substituted Administrators *
of the Estate of ANDREA DE NUTO, *
(aka Andrea DeNuto), Deceased, *

No. 17-104V
Special Master Christian J. Moran

Petitioners, *

Filed: August 22, 2018

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Stipulation; influenza (“flu”) vaccine;
Guillain Barré syndrome (“GBS”);
transverse myelitis (“TM”); death

Respondent. *

Kate Westad, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, MN, for
Petitioner;
Adriana Teitel United States Dep’t of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION¹

On August 21, 2018, the parties filed a joint stipulation concerning the petition for compensation filed for Andrea De Nuto on January 23, 2017. The petition alleged that the influenza (“flu”) vaccine Ms. De Nuto received on October 18, 2014, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), caused her to suffer Guillain-Barré syndrome and/or transverse myelitis, which ultimately led to her death. The petition further alleged that Ms. De Nuto suffered the residual effects of this injury for more than six months. Petitioners

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

represent that there has been no prior award or settlement of a civil action for damages on her behalf as a result of Ms. De Nuto's injuries and death.

Respondent denies that the influenza vaccine caused Ms. De Nuto to suffer Guillain-Barré syndrome, transverse myelitis, any other injury, or that it led to her death.

Nevertheless, the parties agree to the joint stipulation, attached hereto. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

A lump sum payment of \$345,000.00 in the form of a check payable to petitioners as Substituted Administrators of the Estate of Andrea De Nuto. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 17-104V according to this decision and the attached stipulation.²

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

KRISTEN DE NUTO (aka Kristen De Nuto Sudacki) and WILLIS J. DE NUTO, JR. as Substituted Administrators of the Estate of Andrea De Nuto (aka Andrea DeNuto), Deceased,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

No. 17-104V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Willis J. De Nuto, Sr., as the Administrator of the Estate of Andrea De Nuto (“ADN”), deceased, 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 and death allegedly related to ADN’s receipt of an influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a). Following the death of Willis J. De Nuto, Sr., Kristen De Nuto and Willis J. De Nuto, Jr. (“petitioners”) were appointed as Substituted Administrators of the Estate of Andrea De Nuto and recognized as petitioners in this claim.
2. ADN received the flu vaccine on October 18, 2014.
3. The vaccine was administered within the United States.
4. Petitioners allege that as a result of receiving the flu vaccine, ADN suffered Guillain-Barré Syndrome (“GBS”) in combination with or in the alternative Transverse Myelitis (“TM”).

ADN passed away on January 25, 2015. Petitioners further alleges that ADN's death was the sequela of her alleged vaccine-related injuries.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of ADN as a result of her alleged condition or death.

6. Respondent denies that the flu vaccine caused ADN's alleged GBS and/or TM, any other injury, or her death.

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 payment:

A lump sum of \$345,000.00 the form of a check payable to petitioners as Substituted Administrators of the Estate of Andrea De Nuto. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioners have 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. Petitioners and their 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 pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 9, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as substituted administrators of the Estate of Andrea De Nuto, under the laws of the State of New Jersey. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointments as substituted administrators of the Estate of Andrea De Nuto. If petitioners are not authorized by a court of competent jurisdiction to serve as substituted administrators of the Estate of Andrea De Nuto at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as administrators of the Estate of Andrea De Nuto, upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, and any amount awarded pursuant to paragraph 9, petitioners, in their individual capacity, and as the substituted administrators of the Estate of Andrea De Nuto, on behalf of the Estate and ADN's heirs, executors, administrators, successors or assigns, do 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. § 300 aa-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 ADN resulting from, or alleged to have resulted from, the flu vaccine administered on October 18, 2014, as alleged in a Petition filed on January 23, 2017, in the United States Court of Federal Claims as petition No. 17-104V.

14. 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.

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, 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.

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 ADN's alleged GBS and/or TM, any other injury, or her death.

17. All rights and obligations of petitioners in their capacity as the substituted administrators of the Estate of Andrea De Nuto, shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

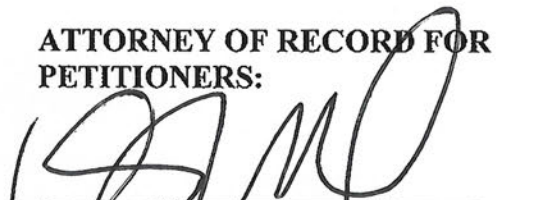
Respectfully submitted,

PETITIONERS:

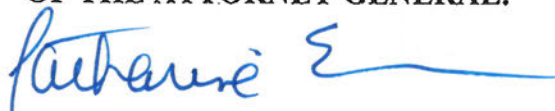

KRISTEN DE NUTO


WILLIS J. DE NUTO, JR.


**ATTORNEY OF RECORD FOR
PETITIONERS:**


KATE WESTAD
Larkin Hoffman Daly & Lindgren Ltd.
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437-1060
(952) 896-3227


**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


CATHARINE E. REEVES
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.
Director, Division of
Injury Compensation Programs
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 08-N146B
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


ADRIANA TEITEL
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-3677

Dated: Aug 21, 2018