

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 18-1316V

UNPUBLISHED

ELBERT COMPTON,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 10, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Jerome A. Konkel, Samster Konkel and Safran, Wauwatosa, WI, for Petitioner.*

*Mitchell Jones, U.S. Department of Justice, Washington, DC, for Respondent.*

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

On August 28, 2018, Elbert Compton 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 he suffered a shoulder injury related to vaccine administration (“SIRVA”) caused by an influenza vaccination on December 28, 2016. Petition at 1, 3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 5, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA.<sup>3</sup> On December 10, 2021, Respondent filed a proffer on award

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<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

<sup>3</sup> In the proffer, respondent waived his right to seek review of a damages decision, however he reserved his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the March 5, 2021, entitlement decision.

of compensation (“Proffer”) indicating Petitioner should be awarded \$50,000.00. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* 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 a lump sum payment 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 Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>4</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.

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

ELBERT COMPTON,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 18-1316V
	)	Chief Special Master Corcoran
	)	ECF
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

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

On August 28, 2018, Elbert Compton (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine he received on December 28, 2016. Petition at 1, 3. On September 24, 2020, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is not appropriate for compensation under the terms of the Act for a SIRVA Table injury. ECF No. 38.

On October 9, 2020, Chief Special Master Corcoran issued a Scheduling Order setting forth the parties’ options for further proceedings. ECF No. 41 at 1. On October 26, 2020, petitioner filed a Motion for a Finding of Fact Regarding Onset. ECF No. 42. On November 9, 2020, respondent filed a Response to Petitioner’s Motion for a Finding of Fact Regarding Onset, requesting that Chief Special Master Corcoran issue a finding of fact regarding onset and a ruling on the record regarding entitlement. ECF No. 43. On March 5, 2021, the Chief Special Master

issued a Ruling on Entitlement finding that onset of petitioner's condition occurred within 48 hours of his vaccination, and further finding that petitioner is entitled to compensation for a Table SIRVA injury.<sup>1</sup> ECF No. 47; ECF No. 248.

**I. Item of Compensation**

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$50,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). The above amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).

Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following: a lump sum payment of \$50,000.00 in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Elbert Compton:	<b>\$50,000.00</b>
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Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

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<sup>1</sup> Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's March 5, 2021, entitlement decision.

C. SALVATORE D’ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

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/s/ Mitchell Jones  
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DATED: December 17, 2021