

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-888V

UNPUBLISHED

THOMAS BIERBAUM,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 11, 2022

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

*David John Carney, Green & Schafle LLC, Philadelphia, PA, for Petitioner.*

*Wei Kit Tai, U.S. Department of Justice, Washington, DC, for Respondent.*

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

On July 22, 2020, Thomas Bierbaum 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”) as a result of his October 11, 2018 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 22, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On January 11, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$72,500.00 (representing pain and suffering). Proffer at 1-2. In the Proffer, Respondent represented

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 Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

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 \$72,500.00 (representing pain and suffering) 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>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief 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.



This amount represent all elements of compensation to which petitioner is 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<sup>1</sup>: a lump sum payment of \$72,500.00, in the form of a check payable to petitioner.

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

Lump sum payable to petitioner, Thomas Bierbaum:	<b>\$72,500.00</b>
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Respectfully submitted,

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Acting Director  
Torts Branch, Civil Division

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Deputy Director  
Torts Branch, Civil Division

LARA A. ENGLUND  
Assistant Director  
Torts Branch, Civil Division

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<sup>1</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.

s/ Wei Kit (Ricky) Tai  
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