

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-2039V

MICHAEL COHEN,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 1, 2023

*Laura Levenberg, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Joseph Adam Lewis, U.S. Department of Justice, Washington, DC, for Respondent.*

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

On October 19, 2021, Michael Cohen 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”) following receipt of a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine received on November 21, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 29, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On September 1, 2023, Respondent filed a proffer on award of compensation (“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.

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<sup>1</sup> Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (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 (2018).

**Pursuant to the terms stated in the attached Proffer, I award Petitioner a lump sum payment of \$65,000.00 (representative of past 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 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.

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

MICHAEL COHEN,	)	
	)	
Petitioner,	)	No. 21-2039V ECF
	)	
v.	)	Chief Special Master Corcoran
	)	
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

**PROFFER ON AWARD OF COMPENSATION<sup>1</sup>**

**I. Procedural History**

On October 19, 2021, Michael Cohen (“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 he suffered a Table shoulder injury related to vaccine administration (“SIRVA”), as the result of a Tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccination received on November 21, 2020. Petition at 1. On August 28, 2023, respondent filed his Vaccine Rule 4(c) Report, concluding that petitioner suffered from SIRVA as defined by the Vaccine Injury Table, within the Table timeframe. ECF No. 25. On August 29, 2023, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for a SIRVA Table injury. ECF No. 26.

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<sup>1</sup> This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

**II. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$65,000.00**, representative of past pain and suffering. This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a).

Petitioner agrees.

**III. Form of the Award**

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 **\$65,000.00** in the form of a check payable to petitioner.<sup>2</sup> Petitioner agrees.

Respectfully submitted,

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

s/ Joseph A. Lewis  
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