In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 22-85V

Filed: May 16, 2025

* * * * * * * * * * * * *

KELLY WICOFF, *
as personal representative of the *
ESTATE OF RANDOLPH KESTER, *
*
Petitioner, *
*
*
v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
Respondent. *

* * * * * * * * * * * * *

Jessi C. Huff, Esq., Mctlaw, Seattle, WA, for petitioner.
Dorian Hurley, Esq., US Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION[1]

Roth, Special Master:

On January 27, 2022, Kelly Wicoff ["petitioner"] filed a petition for compensation under the National Vaccine Injury Compensation Program[2] on behalf of the Estate of Randolph Kester. Petitioner alleges that Mr. Kester developed Guillain-Barre Syndrome after receiving an influenza vaccine on October 30, 2019 and that his death on February 29, 2020 was a sequela of his alleged vaccine-related injury. Stipulation, filed May 15, 2025, at ¶¶ 1-4. Respondent denies that the aforementioned immunization caused petitioner's injury or death. Stipulation at ¶ 6.

[1] 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.

[2] National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

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Nevertheless, the parties have agreed to settle the case. On May 15, 2025, the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms.[3]

Respondent agrees to issue the following payment:

> **A lump sum of $275,000.00** to be paid through an ACH deposit to petitioner's counsel's IOLTA account for prompt disbursement to petitioner, as personal representative of the Estate of Randolph Kester. This amount represents compensation for all damages that would be available under § 300aa-15(a).

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The clerk of the court is directed to enter judgment in accordance with this decision.[4]

IT IS SO ORDERED.

s/ Mindy Michaels Roth
Mindy Michaels Roth
Special Master

[3] The stipulation was filed with petitioner's signature completed via Nintex (electronic verification). To avoid the unnecessary disclosure of petitioner's personal information, the Nintex form has been omitted from this decision.

[4] Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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

KELLY WICOFF, as Personal Representative of the Estate of RANDOLH KESTER, deceased, Petitioner, v. SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	No. 22-0085V Chief Special Master Corcoran ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Kelly Wicoff ("petitioner"), as the personal representative of the Estate of Randolph Kester ("Mr. Kester"), 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 leading and death allegedly related to Mr. Kester'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)

2. Mr. Kester received the flu vaccine on October 30, 2019.

3. The vaccine was administered within the United States.

4. Petitioner alleges that as a result of the flu vaccine, Mr. Kester suffered Guillain-Barré Syndrome ("GBS"). Petitioner further alleges that Mr. Kester's death on February 29, 2020 was a sequela of his alleged vaccine-related injury. In the alternative, petitioner alleges that the vaccine significantly aggravated Mr. Kester's condition and resulted in his death.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Mr. Kester as a result of his alleged condition or his death.

6. Respondent denies that Mr. Kester sustained a GBS Table injury; denies that the flu vaccine caused or significantly aggravated Mr. Kester's alleged GBS, or any other injury; and further denies that the flu vaccine caused Mr. Kester's 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 payment of **$275,000.00** to be paid through an ACH deposit to petitioner's counsel's IOLTA account for prompt disbursement to petitioner, as personal representative of the Estate of Randolph Kester.

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 petitioner has 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. Petitioner and petitioner's 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 by entities that provide health services on a pre-paid basis.

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

12. Petitioner represents that petitioner presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Randolph Kester's estate under the laws of the State of Illinois. No payment made pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing petitioner's appointment as legal representative of Mr. Kester's estate. If the petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of Mr. Kester's estate 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 legal representative of Mr. Kester's estate upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in petitioner's individual capacity, and as the personal representative of the estate of Randolph Kester, on petitioner's own behalf and on behalf of Mr. Kester's estate and his 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 Mr. Kester resulting from, or alleged to have resulted from, the flu vaccination administered on October 30, 2019, as alleged in a petition for vaccine compensation filed on or about January 27, 2022, in the United States Court of Federal Claims as petition No. 22-85V.

15. 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.

16. 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 to 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. 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 or significantly aggravated Mr. Kester's alleged GBS or any other injury, or caused his death.

18. All rights and obligations of petitioner in her personal capacity as the personal representative of the estate of Randolph Kester shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

Respectfully submitted,

PETITIONER:

KELLY WICOFF

ATTORNEY OF RECORD FOR PETITIONER:

for

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AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF HEALTH AND HUMAN SERVICES:

Jeffrey S. Beach -S Digitally signed by Jeffrey S. Beach -S Date: 2025.04.29 10:56:39 -04'00' for

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Dated: 5/15/2025