

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: June 27, 2008)

DO NOT PUBLISH

RENDA SUE MACE,)	
)	
Petitioner,)	
)	
v.)	No. 05-1146V
)	Influenza Vaccine; Multifocal
SECRETARY OF)	Demyelinating Condition;
HEALTH AND HUMAN SERVICES,)	Stipulation
)	
Respondent.)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

Petitioner, Renda Sue Mace (Ms. Mace), seeks compensation under the National Vaccine Injury Compensation Program (Program).² Ms. Mace filed a Program petition on October 25, 2005. *See* Petition (Pet.). She alleges that she suffers a multifocal demyelinating process that is related to an influenza vaccination that she received on November 4, 2003. *See generally* Pet.

Respondent denies that Ms. Mace sustained a vaccine-related injury. *See, e.g.,* Stipulation (Stipulation), filed June 27, 2008, ¶ 6. Nevertheless, on June 27, 2008, the parties filed a Stipulation. *See* Stipulation. The special master has reviewed thoroughly the Stipulation. He adopts completely the Stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the Stipulation in Ms. Mace’s favor. Under Vaccine

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), Ms. Mace may expedite payment by filing an election to accept the judgment.

s/John F. Edwards
John F. Edwards
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

RENDA SUE MACE,)	
)	<u>ECF</u>
Petitioner,)	
v.)	No. 05-1146V
)	Special Master
SECRETARY OF HEALTH)	John F. Edwards
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On October 25, 2005, Renda Sue Mace (“petitioner”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the “Vaccine Program”). An amended petition was filed on February 20, 2007. The petition and amended petition seek compensation for injuries allegedly related to petitioner’s receipt of influenza vaccine, which is covered under the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a)(XIV), as amended.
2. Petitioner received the influenza vaccine on November 4, 2003.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she experienced the onset of progressive neuropathy, including burning and numbness in her lower extremities. Petitioner was hospitalized on November 15, 2003, and initially diagnosed with a variant of Guillain-Barré Syndrome (“GBS”). Petitioner alleges that her condition was caused by the influenza vaccine on November 4, 2003, and has submitted an expert opinion in support of her claim.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her alleged vaccine-related injury.

6. In his Rule 4(c) Report filed April 24, 2006, respondent denied that petitioner's variously diagnosed neurologic condition was caused by the influenza vaccine, and submitted a responsive expert opinion to support his position.

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 payments:

- a. A lump sum of \$85,000.00 in the form of a check payable to petitioner; and,
- b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). The amount described herein represents compensation for all remaining elements of compensation.

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability
Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Renda Sue Mace, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

For all remaining elements of compensation under § 300aa-15(a), the following payments:

Beginning one month from the date of purchase, \$1,442.41 per month for 13 years certain and for life thereafter, increasing at the rate of 3%, compounded annually from the date payments begin.

Should Renda Sue Mace predecease the exhaustion of the certain payments during the 13 year certain period, any remaining payments shall be made to Billy Oliphant, as guardian of the estate of Chad Berry, a minor, for the benefit of Chad Berry. Petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Renda Sue Mace's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and

Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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 special master shall preside over further proceedings to award reasonable attorney's fees and costs incurred in proceeding upon this petition.

13. Payments made pursuant to paragraph 8 and any amount awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

14. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorney's fees and costs incurred in this proceeding, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

15. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of herself resulting from, or alleged to have resulted from, the influenza

vaccination administered to her on November 4, 2003, as alleged by petitioner in a petition for vaccine compensation filed on October 25, 2005, and amended petition filed on February 20, 2007, in the United States Court of Federal Claims as petition No. 05-1146V.

16. If petitioner should die prior to the Secretary making any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

17. 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 null and void at the sole discretion of either party.

18. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 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.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

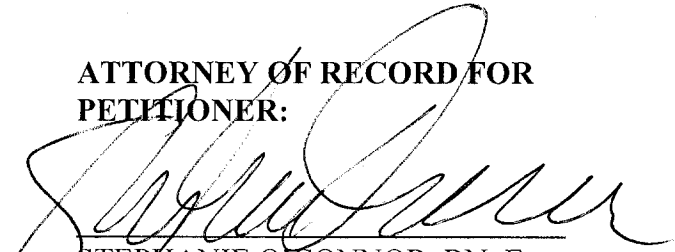
END OF STIPULATION

Respectfully submitted,

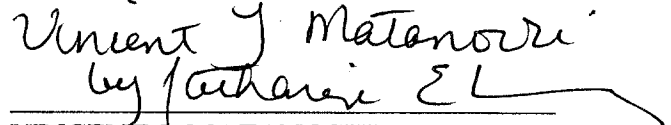
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REDA SUE MACE


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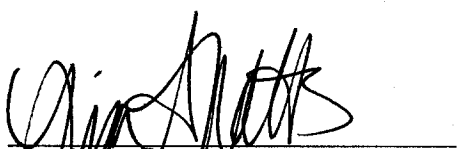
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