

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: March 31, 2008)

DO NOT PUBLISH

CLAIR SWAISS,)	
)	
Petitioner,)	
)	
v.)	No. 06-0638V
)	Measles-Mumps-Rubella Vaccine;
SECRETARY OF)	Stipulation
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

Petitioner, Clair Swaiss (Ms. Swaiss), seeks compensation under the National Vaccine Injury Compensation Program (Program).² Ms. Swaiss filed her Program petition on September 11, 2006. *See* Petition for Vaccine Compensation (Pet.). Ms. Swaiss asserts that she suffers chronic arthropathy and fibromyalgia that are related to a measles-mumps-rubella immunization that she received on January 2, 2004. *See* Pet. at 1.

Respondent denies that Ms. Swaiss sustained a vaccine-related injury. *See, e.g.*, Stipulation (Stipulation), filed March 28, 2008, ¶ 6. Nevertheless, on March 28, 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

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.

Appendix B, the clerk of court shall enter judgment based upon the Stipulation in Ms. Swaiss's favor. Under Vaccine 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. Swaiss may expedite payment by filing an election to accept the judgment.

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

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

_____)	
CLAIR SWAISS,)	
)	
Petitioner,)	
)	
v.)	No. 06-638V
)	Special Master
)	JOHN F. EDWARDS
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner 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 allegedly related to petitioner's receipt of a Measles-Mumps-Rubella ("MMR") vaccination, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a)(II); 42 C.F.R. § 100.3 (a)(IV).
2. Petitioner received the MMR immunization on January 2, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained chronic arthropathy and fibromyalgia as a consequence of her MMR vaccination.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of herself

as a result of her condition.

6. Respondent denies that petitioner suffered an injury actually caused by her MMR vaccination, and denies that her current disabilities are sequelae of her alleged vaccine-related injury.

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 of \$150,000.00 in the form of a check payable to petitioner. 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 attorney's fees and costs incurred in proceeding upon this petition.

10. Payments made pursuant to paragraph 8 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and litigation costs, 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).

12. In return for the payment described in paragraphs 8 and 9 petitioner, on behalf of herself, and 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 petitioner resulting from, or alleged to have resulted from, the MMR vaccination administered on January 2, 2004, as alleged by petitioner in a petition for vaccine compensation filed on September 11, 2006, in the United States Court of Federal Claims

as petition No. 06-638V.

13. If petitioner should die prior to receiving the payment 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.

14. 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.

15. 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 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.

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

END OF STIPULATION

Respectfully submitted,

PETITIONER:

Clair
CLAIR SWAISS

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Dated: *3-28-08*