

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

ALICIA SMITH, CAROLINA BOURQUE,
EMMA BURKEY, CHRISTOPHER CODY
FLINT, MICHELLE ZIMMERMAN, PhD,
ERIN RHODES, and JESSICA KROGMEIER,
LORIN JEPPSEN, and REACT19, INC

Plaintiffs,

-vs.-

UNITED STATES OF AMERICA, UNITED
STATES HEALTH RESOURCES AND
SERVICES ADMINISTRATION, UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES, and JOHN DOES 1-3,

Defendants.

Case No. 3:23-cv-01425

Judge Elizabeth E. Foote

Magistrate Kayla D. McClusky

**SECOND AMENDED VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

INTRODUCTION

1. This case presents the heartbreaking plights of a cross-section of ordinary Americans who suffered and continue to suffer devastating and debilitating injuries which started within days of receiving a COVID-19 vaccine. While drugmakers reap billions of dollars in profits behind the impenetrable shield of legal immunity, Plaintiffs and their families are left with shattered lives, mounting medical bills, ongoing testing and treatment, and in some cases, permanent disabilities and death. The Court should be aware that for every story told in this case, there are thousands upon thousands more, equally heartbreaking and unjust.

2. Instead of being able to sue the vaccine manufacturers for their injuries in a court of law, Plaintiffs have been forced by federal statute, the PREP Act, into the Countermeasures Injury Compensation Program (“CICP”). The CICP is akin to a black hole into which Plaintiffs submit a request for benefits, then wait an indeterminate amount of time for a decision, and for those who have received any decision, are ultimately wholly denied. Plaintiffs have no access to judicial review and are left to cope with their physical injuries and all resulting financial, emotional, and mental injuries.

3. Carolina Bourque used to travel extensively in her role with the Louisiana Department of Wildlife and Fisheries. Carolina loved to travel and hike, and she was always ready for an adventure. After receiving the Moderna vaccine, she cannot complete basic daily tasks, travel, or even drive.

4. Emma Burkey, a healthy Nevada high school student, suffered blood clots in her brain and seizures less than two weeks after receiving the Johnson & Johnson (“J&J”) vaccine. After three brain surgeries and thousands of hours of physical therapy, she struggles to walk, write, and care for herself. Her youth, as she knew it, is over. Her parents, who were on the verge of

retirement, now work around the clock beneath mounting debt, with the somber reality that Emma cannot possibly care for herself.

5. Cody Flint, a husband, father, and pilot from Mississippi with over 10,000 flight hours, suffered immediate adverse reactions to the Pfizer vaccine, culminating in vertigo and ruptured inner ears two days later which nearly resulted in a deadly plane crash. Cody will never fly again because he cannot possibly afford all the treatment needed to repair his injuries. His family is *“flat broke, swamped in debt, and has no real path forward.”*

6. Michelle Zimmerman, PhD, a highly educated K-12 worker in Washington, suffered severe adverse events after she received the J&J vaccine to comply with federal guidelines and to set a positive example for her students. She is now medically disabled, suffering from a severe brain injury, and unable to work, drive, or walk for more than a few minutes at a time. In Michelle’s words: *“I have had everything that I love stripped from me.”*

7. Jessica Krogmeier, a mother, registered nurse, and respiratory therapist from Iowa, received the Pfizer vaccine to comply with requirements for her profession. She used to dream of furthering her education and advancing into nursing leadership. Now, she cannot work full time because of her ongoing symptoms. Jessica used to be hopeful about the future, but her life has dramatically changed: *“I have no idea how it will feel day to day. I don’t even think I will live to see my kid graduate.”*

8. Despite their grievous injuries and the catastrophic effects on their lives, the only relief afforded to these Americans who “did the right thing” and got a COVID-19 vaccine is potential limited compensation under CICP. The federal law that created the CICP immunizes

vaccine manufacturers from financial liability.¹ In exchange, CICIP is supposed to compensate those who are injured by “covered countermeasures” like the COVID-19 vaccine.² The purported purpose of CICIP is to “provid[e] **timely, uniform, and adequate compensation** to eligible individuals for covered injuries and severe adverse events directly caused by the administration or use of a covered countermeasure”³; however, as detailed herein, CICIP is akin to a Potemkin village; it is an elaborate façade designed to hide an undesirable reality. CICIP is the epitome of a kangaroo court or a star chamber — a proceeding that ignores recognized standards of law and justice, is grossly unfair, and comes to a predetermined conclusion.

9. As a critical reminder: taxpayer funds were used to develop, test, purchase, distribute, and promote the vaccines. The federal government also mandated the vaccine through every avenue it legally could (and sometimes went beyond that until corrected by the judicial branch) or incentivized mandates by state and local governments or private employers and schools.

¹ The only exception is for “willful misconduct.” If a willful misconduct claim could be brought by the U.S. government under the Public Health Service Act or the Food, Drug, and Cosmetic Act, then a plaintiff cannot bring that claim unless the U.S. government does so first. For other willful misconduct claims, a plaintiff must satisfy an extremely high burden of proof, especially against a vaccine manufacturer. Notably, willful misconduct first requires that the plaintiff seek compensation through the CICIP and so the program is inescapable. If a plaintiff’s request is granted, he or she cannot sue for willful misconduct if he or she elects to receive that compensation. If the plaintiff chooses instead to file a lawsuit, injured persons may sue only in the U.S. District Court for the District of Columbia. Such lawsuits must meet heightened standards for pleading and discovery and are subject to procedural provisions generally favorable to defendants. Injured persons must prove willful misconduct by clear and convincing evidence (a higher standard than in a typical civil case), and recovery for noneconomic damages such as pain and suffering is limited. A plaintiff must show that a defendant acted (i) intentionally to achieve a wrongful purpose; (ii) knowingly without legal or factual justification; and (iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit. 42 U.S.C. §§ 247d-6d(c)(1)(A), (c)(3), (e)(1).

² CICIP covers numerous “countermeasures,” a category which includes more than COVID-19 vaccines. For purposes of the instant action, the only countermeasures applicable to Plaintiffs are the COVID-19 vaccines.

³ 42 U.S.C. § 247d-6e(a) (emphasis added).

10. The government consistently tested limits in a stated effort to protect Americans from COVID-19. Indeed, according to Justice Gorsuch, during the COVID-19 pandemic, Americans experienced “the greatest intrusions on civil liberties in the peacetime history of this country.” *Arizona v. Mayorkas*, 143 S.Ct. 1312, 1314 (2023) (Gorsuch, J., concurring). Executive officials issued emergency decrees, shuttering businesses, schools, and churches; surveilling cities to enforce compliance with social distancing requirements under threat of criminal penalties; and divided cities and neighborhoods into color-coded zones that could be changed when challenged in the courtroom. *Id.* at 1314-15 (citing 10 cases of intrusions on civil liberties). The government painted the vaccine as the only way out of this crushing regime of restrictions on individual and civil rights that it imposed.

11. Now, on the heels of the COVID-19 pandemic, the government refuses to compensate those who heeded the call and suffered the most severe vaccine injuries and, in doing so, denies them even the most basic of due process measures. The CICIP as it functions now is fundamentally inconsistent with Congress’ intent. CICIP claims are consistently lost, ignored, denied, or caught up in the years-long purgatory of government bureaucracy. The compensation, if any, is neither timely nor adequate. Perhaps the decisions are uniform, but only in the sense that claims uniformly get lost in a black hole for years or are uniformly denied.

12. Congress could remedy the defects in CICIP by amending the PREP Act so that it satisfied Americans’ constitutional rights and accomplishes the stated objective of providing timely, uniform, and adequate compensation to Plaintiffs and other individuals harmed by the COVID-19 vaccine. However, the legislation as currently drafted and implemented fails to provide the most basic protections required under the U.S. Constitution. The immunity to liability provisions within the PREP Act and the CICIP are inextricably intertwined. As such, the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.