

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-02V

Filed: November 21, 2012

AMY OWENS and RICK OWENS, as
Parents and Natural Guardians of TASHA
OWENS,

*
*
*
*
*
*
*
*
*
*

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

UNPUBLISHED

Joint Stipulation on
Damages; meningococcal
vaccine; atypical
fibromyalgia; trigeminal
neuralgia.

Mark T. Sadaka, Englewood, NJ, for petitioners.

Darryl R. Wishard, Washington, DC, for respondent.

DECISION¹

On January 3, 2011, Amy Owens and Rick Owens (petitioners) filed a petition for compensation on behalf of their daughter, Tasha, alleging that, as a result of receiving the meningococcal vaccine on August 27, 2008, Tasha suffered from atypical fibromyalgia and/or trigeminal neuralgia. Petitioners seek an award under the National Vaccine Injury

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

Compensation Program.² 42 U.S.C. §§ 300aa-1 to -34 (2006).

On November 21, 2012, counsel for both parties filed a stipulation, stating that a decision should be entered awarding compensation.

Respondent denies that the meningococcal vaccine caused Tasha to suffer from atypical fibromyalgia, trigeminal neuralgia, or any other injury, and further denies that her alleged medical condition was vaccine-related. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulated that petitioners shall receive the following compensation: “a lump sum of \$15,000.00, in the form of a check payable to petitioners, on behalf of Tasha”. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).” Stipulation ¶ 8.

The undersigned approves the requested amount for petitioners’ compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties’ stipulation.³

IT IS SO ORDERED.

s/ Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

6. Respondent denies that the vaccine caused Tasha to suffer from atypical fibromyalgia, trigeminal neuralgia, or any other injury, and further denies that her alleged medical condition was vaccine-related.

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 petitioners have 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 \$15,000.00, in the form of a check payable to petitioners, on behalf of Tasha, representing 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 petitioners have 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. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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. Payment made pursuant to paragraph 8 of this Stipulation, and any amount 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. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Tasha, 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).

13. Petitioners represent that they are authorized to serve as the guardians and/or legal representatives of Tasha's estate for the purposes of this settlement.

14. In return for the payment described in paragraph 8, and any payments that may be made as described in paragraph 9, petitioners, on behalf of Tasha, and on behalf of the heirs, executors, administrators, successors or assigns of Tasha, do forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions, 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 Tasha resulting from, or alleged to have resulted from, the meningococcal vaccine administered on August 27, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about January 3, 2011, in the United States Court of Federal Claims as petition No. 11-02V.

15. If Tasha should die prior to entry of judgment, this agreement shall be voidable

upon proper notice to the Court on behalf of either or both of the parties.

16. 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.

17. 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.

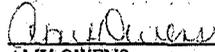
18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the meningococcal vaccine caused Tasha to suffer from fibromyalgia, trigeminal neuralgia, or any other injury.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns, as legal representatives of Tasha.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:

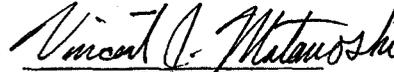

AMY OWENS


RICK OWENS

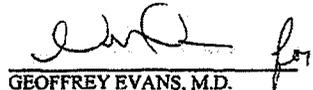
**ATTORNEY OF RECORD FOR
PETITIONERS:**


MARK T. SADAKA
Sadaka & Associates
20 North Van Brunt Street
Englewood, NJ 07024
(201) 266-5670

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


GEOFFREY EVANS, M.D. for
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


DARRYL R. WISHARD
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4357

Dated: 11/21/12