

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 08-82V

Filed: February 9, 2009

Not for publication

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GABRIELA MARTINEZ-OLIVER, \*  
by and through ROBERTO and MONICA \*  
PUENTE, as parents and natural guardians, \*

Petitioners, \*

v. \*

SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

Damages decision based on stipulation;  
Transverse Myelitis following tetanus-  
diphtheria, polio, MMR, and hepatitis B  
vaccinations

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Anne C. Toale, Sarasota, FL, for petitioners.  
Darryl R. Wishard, Washington, DC, for respondent.

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On February 9, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that Gabriela Martinez-Oliver suffered from transverse myelitis caused-in-fact by her receipt of tetanus-diphtheria,

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<sup>1</sup> Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

polio, measles-mumps-rubella, and hepatitis B vaccinations. Respondent denies that Gabriela's transverse myelitis and her current condition were caused-in-fact by receipt of the vaccines. Nonetheless, the parties agree that a decision should be entered awarded compensation described in paragraph 8 of the attached stipulation.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of \$15,000.00 in the form of a check payable to petitioners for past unreimbursable expenses; and
- b. a lump sum of \$285,000.00, in the form of a check payable to petitioners on behalf of and for the benefit of Gabriela. This lump sum amount represents compensation for all remaining damages that would be available under 42 U.S.C. §300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: February 9, 2009

/s/ Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

GABRIELA MARTINEZ-OLIVER, )  
by and through ROBERTO and )  
MÓNICA PUENTE, as parents and )  
natural guardians, )  
Petitioners, )  
v. ) No. 08-82V ECF  
Special Master Millman )  
SECRETARY OF HEALTH AND HUMAN )  
SERVICES, )  
Respondent. )

**STIPULATION**

The parties hereby stipulate to the following matters:

1. On February 11, 2008, petitioners, on behalf of their niece and now adopted child, Gabriela Martinez-Oliver (“Gabriela”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Gabriela’s receipt of the tetanus-diphtheria, polio, measles-mumps-rubella, and hepatitis B vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Gabriela received the above-mentioned vaccines on September 13, 2006.
3. The vaccines were administered within the United States.
4. Petitioners allege that Gabriela sustained the first symptom or manifestation of the onset of transverse myelitis on September 27, 2006, and allege that Gabriela’s transverse myelitis, as well as her continuing disabilities related thereto, were caused-in-fact by her receipt

of the vaccines.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Gabriela as a result of her condition.

6. Respondent denies that Gabriela's transverse myelitis and her current condition were caused-in-fact by receipt of the vaccines.

7. Maintaining their above-stated positions, the parties nevertheless agree 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 payments:

a. A lump sum of \$15,000.00 in the form of a check payable to petitioners for past unreimbursable expenses; and

b. A lump sum of \$285,000.00, in the form of a check, payable to petitioners on behalf of and for the benefit of Gabriela. This lump sum amount represents compensation for all remaining 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. 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 attorneys' fees and costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Gabriela 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Gabriela's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Gabriela's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of Gabriela'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 guardians/conservators of Gabriela's estate upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, petitioners, in their individual capacities and as legal representatives of Gabriela, on behalf of themselves, Gabriela, her heirs, executors, administrators, successors or assigns, do forever fully and 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 Gabriela resulting from, or alleged to have resulted from, the vaccines administered on September 13, 2006, as alleged by petitioners in a petition for vaccine compensation filed on or about February 11, 2008,

in the United States Court of Federal Claims as petition No. 08-82V.

14. If Gabriela should die prior to receiving 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.

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 null and void at the sole discretion of either party.

16. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. 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.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioners' successors and assigns as legal representatives of Gabriela Martinez-Oliver.

**END OF STIPULATION**

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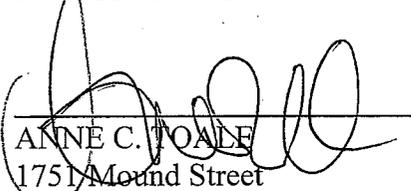
Respectfully submitted,

**PETITIONERS:**

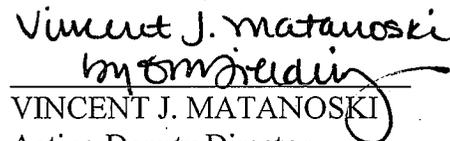
  
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Dated: 2/9/09