

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-0797V

Filed: 18 August 2008

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ADEGOKE AKINSOLA and CAROL *
DENISE McDANIEL, as Legal *
Representatives of the Estate of *
LINDSEY ABIOLA AKINSOLA, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

* * * * *

Kenneth Anderson Brister, Esq., Brister & Brister, Lake Providence, Louisiana, for Petitioner;
Lisa A. Watts, Esq., United States Department of Justice, Washington, D.C. for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 11 August 2008, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Lindsey Abiola Akinsola, as represented legally by Petitioners Adegoke Akinsola and Carol Denise McDaniel, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. On 13 November 2007, Adegoke Akinsola and Carol Denise McDaniel (Petitioners) filed this Petition for vaccine compensation on behalf of the estate of their deceased daughter Lindsey Abiola Akinsola (“Lindsey”) under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through 34, as amended (the “Vaccine Program”). The Petition seeks compensation

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling 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" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

for injuries and resulting death allegedly related to Lindsey's receipt of the following vaccines: diphtheria-tetanus-acellular pertussis (DTaP), inactivated poliovirus (IPV), Hepatitis B (Hep B), pneumococcal conjugate (PCV7), and haemophilus influenzae type b (HIB), which vaccines are included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a)(I-II, VII-IX, XIII).

2. Lindsey received the DTaP, IPV, HIB, Hep B, and PCV7 vaccines on 22 January 2007.
3. The vaccines were administered within the United States.
4. Petitioners allege that the DTaP, IPV, HIB, Hep B, and PCV7 vaccines caused cerebral encephalopathy, thymic enlargement, and visceral congestion, resulting in Lindsey's death on 22 January 2007.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Lindsey or her estate as a result of the alleged injury or death.
6. Respondent denies that the DTaP, IPV, HIB, Hep B, and PCV7 vaccines caused injury to Lindsey, and additionally denies that a vaccine injury was a direct or proximate cause of Lindsey's death.
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 [by the Undersigned] awarding the compensation described in paragraph 8 of this [Decision].
8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioners file an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following vaccine compensation payments:
 - a. A lump sum of **\$170,000.00** in the form of a check payable to Petitioners as the legal representatives of Lindsey's estate. This amount represents full compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a) [to which Petitioners would be entitled]; and
 - b. A lump sum of **\$5,000.00** in the form of a check payable to Petitioners and Petitioners' attorney, Kenneth Anderson Brister, Esq., for attorneys' fees and costs. [In compliance with General Order No. 9, Petitioners represent that they incurred no out-of-pocket expenses in proceeding on the Petition.]
9. Payments made pursuant to paragraph 8 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.
10. In return for the payments described in paragraph 8(a), Petitioner, in their individual capacities and as the legal representatives of the estate of Lindsey Abiola Akinsola, on behalf of themselves and Lindsey's estate, do 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 Lindsey, resulting from, or alleged to have resulted from, the DTaP, IPV, HIB, Hep B, and PCV7 vaccines administered to Lindsey on 22 January 2007, as alleged by Petitioners in a petition for vaccine compensation filed in the United States Court of Federal Claims on 13 November 2007 as petition No. 07-0797V.

11. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

12. This [Decision] 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.

13. All rights and obligations of Petitioners hereunder shall apply equally to her successors and assigns as legal representatives of Lindsey Abiola Akinsola.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

Richard B. Abell
Special Master