

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

No. 02-1392V

December 14, 2010

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RANDY and PAM  
COYNE, as legal representatives of  
their natural son CARSON COYNE

Petitioners,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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Curtis Webb for petitioners, Twin Falls, Idaho

Linda Renzi for respondent, Washington, DC

UNPUBLISHED

Hepatitis B; Autism;  
Omnibus Autism Proceeding  
Theory Two; Decision on  
the Record

**DECISION**<sup>1</sup>

On October 11, 2002, Randy and Pam Coyne [“petitioners”] filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program [“the

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<sup>1</sup> The undersigned 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). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for 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). In the absence of such motion, “the entire” decision will be available to the public. Id.

Program”],<sup>2</sup> on behalf of their son, Carson Coyne [“Carson”]. The petition seeks compensation for injuries allegedly related to Carson’s receipt of the hepatitis B vaccine on October 12, 1999.<sup>3</sup> Petitioners allege that Carson sustained a vaccine-related injury which presented initially as seizures and subsequently developed into autism.

On November 12, 2010, petitioners filed a request for a decision on the record as it now stands. Because the record does not support a finding of entitlement, petitioners’ vaccine claim fails and must be dismissed.

### I. The Omnibus Autism Proceeding

This case is one of more than 5,400 cases filed under the Program in which petitioners alleged that conditions known as “autism” or “autism spectrum disorders” [ASD] were caused by one or more vaccinations. Because a detailed history of the controversy regarding vaccines and autism, along with a history of the development of the OAP, was set forth in the six entitlement decisions issued by three special masters as “test cases” for two theories of causation litigated in the OAP, the undersigned does not repeat that history here.<sup>4</sup>

In furtherance of the OAP, the Petitioners’ Steering Committee [PSC], an organization formed by attorneys representing petitioners with the claims in the OAP, litigated six test cases presenting two different theories on the causation of ASDs. The first theory alleged that the mercury component of thimerosal-containing vaccines compromised the immune system of the vaccinees and permitted the measles portion of the administered measles, mumps, rubella [MMR] vaccine to persist in the body and cause ASDs. That theory was presented in three separate Program test cases during

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<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

<sup>3</sup> The received hepatitis vaccine was the third in the hepatitis series.

<sup>4</sup> The Theory 1 cases are Cedillo v. Sec’y of Health and Human Servs., No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); Hazlehurst v. Sec’y of Health and Human Servs., No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009); Snyder v. Sec’y of Health and Human Servs., No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). The Theory 2 cases are Dwyer v. Sec’y of Health and Human Servs., No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); King v. Sec’y of Health and Human Servs., No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); Mead v. Sec’y of Health and Human Servs., No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

several weeks of trial in 2007. The second theory alleged that the mercury contained in thimerosal-containing vaccines could directly affect an infant's brain and thereby, substantially contribute to the development of ASDs. That theory was presented in three additional test cases during several weeks of trial in 2008.

Decisions in each of the three test cases pertaining to the PSC's first theory rejected the petitioners' causation theories. Cedillo, 2009 WL 331968, aff'd, 89 Fed. Cl. 158 (2009), aff'd, 617 F.3d 1328 (Fed. Cir. 2010); Hazlehurst, 2009 WL 332306, aff'd, 88 Fed. Cl. 473 (2009), aff'd, 604 F.3d 1343 (2010); Snyder, 2009 WL 332044, aff'd, 88 Fed. Cl. 706.<sup>5</sup> Decisions in each of the three "test cases" pertaining to the PSC's second theory also rejected the petitioners' causation theories, and petitioners in each of the three cases chose not to appeal. Dwyer, 2010 WL 892250; King, 2010 WL 892296; Mead, 2010 WL 892248. Thus, the proceedings in these six test cases are concluded.

Petitioners here have designated for consideration with their claim, the evidence presented in the OAP's second theory test cases. Petitioners in this case now request a ruling on the record as it now stands.

## II. Causation in Fact

To receive compensation under the Program, petitioners must prove either 1) that Carson suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to his hepatitis B vaccination, or 2) that he suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of Carson's medical records does not uncover any evidence that he suffered a "Table Injury." In addition, the record in this case—which includes the general causation evidence developed in the second theory test cases—does not contain a medical opinion or any other persuasive evidence indicating that Carson's alleged autism injury was vaccine-caused.

Petitioners may not receive a Program award based solely on their claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records alone are insufficient to support petitioners' claim, a reliable medical opinion must be offered in support. Petitioners, however, have offered no such opinion. Instead, petitioners have relied on the causation theory presented in the OAP second theory test cases, and that theory has been rejected. Accordingly, petitioners' claim must fail.

Petitioners have failed to demonstrate on the record of this case either that Carson suffered a "Table Injury" or that his injuries were "actually caused" by his receipt of a thimerosal-containing hepatitis B vaccination. In the absence of a motion for review filed

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<sup>5</sup> Petitioners in Snyder did not appeal the decision of the U.S. Court of Federal Claims.

pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>6</sup>

**IT IS SO ORDERED.**

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

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<sup>6</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.