

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

E-Filed: July 26, 2012

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RONNI AND CHRISTOPHER KOLLASCH,
as parents and natural guardians of
their minor child, QUINN KOLLASCH,

Petitioners,

v.

SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED

No. 10-717V

Chief Special Master
Campbell-Smith

Joint Stipulation on
Damages; Influenza
("Flu") Vaccine;
Transverse Myelitis
("TM").

Sheila A. Bjorklund, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, MN, for petitioners.

Lara A. Englund, U.S. Dep't of Justice, Washington, DC, for respondent.

DECISION¹

On October 21, 2010, Ronni and Christopher Kollasch ("petitioners") filed a petition on behalf of their minor child, Quinn, seeking compensation under the National Vaccine Injury Compensation Program ("Vaccine Program").²

¹ Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision 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 (Dec. 17, 2002). 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). Otherwise, "the entire" decision will be available to the public. Id.

Petitioners allege that as a result of Quinn’s receipt of a seasonal influenza (“flu”) vaccine on November 18, 2009, he thereafter suffered from transverse myelitis (“TM”) and the residual effects of this injury for more than six months. Pet. at 1.

Respondent denies that the flu vaccine or any other vaccines caused Quinn’s TM, any other injury, or his current condition. Stip. at ¶ 6.

Nevertheless, on July 26, 2012, counsel for the parties filed a joint stipulation, which is attached to this decision, stating that a decision should be entered awarding compensation.³ See Stip.

The undersigned finds the stipulation reasonable, adopts it as the decision of the court on damages, and approves the requested amount for petitioners’ compensation. Pursuant to the terms stated in that stipulation, the court awards to petitioners:

- A lump sum of **\$125,000.00**, in the form of a check payable to petitioners as the court appointed guardians/conservators of Quinn’s estate; and
- An amount sufficient to purchase an annuity contract, subject to the conditions described in paragraph 10 of the attached stipulation, paid to the life insurance company from which the annuity will be purchased.

Id. at ¶ 8.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). Id.

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 “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

³ On June 26, 2012, the undersigned issued a decision on attorneys’ fees and costs, based on the parties’ stipulation of facts regarding an amount of attorneys’ fees and costs. See Attorneys’ Fees and Costs Decision.

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.⁴

IT IS SO ORDERED.

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

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

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

6. Respondent denies that the flu vaccine or any other vaccines caused Quinn's transverse myelitis, or any other injury, or his current condition.

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 payments:

a. A lump sum of **\$125,000.00** in the form of a check payable to petitioners as the court appointed guardian(s)/conservator(s) of Quinn's estate. No payment shall be made until petitioners have provided respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Quinn Kollasch's estate; and

b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

These amounts represent compensation for damages that would be available under 42 U.S.C. §300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;

b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;

- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Quinn Kollasch, pursuant to which the Life Insurance Company will agree to make payments periodically to Quinn Kollasch, or to his court-appointed guardian(s)/conservator(s), if applicable, for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. Beginning on April 17, 2032, \$6,500.00 per year for 30 years certain and life thereafter. The last certain payment will be made on April 17, 2061; and
- b. \$10,000.00 payable in a certain lump sum on April 17, 2031; and
- c. \$20,000.00 payable in a certain lump sum on April 17, 2034; and
- d. \$25,000.00 payable in a certain lump sum on April 17, 2039; and
- e. \$30,000.00 payable in a certain lump sum on April 17, 2044.

The payments provided for in this paragraph 10 shall be made as set forth above. Should Quinn Kollasch predecease the exhaustion of the certain payments during the certain periods specified above, any remaining certain payments shall be made to his estate. After the 30-year certain period described in paragraph 10(a), above, Quinn Kollasch, or the guardian of his estate, will continue to receive the annuity payments from the Life Insurance Company only so long as Quinn Kollasch is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Quinn Kollasch's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a

judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. Petitioners and their attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided

pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of Quinn 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).

16. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardian(s)/conservator(s) of Quinn's estate under the laws of the State of Minnesota. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardian(s)/conservator(s) of Quinn's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Quinn Kollasch 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 guardian(s)/conservator(s) of the estate of Quinn Kollasch upon submission of written documentation of such appointment to the Secretary.

17. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of Quinn, on behalf of themselves, Quinn, and his heirs, executors, administrators, successors or assigns,

(a) 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 or 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

Quinn resulting from, or alleged to have resulted from, the flu vaccine administered on or about November 18, 2009, as alleged by petitioners in a petition for vaccine compensation filed on or about October 21, 2010, in the United States Court of Federal Claims as petition No. 10-717V; and

(b) waive any and all rights to any compensation that may be available under the Countermeasures Injury Compensation Program, 42 U.S.C. § 247d-6e (or an action under 42 U.S.C. § 247d-6d(d)), for a claim alleging that a covered countermeasure, including the H1N1 influenza vaccinations administered on November 19, 2009, and December 22, 2009, on their own or in combination with the influenza vaccination administered on November 18, 2009, caused or significantly aggravated the same injuries that were the subject of the petition for vaccine compensation filed on or about October 21, 2010, in the United States Court of Federal Claims as petition No. 10-717V, specifically transverse myelitis, for which petitioners will receive compensation pursuant to this stipulation.

18. If Quinn 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.

19. 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.

20. 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 12 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

21. Petitioners hereby authorize respondent to disclose documents filed by petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

22. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Quinn's transverse myelitis, or any other injury, or his current condition.

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

END OF STIPULATION

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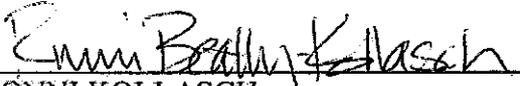
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Respectfully submitted,

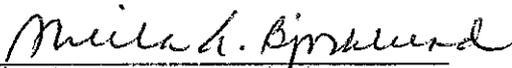
Petitioner:


RONNI KOLLASCH

Petitioner:


CHRISTOPHER KOLLASCH

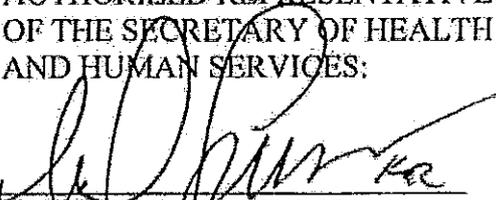
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Dated: 7/26/12