

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
Filed: February 19, 2013

* * * * *	*	
J.M.M., by and through DAVID	*	No. 11-730V
MUDANO and HEATHER MUDANO,	*	
as parents and natural guardians,	*	
	*	
Petitioners,	*	Chief Special Master Campbell-Smith
	*	
v.	*	
	*	UNPUBLISHED
	*	
SECRETARY OF THE	*	
DEPARTMENT OF	*	Joint Stipulation on Damages;
HEALTH AND HUMAN SERVICES,	*	Influenza (“flu”) Vaccine;
	*	Guillain-Barré Syndrome (“GBS”)
	*	
Respondent.	*	
	*	

* * * * *

Ann Carrion Toale, Sarasota, FL, for petitioner.
Lara Ann Englund, Washington, D.C., for respondent.

DECISION¹

On November 3, 2011, David and Heather Mudano (“petitioners”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program

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’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 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.

("Vaccine Program").² In their petition, petitioners allege that their child, J.M.M., received an influenza ("flu") vaccine on September 2, 2009, and thereafter suffered from Guillain-Barré Syndrome ("GBS").

Respondent denies that the flu vaccine caused J.M.M. to suffer from GBS or any other injury.

Nevertheless, on February 12, 2013, counsel for both parties filed a stipulation stating that a decision should be entered awarding compensation.³ The parties stipulated that petitioners should receive the following compensation:

A lump sum of **\$40,000.00** in the form of a check payable to petitioners. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

Stipulation at ¶ 8.

The parties further stipulated that they had not yet reached an agreement with respect to attorneys' fees and costs, but that they will submit to further proceedings to award reasonable attorneys' fees and costs incurred. Id. ¶ 9.

The undersigned finds the stipulation reasonable, adopts it as the decision of the court on damages, and approves the requested amount for petitioners' compensation. Accordingly, an award should be made in the form of a check payable to petitioners in the amount of **\$40,000.00**. 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

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. § 300aa (2006).

³ On February 12, 2009, the parties forwarded to the undersigned a version of their stipulation with J.M.M.'s name redacted to initials, and requested it be attached to the issued decision instead of the parties' originally filed stipulation.

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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DAVID and HEATHER MUDANO,)	
parents and natural guardians of)	
J.M.M., a minor,)	
)	
Petitioners,)	
)	
v.)	No. 11-730V
)	Chief Special Master Campbell-Smith
SECRETARY OF)	ECF
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, J.M.M., petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to J.M.M.’s receipt of the influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. J.M.M. received a flu vaccine on or about September 2, 2009.
3. The vaccine was administered within the United States.
4. Petitioners allege that the flu vaccine caused J.M.M. to develop Guillain-Barre Syndrome (“GBS”) and that he experienced residual effects of this injury for more than six months.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages as a result of J.M.M.’s condition.

6. Respondent denies that the flu vaccine is the cause of J.M.M.'s alleged GBS 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 payment:

A lump sum of **\$40,000.00** in the form of a check payable to petitioners as guardians of J.M.M.'s estate. This amount represents 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 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.

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 J.M.M. 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 presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians of J.M.M.'s estate under the laws of the State of Connecticut. No payments pursuant to this Stipulation shall be made until petitioners provides the Secretary with documentation establishing their appointment as the guardians of J.M.M.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian of the estate of J.M.M. 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 of the estate of J.M.M. upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of J.M.M., on behalf of themselves, J.M.M., and his heirs, executors, administrators, successors or assigns, 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 J.M.M. resulting from, or alleged to have resulted from, the influenza vaccination administered on September 2, 2009, as alleged by petitioners in a petition for vaccine compensation filed on or about November 3, 2011, in the United States Court of Federal Claims as petition No. 11-730V.

15. If J.M.M. 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, 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.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused J.M.M.'s alleged GBS, or any other injury, or his current condition.

Respectfully submitted,

PETITIONERS:

DAVID MUDANO

ATTORNEY OF RECORD FOR
PETITIONERS:

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AUTHORIZED REPRESENTATIVE
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AND HUMAN SERVICES:

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U.S. Department of Health
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Dated: _____

HEATHER MUDANO

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