

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-698V

Filed: November 2, 2012

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BRIAN R. PARMLEY and STEPHANIE	*	UNPUBLISHED
D. PARMLEY, as parents and legal	*	
representatives of their minor son, ISIAAH	*	Joint Stipulation on
RAY PARMLEY,	*	Damages; measles-mumps
	*	rubella (MMR);
Petitioners,	*	pneumococcal conjugate
	*	(PCV); seizure disorder;
v.	*	developmental and
	*	language delays; esotropia
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

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Elizabeth Muldowney, Richmond, VA, for petitioners.

Alexis Babcock, Washington, DC, for respondent.

### DECISION<sup>1</sup>

On October 15, 2009, Brian and Stephanie Parmley (petitioners), filed a petition for compensation on behalf of their son, Isaiah, alleging that he suffered certain injuries as a result of receiving several vaccinations. Petitioners specifically allege that Isaiah suffered from a seizure disorder, developmental and language delays, and esotropia as a result of receiving the Measles-Mumps-Rubella (“MMR”) and Pneumococcal conjugate

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling 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 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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).

("PCV") vaccinations on October 17, 2006, and that he experienced the residual effects of his injuries for more than six months. Petitioners sought an award on Isaiah's behalf under the National Vaccine Injury Compensation Program.<sup>2</sup> 42 U.S.C. §§ 300aa-1 to -34 (2006).

On November 1, 2012, counsel for both parties filed a stipulation, stating that a decision should be entered awarding compensation.

Respondent denies: (1) that Isaiah's MMR and PCV vaccines caused his seizure disorder, developmental delays, esotropia, or any other injury; (2) that Isaiah's vaccinations significantly aggravated an underlying condition he might have had; and (3) that Isaiah experienced the residual effects of this injury for more than six months. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulated that petitioners shall receive the following compensation: "A lump sum of \$ 112,500.00 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 ¶ 8.

The undersigned approves the requested amount for petitioners' compensation. Accordingly, an award should be made consistent with the stipulation.

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.<sup>3</sup>

**IT IS SO ORDERED.**

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

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<sup>2</sup> 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 the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

<sup>3</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.

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

**BRIAN R. PARMLEY and,  
STEPHANIE D. PARMLEY, as parents and  
legal representatives of their minor son,  
ISAIAH RAY PARMLEY,**

Petitioners,

v.

**SECRETARY OF HEALTH AND  
HUMAN SERVICES,**

Respondent.

No. 09-698V  
Chief Special Master  
Campbell-Smith

**STIPULATION**

The parties hereby stipulate to the following matters:

1. On October 15, 2009, Brian and Stephanie Parmley ("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") on behalf of their son, Isaiah. The petition seeks compensation for injuries allegedly related to Isaiah's receipt of the Measles-Mumps-Rubella ("MMR") and Pneumococcal conjugate ("PCV") vaccines, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Isaiah received MMR and PCV vaccinations on October 17, 2006.
3. The vaccines were administered within the United States.
4. Petitioners allege that Isaiah suffered from a seizure disorder, developmental and language delays, and esotropia which were caused-in-fact by his vaccinations. In the alternative, petitioners allege that Isaiah's vaccination significantly aggravated an underlying disorder.

Petitioners further allege that Isaiah experienced residual effects of this injury for more than six months.

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

6. Respondent denies that Isaiah's MMR and PCV vaccines caused his seizure disorder, developmental and language delays, esotropia, or any other injury; denies that his vaccinations significantly aggravated an underlying condition; and denies that Isaiah experienced the residual effects of this injury for more than six months.

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 \$112,500.00 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).

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, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Isaiah 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/conservators of Isaiah's estate under the laws of the State of Oregon. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Isaiah's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Isaiah Parmley 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/conservator of the estate of Isaiah Parmley 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 capacity and as the legal representatives of Isaiah, on behalf of themselves, Isaiah, and Isaiah's 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 Isaiah resulting from, or alleged to have resulted from, the MMR and PCV vaccinations administered on October 17, 2006, as alleged by petitioners in a petition for vaccine compensation filed on or about October 15, 2009, in the United States Court of Federal Claims as petition No. 09-698V.

15. If Isaiah 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 Chief 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 MMR or PCV vaccines caused Isaiah's seizure disorder, developmental and language delays, esotropia, or any other injury or his current disabilities.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representative of Isaiah Parmley.

END OF STIPULATION

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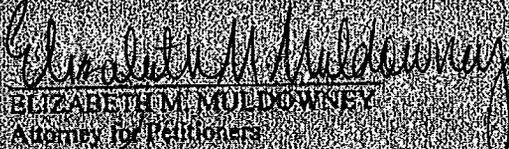
Respectfully submitted,

**PETITIONERS:**

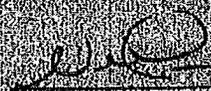
  
BRIAN PARMLEY

  
STEPHANIE PARMLEY

**ATTORNEY OF RECORD FOR  
PETITIONERS:**

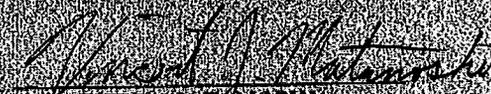
  
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**AUTHORIZED REPRESENTATIVE  
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AND HUMAN SERVICES:**

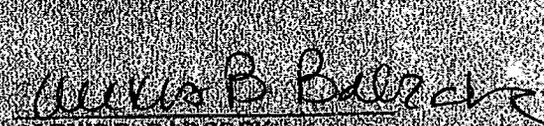
  
VITO CASERTA, M.D.  
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Dated: 11/1/12

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