

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-657V

Filed: January 18, 2013

JAMIE TRUNCALI and BENJAMIN,
TRUNCALI, Administrators of the
Estate of ANTHONY TRUNCALI,
Deceased,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Todd M. Rubin, Mineola, NY, for petitioners.
Alexis B. Babcock, Washington, DC, for respondent.

DECISION¹

On October 11, 2011, Jamie and Benjamin Truncali (petitioners), filed a petition on behalf of their son Anthony, pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-1 to -34 (2006). Petitioners seek compensation for an

¹ 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).

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 the Act). All

encephalopathy and death allegedly related to Anthony's receipt of the Diphtheria-Tetanus-acellular Pertussis ("DTaP"), Haemophilus-influenzae-type B ("Hib"), Pneumococcal conjugate, and Measles-Mumps-Rubella ("MMR") vaccines on November 24, 2009. Petition at 1.

On January 16, 2013, the parties filed a stipulation, stating that a decision should be entered awarding compensation.

Respondent denies that Anthony's alleged encephalopathy was caused-in-fact by his vaccinations, and denies that the vaccines caused any other injury or his death. 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. **A lump sum of \$40,000.00, in the form of a check payable to petitioners as guardians/conservators of Anthony's estate.** This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and
- b. **A lump sum of \$19,123.20, in the form of a check payable jointly to petitioners and petitioners' attorney, Todd. M. Rubin,** for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

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.³

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

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IT IS SO ORDERED.

s/ Nora Beth Dorsey
Nora Beth Dorsey
Special Master

in-fact by his vaccinations. Petitioners further allege that Anthony died as a result of his encephalopathy.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages as a result of Anthony's encephalopathy and death.

6. Respondent denies that Anthony's alleged encephalopathy was caused-in-fact by his vaccinations, and denies that the vaccine caused any other injury or his 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 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 \$40,000.00 in the form of a check payable to petitioners as guardians/conservators of Anthony's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and

b. A lump sum of \$19,123.20 in the form of a check payable jointly to petitioners and petitioners' attorney, Todd M. Rubin, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. 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.

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

11. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as conservators of Anthony's estate under the laws of the State of New York.

12. In return for the payments described in paragraphs 8, petitioners, in their individual capacity, and as legal representatives of the estate of Anthony Truncali, on behalf of themselves, and Anthony'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 Anthony resulting from, or alleged to have resulted from, the MMR, DTaP, Hib, and Pneumococcal vaccinations administered on November 24, 2009 as alleged in a petition for vaccine compensation filed on or about October 11, 2011, in the United States Court of Federal Claims as petition No. 11-657V.

13. 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.

14. 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. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the DTaP, Hib, Pneumococcal, and MMR immunizations caused Anthony's encephalopathy or any other injury or his death.

16. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of the estate of Anthony Truncali.

END OF STIPULATION

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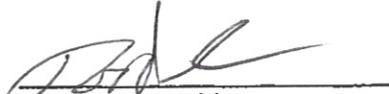
Respectfully submitted,

PETITIONERS:


JAMIE TRUNCALI


BENJAMIN TRUNCALI

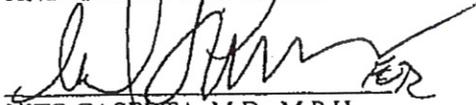
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Dated: 11/16/13